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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

CFR Correction

■ In Title 5 of the Code of Federal Regulations, Parts 1 to 699, revised as of January 1, 2014, on page 445, in appendix C to subpart B of part 532, under Colorado, under the subheading ''Southern Colorado'', under ''Area of Application. Survey area plus:'', remove the entry for Montrose.

[FR Doc. 2014–29465 Filed 12–15–14; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 361

[Docket No. APHIS–2008–0071]

RIN 0579–AD47

Importation of Plants for Planting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations on importing plants for planting to add Turkey to the list of countries from which the importation of restricted articles of *Chrysanthemum* spp., *Leucanthemella serotina,* and *Nipponanthemum nipponicum* into the United States is prohibited due to the presence of white rust of Chrysanthemum; to require permits for the importation of any seed that is coated, pelleted, or embedded in a substrate that obscures visibility; to provide for an alternate additional declaration on phytosanitary certificates that accompany articles imported from a country in which potato cyst nematodes are known to occur; to provide conditions for the importation of *Prunus* spp. articles from Canada that address the presence of plum pox potyvirus in that country; and to provide for the importation of *Dianthus* spp. (carnations) from the Netherlands. We are also making other changes to update and clarify the regulations and to improve their effectiveness. These changes are necessary to relieve restrictions that appear unnecessary, to update existing provisions, and to make the regulations easier to understand and implement.

DATES: Effective January 15, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Coady, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 851–2076.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of quarantine plant pests. The regulations contained in ''Subpart—Plants for Planting,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict among other things, the importation of living plants, plant parts, and seeds for propagation or planting.

On February 12, 2013, we published in the **Federal Register** (78 FR 9851–9865, Docket No. APHIS–2008–0071) a proposed rule [1] to amend various provisions of the regulations.

We solicited comments concerning our proposal for 60 days ending April 15, 2013. We received eight comments by that date. They were from the national plant protection organization (NPPO) of a foreign country, an organization representing wholesale exporters of plants for planting from a foreign country, a national organization that represents State departments of agriculture, a State department of agriculture, a national organization representing gardeners within the United States, and private citizens. The comments that we received are discussed below, by topic.

Comments Regarding ''Bulb'' and ''Dormant Herbaceous Perennial''

Section 319.37–1 contains definitions of terms used in the regulations. *Bulb* is defined in that section as: ''The portion of a plant commonly known as a bulb, bulbil, bulblet, corm, cormel, rhizome, tuber, or pip, and including fleshy roots or other underground fleshy growths, a unit of which produces an individual plant.''

In the proposed rule, we proposed to revise the definition of *bulb.* As we proposed to revise it, the definition would have been: ''The storage organ of a plant that serves as the plant's sexual structure during dormancy. Examples include bulbs, bulbils, bulblets, corms, and cormels. For purposes of this subpart, a bulb remains a bulb until such time as environmental conditions induce it to produce shoots. It is then considered a plant.'' We proposed this revision based on our belief that certain of the types of plant parts provided in the definition as examples of bulbs were actually better categorized as dormant herbaceous perennials.

For that reason, we also proposed to add a definition of *dormant herbaceous perennial* to the regulations. We proposed to define *dormant herbaceous perennial* in the following manner: ''Except for bulbs, the portions of an herbaceous perennial that remain after the above-ground parts of the plant have died back to the earth after the growing season and the plant remains dormant. Examples include rhizomes, tubers, tuberous roots, pips, fleshy roots, divisions, and underground fleshy growths. For purposes of this subpart, dormant herbaceous perennials remain dormant herbaceous perennials until such time as environmental conditions induce them to sprout. They are then considered plants.''

Two commenters asked whether it was our intent to retroactively apply the term *dormant herbaceous perennial* to certain articles that are currently authorized importation into the United States as bulbs. If so, the commenters asked whether this change in nomenclature would have any impact on preclearance programs or port-of-first-arrival procedures for the articles. The commenters also expressed concern that adding a definition of *dormant herbaceous perennial* to the regulations

[1] To view the proposed rule, its supporting documents, or the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0071.*

could inadvertently adversely impact trade in bulbs.

Another commenter asked what our scientific basis was for proposing to classify tubers and pips as dormant herbaceous perennials. The commenter pointed out that tubers and pips are the storage organs for several species of plants that do not have above-ground parts. Conversely, the commenter pointed to several species of rhizomes that would not meet our proposed definition of *dormant herbaceous perennial* because they maintain above-ground parts during the plant's dormancy.

The same commenter also stated that several of the terms used in our proposed definitions of *bulb* and *dormant herbaceous perennial,* such as ''divisions'' and fleshy growths,'' are not currently terms with clearly delineated meanings within the field of botany. Similarly, the commenter stated that most botanists would not consider a bulb to be a sexual structure.

Based on the issues identified and concerns raised by commenters, we have decided not to finalize our proposed revision to the definition of *bulb* or our proposed definition of *dormant herbaceous perennial.* While we maintain that the current definition of *bulb* should be revised, we will continue to dialogue with regulated entities and other stakeholders regarding the best manner to do so.

Comment Regarding Potato Cyst Nematode Prevalence in Canada

In § 319.37–5, paragraph (a) lists regions of the world in which potato cyst nematodes (PCN, *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens) are known to exist and places restrictions on the importation of restricted articles from those regions.

In our proposed rule, we proposed to revise and update the list. Among other revisions, we proposed to amend the manner in which the list refers to areas in Canada that are regulated for PCN. We pointed out that the list only contains two areas in Canada that the NPPO of Canada regulates for PCN, Newfoundland and a portion of the Municipality of Central Saanich in the Province of British Columbia; however, two other such areas exist, in Alberta and Quebec. For this reason, we proposed to amend the list to refer to all areas of Canada that are regulated by the NPPO of Canada for PCN. To further justify this amendment, we stated that the movement of soil within Canada has historically not been stringently regulated, and there is a significant possibility of future detections of PCN in other areas of Canada.

One commenter agreed with our proposed amendment and our rationale that there may be future detections of PCN in other areas within Canada, but disagreed with our assertion that the movement of soil in Canada has historically not been stringently regulated. The commenter pointed to several long-standing directives that the NPPO of Canada has issued that regulate the movement of soil in Canada.

We acknowledge that the NPPO of Canada has long placed restrictions on the movement of soil in Canada, and agree that the proposed rule should not have suggested otherwise. We note, however, that the commenter agreed that there is a possibility of future detections of PCN in Canada, and likewise agreed that this provides a sufficient rationale for our proposed amendment to the list. Therefore, based on this rationale, we are finalizing that amendment.

Importation of Restricted Articles of the Genera Chaenomeles, Cydonia, Malus, Prunus, Pyrus, and Vitis

At the time our proposed rule was issued, paragraph (b)(1) of § 319.37–5 contained requirements for the importation of restricted articles (except seeds) of *Chaenomeles, Cydonia, Malus, Prunus,* and *Pyrus* spp. from Belgium, Canada, France, Germany, Great Britain, and the Netherlands, as well as *Vitis* spp. restricted articles (except seeds) from Canada. It authorized the importation of these articles, provided that they are accompanied by a phytosanitary certificate with an additional declaration that the articles were grown in a nursery and found by the NPPO of the country in which they were grown to be free of certain plant diseases, or alternatively, with an additional declaration that those plant diseases do not occur in that country. Paragraph (b)(3) of § 319.37–5 listed the relevant plant diseases.

Paragraph (b)(2) of § 319.37–5 was meant to complement paragraph (b)(1), and contained what were intended to be conditions for the importation of budwood of certain *Prunus* species that are susceptible to plum pox potyvirus from Belgium, France, Germany, Great Britain, or the Netherlands.

Paragraph (j)(1) of § 319.37–5 contained conditions for the importation of seed of *Prunus* spp. that are susceptible to plum pox potyvirus from Belgium, France, Germany, Great Britain, or the Netherlands. Paragraph (j)(2) of § 319.37–5 complemented paragraph (j)(1) and provided additional conditions for the importation of seed of these *Prunus* spp. from all other countries, unless plum pox potyvirus is known to exist in that country.

In our proposed rule, we proposed to revise and consolidate paragraphs (b) and (j). We proposed to do so primarily in order to make the scope and intent of these paragraphs clearer, but also in order to add provisions regarding grafted plants to paragraph (b)(1), in order to update the list of plant diseases, and in order to reflect the detection of plum pox potyvirus in Canada, Argentina, Chile, and Japan.

(We also proposed certain harmonizing changes to provisions in § 319.37–2 and § 319.37–7 that referred to these paragraphs of § 319.37–5. We did so in order to ensure the internal consistency of the regulations.)

Of the revisions to paragraphs (b) and (j) of § 319.37–5 that we proposed, we are finalizing those that pertained to the importation of *Prunus* spp. seed into the United States without modification. With regard to the other proposed revisions, we are finalizing them with several modifications. We discuss the nature of and reasons for these modifications in the following paragraphs.

A commenter agreed with the majority of the revisions to the list of plant diseases that we proposed. However, the commenter asked us to remove the following plant diseases from the list: Grapevine corky bark ''Legno riccio'' agent, grapevine leaf roll viruses, grapevine stem pitting agent, and grapevine yellows disease bacterium. The commenter stated that these diseases are widely distributed in the United States and are not under official control by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA).

In response to this comment, USDA's Agricultural Research Service reviewed the distribution of these diseases within the United States, and agreed with the commenter that they are in fact widely distributed. Moreover, the commenter is correct that none of these diseases are under official control by APHIS. Therefore, we are removing the agents from the list. We are finalizing the other revisions to the list that we proposed.

We are finalizing our proposed revisions to the requirements for the importation of restricted articles (except seeds) of *Chaenomeles, Cydonia, Malus, Prunus,* and *Pyrus* spp. from Belgium, Canada, France, Germany, Great Britain, and the Netherlands, as well as *Vitis* spp. from Canada, with several modifications. We have also modified our proposed revisions to the requirements for the importation of

budwood of certain *Prunus* species that are susceptible to plum pox potyvirus from Belgium, Canada, France, Germany, Great Britain, or the Netherlands. We are doing so because of a notice that we published in the **Federal Register** on April 18, 2013 (78 FR 23209–23219, Docket No. APHIS–2011–0072). In that notice, pursuant to paragraph (b) of § 319.37–2(a), we added *Chaenomeles* and *Cydonia* spp. plants for planting, except seed, from all countries other than Canada; *Malus* spp. plants for planting, except seed, from all countries other than Belgium, Canada, France, Germany, or the Netherlands; *Prunus* spp. plants for planting, except seed, from all countries other than Canada and the Netherlands; and *Pyrus* spp. plants for planting, except seed, from all countries other than Canada to a list of taxa whose importation into the United States is not authorized pending pest risk analysis (referred to below as the NAPPRA list).

The revisions that we proposed to the requirements in paragraph (b)(1) of § 319.37–5 regarding the importation of restricted articles of *Chaenomeles, Cydonia, Malus, Prunus, Pyrus,* and *Vitis* spp. predated the issuance of the notice, and therefore need to be revised in light of it. Primarily, we wish to ensure that paragraph (b)(1) could not be construed to authorize the importation of *Chaenomeles, Cydonia, Malus, Prunus, Pyrus,* or *Vitis* spp. restricted articles from a country that was added to the NAPPRA list in the notice.

Accordingly, in this final rule, paragraph (b)(1)(i) of § 319.37–5 contains conditions for the importation of *Chaenomeles* spp. and *Cydonia* spp. restricted articles (except seeds) from Canada. Paragraph (b)(1)(ii) of § 319.37–5 contains conditions for the importation of *Malus* spp. restricted articles (except seeds) from Belgium, Canada, France, Germany, or the Netherlands. Paragraph (b)(1)(iii) of § 319.37–5 contains conditions for the importation of *Prunus* spp. restricted articles (except seeds) not susceptible to plum pox potyvirus from Canada or the Netherlands. Paragraph (b)(1)(iv) of § 319.37–5 contains conditions for the importation of *Pyrus* spp. restricted articles (except seeds) from Canada. Finally, paragraph (b)(1)(v) of § 319.37–5 contains conditions for the importation of *Vitis* spp. restricted articles (except seeds) from Canada.

These paragraphs retain the provisions that we would have added to paragraph (b)(1) of § 319.37–5 regarding grafted articles, or articles in which plant parts from one plant are inserted into those of another plant for purposes of propagation, and are, in other respects, substantially similar in content to our proposed revisions to paragraph (b)(1) of § 319.37–5. However, we believe that, by dividing paragraph (b)(1) into commodity-specific subparagraphs, we will provide importers and other interested parties with greater clarity regarding our importation requirements for a given species.

The additions to the NAPPRA list in the notice also led us to modify our proposed revisions to paragraph (b)(2) of § 319.37–5. In this final rule, paragraph (b)(2) of § 319.37–5 now only contains conditions for the importation of budwood of *Prunus* spp. susceptible to plum pox potyvirus from the Netherlands.

The additions to the NAPPRA list in the notice required us to modify some of our proposed harmonizing changes to §§ 319.37–2 and 319.37–7. Within § 319.37–7, paragraph (a)(3) contains a table requiring certain restricted articles (excluding seeds) from certain countries to be grown under post-entry quarantine conditions in order for the articles to be imported into the United States. The table had contained entries requiring post-entry quarantine for *Chaenomeles, Cydonia,* and *Pyrus* spp. restricted articles that meet the conditions for importation in § 319.37–5(b).

However, as a result of the changes to the NAPPRA list, these species of articles may only be imported into the United States from Canada, and, because of long-standing operational practices, we do not require post-entry quarantine for restricted articles from Canada. As a result, we are removing the entries for *Chaenomeles, Cydonia,* and *Pyrus* spp. restricted articles from the table.

In our proposed rule, the entries for *Chaenomeles* and *Cydonia* spp. articles in a table in § 319.37–2 would have prohibited the importation of any articles of those species that did not meet the conditions for importation in § 319.37–5(b) and § 319.37–7. Because we have removed the entries for *Chaenomeles* and *Cydonia* spp. restricted articles from § 319.37–7, the entries for those species in the table in § 319.37–2 do not refer to § 319.37–7.

In our proposed rule, our proposed revision to the entry in the table in § 319.37–7 for *Prunus* spp. would have required post-entry quarantine for *Prunus* spp. restricted articles imported from all countries listed in § 319.37–5(b) except Canada. In this final rule, as a result of the NAPPRA notice, it requires post-entry quarantine for all *Prunus* spp. restricted articles imported into the United States from the Netherlands.

Finally, in the course of reviewing our proposed revisions to § 319.37–5 in light of the NAPPRA notice, we realized that both proposed paragraph (b)(4)(i) and paragraph (b)(4)(ii) of § 319.37–5 could be construed to contain provisions regarding the importation of seed of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus from Belgium, Canada, France, Germany, Great Britain, and the Netherlands. However, we only intended proposed paragraph (b)(4)(i) to contain such provisions. As a result, we have made editorial revisions to paragraph (b)(4)(ii) to clarify its scope.

Comment Regarding the Importation of Dianthus spp. From the Netherlands

In our proposed rule, we proposed to authorize the importation of *Dianthus* spp. (carnations) from the Netherlands, subject to certain conditions proposed to us by the NPPO of the Netherlands.

One commenter expressed general concern that the importation of *Dianthus* spp. from the Netherlands could result in the introduction of plant pests into the United States, but did not cite any particular plant pest risks or scientific evidence to elaborate on this general concern.

As we mentioned in the proposed rule, we evaluated the conditions for the importation of *Dianthus* spp. from the Netherlands that the NPPO of the Netherlands proposed, and determined that they address the plant pest risk associated with such importation.

Controlled Import Permits

In the proposed rule, we proposed to amend § 319.37–1 to add a definition of *Administrator* to that section. However, on May 2, 2013, we published in the **Federal Register** a final rule (78 FR 25565–25572, Docket No. APHIS–2008–0055) that amended the regulations to establish the controlled import permit as a single type of authorization for the importation into the United States of otherwise prohibited or restricted plants for planting for experimental, therapeutic, or developmental purposes. Among other changes, that final rule added an identical definition of *Administrator* to the one we proposed to add to § 319.37–1. Accordingly, since a definition of *Administrator* has already been added to the regulations, and this definition mirrors the one we proposed, we do not need to finalize our proposed definition.

Consolidation of Permits

In the proposed rule, we proposed a number of revisions to § 319.37–3 of the regulations. Among other proposed revisions to that section, we proposed to revise paragraph (d) to incorporate

nonsubstantive editorial changes that updated and simplified its language. However, in a final rule published in the **Federal Register** on April 10, 2014 (79 FR 19805–19812, Docket No. APHIS–2011–0085), we simplified the language in paragraph (d) in a manner which obviates the need for our proposed revisions. Accordingly, we are not finalizing these proposed revisions.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis identifies importers and wholesale merchants of flowers, nursery stock, and florists' supplies, as well as wholesale merchants of fresh fruits and vegetables, as the small entities most likely to be affected by this action. The analysis considers the losses that may occur due to relaxing restrictions on the importation of certain plants for planting into the United States, while strengthening or expanding the scope of certain other restrictions. The analysis expects such losses to be relatively minor and anticipates that they would not substantively adversely impact small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

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

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection or recordkeeping requirements included in the regulations amended by this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0049.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are amending 7 CFR parts 319 and 361 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.37 [Amended]

■ 2. In § 319.37, in paragraph (b), the final sentence is amended by removing the words ''and the availability of treatment facilities for the article'' and adding in their place the words ''the availability of treatment facilities for the article, and any other factors pertaining to the risk that the article may present to plants, plant parts, or plant products within the United States that he or she considers necessary''.

■ 3. Section 319.37–1 is amended as follows:

■ a. In the definition of *from,* in paragraph (b), by adding the words ''or an article whose importation into the United States is not authorized pending pest risk analysis'' after the words ''prohibited article'', and by removing the words ''(c), (d), (e), (f), (g), (h), (i), (j)'' and adding the words ''(b)(2), (b)(3), (b)(4), (c), (d), (e), (f), (g), (h), (i)'' in their place;

■ b. In the definition of *from* by redesignating paragraphs (a) through (d) as paragraphs (1) through (4), respectively; and

■ c. By revising the definition of *phytosanitary certificate of inspection.*

The revision reads as follows:

§ 319.37–1 Definitions.

* * * * *

Phytosanitary certificate of inspection. A document, including electronic versions, that is related to a restricted article and is issued not more than 15 days prior to shipment of the restricted article from the country in which it was grown and that:

(1) Is patterned after the model certificate of the International Plant Protection Convention, a multilateral convention on plant protection under the authority of the Food and Agriculture Organization of the United States (FAO);

(2) Is issued by an official of a foreign national plant protection organization in one of the five official languages of the FAO;

(3) Is addressed to the national plant protection organization of the United States (Animal and Plant Health Inspection Service);

(4) Describes the shipment;

(5) Certifies the place of origin for all contents of the shipment;

(6) Certifies that the shipment has been inspected and/or tested according to appropriate official procedures and is considered free from quarantine pests of the United States;

(7) Contains any additional declarations required by this subpart; and

(8) Certifies that the shipment conforms with the phytosanitary requirements of the United States and is considered eligible for importation pursuant to the laws and regulations of the United States.

* * * * *

■ 4. In § 319.37–2, in paragraph (a), the table is amended as follows:

■ a. By removing the entries for ''*Arikuryoba* spp. (arikury palm)'', ''*Chrysalidocarpus* spp. (butterfly palm)'', ''*Mahoberberis* spp. (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter)'', ''*Mahoberberis* spp. destined to an eradication State listed in § 301.38–2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter)'', ''*Mahoberberis* spp. seed'', ''*Mahonia* spp. (mahonia) (plants of all species and horticultural varieties

not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter)'', ''*Mahonia* spp. (mahonia) destined to an eradication State listed in § 301.38–2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter)'', ''*Mahonia* spp. seed'', and ''*Neodypsis* spp. (palm)'';

■ b. In the entry for ''*Acer* spp. (maple) (except *Acer palmatum* and *Acer japonicum* meeting the conditions for importation in § 319.37–5(m)'', by removing the words ''in § 319.37–5(m)'' and adding the words ''in §§ 319.37–5 or 319.37–7'' in their place;

■ c. In the entry for ''*Berberis* spp. (barberry) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter)'', by removing the word ''(barberry)'' and adding the words ''(barberry, includes *Mahoberberis* and *Mahonia* spp.)'' in its place;

■ d. In the entry for ''*Berberis* spp. (barberry) destined to an eradication State listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter),'' by removing the word ''(barberry)'' and adding the words ''(barberry, includes *Mahoberberis* and *Mahonia* spp.)'' in its place;

■ e. In the entry for ''*Berberis* spp. (barberry) seed'', by removing the word ''(barberry)'' and adding the words ''(barberry, includes *Mahoberberis* and *Mahonia* spp.)'' in its place;

■ f. By revising the entry for ''*Chaenomeles* spp. (flowering quince) not meeting the conditions for importation in § 319.37–5(b)'';

■ g. By revising the entry for ''*Chrysanthemum,* spp. (chrysanthemum, includes *Dendranthema* spp.)'';

■ h. By adding an entry for ''*Dypsis* spp. (butterfly palm)'' in alphabetical order;

■ i. By revising the entry for ''*Leucanthemella serotina'';*

■ j. In the entry for ''*Malus* spp. (apple, crabapple) not meeting the conditions for importation in § 319.37–5(b)'', by removing the words ''in § 319.37–5(b)'' and adding the words ''in §§ 319.37–5(b) and 319.37–7'' in their place;

■ k. By revising the entry for ''*Nipponanthemum nipponicum'';*

■ l. By removing the entry for ''*Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) not meeting the conditions for importation in § 319.37–5(b)'' and adding a new entry for ''*Prunus* spp. not meeting the conditions for importation in § 319.37–5(b)'' in its place;

■ m. By removing the entry for ''*Prunus* spp. seed only (almond, apricot, nectarine, peach, plum, and prune, but not species in subgenus *Cerasus*) not meeting the conditions for importation in § 319.37–5(j)'' and adding a new entry for ''*Prunus* spp. seed only not meeting the conditions for importation in § 319.37–5(b)'' in its place;

■ n. In the entry for ''*Salix* spp. (willow)'', by removing the words ''*Erwinia salicis* (Day) Chester'' and adding the words ''*Brenneria salicis* (Day) Hauben et al., syn. *Erwinia salicis* (Day) Chester'' in their place; and

■ o. By adding an entry for ''*Syagrus schizophylla* (Mart.) Glassman (arikury palm)'' in alphabetical order.

The additions and revisions read as follows:

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Quarantine pests existing in the places named and capable of being transported with the prohibited article
* * *	*	* * *
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in §§ 319.37–5(b).	All	A diversity of diseases including but not limited to those listed for *Chaenomeles* in § 319.37–5(b).
Chrysanthemum spp. (chrysanthemum, includes *Dendranthema* spp.) not meeting the conditions for importation in §§ 319.37–5(c) and 319.37–7.	All	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
* * *	*	* * *
Dypsis spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
* * *	*	* * *
Leucanthemella serotina not meeting the conditions for importation in §§ 319.37–5(c) and 319.37–7.	All	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
* * *	*	* * *
Nipponanthemum nipponicum not meeting the conditions for importation in §§ 319.37–5(c) and 319.37–7.	All	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).
* * *	*	* * *
Prunus spp. not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to those listed for *Prunus* in § 319.37–5(b).
Prunus spp. seed only not meeting the conditions for importation in § 319.37–5(b).	All	Plum pox (=Sharka) potyvirus.
* * *	*	* * *
Syagrus schizophylla (Mart.) Glassman (arikury palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
* * *	*	* * *

* * * * *

■ 5. Section 319.37–3 is amended as follows:

■ a. By revising paragraphs (a)(1) through (11);

■ b. By removing paragraphs (a)(12) through (19); and

■ c. By adding paragraph (b).

The revisions and addition read as follows:

§ 319.37–3 Permits.

(a) * * *

(1) Lots of 13 or more articles (other than seeds of herbaceous plants, precleared bulbs of a taxon approved by APHIS for preclearance, or sterile cultures of orchid plants) from any country or locality except Canada;

(2) Seeds of non-herbaceous plants, such as trees and shrubs, from any country or locality except Canada;

(3) Articles subject to the requirements of § 319.37–5;

(4) Articles subject to the postentry quarantine conditions of § 319.37–7;

(5) Small lots of seed imported in accordance with § 319.37–4(d) of this subpart;

(6) Articles subject to treatment and other requirements of § 319.37–6;

(7) Seed of herbaceous plants for planting that is coated, pelleted, or embedded in a substrate that obscures visibility;

(8) Articles (except seeds) of *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp., *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), and *Vitis* spp. (grape) from Canada;

(9) Articles (except seeds) of *Fraxinus* spp. (ash) from counties or municipal regional counties in Canada that are not regulated for emerald ash borer (EAB) but that are within an EAB-regulated Province or Territory and are not prohibited under § 317.37–2;

(10) Articles (except seeds) of *Pinus* spp. from Canada; and

(11) *Solanum tuberosum* true seed from New Zealand and the X region of Chile (that area of Chile between 39° and 44° South latitude—see § 317.37–5(o));

(b) An application for a written permit should be submitted to the Plant Protection and Quarantine Programs (Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 136, Riverdale, MD 20737–1236) at least 30 days prior to the arrival of the article at the port of entry. The completed application must contain the following information:

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, *e.g.,* mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

* * * * *

■ 6. Section 319.37–4 is amended as follows:

■ a. By revising paragraph (a) introductory text;

■ b. In paragraph (a)(4), by removing the word ''Bulbs'' and adding the words ''Small packages of bulbs offered to travelers returning'' in its place, and by adding the word ''within'' before the words ''6 weeks after the issuance''; and

■ c. In paragraph (b), by removing the words ''may be sampled and inspected'' and adding the words ''must be presented for inspection'' in their place.

The revision reads as follows:

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

(a) *Phytosanitary certificates of inspection.* Any restricted article offered for importation into the United States must be accompanied by a phytosanitary certificate, unless the article is explicitly exempted from this requirement in the paragraphs below. The phytosanitary certificate must identify the genus of the article it accompanies. When the regulations in this subpart place restrictions on individual species or cultivars within a genus, the phytosanitary certificate must also identify the species or cultivar of the article it accompanies. If the plant is grafted, budded, or otherwise contains interpolated plant parts, the phytosanitary certificate must list the identity of any plant parts (*e.g.,* scion, rootstock, or interstem) that belong to restricted taxa to the lowest regulated taxon, *e.g.,* genus, species, or cultivar. Otherwise, identification of the species is strongly preferred, but not required. Intergeneric and interspecific hybrids must be designated by placing the multiplication sign ''x'' between the names of the parent taxa. If the hybrid is named, the multiplication sign may instead be placed before the name of an intergeneric hybrid or before the epithet in the name of an interspecific hybrid. Phytosanitary certificates are not required to accompany the following restricted articles:

* * * * *

■ 7. Section 319.37–5 is amended as follows:

■ a. By revising paragraphs (a), (b), and (c);

■ b. In paragraph (d), by adding the words ''or the Netherlands'' after the words ''Great Britain'' each time they occur;

■ c. By removing and reserving paragraph (j);

■ d. In paragraph (k), by removing the word ''*Feijoa''* and adding the words ''*Acca sellowiana* (O. Berg) Burret'' in its place;

■ e. In paragraph (m), by adding the words '', and unless the article is subject to the postentry quarantine requirements of § 319.37–7(a)'' at the end of the sentence; and

■ f. In paragraph (v)(4)(iv), by removing the words ''to the plants''.

The revisions read as follows:

§ 319.37–5 Special foreign inspection and certification requirements.

(a) Any restricted article (except seeds, unrooted cuttings, and articles declared solely for food, analytical, or manufacturing purposes) from Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Azores, Belarus, Belgium, Bolivia, Bulgaria, Canada (all areas regulated by the national plant protection organization of Canada for potato cyst nematodes), Channel Islands, Chile, Columbia, Costa Rica, Crete, Croatia, Cyprus, Czech Republic, Denmark (including Faeroe Islands), Ecuador, Egypt, Estonia, Falkland Islands, Finland, France, Georgia, Germany, Great Britain, Greece, Guernsey, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Jersey, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Republic of Moldova, Morocco, the Netherlands, New Zealand, Northern Ireland, Norway, Pakistan, Panama, Peru, the Philippines, Poland, Portugal (including Madeira), Romania, Russian Federation, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Africa, Spain (including Canary Islands and Mallorca), Sri Lanka, Sweden, Switzerland, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan, and Venezuela must be accompanied by a phytosanitary certificate of inspection with an additional declaration either:

(1) That the article was grown on land or in a substrate which has been microscopically inspected by the national plant protection organization of the country in which it was grown within 12 months preceding issuance of the certificate and found free from potato cyst nematodes, *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens; or

(2) That the article has been grown within a secure environment in a production area that is free of potato cyst nematodes, in a soilless growing medium, or *in vitro,* and has never been grown in soil nor come in contact with soil.

(b)(1)(i) Restricted articles (except seeds) of *Chaenomeles* spp. (flowering quince) or *Cydonia* spp. (quince) from Canada, at the time of arrival at the port of first arrival in the United States, must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Canada and that the article was found by the national plant protection organization of Canada to be free of the injurious plant pathogens listed in paragraphs (b)(5)(i), (ii), (iv), (xviii), (xix), (xx), and (xxi) of this section. The determination by the national plant protection organization that the article is free of these pathogens will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national plant protection organization that a pathogen does not occur in Canada may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, for articles containing more than one plant part (*e.g.,* grafted or budded plants), if the scion, interstem, rootstock, or any other plant part of the finished plant that is offered for importation belongs to a taxon listed within this paragraph as a regulated taxon, the additional declaration must address the quarantine pests and related restrictions associated with that taxon. The additional declaration must list all plant parts of regulated taxa that have been incorporated into the finished plant.

(ii) Restricted articles (except seeds) of *Malus* spp. (apple, crabapple) from Belgium, Canada, France, Germany, or the Netherlands, at the time of arrival at the port of first arrival in the United States, must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Belgium, Canada, France, Germany, or the Netherlands, and that the article was found by the national plant protection organization of the country in which it was grown to be free of the injurious plant pathogens listed in paragraphs (b)(5)(i), (ii), (iii), (vi), (vii), (viii), (xxii), (xxiii), (xl), (xli), (xlii), and (xliii) of this section. The determination by the national plant protection organization that the article is free of these pathogens will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national plant protection organization that a pathogen does not occur in the country in which the article is grown may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, for articles containing more than one plant part (*e.g.,* grafted or budded plants), if the scion, interstem, rootstock, or any other plant part of the finished plant that is offered for importation belongs to a taxon listed within this paragraph as a regulated taxon, the additional declaration must address the quarantine pests and related restrictions associated with that taxon. The additional declaration must list all plant parts of regulated taxa that have been incorporated into the finished plant.

(iii) Restricted articles (except seeds) of *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) not susceptible to plum pox (=Sharka) potyvirus (*P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana*) from Canada or the Netherlands, at the time of arrival at the port of first arrival in the United States, must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Canada or the Netherlands and that the article was found by the national plant protection organization of the country in which it was grown to be free of the injurious plant pathogens listed in paragraphs (b)(5)(i), (x) through (xvii), (xxii), and (xliii) of this section. The determination by the national plant protection organization that the article is free of these pathogens will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national plant protection organization that a pathogen does not occur in the country in which the article is grown may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, for articles containing more than one plant part (*e.g.,* grafted or budded plants), if the scion, interstem, rootstock, or any other plant part of the finished plant that is offered for importation belongs to a taxon listed within this paragraph as a regulated taxon, the additional declaration must address the quarantine pests and related restrictions associated with that taxon. The additional declaration must list all plant parts of regulated taxa that have been incorporated into the finished plant.

(iv) Restricted articles (except seeds) of *Pyrus* spp. (pear) from Canada, at the time of arrival at the port of first arrival in the United States, must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Canada and that the article was found by the national plant protection organization of Canada to be free of the injurious plant pathogens listed in paragraphs (b)(5)(i), (ii), (iv), (v), (xviii), (xix), (xx), (xliii), and (xliv) of this section. The determination by the national plant protection organization that the article is free of these pathogens will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national plant protection organization that a pathogen does not occur in Canada may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, for articles containing more than one plant part (*e.g.,* grafted or budded plants), if the scion, interstem, rootstock, or any other plant part of the finished plant that is offered for importation belongs to a taxon listed within this paragraph as a regulated taxon, the additional declaration must address the quarantine pests and related restrictions associated with that taxon. The additional declaration must list all plant parts of regulated taxa that have been incorporated into the finished plant.

(v) Restricted articles (except seeds) of *Vitis* spp. (grape) from Canada, at the time of arrival at the port of first arrival in the United States, must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Canada and that the article was found by the national plant protection organization of Canada to be free of the injurious plant pathogens listed in paragraphs (b)(5)(xiv) through (xvii) and (xxiv) through (xxxix) of this section. The determination by the national plant protection organization that the article is free of these pathogens will be based on visual examination and

indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national plant protection organization that a pathogen does not occur in Canada may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, for articles containing more than one plant part (*e.g.,* grafted or budded plants), if the scion, interstem, rootstock, or any other plant part of the finished plant that is offered for importation belongs to a taxon listed within this paragraph as a regulated taxon, the additional declaration must address the quarantine pests and related restrictions associated with that taxon. The additional declaration must list all plant parts of regulated taxa that have been incorporated into the finished plant.

(2) Budwood of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana*) and grown in the Netherlands may be imported into the United States only if it is accompanied by a phytosanitary certificate with an additional declaration that the original parent stock (nuclear stock) has been indexed and found free of pathogens in paragraphs (b)(5)(i), (ix) through (xvii), (xxii), (xliii), and (xliv) of this section by the appropriate national fruit tree certification program, and only if the original parent stock from which the budwood is taken is produced within a secure, enclosed, APHIS-approved pest-exclusionary facility within a national plant protection organization-operated or -approved nuclear stock program where the parent stock is maintained in a pathogen-free state.

(3) Restricted articles, except seeds, of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana*) from Canada must be accompanied by a phytosanitary certificate that contains an additional declaration that the article was grown in a nursery in Canada, that the article was found by the national plant protection organization of Canada to be free of the injurious plant pathogens listed in paragraphs (b)(5)(i), (ix) through (xvii), (xxii), (xliii), and (xliv) of this section, and that the article was grown in an area that has been surveyed and found free of plum pox (=Sharka) potyvirus according to a surveying protocol mutually agreed upon by APHIS and the national plant protection organization of Canada. The determination by the national plant protection organization of Canada that the article is free of these pathogens will be based on visual examination and indexing of the parent stock of the article and inspection of the nursery where the restricted article is grown to determine that the nursery is free of the specified pathogens. An additional declaration on the phytosanitary certificate of inspection by the national plant protection organization of Canada that a pathogen does not occur in Canada may be used in lieu of visual examination and indexing of the parent stock for that pathogen and inspection of the nursery. Finally, if any part of the article is not from Canada, but rather from a third country, that article must meet the entry requirements of this subpart as if the article had been directly imported into the United States from that third country.

(4)(i) Seeds of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana*) from Belgium, Canada, France, Germany, Great Britain, or the Netherlands shall, at the time of arrival at the port of first arrival at the United States, be accompanied by a phytosanitary certificate of inspection containing accurate additional declarations that:

(A) The seeds are from parent stock grown in a nursery in Belgium, Canada, France, Germany, Great Britain, or the Netherlands that is free of plum pox (=Sharka) potyvirus; and

(B) The seeds have been found by the national plant protection organization of the country in which they are produced to be free of plum pox (=Sharka) potyvirus based on the testing of parent stock by visual examination and indexing.

(ii) Seeds of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana*) from all countries except for the countries of Europe, Argentina, Canada, Chile, Cyprus, Japan, Syria, and Turkey, shall, at the time of arrival at the port of first arrival, be accompanied by a phytosanitary certificate of inspection, containing an accurate additional declaration that plum pox (=Sharka) potyvirus does not occur in the country in which the seeds were produced. The importation of seeds of *Prunus* spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana*) from Belgium, Canada, France, Germany, Great Britain, and the Netherlands is authorized subject to the conditions of paragraph (b)(4)(i) of this section. The importation of seeds of Prunus spp. susceptible to plum pox (=Sharka) potyvirus (species other than *P. avium, P. cerasus, P. effusa, P. laurocerasus, P. mahaleb, P. padus, P. sargentii, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. yedoensis,* and *P. virginiana*) from all other countries in Europe, as well as Argentina, Chile, Cyprus, Japan, Syria, and Turkey, is prohibited.

(5) List of pathogens:

(i) *Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).

(ii) *Guignardia piricola* (Nose) Yamomoto (Leaf, branch, and fruit disease).

(iii) Apple proliferation phytoplasma.

(iv) Pear blister canker apscaviroid.

(v) Pear bud drop virus.

(vi) *Diaporthe mali* Bres. (Leaf, branch, and fruit fungus).

(vii) Apple green crinkle agent (Apple false sting virus).

(viii) Apple chat fruit agent (Apple small fruit).

(ix) Plum pox (=Sharka) potyvirus and its strains.

(x) Cherry leaf roll nepovirus (Elm mosaic virus, golden elderberry virus).

(xi) European cherry rusty mottle virus.

(xii) European stone fruit yellows phytoplasma (Apricot chlorotic leaf roll agent).

(xiii) Plum bark split trichovirus.

(xiv) Arabis mosaic nepovirus and its strains.

(xv) Raspberry ringspot nepovirus (European cherry rasp leaf) and its strains.

(xvi) Tomato blackring nepovirus (Myrobalan latent ringspot, peach shoot stunting) and its strains.

(xvii) Strawberry latent ringspot sadwavirus (Peach willow leaf rosette, Court noue) and its strains.

(xviii) Quince sooty ringspot agent.

(xix) Quince yellow blotch agent (Pear yellow blotch agent, Apple rubbery wood phytoplasma).

(xx) Quince stunt agent.

(xxi) *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust).

(xxii) *Valsa mali* Miyabe and Yamada ex. Miura (Branch canker fungus).

(xxiii) Apple ringspot agent (Apple thumb mark, Thumb mark, Apple Henderson spot agent).

(xxiv) The following nematode transmitted viruses: Artichoke Italian latent virus, Grapevine Bulgarian latent virus, Grapevine fanleaf virus and its strains, and Hungarian chrome mosaic virus.

(xxv) Grapevine asteroid mosaic agent.

(xxvi) Grapevine Bratislava mosaic virus.

(xxvii) Grapevine chasselas latent agent.

(xxviii) Grapevine little leaf agent.

(xxix) Grapevine vein mosaic agent.

(xxx) Grapevine vein necrosis agent.

(xxxi) Flavescence-doree phytoplasma.

(xxxii) Black wood phytoplasma (bois-noir).

(xxxiii) Grapevine infectious necrosis bacterium.

(xxxiv) *Xanthomonas ampelina* Panagopoulas.

(xxxv) *Peyronellaea glomerata* Ciferri.

(xxxvi) *Pseudopeziza tracheiphila* Muller-Thur-gau.

(xxxvii) *Rhacodiella vitis* Sterenberg.

(xxxviii) *Rosellinia necatrix* Prill.

(xxxix) *Septoria melanosa* (Vialla and Ravav) Elenk.

(xl) Apple fruit crinkle apscaviroid.

(xli) Apple dimple fruit apscaviroid.

(xlii) Apple scar skin apscaviroid.

(xliii) *Monilinia polystroma.*

(xliv) Apricot pseudo-chlorotic leaf spot trichovirus.

(c) Any restricted article (except seeds) of *Chrysanthemum* spp. (chrysanthemum, includes *Dendranthema* spp.), *Leucanthemella serotina,* or *Nipponathemum nipponicum,* from a foreign place except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia shall, at the time of arrival at the port of first arrival in the United States, be accompanied by a phytosanitary certificate of inspection. The phytosanitary certificate of inspection must contain a declaration that the article was grown in a greenhouse nursery and found by the national plant protection organization of the country in which the article was grown to be free of white rust of chrysanthemum (caused by the rust fungus *Puccinia horiana* P. Henn.) based on visual examination of parent stock, the articles for importation, and the greenhouse nursery in which the articles for importation and the parent stock were grown, once a month for 4 consecutive months immediately prior to importation. Such articles are also subject to the postentry quarantine requirements of § 319.37–7.

* * * * *

■ 8. Section 319.37–6 is amended as follows:

■ a. In paragraph (a), in the table, by adding an entry for ''*Dioscorea* spp. (yam) plants for planting, including, but not limited to, bulbs, minisetts, and yam-setts'' in alphabetical order; and

■ b. By adding paragraph (e).

The additions read as follows:

§ 319.37–6 Specific treatment and other requirements.

(a) * * *

Seed/bulb	Country/locality	Pest(s) for which treatment is required
* *	* * *	* *
Dioscorea spp. (yam) plants for planting, including, but not limited to, bulbs, minisetts, and yam-setts.	All countries, except as provided in paragraphs (e)(1) through (e)(3) of this section.	A diversity of internal and external feeders, including but not limited to: *Aspiditosis hartii* (yam scale) and *Palaeopus costicollis* (yam weevil).
* *	* * *	* *

* * * * *

(e) *Dioscorea* spp. (yam) plants for planting, including, but not limited to, bulbs, minisetts, and yam-setts, may be imported into the United States without being treated in accordance with part 305 of this chapter if:

(1) They are imported from Japan.

(2) They are imported from the Dominican Republic into Puerto Rico.

(3) They are imported from the West Indies into the U.S. Virgin Islands.

■ 9. Section 319.37–7 is amended as follows:

■ a. By removing the words ''Postentry Quarantine Unit'' wherever they occur and adding the words ''National Postentry Quarantine Coordinator'' in their place;

■ b. In paragraph (a)(3), in the table, by revising the entries for ''*Acer* spp. (maple)'', ''*Chrysanthemum* spp. (chrysanthemum, includes *Dendranthema* spp.) meeting the conditions in § 319.37–5(c)'', ''*Leucanthemella serotina'',* ''*Malus* spp. (apple, crabapple) meeting the conditions for importation in § 319.37–5(b)'', ''*Nipponanthemum nipponicum'',* and ''*Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) meeting the conditions for importation in § 319.37–5(b)'';

■ c. In paragraph (a)(3), in the table, in the entry for ''*Dianthus* spp. (carnation, sweet-william)'', by adding the words ''and the Netherlands'' after the words ''Great Britain'';

■ d. In paragraph (c)(1)(i), by removing the words '', except the District of Columbia, Guam, Hawaii, Kansas, and the Northern Mariana Islands'';

■ e. In paragraph (d)(1), by removing the words ''Building 580, BARC-East, Beltsville, MD 20705'' and adding the words ''4700 River Road, Unit 133 Riverdale, MD 20737–1236'' in their place; and

■ f. By adding paragraph (d)(8).

The revisions and addition read as follows:

§ 319.37–7 Postentry quarantine.

(a) * * *

(3) * * *

Restricted Article (excluding seeds)	Foreign Country(ies) or Locality(ies) from which imported
* * * *	* * *
Acer spp. (maple)	All except Canada, Europe (except the Netherlands in accordance with § 319.37–5(m)), and Japan.

Restricted Article (excluding seeds)	Foreign Country(ies) or Locality(ies) from which imported
* * * *	* * *
Chrysanthemum spp. (chrysanthemum), includes *Dendranthema* spp.), meeting the conditions for importation in § 319.37–5.	All except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia.
* * * *	* * *
Leucanthemella serotina meeting the conditions for importation in § 319.37–5.	All except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia.
* * * *	* * *
Malus spp. (apple, crabapple) meeting the conditions for importation in § 319.37–5(b).	All countries listed in § 319.37–5(b).
* * * *	* * *
Nipponathemum nipponicum meeting the conditions for importation in § 319.37–5.	All except Asia, Europe, South America, Australia, Mexico, New Zealand, Oceania (Melanesia, Micronesia, and Polynesia), Republic of South Africa, and Tunisia.
* * * *	* * *
Prunus spp. meeting the conditions for importation in § 319.37–5(b)	The Netherlands.
* * * *	* * *

* * * * *

(d) * * *

(8) To keep the article under postentry quarantine conditions until the National Postentry Quarantine Coordinator issues a written release for the article.

* * * * *

§ 319.37–8 [Amended]

■ 10. In § 319.37–8, paragraph (b)(2) is amended by removing the words ''Newfoundland or from that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road'' and adding the words ''all areas of Canada regulated by the national plant protection organization of Canada for potato cyst nematode'' in their place.

■ 11. In § 319.37–10, paragraph (c) is revised to read as follows:

§ 319.37–10 Marking and identity.

* * * * *

(c) Any restricted article for importation (by mail or otherwise), at the time of importation or offer for importation into the United States shall be accompanied by an invoice or packing list indicating the scientific names of the articles, at least to the level of genus, and the quantity of plants for planting in the shipment. Quantity must be expressed in the number of plant units, or in the case of seeds, by weight in grams or kilograms. Finally, when the regulations in this subpart place restrictions on individual species or cultivars within a genus, the invoice or packing list must also identify the species or cultivar of the articles.

* * * * *

§ 319.37–11 [Amended]

■ 12. Section 319.37–11 is amended by adding the words ''that must be accompanied by a permit in accordance with § 319.37–3(a)(1) through (11)'' after the words ''restricted article''.

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

■ 13. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.3.

§ 361.2 [Amended]

■ 14. In § 361.2, paragraph (d) is amended by adding the words ''and in addition to the restrictions of § 319.37–3(a)(7),'' before the words ''coated or pelleted seed'', and by adding the words '', or seed that is embedded in a substrate that obscures visibility'' after the words ''coated or pelleted seed''.

Done in Washington, DC, this 5th day of December 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–29114 Filed 12–15–14; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AJ40

[NRC–2014–0102]

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM FLOOD/WIND System; Certificate of Compliance No. 1032, Amendment No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of December 17, 2014, for the direct final rule that was published in the **Federal Register** on October 3, 2014. This direct final rule amended the NRC's spent fuel storage regulations by revising the Holtec International HI–STORM FLOOD/WIND (FW) System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to Certificate of Compliance (CoC) No. 1032.

DATES: The effective date of December 17, 2014, for the direct final rule published October 3, 2014 (79 FR 59623), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2014–0102 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–2014–0102. 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.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at: *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to: *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6445, email: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION: On October 3, 2014 (79 FR 59623), the NRC published a direct final rule amending its regulations in part 72 of Title 10 of the *Code of Federal Regulations* by revising the Holtec International HI–STORM FW System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to CoC No. 1032. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become final on December 17, 2014. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated at Rockville, Maryland, this 11th day of December, 2014.

For the U.S. Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2014–29427 Filed 12–15–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket ID OCC–2014–001]

RIN 1557–AD78

OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations

Correction

In rule document 2014–21224 appearing on pages 54517 through 54549 in the issue of Thursday, September 11, 2014, make the following corrections:

APPENDIX C TO PART 30 [CORRECTED]

■ 1. On page 54544, in the third column, paragraph I.i. is corrected to read as follows:

i. * * * The Guidelines are designed to protect against involvement by national banks, Federal savings associations, Federal branches and Federal agencies of foreign banks, and their respective operating subsidiaries (together, ''national banks and Federal savings associations''), either directly or through loans that they purchase or make through intermediaries, in predatory or abusive residential mortgage lending practices that are injurious to their respective customers and that expose the national bank or Federal savings association to credit, legal, compliance, reputation, and other risks.

* * * * *

■ 2. On page 54545, in the third column, second line from the top, the word ''Rrisk'' should be ''Risk''.

[FR Doc. C1–2014–21224 Filed 12–15–14; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1251

RIN 2590–AA73

Housing Trust Fund

AGENCY: Federal Housing Finance Agency.

ACTION: Interim final rule; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing an interim final rule setting forth requirements related to allocations by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises) to the Housing Trust and Capital Magnet Funds created by the Housing and Economic Recovery Act of 2008. The rule implements a statutory prohibition against the Enterprises passing the cost of such allocations through to the originators of loans they purchase or securitize.

DATES: This interim final rule is effective on December 16, 2014. FHFA will accept written comments on this interim final rule on or before January 15, 2015.

ADDRESSES: You may submit your comments on this Interim Final Rule, identified by regulatory identifier number ''RIN 2590–AA73,'' by any of the following methods:

• *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include ''RIN 2590–AA73'' in the subject line of the message.

• *Courier/Hand Delivered:* The hand delivery address is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590–AA73, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel; Attention: Comments/RIN 2590–AA73, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, (202) 649–3050 (not a toll-free number), Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on any aspect of the interim final rule and will

take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, including any personal information you provide such as your name, address, email address and phone number, on the FHFA internet Web site at *www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10:00 a.m. and 3:00 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

Section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as added by section 1131(b) of the Housing and Economic Recovery Act of 2008 (HERA), directs the Secretary of the Department of Housing and Urban Development to establish and manage a Housing Trust Fund (HTF) that is funded by amounts allocated by Fannie Mae and Freddie Mac and any other amounts appropriated, transferred, or credited to the HTF under any other provision of law. 12 U.S.C. 4568(a); *see also id.* at 4567(a). The purpose of the HTF is to provide grants to States ''to increase and preserve the supply of rental housing for extremely low- and very low-income families, including homeless families'' and ''to increase homeownership for extremely low- and very low-income families.'' *Id.* at 4568(a)(1).

Separately, section 1339 of the Safety and Soundness Act, as added by section 1131(b) of HERA, establishes the Capital Magnet Fund (CMF) within the U.S. Treasury as a special account within the Community Development Financial Institutions Fund. *Id.* at 4569(a). As with the HTF, the CMF is also funded by amounts allocated by Fannie Mae and Freddie Mac and any other amounts appropriated, transferred, or credited to it under any other provision of law. *Id.* at 4569(b); *see also id.* at 4567(a). Funds in the CMF are available to the Secretary of the Treasury to carry out a competitive grant program to attract private capital for, and increase investment in, ''the development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low-, very low-, and low-income families'' and ''economic development activities or community service facilities . . . which in conjunction with affordable housing activities implement a concerted strategy to stabilize or revitalize a low-income area or underserved rural area.'' *Id.* at 4569(c).

Though the HTF is administered by the Secretary of HUD and the CMF is administered by the Secretary of the Treasury, Fannie Mae and Freddie Mac are supervised by FHFA. *See generally id.,* at 4501 *et seq.* The Director of FHFA has general regulatory authority over each Enterprise and is responsible for ensuring that the purposes of the Safety and Soundness Act, the Enterprises' charter acts, and any other applicable law are carried out. *Id.* at 4511(b). The duties of the Director include ensuring that the operations and activities of each Enterprise foster liquid, efficient, competitive and resilient national housing finance markets, including activities relating to mortgages on housing for low- and moderate-income families; that each Enterprise complies with the Safety and Soundness Act and any rules, regulations, orders and guidelines issued under it or the Enterprises' charter acts; and that the activities of each Enterprise and the manner in which they are carried out are consistent with the public interest. *Id.* at 4513(a)(1)(B)(ii), (iii) and (v). The Director is authorized to issue any regulations, guidelines or orders necessary to carry out the duties of the Director under the Safety and Soundness Act or the Enterprise charter acts and to ensure that the purposes of such acts are accomplished. *Id.* at 4526.

The Enterprises' allocation obligations to support the HTF and CMF (together, the Funds) and related requirements are set forth at section 1337 of the Safety and Soundness Act. *Id.* at 4567. That section addresses the amount the Enterprises are to set aside and allocate to the Secretaries of HUD and the Treasury each fiscal year, based on the unpaid principal balance of their total new business purchases, which are the single- and multi-family residential mortgage loans or re-financings acquired by the Enterprises and held in portfolio or that support securities, notes or other obligations which the Enterprises guarantee. The section further directs the Director to issue a regulation prohibiting an Enterprise from redirecting the costs of any required allocation to the originators of mortgages the Enterprise purchases or securitizes, addresses enforcement of Enterprise compliance with the section and any regulation, rule or order issued pursuant to it, and authorizes the Director temporarily to suspend allocations if the Director makes any finding among three set forth by statute. *Id.*

Pursuant to section 1337 and the Director's general regulatory authority, the Director has determined to issue an Interim Final Rule prohibiting each Enterprise from passing through the costs of allocations to originators of mortgages purchased or securitized by the Enterprise.

FHFA is issuing this rule as an Interim Final Rule with request for comments. Section 1337 requires the Director to issue a regulation regarding the prohibition against passing costs of the allocations required under the section to originators and how compliance with the requirements of the regulation and statute is to be enforced. The Interim Final Rule's substantive provisions are established by statute and the rule does not deviate from or add to the statutory requirements. The need for the rule at this time is to support the implementation process that the Director will provide for the Enterprises to begin the process of setting aside and allocating monies for the Funds and to assure that the prohibition on pass through of costs accompanies the planning and deployment of funds. Further, the rule will support the development of regulatory oversight mechanisms to be put in place to assure compliance with the prohibition.[1]

Regulatory Impact

Paperwork Reduction Act

The interim final rule does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the rule's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the interim final rule under the Regulatory Flexibility Act. FHFA certifies that the Interim Final Rule is not likely to have a significant economic impact on a substantial number of small business entities because the rule is applicable

[1] FHFA is issuing this Interim Final Rule with a request for comments to provide transparency on the prohibition and its implementation, though the Rule itself is not a legislative rule but is procedural and thus would be excepted from the normal notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3).

only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1251

Administrative practice and procedure, Capital Magnet Fund, Government-sponsored enterprises, Housing Trust Fund, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons stated in the Supplementary Information, under the authority of 12 U.S.C. 4567, the Federal Housing Finance Agency amends Chapter XII of Title 12 of the Code of Federal Regulations, as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

■ 1. Add part 1251 to Subchapter C to read as follows:

PART 1251—CONTRIBUTIONS TO THE HOUSING TRUST AND CAPITAL MAGNET FUNDS

Sec.
1251.1 Purpose.
1251.2 Definitions.
1251.3 Prohibition on pass-through of cost of allocation; enforcement.
1251.4 Submission of information.

Authority: 12 U.S.C. 1452(c), 1718(b), 4511(b), 4513(a), 4514(a), 4526(a), and 4567.

§ 1251.1 Purpose.

The purpose of this part is to implement a prohibition against an Enterprise redirecting the cost of any allocation to the Housing Trust Fund or the Capital Magnet Fund to originators of mortgages purchased or securitized by an Enterprise.

§ 1251.2 Definitions.

The following definitions apply to the terms used in and related specifically to this part. Definitions of other terms may be found in 12 CFR part 1201, General Definitions Applying to All Federal Housing Finance Agency Regulations:

Capital Magnet Fund means that Fund established at section 1339(a) of the Safety and Soundness Act, 12 U.S.C. 4569(a).

Housing Trust Fund means that Fund established by section 1338(a) of the Safety and Soundness Act, 12 U.S.C. 4568(a).

§ 1251.3 Prohibition on pass-through of cost of allocation; enforcement.

(a) *In general.* No Enterprise shall redirect or pass through the cost of any allocation to the Housing Trust Fund or the Capital Magnet Fund required pursuant to section 1337(a) of the Safety and Soundness Act, 12 U.S.C. 4567(a), through increased charges or fees, or decreased premiums, or in any other manner, to the originators of mortgages purchased or securitized by the Enterprise.

(b) *Enforcement.* Compliance by each Enterprise with the foregoing prohibition shall be enforced under subpart 3 of part B of the Safety and Soundness Act, 12 U.S.C. 4581–89.

§ 1251.4 Submission of information.

The Director may issue guidance, orders, or notices on compliance with section 1337 and this part by the Enterprises, which may include information submissions by the Enterprises.

Dated: December 10, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–29345 Filed 12–15–14; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0453; Directorate Identifier 2013–NM–205–AD; Amendment 39–18049; AD 2014–25–07]

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 certain Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes. This AD was prompted by a report of cracking at the splice plate of the frame (FR) 47 butt joint crossing area found during full-scale fatigue testing. This AD requires repetitive inspections for cracking of both sides of the splice plate of that frame butt joint crossing area, and corrective action if necessary. This AD also provides for an optional modification, which terminates the repetitive inspections. We are issuing this AD to detect and correct fatigue cracking of the splice plate of the FR 47 butt joint crossing area, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective January 20, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 20, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0453* 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, 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.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–227–1405; 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 certain Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes. The NPRM published in the **Federal Register** on July 18, 2014 (79 FR 41940).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0203, dated September 6, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes. The MCAI states:

> During the full scale fatigue test on A320–200, cracks were reported at the splice plate of the frame (FR) 47 butt joint crossing area, both sides.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> Prompted by these findings, Airbus developed Mod 31012 and introduced this on the production line to modify the current 2 fastener row butt joint into a 3 fastener row butt joint to prevent further damage. For in-service aeroplanes, a corresponding modification was developed and published

as Airbus Service Bulletin (SB) A320–53–1271.

For the reason described above, this [EASA] AD requires repetitive special detailed inspections (SDI) of the splice plate of the FR47 butt joint crossing area and, depending on findings, accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0453-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (79 FR 41940, July 18, 2014) and the FAA's response.

Request to Extend the Compliance Time

Allegiant Air, LLC asked that we extend the threshold for the initial inspection for the airplanes identified in paragraph (g)(3) of the proposed AD (79 FR 41940, July 18, 2014) to 44,000 flight cycles or 88,000 flight hours, whichever occurs first. Allegiant Air asserted that an equivalent level of safety would be maintained by extending the compliance time as proposed. Allegiant Air noted that paragraph (g)(2) of the proposed AD specified a threshold of 45,000 total flight cycles or 91,000 total flight hours, whichever occurs first.

We do not agree with the commenter's request to extend the compliance time. We infer that Allegiant Air, LLC expected 44,000 total flight cycles or 88,000 total flight hours to be the threshold for crack growth propagation based on full-scale fatigue testing; however, Allegiant Air, LLC did not provide data to support this inference. Based on our risk assessment, taking into consideration the worldwide fleet utilization, as well as fatigue and crack growth analysis, we have determined that the compliance time specified in paragraph (g)(3) of this AD will ensure an acceptable level of safety and allow the inspections to be done in a timely manner. However, under the provisions of paragraph (j) of this AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed this final rule in this regard.

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 (79 FR 41940, July 18, 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 41940, July 18, 2014).

Costs of Compliance

We estimate that this AD affects 229 airplanes of U.S. registry.

We also estimate that it will take about 98 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,907,570, or $8,330 per product.

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

In addition, we estimate that any necessary follow-on actions take about 100 work-hours and require parts costing $1,150, for a cost of $9,650 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0453;* 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):

2014–25–07 Airbus: Amendment 39–18049. Docket No. FAA–2014–0453; Directorate Identifier 2013–NM–205–AD.

(a) Effective Date

This AD becomes effective January 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 31012 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a report of cracking at the splice plate of the frame (FR) 47 butt joint crossing area found during full-scale fatigue testing. We are issuing this AD to detect and correct fatigue cracking of the splice plate of the FR47 butt joint crossing area, 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) Repetitive Inspections

At the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Do a special detailed inspection (rototest) for cracking of both sides of the splice plate of the FR47 butt joint crossing area, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1260, dated December 19, 2012. Repeat the inspection thereafter at intervals not to exceed 14,800 flight cycles or 29,600 flight hours, whichever occurs first.

(1) For airplanes that, as of the effective date of this AD, have accumulated 44,000 or more total flight cycles or 88,000 or more total flight hours since first flight of the airplane: Do the inspection within 1,500 flight cycles or 3,000 flight hours after the effective date of this AD, whichever occurs first.

(2) For airplanes that, as of the effective date of this AD, have accumulated 27,700 or more total flight cycles or 55,400 or more total flight hours, but fewer than 44,000 total flight cycles or 88,000 total flight hours since first flight of the airplane: Do the inspection within 3,000 flight cycles or 6,000 flight hours after the effective date of this AD, without exceeding 45,500 total flight cycles or 91,000 total flight hours since first flight of the airplane, whichever occurs first.

(3) For airplanes that, as of the effective date of this AD, have accumulated fewer than 27,700 total flight cycles and less than 55,400 total flight hours since first flight of the airplane: Do the inspection before the accumulation of 30,700 total flight cycles or 61,400 total flight hours since first flight of the airplane, whichever occurs first.

(h) Corrective Action

If any crack 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 Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Optional Modification

Accomplishing the modification of the splice plate of the FR47 butt joint in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1271, dated December 18, 2012, constitutes terminating action for the repetitive inspections required by paragraph (g) of 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–227–1405; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the 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

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0203, dated September 6, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0453-0002.*

(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 A320–53–1260, dated December 19, 2012.

(ii) Airbus Service Bulletin A320–53–1271, dated December 18, 2012.

(3) 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.*

(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 December 3, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–29174 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0257; Directorate Identifier 2014–NM–012–AD; Amendment 39–18051; AD 2014–25–09]

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 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports of fatigue cracking in the skin assembly and bear strap of the aft lower corner of the forward airstair stowage doorway. This AD requires repetitive inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway; post-repair and post-modification inspections for certain airplanes; and related investigative and corrective actions, if necessary. This AD also provides optional terminating actions for certain inspections. We are issuing this AD to detect and correct fatigue cracking, which could result in rapid loss of cabin pressure.

DATES: This AD is effective January 20, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 20, 2015.

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

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

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–2014–0257; 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: Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6450; fax: (425) 917–6590; email: *alan.pohl@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 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on May 1, 2014 (79 FR 24628). The NPRM was prompted by reports of fatigue cracking in certain areas. The NPRM proposed to require repetitive inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway; post-repair and post-modification inspections for certain airplanes; and related investigative and corrective actions, if necessary. The NPRM also proposed to provide optional terminating actions for certain inspections. We are issuing this AD to detect and correct fatigue cracking, which could result in rapid loss of cabin pressure.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 24628, May 1, 2014) and the FAA's response to each comment.

Effect of Winglets on AD

Aviation Partners Boeing and UPS stated that the installation of winglets per Supplemental Type Certificate (STC) ST01219SE *(http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf)* does not affect the accomplishment of the manufacturer's service instructions.

We agree with the commenters' statement. We have redesignated paragraph (c) of the NPRM (79 FR 24628, May 1, 2014) as (c)(1) in this AD and added new paragraph (c)(2) to this AD to state that the installation of winglets as specified in STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf*) does not affect accomplishment of the requirements of this AD, and for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of section 39.17 of the Federal Aviation Regulations (14 CFR 39.17).

Request To Revise Paragraph (m) of the NPRM (79 FR 24628, May 1, 2014)

Southwest Airlines (SWA) stated that the NPRM (79 FR 24628, May 1, 2014), does not address terminating the initial inspection if a repair was previously installed using Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014. SWA requested that we revise the text of paragraph (m)(3) of the NPRM, to state that repairs or modifications using Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, terminates both the initial and repetitive inspections required by paragraph (j) of this AD. SWA also requested that repairs previously approved by a Boeing authorized representative via an FAA 8100–9 form are terminating action to both the initial and repetitive inspection requirements required by paragraph (j) of the NPRM.

We agree with the request because it was not intended that a separate initial inspection would be performed on airplanes that have the repair previously installed. We have deleted the word ''repetitive'' from paragraphs (m)(1) through (m)(3) of this AD to clarify that accomplishing the actions in those paragraphs terminates certain initial and repetitive inspections. We have also added paragraph (m)(4) to this final rule, which specifies that the accomplishment of a repair of the aft lower corner of the forward airstair stowage doorway that was previously approved using FAA Form 8100–9, terminates the inspections required by paragraph (j) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the 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 24628, May 1, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 24628, May 1, 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 132 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	5 work-hours × $85 per hour = $425 per inspection cycle.	None	$425 per inspection cycle	$56,100 per inspection cycle.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–25–09 The Boeing Company: Amendment 39–18051; Docket No. FAA–2014–0257; Directorate Identifier 2014–NM–012–AD.

(a) Effective Date

This AD is effective January 20, 2015.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracking in the skin assembly and bear strap of the aft lower corner of the forward airstair stowage doorway. We are issuing this AD to detect and correct fatigue cracking, which could result in rapid loss of cabin pressure.

(f) Compliance

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

(g) Inspections and Corrective Actions for Group 1 and Group 2 Airplanes That Do Not Have a Certain Repair or Preventative Modification Installed

For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, on which no repair or preventative modification has been done as specified in any of the service information identified in paragraphs (g)(1) through (g)(4) of this AD: At the applicable times specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(1) of this AD, do high frequency eddy current and detailed inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections at the applicable times specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, until the applicable terminating action specified in paragraph (m) of this AD is done.

(1) Boeing Service Bulletin 737–53–1058, dated April 4, 1980.

(2) Boeing Service Bulletin 737–53–1058, Revision 1, dated March 5, 1987.

(3) Boeing Service Bulletin 737–53–1058, Revision 2, dated December 7, 1989.

(4) Boeing Service Bulletin 737–53–1058, Revision 3, dated March 11, 1993.

(h) Inspections and Corrective Actions for Group 1 and Group 2 Airplanes That Have a Certain Repair Installed

For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, on which a repair has been installed as specified in Boeing Service Bulletin 737–53–1058, dated April 4, 1980: Within the applicable times specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(1) of this AD, do a high frequency eddy current inspection for cracking of the bear strap of the forward airstair stowage doorway, and do low frequency eddy current and detailed inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections at the applicable times specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, until the applicable terminating action specified in paragraph (m) of this AD is done.

(i) Inspections and Corrective Actions for Group 1 and Group 2 Airplanes That Have a Certain Preventative Modification Installed

For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, on which a preventative modification has been installed as specified in any of the service information identified in paragraphs (i)(1) through (i)(4) of this AD: Within the applicable times specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(1) of this AD, do a high frequency eddy current inspection for cracking of the bear strap of the forward airstair stowage doorway, a low frequency eddy current inspection for cracking of the skin assembly and bear strap of the forward airstair stowage doorway, and detailed inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway; and do all related investigative and applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1058,

Revision 4, dated January 9, 2014, except as required by paragraph (o)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections at the applicable times specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, until the applicable terminating action specified in paragraph (m) of this AD is done.

(1) Boeing Service Bulletin 737–53–1058, dated April 4, 1980.

(2) Boeing Service Bulletin 737–53–1058, Revision 1, dated March 5, 1987.

(3) Boeing Service Bulletin 737–53–1058, Revision 2, dated December 7, 1989.

(4) Boeing Service Bulletin 737–53–1058, Revision 3, dated March 11, 1993.

(j) Inspections and Corrective Actions for Group 3 Through Group 5 Airplanes

For Group 3 through Group 5 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014: At the applicable times specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(1) of this AD, do a high frequency eddy current inspection for cracking of the bear strap of the forward airstair stowage doorway, a low frequency eddy current inspection for cracking of the skin assembly and bear strap of the forward airstair stowage doorway, and detailed inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway; and do all related investigative and applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(2) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections at the applicable times specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, until the applicable terminating action specified in paragraph (m) of this AD is done.

(k) Inspections and Corrective Actions for Group 6 Airplanes

For Group 6 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014: Within 120 days after the effective date of this AD, inspect and repair any cracking using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(l) Post-Repair and Post-Modification Inspections for Group 1 and Group 2 Airplanes

For Group 1 and Group 2 airplanes on which any repair has been done as specified in any of the service information identified in paragraphs (l)(1) through (l)(3) of this AD, or on which any repair or modification has been done as specified in the service information identified in paragraph (l)(4) of this AD: At the applicable times specified in Table 3 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, except as required by paragraph (o)(1) of this AD, do a high frequency eddy current inspection for cracking in the bear strap and skin assembly and a general visual inspection for cracking in the frame of the forward airstair stowage doorway; or do low frequency eddy current inspections for cracking of the skin assembly and bear strap of the forward airstair stowage doorway; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014. Options provided in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, for accomplishing the inspections are acceptable for compliance with the corresponding requirements of this paragraph provided that the inspections are done at the applicable times specified in paragraph 1.E., ''Compliance,'' of the Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014. If any cracking is found, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (q) of this AD. Repeat the inspections at the applicable times specified in Table 3 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014.

(1) Boeing Service Bulletin 737–53–1058, Revision 1, dated March 5, 1987.

(2) Boeing Service Bulletin 737–53–1058, Revision 2, dated December 7, 1989.

(3) Boeing Service Bulletin 737–53–1058, Revision 3, dated March 11, 1993.

(4) Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014.

(m) Optional Terminating Actions

(1) For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014: Accomplishment of a repair for cracking of the skin assembly and bear strap of the forward airstair stowage doorway before the effective date of this AD, using any service information specified in paragraphs (m)(1)(i) through (m)(1)(iv) of this AD, terminates the inspections required by paragraphs (g), (h), and (i) of this AD.

(i) Boeing Service Bulletin 737–53–1058, Revision 1, dated March 5, 1987.

(ii) Boeing Service Bulletin 737–53–1058, Revision 2, dated December 7, 1989.

(iii) Boeing Service Bulletin 737–53–1058, Revision 3, dated March 11, 1993.

(iv) Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014.

(2) For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014: Accomplishment of a preventative modification for cracking of the skin assembly and bear strap of the forward airstair stowage doorway before the effective date of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, terminates the inspections required by paragraphs (g), (h), and (i) of this AD.

(3) For Group 3 through Group 5 airplanes identified in Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014: Repairing or modifying the forward airstair stowage doorway, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, terminates the inspections required by paragraph (j) of this AD.

(4) Accomplishment, prior to the effective date of this AD, of a repair of the aft lower corner of the forward airstair stowage doorway that was approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) using FAA Form 8100–9, terminates the inspections required by paragraph (j) of this AD.

(n) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using any service information specified in paragraphs (n)(i) through (n)(iii) of this AD.

(i) Boeing Service Bulletin 737–53–1058, Revision 1, dated March 5, 1987.

(ii) Boeing Service Bulletin 737–53–1058, Revision 2, dated December 7, 1989.

(iii) Boeing Service Bulletin 737–53–1058, Revision 3, dated March 11, 1993.

(o) Exceptions to the Service Information

(1) Where Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, specifies a compliance time ''after the Revision 4 date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(2) Where Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(p) Post-Repair and Post-Modification Inspections for Group 3 Through Group 5 Airplanes Not Required

The post-repair and post-modification inspections specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, are not required by this AD.

Note 1 to paragraph (p) of this AD: The post-repair and post-modification inspections specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)).

(q) 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 (r)(1) 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, and the approval must specifically refer to this AD.

(r) Related Information

(1) For more information about this AD, contact Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: (562) 627–5234; fax: (562) 627–5210; email: *nenita.odesa@faa.gov.*

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

(s) 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 Service Bulletin 737–53–1058, Revision 4, dated January 9, 2014.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on December 5, 2014.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–29190 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0566; Directorate Identifier 2014–NM–041–AD; Amendment 39–18050; AD 2014–25–08]

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 certain Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. This AD was prompted by a design review, which revealed that the forward servicing compartment (FSC) is configured with tie-down points. This AD requires inspecting the FSC for installed tie-down points, and removing those tie-down points. We are issuing this AD to detect and correct installed tie-down points, which could lead to inadvertent use of the FSC as a cargo compartment, which could result in damage to the structure of the airplane or potential risk of fire.

DATES: This AD becomes effective January 20, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 20, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0566;* 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 certain Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. The NPRM published in the **Federal Register** on August 14, 2014 (79 FR 47592).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2014–0027R1, dated February 5, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. The MCAI states:

> The Forward Servicing Compartment (FSC) of the Falcon 2000 is an unpressurized service compartment located between fuselage frames 26 and 33. This compartment is accessible from a lockable external door located in the lower aft fuselage.
>
> A design review has brought to light that the compartment is configured with tie-down points, which were used by operators to fix loads (*e.g.* ski or golf bags) in that compartment. However, the FSC has not been designed and consequently demonstrated as being compliant with cargo compartment airworthiness requirements.
>
> This condition, if not corrected, could lead to inadvertent use of the FSC as [a] cargo compartment, which could result in damage to the structure of the aeroplane or potential risk of fire.
>
> To address this potential unsafe condition, Dassault Aviation issued Service Bulletin (SB) F2000–407 and SB F2000EX–289, as applicable, which provide instructions for removal of the tie-down points.
>
> For the reasons described above, this [EASA] AD requires removal of the tie-down points from the FSC.
>
> **Note:** Operators are also reminded about the intended function of the FSC.
>
> This [EASA] AD is revised to clarify the AD Applicability and to correct the [type certificate data sheet] TCDS Number.

Required actions include inspecting for installed tie-down points. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0566-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 47592, August 14, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the

public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 47592, August 14, 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 47592, August 14, 2014).

Costs of Compliance

We estimate that this AD affects 247 airplanes of U.S. registry.

We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $5 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $43,225, or $175 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0566;* 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):

2014–25–08 Dassault Aviation: Amendment 39–18050. Docket No. FAA–2014–0566; Directorate Identifier 2014–NM–041–AD.

(a) Effective Date

This AD becomes effective January 20, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Dassault Aviation airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Dassault Aviation Model FALCON 2000 airplanes, having serial numbers (S/Ns) 1 through 231 inclusive.

(2) Dassault Aviation Model FALCON 2000EX airplanes, having S/Ns 1 through 262 inclusive, and S/Ns 601 through 604 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by a design review, which revealed that the forward servicing compartment (FSC) is configured with tie-down points. We are issuing this AD to detect and correct installed tie-down points, which could lead to inadvertent use of the FSC as a cargo compartment, which could result in damage to the structure of the airplane or potential risk of fire.

(f) Compliance

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

(g) Inspection and Removal

(1) Within 440 flight hours or 9 months after the effective date of this AD, whichever occurs first, inspect the FSC for installed tie-down points, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000–407, Revision 1, dated January 29, 2014; or Dassault Service Bulletin F2000EX–289, Revision 1, dated January 29, 2014; as applicable.

(2) If it is determined from the inspection required by paragraph (g)(1) of this AD that tie-down points are installed, within the compliance time specified in paragraph (g)(1) of this AD, remove the tie-down points from the FSC, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F2000–407, Revision 1, dated January 29, 2014; or Dassault Service Bulletin F2000EX–289, Revision 1, dated January 29, 2014; as applicable.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g)(1) and (g)(2) of this AD, if those actions were performed before the effective date of this AD using Dassault Service Bulletin F2000–407, dated December 17, 2013; or Dassault Service Bulletin F2000EX–289, dated December 17, 2013; which are not incorporated by reference in this AD.

(i) 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.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0027R1, dated February 5, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0566-0002.*

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

(k) 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) Dassault Service Bulletin F2000–407, Revision 1, dated January 29, 2014.

(ii) Dassault Service Bulletin F2000EX–289, Revision 1, dated January 29, 2014.

(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 December 5, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–29225 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0448; Directorate Identifier 2013–NM–055–AD; Amendment 39–18048; AD 2014–25–06]

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; 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 Airbus Model A310 series airplanes. This AD was prompted by a report of early ruptures on the levers of the nose landing gear (NLG) sequence valve. This AD requires a one-time inspection for damage of the landing gear sequence valve levers and pin shearing indicating areas on the NLG and the main landing gears (MLGs); and depending on findings, replacing the sequence valve and lever, or doing a one-time inspection to detect interference between control rods and sequence valves and corrective actions if necessary. We are issuing this AD to detect and correct interference between a landing gear leg and door, which could result in failure of that landing gear to extend and could damage the airplane and injure occupants.

DATES: This AD becomes effective January 20, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 20, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0448;* 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; 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 Airbus Model A310 series airplanes. The NPRM published in the **Federal Register** on July 16, 2014 (79 FR 41459).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0058, dated March 11, 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; 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 Airbus Model A310 series airplanes. The MCAI states:

> Operators have reported five cases of early ruptures on levers of the nose landing gear (NLG) sequence valve.
>
> Analysis showed that these fatigue ruptures were due to an incorrect adjustment of the mechanical links. As the design of the main landing gear (MLG) sequence valve lever is similar, there is sufficient reason to assume that these parts are similarly affected by fatigue.
>
> This condition, if not detected and corrected, could lead to interference between landing gear leg and door and consequent failure of the landing gear to extend, possibly resulting in damage to the aeroplane and injury to occupants.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the sequence valve control lever [for damage, which could include cracking or deformation], of the adjustment of the control rod between doors and landing gear sequence valve and depending on inspections results, accomplishment of applicable corrective actions.

The corrective actions include adjusting the control rod between the door and the sequence valves; adjusting mechanical linkages; and replacing/installing a serviceable valve and lever. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0448-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 41459, July 16, 2014) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 41459, July 16, 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 41459, July 16, 2014).

Costs of Compliance

We estimate that this AD affects 128 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 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 $43,520, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take up to 9 work-hours and require parts costing up to $42,000, for a cost of $42,765 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0448;* 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):

2014–25–06 Airbus: Amendment 39–18048. Docket No. FAA–2014–0448; Directorate Identifier 2013–NM–055–AD.

(a) Effective Date

This AD becomes effective January 20, 2015.

(b) Affected ADs

None.

(c) Applicability

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

(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, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.

(3) 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 a report of early ruptures on the levers of the nose landing gear (NLG) sequence valve. We are issuing this AD to detect and correct interference between a landing gear leg and door, which could result in failure of that landing gear to extend, and could damage the airplane and injure occupants.

(f) Compliance

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

(g) Service Information

Do the actions required by paragraph (h) of this AD in accordance with the applicable service information identified in paragraphs (g)(1) through (g)(3) of this AD.

(1) For Model A300 airplanes: Airbus Service Bulletin A300–32–0464, dated July 17, 2012.

(2) For Model A300–600 airplanes: Airbus Service Bulletin A300–32–6110, dated July 17, 2012.

(3) For Model A310 airplanes: Airbus Service Bulletin A310–32–2146, dated July 17, 2012.

(h) Inspections and Corrective Actions

Within 4,000 flight cycles, 6,000 flight hours, or 30 months after the effective date of this AD, whichever occurs first: Do a detailed inspection of each sequence valve lever and pin shearing indicating area on the nose landing gear and main landing gears for any damage, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(3) of this AD. Do the actions required by paragraphs (h)(1) and (h)(2) of this AD in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(3) of this AD.

(1) If damage is found, before further flight, replace the affected sequence valve and its lever with a serviceable sequence valve and

lever. No further action is required by paragraph (h) of this AD for that replaced valve and lever.

(2) If no damage is found, within the compliance time required by paragraph (h) of this AD, do a detailed inspection to detect interference between the landing gear door control rod and the landing gear sequence valve, and do all applicable corrective actions. Do all applicable corrective actions before further flight. No further action is required by paragraph (h) of this AD.

(3) For the purposes of this AD, a detailed inspection is: An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install on any airplane a landing gear sequence valve, unless that valve has been inspected and corrected, as applicable, in accordance with the requirements of paragraph (h) of 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

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0058, dated March 11, 2013, or related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0448-0002.*

(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 A300–32–0464, dated July 17, 2012.

(ii) Airbus Service Bulletin A300–32–6110, dated July 17, 2012.

(iii) Airbus Service Bulletin A310–32–2146, dated July 17, 2012.

(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 December 5, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–29228 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No.: FAA–2014–1000; Amdt. No. 65–56]

RIN 2120–AK40

Elimination of the Air Traffic Control Tower Operator Certificate for Controllers Who Hold a Federal Aviation Administration Credential With a Tower Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rulemaking eliminates the requirement for an air traffic control tower operator to hold a control tower operator certificate if the individual also holds a Federal Aviation Administration Credential with a tower rating (FAA Credential). The requirement to hold both the control tower operator certificate and the FAA Credential is redundant since the underlying requirements for the FAA Credential encompass those of the control tower operator certificate. This action will reduce the FAA's burden of administering redundant programs for those individuals who hold an FAA Credential.

DATES: This rule is effective February 17, 2015. Send comments on or before February 17, 2015.

ADDRESSES: Send comments identified by docket number FAA–2014–1000 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or 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: For technical questions concerning this action, contact Michele Cappelle, Air Traffic Safety Oversight Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5205; email *michele.cappelle@faa.gov.*

For legal questions concerning this action, contact Neal O'Hara, Attorney, Office of the Chief Counsel, Regulations

Division, AGC–240, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *neal.o'hara@faa.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

On January 18, 2011, the President signed Executive Order 13563, Improving Regulation and Regulatory Review. Among other things, Section 6 of that Executive Order directs agencies to conduct a retrospective analysis of existing rules. Specifically, Executive Order 13563 provides that ''[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''

Consistent with Executive Order 13563, the FAA routinely evaluates existing regulations and other requirements. The FAA works to identify unnecessary, duplicative, or ineffective regulations and to mitigate the impacts of those regulations, where possible, without compromising safety.

As part of the FAA's continuing obligation to review its regulations, the agency has reviewed the requirement in Title 14, Code of Federal Regulations (14 CFR) part 65 that FAA air traffic control tower operators hold a CTO certificate. The FAA has determined that the requirement for FAA air traffic control tower operators to hold the CTO certificate is redundant and unnecessary. These individuals are also required by FAA Order 8000.90, *Air Traffic Safety Oversight Credentialing and Control Tower Operator Certification Programs,* to hold an FAA Credential, and the underlying requirements for the FAA Credential encompass those of the CTO certificate. Therefore, consistent with the requirements of Executive Order 13563, and as discussed later, persons who hold an FAA Credential for the performance of their duties will no longer be required to hold a CTO certificate.

The purpose of both the FAA Credentialing and the CTO programs is to establish that air traffic controllers possess the requisite skills to do their jobs safely. While the FAA Credential is comparable to a CTO certificate, they are two different programs requiring separate administrative activities. After many years of overseeing both programs, the FAA has determined there is no appreciable value in imposing both programs on the same population. Therefore, the FAA is amending 14 CFR part 65 to permit a person to act as an air traffic control tower operator if that person holds either an FAA Credential or a CTO certificate. FAA tower controllers must hold an FAA Credential. This amendment eliminates the need for an air traffic control tower operator to hold both an FAA Credential and a CTO certificate.

The FAA notes that the CTO program will remain intact for those individuals who are not required to hold an FAA Credential (*e.g.,* controllers at non-Federal contract towers). In addition, FAA air traffic control tower operators who currently possess CTO certificates will be permitted to retain them.

The FAA estimates there will be minimal cost savings to the FAA of about $189,600 because of this rule change.

Good Cause for Immediate Adoption

Section 553(b)(3)(B) of Title 5 of the United States Code (5 U.S.C.), authorizes agencies to dispense with notice and comment procedures for rules when the agency finds ''good cause'' that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that prior notice and public comment on this final rule are unnecessary. This final rule eliminates the requirement for an air traffic control tower operator (CTO) to hold a CTO certificate if the individual also holds an FAA Credential with a tower rating (FAA Credential). The requirement to hold both the CTO certificate and the FAA Credential is redundant, since the underlying requirements for the FAA Credential encompass those of the CTO certificate, and there will not be an adverse safety impact. Therefore, the FAA has determined that prior notice and public comment are unnecessary.

Comments Invited

The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), provide that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. The FAA is adopting this final rule without prior notice, but with public comment, because this rule removes a redundant requirement and promotes program efficiencies.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator, specifically Sections 106(f) and (g). 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 iii, Section 44701, General Requirements; Section 44702, Issuance of Certificates; and, Section 44703, Airman Certificates. Under Section 44701, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. Section 44702 provides the authority for the Administrator to issue certificates, including airman certificates. Section 44703 describes the conditions that must be met for the Administrator to issue an airman certificate. This rule is within the scope of that authority.

I. Background

A. Statement of the Problem

According to § 65.31, a person must hold a CTO certificate issued under subpart B of part 65 to act as an air traffic control tower operator. When the rule was first promulgated in 1962, all FAA controllers worked in tower facilities. However, as the air traffic control system evolved, other types of facilities, namely En Route and Terminal Radar Approach Control (TRACON) facilities, came into existence. The rule, however, continued to require only air traffic control tower operators to hold a CTO certificate.

The FAA's Air Traffic Safety Oversight Service (AOV) issues the FAA Credential to FAA air traffic controllers under its authority in FAA Order 1100.161 Change 1, *Air Traffic Safety Oversight.* FAA Order 8000.90, *Air Traffic Safety Oversight Credentialing and Control Tower Operator Certification Programs,* explains how each of these programs are administered.

The FAA Credentialing program is broader than the CTO program. The FAA Credentialing program requires all FAA air traffic controllers, including those working in tower, En Route and TRACON facilities, to hold an FAA Credential with appropriate ratings. FAA control tower operators, therefore, hold a CTO certificate under § 65.31 as well as an FAA Credential. The requirement to hold both the CTO certificate and the FAA Credential is

redundant, since the underlying requirements for the FAA Credential encompass those of the CTO certificate. There will not be an adverse impact to safety as the result of this change to part 65.

The purpose of both the FAA Credentialing and the CTO programs is to establish that air traffic controllers possess the requisite skills to do their jobs safely. While the FAA Credential is comparable to a CTO certificate, they are two different programs requiring separate administrative activities. After many years of overseeing both programs, the FAA has determined there is no appreciable value in imposing both programs on the same population (FAA control tower operators). After the effective date of this rule, the FAA will no longer issue CTO certificates to FAA air traffic control tower operators who are required to hold an FAA Credential for the performance of their duties. As noted previously, FAA air traffic control tower operators who currently possess CTO certificates will be permitted to retain them.

B. CTO Program

On August 10, 1962, the FAA published a final rule that added Subchapter D ''Airmen'' to Chapter I of Title 14 of the Code of Federal Regulations (27 FR 7954). The amendment was part of the FAA's program to recodify its regulatory material into the Federal Aviation Regulations, which replaced the Civil Air Regulations and Regulations of the Administration. This rule first established the requirements for the CTO certificate in part 65. The purpose of the CTO program is to ensure that air traffic controllers possess the requisite qualifications and skills to do their jobs safely.

The FAA established AOV in 2005 to provide independent oversight of air traffic services. As part of its responsibilities, AOV manages the CTO program and establishes policy and guidance for the program. The FAA's Civil Aviation Registry is the official custodian of airmen and aircraft records. The Registry is the office responsible for the day-to-day administration activities including the review, recordation, and the issuance of CTO certificates and AOV Credentials. The CTO information that is currently in the Civil Aviation Registry database will remain in the database. The Civil Aviation Registry will continue to maintain CTO information and will continue to receive and process CTO applications for individuals who meet the requirements of 14 CFR part 65.

The FAA's Civil Aviation Registry will continue to receive inquiries concerning FAA air traffic controllers. Any inquiries related to policy and guidance concerning the CTO program and the Credentialing program will be directed to AOV, as appropriate.

C. FAA Credentialing Program

In addition to managing the CTO program, AOV manages the FAA Credentialing program for air traffic controllers. Like the CTO program, the purpose of the Credentialing program is to establish that air traffic controllers possess the requisite qualifications and skills to do their jobs safely. The Credentialing program encompasses the underlying requirements of the CTO program. Unlike the CTO program, which is only applicable to air traffic control tower operators, the FAA Credentialing program is broader and applies to all air traffic controllers, including those who work in En Route and TRACON facilities.

AOV is the office responsible for tracking and maintaining the system that houses FAA Credential information. This system does not contain any personally identifiable information, such as Social Security numbers, home addresses, or dates of birth.

II. Discussion of Adopted Final Rule

A. Removal of Redundant Program Requirements (§§ 65.11 and 65.31)

The FAA is revising §§ 65.11 and 65.31 to recognize the FAA Credential and permits a person to act as an air traffic control tower operator if that person holds either an FAA credential or a CTO certificate. FAA tower controllers must hold an FAA credential. Any person who is required to hold an FAA Credential for the performance of his or her duties will no longer be required to also hold a CTO certificate. It also relieves the FAA from subjecting a select group of air traffic controllers to two separate programs.

To conform to the changes in this rule, the FAA is updating its internal procedures for managing the FAA Credentialing and CTO programs (FAA Order 8000.90). The revision to FAA Order 8000.90 will be effective at the same time as this rule.

B. Removal of Outdated Language (§ 65.43)

The FAA is also removing outdated language regarding junior and senior ratings. On August 1, 1970, the FAA published a final rule that reorganized the requirements in subpart B of part 65 and established a facility rating (35 FR 12326). The FAA intended to remove the junior and senior ratings because they were unnecessary, but inadvertently did not remove the regulatory text. This rule corrects that error, and the FAA is now removing the unnecessary requirement.

III. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Who is potentially affected by this rule?

Persons who hold an FAA Credential for the performance of their duties are potentially affected by this rule. After the effective date of this rule, such persons will no longer be required to hold a CTO certificate.

Assumptions:

- All costs are presented in 2014 dollars.
- The FAA estimates about $35 to process each CTO certificate.
- The number of CTO certificates issued in 2011 and 2012 totaled 1,070 and 1,048, respectively. The average of both years is 1,059.
- The FAA estimates 2 hours for the Air Traffic Supervisor/Manager to fill out the CTO form.
- The FAA estimates 15 minutes for a Legal Instruments Examiner to enter the CTO form information into the AFS database.
- The hourly rate for an Air Traffic Supervisor/Manager is $68.11.
- The hourly rate for a Legal Instruments Examiner is $31.29.

Total Benefits and Costs of This Rule

This final rule responds to Executive Order 13563 by reducing the FAA's burden of administering redundant programs, the FAA Credentialing program and the CTO program.

A CTO certificate costs the same amount as an FAA Airmen Certificate to produce. The FAA estimates that this cost range is between $20 and $50 per Airmen Certificate. The FAA used the midpoint of that range, $35, as an estimate of cost to produce a CTO certificate.

Since this rulemaking eliminates the requirement for controllers holding an FAA Credential to also hold a CTO certificate, this amounts to an average cost savings of approximately $189,600; ranging from $173,700–$205,500 for a $20–$50 per application processing cost, respectively.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that this final rule will not have a significant economic impact on a substantial number of small entities for the following reason:

This rule reduces redundancy, which lowers FAA costs and has no effect outside of the FAA.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no new differences with these regulations.

G. Environmental Analysis

FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures,* identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

IV. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between

the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

V. How To Obtain Additional Information

A. Comments Invited

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

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. The FAA will consider all comments it receives on or before the closing date for comments. The agency may change this rule in light of the comments it receives.

Commenters are encouraged to identify the provisions on which they are commenting based on the title of the provisions.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD–ROM, mark the outside of the disk or CD–ROM, and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at: *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

C. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 65

Air traffic controllers, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 65—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g). 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 65.11 by revising paragraph (b) to read as follows:

§ 65.11 Application and issue.

* * * * *

(b) Except for FAA Credential holders with tower ratings, an applicant who meets the requirements of this part is entitled to an appropriate certificate and rating.

* * * * *

■ 3. Amend § 65.31 by revising the section heading, introductory text, and paragraphs (a) and (b) to read as follows:

§ 65.31 Required credentials, certificates, and ratings or qualifications.

No person may act as an air traffic control tower operator at an air traffic control tower in connection with civil aircraft unless he or she—

(a) Holds an FAA Credential with a tower rating or an air traffic control tower operator certificate issued under this subpart;

(b) Holds a facility rating for that control tower issued under this subpart, or has qualified for the operating position at which he or she acts and is under the supervision of the holder of a facility rating for that control tower; and

* * * * *

§ 65.43 [Removed and Reserved]

■ 4. Remove and reserve § 65.43.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on November 14, 2014.

Michael P. Huerta,

Administrator.

[FR Doc. 2014–29386 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 232

[Docket No. FR–5794–F–03]

RIN 2502–AJ25

Federal Housing Administration (FHA): Section 232 Healthcare Facility Insurance Program—Aligning Operator Financial Reports With HUD's Uniform Financial Reporting Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: On September 16, 2014, HUD published an interim rule that revised the financial reporting deadlines for operators participating in FHA's program for insurance of health care facilities under section 232 of the National Housing Act (Section 232 program) to bring them in-line with the reporting periods prescribed in HUD's Uniform Financial Reporting Standards, to which owners and borrowers participating in the Section 232 program are subject. HUD received no public comments in response to its solicitation of comment in the September 16, 2014, rule, and is therefore adopting the interim rule without change.

DATES: *Effective date:* January 15, 2015.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6264, Washington, DC 20410–8000; telephone number 202–708–0599 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 232 of the National Housing Act (12 U.S.C. 1715w) (Section 232) authorizes FHA to insure mortgages made by private lenders to finance the development of nursing homes, intermediate care facilities, board and care homes, and assisted living facilities (collectively, residential healthcare facilities). The Section 232 program allows for long-term, fixed-rate financing for new and rehabilitated properties for up to 40 years. Existing properties without rehabilitation can be financed with or without Ginnie Mae® [1] Mortgage Backed Securities for up to 35 years. Eligible borrowers under the Section 232 program include investors, builders, developers, public entities, and private nonprofit corporations and associations. The documents executed at loan closing provide that the borrower may not engage in any other business or activity. The Section 232 program regulations are codified in 24 CFR part 232.

In 2012, HUD commenced the rulemaking to update the Section 232 program regulations, regulations that had not been revised since 1996. By final rule published on September 7, 2012, at 77 FR 55120, HUD revised the Section 232 program regulations to reflect current policy and practices, and improve accountability and strengthen risk management in the Section 232 program. The September 7, 2012, final rule was preceded by a proposed rule published on May 3, 2012, at 77 FR 26304.

Included in the updates made by the 2012 rulemaking were revisions to 24 CFR 5.801 (Uniform Financial Reporting Standards) and 24 CFR 232.1009 (Financial Reports), both of which contained reporting requirements applicable to the Section 232 program. HUD revised these regulatory sections to include operators of projects insured or held by HUD as entities that must submit financial statements to HUD. Owners and borrowers have long been required to submit financial reports.

Sections 5.801(c)(4) and 232.1009 provide that operators must submit financial statements to HUD quarterly within 30 calendar days of the date of the end of each fiscal quarter, and 60 calendar days from the end of the fiscal-year-end quarter to submit final fiscal year end quarter and fiscal year-to-date reports to HUD. The other entities required to submit reports were provided slightly longer periods to prepare and submit the reports than that provided to operators. In the September 7, 2012, final rule, commenters asked that HUD extend the 30-day filing deadline for end-of-each quarterly report to 60 days. HUD declined to provide the extension and stated that receipt of unaudited quarterly and year-to-date operator financial statements promptly at the end of each quarter is needed for effective monitoring of a property's financial operations and the trend of those operations.

HUD's September 16, 2014, interim rule, published at 79 FR 55360, revised the Section 232 program regulation to increase the amount of time operators have to comply with the reporting requirements provided in §§ 5.801(c)(4) and 232.1009. In the interim rule, HUD advised that with almost two years of administering the Section 232 program under the revised regulations, HUD determined that it can provide operators additional time to submit financial reports and maintain the effective monitoring of a property's financial operations and the trend of those operations, which was of concern to HUD in the September 7, 2012, rule.

The September 16, 2014, interim rule provided operators with 60 calendar days following the end of a fiscal quarter and 90 calendar days following the end of the fiscal-year-end quarter to comply with HUD's financial statement reporting requirements. HUD solicited comment on the changes made to Section 232 program regulations by the September 16, 2014, interim rule, but received no public comments in response to this solicitation.

On October 3, 2014, HUD published a notice in the **Federal Register**, at 79 FR 59646, announcing the commencement of compliance with the Uniform Financial Reporting Standards. Section 5.801(d)(4) of HUD's Uniform Financial Reporting Standards regulations provides that operators of projects with Section 232 insured mortgages (the entities described in § 5.801(a)(6)) must comply with the requirements of § 5.801 with respect to fiscal years commencing on or after the date that is 60 calendar days after the date on which HUD announces, through **Federal Register** notice, that it has issued guidance on the manner in which these reports will be transmitted to HUD. The October 3, 2014, notice served as the notice required by § 5.801(d)(4) that HUD has issued guidance on the manner in which the operator financial reports will be transmitted to HUD.[2] Accordingly, operators must comply with the operator financial report requirements for fiscal years commencing on or after December 2, 2014.

[1] Ginnie Mae is a registered service mark of the Government National Mortgage Association; see *http://www.ginniemae.gov/*.

[2] That guidance can be found under the Guidance for Lenders' Operator Financial Statement section at *http://portal.hud.gov/hudportal/HUD?src=/federal_housing_administration/healthcare_facilities/residential_care.*

B. This Final Rule

As noted above, HUD received no public comments in response to the September 16, 2014, interim rule, and is adopting the interim rule without change.

Findings and Certifications

Executive Order 13563, Regulatory Review

The President's Executive Order (EO) 13563, entitled ''Improving Regulation and Regulatory Review,'' was signed by the President on January 18, 2011, and published on January 21, 2011, at 76 FR 3821. This EO requires executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Section 4 of the EO, entitled ''Flexible Approaches,'' provides, in relevant part, that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. HUD submits that the changes made by this rule to the Section 232 regulations are consistent with the EO's directions as the rule reduces the burden on regulated parties by allowing for less restrictive reporting periods.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The changes required by this rule do not impose significant economic impacts on these small entities or otherwise adversely disproportionately burden such small entities. In fact, such small entities should benefit from the less restrictive reporting period. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to changing submission deadlines for required reports. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Information Collection Requirements

The information collection requirements contained in this rule were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0605. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the Mortgage Insurance Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities mortgage insurance programs is 14.129.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

■ Accordingly, the interim rule amending parts 5 and 232 of title 24 of the Code of Federal Regulations, which was published at 79 FR 55360 on September 16, 2014, is adopted as final without change.

Date: December 5, 2014.

Biniam Gebre,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–29464 Filed 12–15–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–052–FOR; Docket ID No. OSM–2012–0021; S1D1SS08011000 SX066A00067F144S180110; S2D2SS080 11000SX066A00033F14XS501520]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the North Dakota regulatory program (the ''North Dakota

program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). North Dakota intends to revise its program to be consistent with the corresponding Federal regulations. North Dakota submitted the amendment to address required rule changes OSMRE identified by letter to North Dakota dated October 2, 2009, under 30 CFR 732.17(c). These include changes to North Dakota's rules regarding use of the Applicant Violator System (AVS) and ownership and control. North Dakota has met all of the conditions outlined in the 732 letter and has included all applicable revisions and/or additions to their rules. North Dakota is also proposing to add a new subsection to an existing rule with general requirements relating to the format of electronic applications. They are also making a minor correction to another rule pertaining to the term of permits to make it consistent with a separate rule which was previously amended to no longer require renewal of a permit once lands in that permit are no longer being mined or used in the support of surface coal mining.

DATES: Effective December 16, 2014.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Chief, Denver Field Division, Telephone: 307–261–6550, Internet address: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSMRE's) Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act. . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.''

See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

II. Submission of the Proposed Amendment

By letter dated November 14, 2012, North Dakota sent us a proposed amendment to its program (Administrative Record Document ID No. OSM–2012–0021–0002) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment in response to an October 2, 2009 letter (Document ID No. OSM–2012–0021–0004) that we sent to North Dakota in accordance with 30 CFR 732.17(c), and to include the changes made at its own initiative.

Specifically, North Dakota proposes to add and/or change nine rules in the North Dakota Administrative Code (NDAC) Section 69–5.2. The rule changes primarily address the use of OSMRE's Applicant Violator System (AVS) prior to the approval of permits, permit renewals, and certain permit revisions. The proposed rule also contains procedures for surface coal mining operators to use if they want to submit challenges to information in the AVS. North Dakota proposed these changes to make its program consistent with the counterpart Federal regulations regarding the AVS and ownership and control. Additionally, North Dakota is submitting a proposed rule change that adds specificity to the format requirements for electronic applications and a change that updates a provision to no longer require the renewal of a permit once surface coal mining is completed and only reclamation work remains.

We announced receipt of the proposed amendment in the January 29, 2013, **Federal Register** (78 FR 6062). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Document ID No. OSM–2012–0021–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 1, 2013. We received a letter from one Federal agency stating that they had no comments.

During our review of the amendment, we identified an area of concern regarding the fact that North Dakota failed to provide a counterpart rule to 30 CFR 774.12(c)(1). We notified North Dakota of our concerns on March 13, 2013 (Administrative Record Document ID No. OSM–2012–0021–0008). North Dakota responded in a letter dated May 10, 2013 by revising their proposed amendment language (Administrative Record Document ID No. OSM–2012–0021–0009). Specifically, North Dakota corrected a drafting error which occurred from the use of a previous version of the 30 CFR rules by modifying NDAC Section 69–05.2–10–09. The proposed modification provides State counterpart language to 30 CFR 778.11(d), which is referenced in 30 CFR 774.12(c)(1).

III. OSMRE's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Revisions to North Dakota's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

North Dakota's proposed revisions to the following rules contain language that is the same as or similar to the corresponding sections of the Federal regulations, which we find to be consistent with and no less effective than the Federal regulations.

NDAC 69–05.2–05–08 Permit Applications—Permit Term

North Dakota added language to its rules to clarify that surface coal mining permits are to be renewed only when surface coal mining operations are taking place. Prior to this amendment, this particular section of North Dakota's regulations required permit renewal through the completion of surface coal mining and reclamation operations. NDAC 69–05.2–11–03, which contains the rules specific to permit renewals, already allowed permit renewals to lapse once surface mining operations are complete and only reclamation remains, but it was contradictory with NDAC 69–05.2–05–08. NDAC 69–05.2–05–08 is being revised to remove this contradiction in North Dakota's rules by deleting ''and reclamation''.

We also note that the revised rule has an apparent inconsistency because it states that permits shall be successively renewed under section 69–05.2–11–03 ''until final bond release.'' A final bond, however, is not released until after reclamation is complete. Thus, North Dakota's failure to delete the latter part of the rule ''until final bond release'' may create ambiguous interpretations. By letter dated November 14, 2012, North Dakota explained that the change was being proposed to no longer require renewal of a permit once lands in that permit are no longer being mined or

used in support of mining. Thus, whether this provision is interpreted as intended to require renewal only while surface coal mining operations occur or whether it is interpreted to require renewal through the release of the bond, we find that it is no less effective than the counterpart Federal Regulation found at 30 CFR 773.4(a). OSMRE understands that the intention of the rule is that permit renewal will only be required while surface coal mining operations are occurring and will expect the provision to be enforced accordingly.

30 CFR 773.4(a) specifically allows permit renewals to lapse once surface coal mining operations are completed and only reclamation operations remain. The Federal regulation also states that the obligations established under a coal mining permit do not lapse once surface mining activities cease and a permit need no longer be renewed. Thus, we find this section of the amendment to be no less effective than the Federal regulations. We, therefore, are approving it.

NDAC 69–05.2–06–01 Permit Applications—Identification of Interests and NDAC 69–05.2–06–02 Permit Applications—Compliance Information

North Dakota proposed to add subsection 2 of NDAC 69–05.2–06–01, which addresses business entity information, and subsection 6 of NDAC 69–05.2–06–02, which addresses violation information, to make their rules consistent with 30 CFR 778.9. The proposed amendments to each subsection are similar to each other. This duplication of rules is necessary due to the structure of the North Dakota Administrative code, which is divided into a section for permit/mining history information requirements and a section for requirements regarding identification of interests in the area surrounding a proposed surface coal mine permit.

These two subsections of the rules state that an applicant must certify that information recorded in the AVS system is accurate, complete and up to date and states that necessary information must be submitted and affirmed by the applicant if it is not accurate, complete and up to date. There are also regulations included in the two subsections that state that a central file containing an applicant's business entity identity information will be created in AVS by the Commission and provides that the file will be open to the public. The rules also require the applicant to file a copy of the information with the county auditor where the surface coal mining is proposed.

Based on the discussion above and because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, at 30 CFR 778.9, we find that they are consistent with and no less effective than the corresponding Federal regulations. We, therefore, are approving them.

NDAC 69–05.2–10–01 Permit Applications—Public Notices of Filing and Entering Data Into the Applicant Violation System

North Dakota proposed an addition to NDAC Section 69–05.2–10–01 which defines what the AVS system is and requires that information from a permit application deemed complete be entered into the database, and that new information from the permit review process be updated in the database as it is submitted to the Commission. This portion of the amendment is substantially the same as the counterpart Federal regulations and Federal definition of AVS found at 30 CFR 773.4.

North Dakota's proposed language at NDAC 69–05.2–10–01(7) states that business entity information must be entered into AVS according to requirements in NDAC 69–05.2–06–01. This language is consistent with OSMRE's rules which state that information from 30 CFR 778.11 (Providing applicant and operator information) must be submitted along with information pertaining to 778.12(c).

The proposed language also states that information pertaining to unabated or uncorrected violations must be entered into the database according to NDAC 69–05.2–06–02, which is consistent with the Federal reference to 30 CFR 773.8(b)(2). North Dakota's proposed language stipulates that information entered into AVS according to NDAC 69–05.2–10–01(7)(a) must be updated throughout the permit review process as new information becomes available. This language is consistent with the Federal Regulation that outlines the same requirement in 30 CFR 773.8.

North Dakota proposes to add NDAC 69–05.2–10–01(8), which is consistent with 30 CFR 773.9. This part states that prior to a permit eligibility determination, information in AVS and from other sources will be reviewed to make ownership and control findings. The language contained in this part indicates that review of this information is necessary to make a permit eligibility determination based on subsections 1 through 5 of NDAC 69–05.2–10–03. This proposed addition is substantially the same as the relevant portions of the counterpart Federal regulations at 30 CFR 773.8 and 773.9.

North Dakota also proposed additional language to NDAC 69–05.2–10–01(9). These regulations in the North Dakota program, which are the counterparts to 30 CFR 773.10, state that permit eligibility will be dependent upon review of an applicant's and operator's permit history and mining experience. The North Dakota Rules state that the Commission rather than the regulatory authority (as stated in the Federal counterpart) will rely on information that the applicant submits, because the Commission is the regulatory authority within the state of North Dakota with jurisdiction over permit applications. North Dakota references NDAC Section 69–05.2–06–01 which details the required information to be submitted into the AVS whereas the Federal Regulation references 30 CFR 778.12. NDAC 69–05.2–06–01 is consistent with 30 CFR 778.12 and is therefore the appropriate counterpart reference. This proposed addition is substantially the same as the counterpart Federal Regulation.

North Dakota proposes to revise NDAC 69–05.2–10–01(10) which is the counterpart to 30 CFR 773.11. The Federal counterpart regulation states that this requirement pertains to compliance with SMCRA, ''the State regulatory program'' and ''other applicable air or water quality laws.'' This amendment states that the Commission will review an applicant's and operator's history, relying on information both in AVS and submitted by the applicant, to determine whether any laws or rule of North Dakota, SMCRA, or ''any law or rule in any state enacted under federal law or regulation pertaining to air, water or environmental protection have been violated in connection with any surface coal mining and reclamation operation.'' We find that North Dakota's broad interpretation of ''other applicable air or water quality laws'' is consistent with and no less effective than the Federal Regulation.

North Dakota references NDAC 69–05.2–06–02 for the information the applicant submits whereas the Federal Regulation references 30 CFR 778.14. Subsections 1 through 5 of NDAC 69–05.2–10–03 are referenced in place of 30 CFR 773.12. All references to the NDAC are consistent with the referenced Federal regulations and are therefore the appropriate counterpart references. This proposed addition, as with the other provisions, is consistent with and no less effective than the counterpart

Federal regulations. We, therefore, are approving this portion of the amendment.

NDAC 69–05.2–10–03 Permit Applications—Criteria for Permit Approval or Denial

North Dakota proposed to add language to subsection 5 of NDAC 69–05.2–10–03 in order to make it consistent with the Federal counterpart rule at 30 CFR 773.12. This part states that the Commission will request a compliance history report from AVS to determine permit eligibility based on unabated or uncorrected violations, and that if the permit is denied the applicant will receive a written explanation and notification of appeal rights under North Dakota's appellate process. In this section of its rules, North Dakota provides reference to both subsection 2 of NDAC 69–05.2–06–01 and to subsection 6 of NDAC 69–05.2–06–02 regarding new information which is required to be submitted, both of which are the counterparts to Federal regulations at 30 CFR 778.9(d). This revised provision is consistent with and no less effective than Federal Regulation 30 CFR 773.12. Therefore, we are approving this portion of the amendment.

NDAC 69–05.2–10–07 Permit Applications—Challenges to Ownership or Control Listings and Findings

North Dakota proposed to add NDAC 69–05.2–10–07 to make its rules consistent with 30 CFR 773.25, 773.26, 773.27, and 773.28. This section of the North Dakota rules addresses who may challenge ownership and control listings and findings, what evidence must be submitted under such a challenge, how the Commission makes a decision about ownership and control listings and findings, how to submit appeals regarding ownership and control findings, and how the AVS system is used to facilitate deliberation of ownership and control.

With one exception, the language contained in this amendment is substantially the same as the counterpart Federal regulations. North Dakota did not include certain counterpart language included in 30 CFR 773.27(b) in its proposed rule. 30 CFR 773.27(b) states that the materials presented in connection with a challenge to ownership and control listings and findings will become part of a permit file, an investigation file, or another publically available file. However, this amendment does not explicitly provide that the information submitted under this subpart will become publicly available. In lieu of explicitly stating this requirement, North Dakota elected to refer to its open records statute at North Dakota Century Code (NDCC) 44–04–18 which states ''except as otherwise specifically provided by law, all records of a public entity are public records.'' There is no specific exception in this section of NDCC which would apply to challenges to AVS findings. Additionally, North Dakota has specifically stated that the information submitted in connection with a challenge to AVS findings in the state will be publically available upon approval of this amendment unless a request is made to hold certain information as confidential. Thus, we find this provision to be consistent with the Federal Regulation.

The Federal Regulation at 30 CFR 773.27(b) states that the regulatory authority upon request will hold as confidential any information submitted in an ownership and control challenge which is not required to be made available to the public under 30 CFR 840.14, which references 772.15(b) and 773.6(d). 30 CFR 772.15 states that the regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration. Under 30 CFR 773.6(d), certain chemical analyses of coal, archaeological resources, and information submitted under Section 508 of SMCRA are also listed as potential confidential information. Similarly, North Dakota has provisions under subsection 3 of North Dakota Century Code Section 38–14.1–13 to hold confidential information which pertains only to the analysis of the chemical and physical properties of the coal. NDAC 69–05.2–10–07(7) states that a request to hold materials submitted under this section as a trade secret may be made to the commission following the procedures of North Dakota Administrative Code chapter 69–02–09. Thus, we find that North Dakota's rule at NDAC 69–05.2–10–07 is consistent with and no less effective than Federal regulations at 30 CFR 773.25, 773.26, 773.27, and 773.28. Therefore, we are approving this portion of the amendment.

NDAC 69–05.2–10–08 Permit Applications—Commission Actions Related to Ownership and Control Information After Permit Issuance

North Dakota proposed to add NDAC Section 69–05.2–10–08 to its rules to make them consistent with 30 CFR 774.11. This Rule addresses permit eligibility determinations. It states how information must be entered into AVS and that AVS will be used to discover any unabated violations permittees and owners/controllers have with other mines that they own or control. It also includes information about how permanent permit ineligibility findings can be made by the Commission, what these findings are based on, and the due process under which such findings are made. This proposed addition to North Dakota's Rules is consistent with and no less effective than the counterpart Federal Regulation at 30 CFR 774.11. We, therefore, are approving it.

NDAC 69–05.2–10–09 Permit Applications—Ownership and Control Requirements for Permittees After Permit Issuance

North Dakota proposed to add NDAC Section 69–05.2–10–09 to make its rules consistent with 30 CFR 774.12 and 778.11(d) to include all applicable provisions in the Federal counterpart rules. This new section states that a permittee must update pertinent information required by NDAC 69–05.2–06–01 after either receiving a cessation order or if there is a change to any position of any person who has ownership or control of the applicant identified in subdivision e of subsection 1 of NDAC 69–05.2–06–01, whose Federal counterpart rule is 30 CFR 778.11.

The North Dakota rule language at NDAC 69–05.2–10–09 provides State counterpart language to 30 CFR 778.11(d), which is referenced in 30 CFR 774.12(c)(1). In subsection 3, North Dakota listed the requirements in their proposed language regarding information which must be provided after a change in ownership or control of the applicant. The list of requirements proposed by North Dakota in subsection 3 is identical to those referred to in the counterpart Federal regulations, located at 30 CFR 778.11(d). The proposed North Dakota rules are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 774.12 and 778.11(d). Thus, we are approving it.

B. Revisions to North Dakota's Rules With No Corresponding Federal Regulations

NDAC 69–05.2–05–02 Permit Applications—General Requirements for Format and Contents

North Dakota proposed to add stipulations to its rules which outline requirements for electronic permit

submittals. Additionally, North Dakota is adding a requirement that permit submissions made electronically use underline and strikethrough to display proposed changes. OSMRE recognizes that the format of electronic permit submissions which are received from coal operators can be highly variable and that there are no specific standards in the Federal regulations which require certain formats for information submittal by electronic means. North Dakota's proposal to add specificity to their rules by incorporating these detailed requirements does not conflict with and is no less effective than the Federal Program. We, therefore, are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM–2012–0021–0001), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record Document ID No. OSM–2012–0021–0005).

We received one response letter, dated December 7, 2012, from the Bureau of Land Management stating that they had no comments (Administrative Record Document ID No. OSM–2012–0021–0005).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that North Dakota proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. Under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from EPA (Administrative Record Document ID No. OSM–2012–0021–0005). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 28, 2012, we requested comments on North Dakota's amendment (Administrative Record Document ID No. OSM–2012–0021–0005), but neither responded to our request. OSMRE does not believe this amendment will have an effect on historic properties given that it outlines a purely administrative process and will not affect any on-the-ground activities on surface coal mining and reclamation operations in the state of North Dakota, however we requested comments nonetheless.

V. OSMRE's Decision

Based on the above findings, we approve North Dakota's November 14, 2012 amendment ND–052–FOR. North Dakota has met all of the conditions outlined in the October 2, 2009 732.17(c) letter and has included all applicable revisions and/or additions to their rules.

To implement this decision, we are amending the Federal regulations at 30 CFR part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSMRE. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply,

distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 2014.

Ervin Barchenger,

Acting Director, Western Region.

Editorial note: This document was received for publication by the Office of **Federal Register** on December 10, 2014.

For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	*
November 14, 2012	December 16, 2014	NDAC 69–05.2–05–02 NDAC 69–05.2–05–08 NDAC 69–05.2–06–01 NDAC 69–05.2–06–02 NDAC 69–05.2–10–01 NDAC 69–05.2–10–03 NDAC 69–05.2–10–07 NDAC 69–05.2–10–08 NDAC 69–05.2–10–09

■ 3. Section 934.16 is republished to read as follows:

§ 934.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), North Dakota is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with North Dakota's established administrative or legislative procedures.

(a)–(cc) [Reserved]

[FR Doc. 2014–29384 Filed 12–15–14; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2014–0058]

2014 Interim Guidance on Patent Subject Matter Eligibility

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Examination guidance; request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) has prepared interim guidance (2014 Interim Guidance on Patent Subject Matter Eligibility, called ''Interim Eligibility Guidance'') for use by USPTO personnel in determining subject matter eligibility under 35 U.S.C. 101 in view of recent decisions by the U.S. Supreme Court (Supreme Court). This Interim Eligibility Guidance supplements the June 25, 2014, Preliminary Examination Instructions in view of the Supreme Court decision in *Alice Corp.* (June 2014 Preliminary Instructions) and supersedes the March 4, 2014, Procedure For Subject Matter Eligibility Analysis Of Claims Reciting Or Involving Laws Of Nature/Natural Principles, Natural Phenomena, And/Or Natural Products (March 2014 Procedure) issued in view of the Supreme Court decisions in *Myriad* and *Mayo.* The USPTO is seeking public comment on this Interim Eligibility Guidance along with additional suggestions on claim examples for explanatory example sets.

DATES: *Effective Date:* This Interim Eligibility Guidance is effective on December 16, 2014. This Interim Eligibility Guidance applies to all applications filed before, on or after December 16, 2014.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before March 16, 2015.

ADDRESSES: Comments on this Interim Eligibility Guidance must be sent by electronic mail message over the Internet addressed to: *2014_interim_guidance@uspto.gov.* Electronic comments submitted in plain text are preferred, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. The comments will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at 571–272–7728, or Michael Cygan, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at 571–272–7700.

SUPPLEMENTARY INFORMATION: Section 2106 of the Manual of Patent Examining Procedure (MPEP) sets forth guidance for use by USPTO personnel in determining subject matter eligibility under 35 U.S.C. 101. *See* MPEP 2106 (9th ed. 2014). The USPTO has prepared this Interim Eligibility Guidance for use by USPTO personnel in determining subject matter eligibility under 35 U.S.C. 101 in view of recent decisions by the Supreme Court. The following Interim Eligibility Guidance on patent subject matter eligibility under 35 U.S.C. 101 supplements the June 25, 2014, Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd.* v. *CLS Bank International, et al.*[1] (June 2014 Preliminary Instructions) and supersedes the March 4, 2014, Procedure For Subject Matter Eligibility Analysis Of Claims Reciting Or Involving Laws Of Nature/Natural Principles, Natural Phenomena, And/Or Natural Products (March 2014 Procedure) [2] issued in view of the Supreme Court decisions in *Association for Molecular Pathology* v. *Myriad Genetics, Inc.*[3] and *Mayo Collaborative Services* v. *Prometheus Laboratories Inc.*[4] Implementation of examination guidance on eligibility will be an iterative process continuing with periodic supplements based on developments in patent subject matter eligibility jurisprudence [5] and public feedback.

The USPTO is seeking written comments on this guidance, as well as additional suggestions for claim examples to use for examiner training. Further, the USPTO plans to hold a public forum in mid-January 2015 in order to discuss the guidance and next steps and to receive additional oral input. When the date and location are finalized, notice of the forum will be provided on the Office's Internet Web site (*http://www.uspto.gov*).

This Interim Eligibility Guidance does not constitute substantive rulemaking and does not have the force and effect of law. This Interim Eligibility Guidance sets out the Office's interpretation of the subject matter eligibility requirements of 35 U.S.C. 101 in view of recent decisions by the Supreme Court and the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and advises the public and Office personnel on how these court decisions impact the provisions of MPEP 2105, 2106 and 2106.01. This Interim Eligibility Guidance has been developed as a matter of internal Office management and is not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office. Rejections will continue to be based upon the substantive law, and it is these rejections that are appealable. Failure of Office personnel to follow this Interim Eligibility Guidance is not, in itself, a proper basis for either an appeal or a petition.

This Interim Eligibility Guidance offers a comprehensive view of subject matter eligibility in line with *Alice Corp, Myriad, Mayo,* and the related body of case law, and is responsive to the public comments received pertaining to the March 2014 Procedure and the June 2014 Preliminary Instructions (*see* the Notice of Forum on the Guidance for Determining Subject Matter Eligibility of Claims Reciting or Involving Laws of Nature, Natural Phenomena, and Natural Products, 79 FR 21736 (Apr. 17, 2014) and the Request for Comments and Extension of Comment Period on Examination Instruction and Guidance Pertaining to Patent-Eligible Subject Matter, 79 FR 36786 (June 30, 2014)). In conjunction with this Interim Eligibility Guidance, a set of explanatory examples relating to nature-based products is being released to replace the prior examples issued with the March 2014 Procedure and the related training. The explanatory examples relating to nature-based products address themes raised in the public comments and adopt many suggestions from the comments. Additional explanatory example sets relating to claims that do and do not amount to significantly more than a judicial exception are being developed and will be issued at a future date, taking into account suggestions already received from the public comments,

[1] *Alice Corp. Pty. Ltd.* v. *CLS Bank Int'l,* 573 U.S. __, 134 S. Ct. 2347 (2014).

[2] This analysis differs from the March 2014 Procedure in certain respects. Note, for example, the test for determining whether a claim is directed to a ''product of nature'' exception is separated from the analysis of whether the claim includes significantly more than the exception. Also, the application of the overall analysis is based on claims *directed* to judicial exceptions (defined as claims reciting the exception, *i.e.,* set forth or described), rather than claims merely ''involving'' an exception. For instance, process claims that merely use a nature-based product are not necessarily subject to an analysis for markedly different characteristics. Additionally, the markedly different analysis focuses on characteristics that can include a product's structure, function, and/or other properties as compared to its naturally occurring counterpart in its natural state.

[3] *Association for Molecular Pathology* v. *Myriad Genetics, Inc.,* 569 U.S. __, 133 S. Ct. 2107 (2013).

[4] *Mayo Collaborative Serv.* v. *Prometheus Labs., Inc.,* 566 U.S. __, 132 S. Ct. 1289 (2012).

[5] The Court of Appeals for the Federal Circuit has a number of pending appeals that could result in further refinements to the eligibility guidance, including for example, *University of Utah Research Foundation* v. *Ambry Genetics Corp. (In re BRCA1- & BRCA2-Based Hereditary Cancer Test Patent Litigation*), No. 14–1361 (Fed. Cir. filed Mar. 18, 2014), and *Ariosa Diagnostics, Inc.* v. *Sequenom, Inc.,* No. 14–1139 (Fed. Cir. filed Dec. 4, 2013).

future public comments, and any further judicial developments.

The June 2014 Preliminary Instructions superseded MPEP sections 2106(II)(A) and 2106(II)(B). MPEP 2105 is also superseded by this Interim Eligibility Guidance to the extent that it suggests that ''mere human intervention'' necessarily results in eligible subject matter. MPEP 2106.01 is additionally now superseded with this interim guidance. Examiners should continue to follow the MPEP for all other examination instructions. The following sections pertain to examining for patent subject matter eligibility with details on determining what applicant invented and making a rejection under 35 U.S.C. 101 and should be reviewed closely as they are not duplicated in this Interim Eligibility Guidance:

- MPEP 2103: Patent Examination Process
  - 2103(I): Determine What Applicant Has Invented and Is Seeking to Patent
  - 2103(II): Conduct a Thorough Search of the Prior Art
  - 2103(III): Determine Whether the Claimed Invention Complies With 35 U.S.C. 101
  - 2103(IV): Evaluate Application for Compliance With 35 U.S.C. 112
  - 2103(V): Determine Whether the Claimed Invention Complies With 35 U.S.C. 102 and 103
  - 2103(VI): Clearly Communicate Findings, Conclusions, and Their Bases
- MPEP 2104: Patentable Subject Matter
- MPEP 2105: Patentable Subject Matter—Living Subject Matter [6]
- MPEP 2106: Patent Subject Matter Eligibility
  - 2106(I): The Four Categories of Statutory Subject Matter
  - 2106(II): Judicial Exceptions to the Four Categories (*not* subsections (II)(A) and (II)(B))
  - 2106(III): Establish on the Record a *Prima Facie* Case

[6] To the extent that MPEP 2105 suggests that mere ''human intervention'' necessarily results in eligible subject matter, it is superseded by this Interim Eligibility Guidance. As explained herein, if human intervention has failed to confer markedly different characteristics on a product derived from nature, that product is a judicial exception (a product of nature exception). *See generally Myriad*; *In re Roslin Inst. (Edinburgh),* 750 F.3d. 1333 (Fed. Cir. 2014).

The current version of the MPEP (9th ed., March 2014) incorporates patent subject matter eligibility guidance issued as of November 2013.

This Interim Eligibility Guidance is divided into the following sections:

Flowchart: Eligibility Test for Products and Processes;

Part I: Two-part Analysis for Judicial Exceptions;

Part II: Complete Examination;

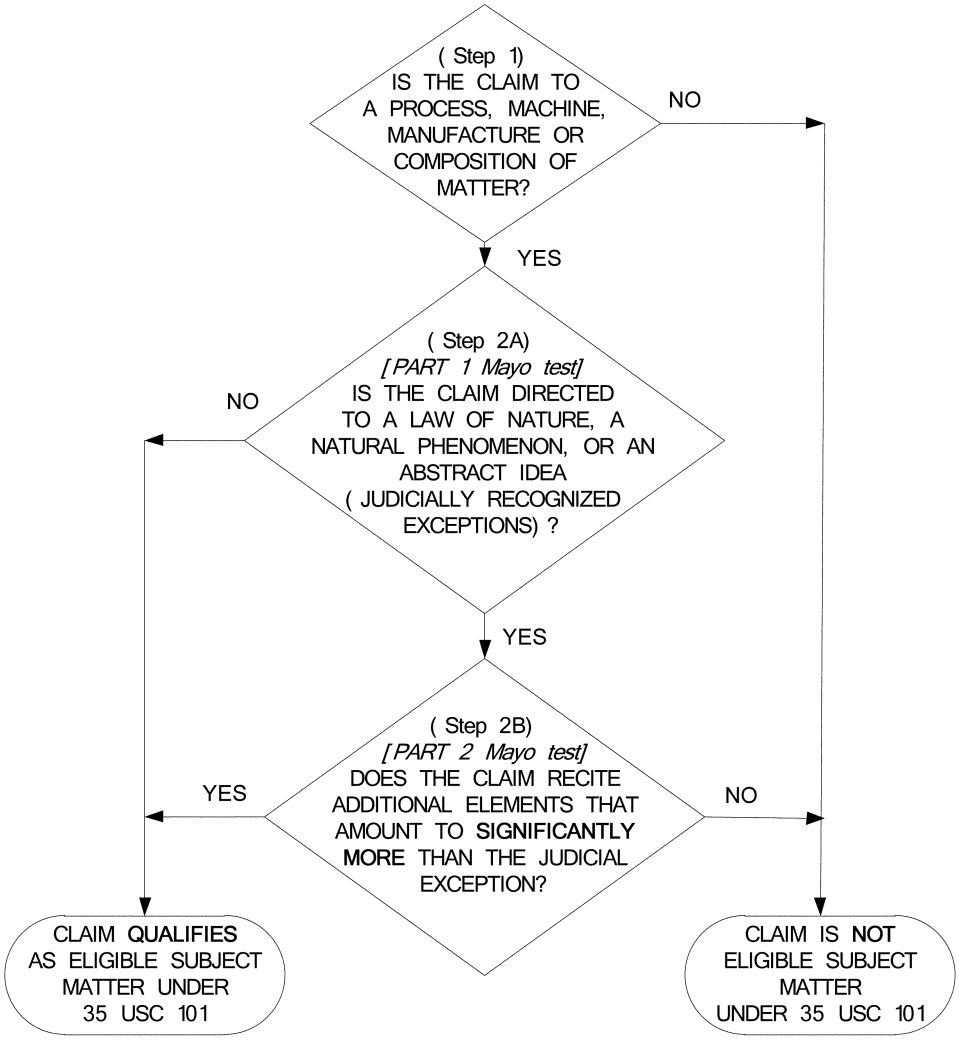
Part III: Sample Analysis; and

Part IV: Summaries of Court Decisions Relating to Laws of Nature, Natural Phenomena, and Abstract Ideas.

The following flowchart illustrates the subject matter eligibility analysis for products and processes to be used during examination for evaluating whether a claim is drawn to patent-eligible subject matter. It is recognized that under the controlling legal precedent there may be variations in the precise contours of the analysis for subject matter eligibility that will still achieve the same end result. The analysis set forth herein promotes examination efficiency and consistency across all technologies.

SUBJECT MATTER ELIGIBILITY TEST FOR PRODUCTS AND PROCESSES

PRIOR TO EVALUATING A CLAIM FOR PATENTABILITY, ESTABLISH THE BROADEST REASONABLE INTERPRETATION OF THE CLAIM. ANALYZE THE CLAIM AS A WHOLE WHEN EVALUATING FOR PATENTABILITY.



IN ACCORDANCE WITH COMPACT PROSECUTION, ALONG WITH DETERMINING ELIGIBILITY, ALL CLAIMS ARE TO BE FULLY EXAMINED UNDER EACH OF THE OTHER PATENTABILITY REQUIREMENTS: 35 USC §§ 102, 103, 112, and 101 (UTILITY, INVENTORSHIP, DOUBLE PATENTING) AND NON- STATUTORY DOUBLE PATENTING.

Notable changes from prior guidance:
- All claims (product and process) with a judicial exception (any type) are subject to the same steps.
- Claims including a nature- based product are analyzed in Step 2A to identify whether the claim is directed to (recites) a "product of nature" exception. This analysis compares the nature- based product in the claim to its naturally occurring counterpart to identify markedly different characteristics based on structure, function, and/ or properties. The analysis proceeds to Step 2B only when the claim is directed to an exception (when no markedly different characteristics are shown) .

2014 Interim Eligibility Guidance: In accordance with the existing two-step analysis for patent subject matter eligibility under 35 U.S.C. 101 explained in MPEP 2106, the claimed invention (Step 1) ''must be directed to one of the four statutory categories'' and (Step 2) ''must not be wholly directed to subject matter encompassing a judicially recognized exception.'' Referring to the attached flowchart titled Subject Matter Eligibility Test for Products and Processes, Step 1 is represented in diamond (1), which is explained in MPEP 2106(I). Step 2 is represented in diamonds (2A) and (2B) and is the subject of this Interim Eligibility Guidance. Step 2 is the two-part

analysis from *Alice Corp.*[7] (also called the *Mayo* test) for claims directed to laws of nature, natural phenomena, and abstract ideas (the judicially recognized exceptions).

I. Two-Part Analysis for Judicial Exceptions

A. Flowchart Step 2A (Part 1 *Mayo* Test)—Determine whether the claim is *directed* to a law of nature, a natural phenomenon, or an abstract idea (judicial exceptions).

After determining what applicant has invented by reviewing the entire application disclosure and construing the claims in accordance with their broadest reasonable interpretation (MPEP 2103), determine whether the claim as a whole is directed to a judicial exception. A claim to a process, machine, manufacture or composition of matter (*Step 1: YES*) that is not directed to any judicial exceptions (*Step 2A: NO*) is eligible and needs no further eligibility analysis. A claim that is directed to at least one exception (*Step 2A: YES*) requires further analysis to determine whether the claim recites a patent-eligible application of the exception (*Step 2B*).

1. Determine What the Claim Is ''Directed to''

A claim is directed to a judicial exception when a law of nature, a natural phenomenon, or an abstract idea is recited (*i.e.,* set forth or described) in the claim. Such a claim requires closer scrutiny for eligibility because of the risk that it will ''tie up'' [8] the excepted subject matter and pre-empt others from using the law of nature, natural phenomenon, or abstract idea. Courts tread carefully in scrutinizing such claims because at some level all inventions embody, use, reflect, rest upon, or apply a law of nature, natural phenomenon, or abstract idea.[9] To properly interpret the claim, it is important to understand what the applicant has invented and is seeking to patent.

For claims that may recite a judicial exception, but are directed to inventions that clearly do not seek to tie up the judicial exception, see Section I.B.3. regarding a streamlined eligibility analysis.

2. Identify the Judicial Exception Recited in the Claim

MPEP 2106(II) provides a detailed explanation of the judicial exceptions and their legal bases. It should be noted that there are no bright lines between the types of exceptions because many of these concepts can fall under several exceptions. For example, mathematical formulas are considered to be an exception as they express a scientific truth, but have been labelled by the courts as both abstract ideas and laws of nature. Likewise, ''products of nature'' are considered to be an exception because they tie up the use of naturally occurring things, but have been labelled as both laws of nature and natural phenomena. Thus, it is sufficient for this analysis to identify that the claimed concept aligns with at least one judicial exception.

Laws of nature and natural phenomena, as identified by the courts, include naturally occurring principles/substances and substances that do not have markedly different characteristics compared to what occurs in nature. See Section I.A.3. for a discussion of the markedly different characteristics analysis used to determine whether a claim that includes a nature-based product limitation recites an exception. The types of concepts courts have found to be laws of nature and natural phenomena are shown by these cases, which are intended to be illustrative and not limiting:

- An isolated DNA (*Myriad:* see Section III, Example 2);
- a correlation that is the consequence of how a certain compound is metabolized by the body (*Mayo:* see Section III, Example 5);
- electromagnetism to transmit signals (*Morse:*[10] see Section IV.A.1.); and
- the chemical principle underlying the union between fatty elements and water (*Tilghman:*[11] see Section IV.A.2.).

Abstract ideas have been identified by the courts by way of example, including fundamental economic practices, certain methods of organizing human activities, an idea 'of itself,' and mathematical relationships/formulas.[12] The types of concepts courts have found to be abstract ideas are shown by these cases, which are intended to be illustrative and not limiting:

- Mitigating settlement risk (*Alice:* see Section III, Example 6);
- hedging (*Bilski:*[13] see Section IV.A.5.);
- creating a contractual relationship (*buySAFE:*[14] see Section IV.C.3.);
- using advertising as an exchange or currency (*Ultramercial:*[15] see Section IV.C.4.);
- processing information through a clearinghouse (*Dealertrack:*[16] see Section IV.B.3.);
- comparing new and stored information and using rules to identify options (*SmartGene:*[17] see Section IV.B.4.);
- using categories to organize, store and transmit information (*Cyberfone:*[18] see Section IV.B.5.);
- organizing information through mathematical correlations (*Digitech:*[19] see Section IV.C.1.);
- managing a game of bingo (*Planet Bingo:*[20] see Section IV.C.2.);
- the Arrhenius equation for calculating the cure time of rubber (*Diehr:*[21] see Section III, Example 3);
- a formula for updating alarm limits (*Flook:*[22] see Section III, Example 4);
- a mathematical formula relating to standing wave phenomena (*Mackay Radio:*[23] see Section IV.A.3.); and
- a mathematical procedure for converting one form of numerical representation to another (*Benson:*[24] see Section IV.A.4.)

3. Nature-Based Products

a. Determine Whether the Markedly Different Characteristics Analysis Is Needed To Evaluate a Nature-Based Product Limitation Recited in a Claim

Nature-based products, as used herein, include both eligible and

[7] *Alice Corp.,* 134 S. Ct. at 2355.

[8] *Mayo,* 132 S. Ct. at 1301 (''[E]ven though rewarding with patents those who discover new laws of nature and the like might well encourage their discovery, those laws and principles, considered generally, are 'the basic tools of scientific and technological work.' And so there is a danger that the grant of patents that tie up their use will inhibit future innovation premised upon them, a danger that becomes acute when a patented process amounts to no more than an instruction to 'apply the natural law,' or otherwise forecloses more future invention than the underlying discovery could reasonably justify'' (quoting *Gottschalk* v. *Benson,* 409 U.S. 63, 67 (1972)).

[9] An invention is not rendered ineligible for patent simply because it involves an abstract concept. Applications of such concepts ''to a new and useful end,'' remain eligible for patent protection. *Alice Corp.,* 134 S.Ct. at 2354 (quoting *Benson,* 409 U.S. at 67).

[10] *O'Reilly* v. *Morse,* 56 U.S. 62 (1853).

[11] *Tilghman* v. *Proctor,* 102 U.S. 707 (1881).

[12] *Alice Corp.,* 134 S. Ct. at 2355–56.

[13] *Bilski* v. *Kappos,* 561 U.S. 593 (2010).

[14] *buySAFE, Inc.* v. *Google, Inc.,* ___ F.3d ___, 112 USPQ2d 1093 (Fed. Cir. 2014).

[15] *Ultramercial, LLC* v. *Hulu, LLC and WildTangent,* ___ F.3d ___, 112 USPQ2d 1750 (Fed. Cir. 2014).

[16] *Dealertrack Inc.* v. *Huber,* 674 F.3d 1315 (Fed. Cir. 2012).

[17] *SmartGene, Inc.* v. *Advanced Biological Labs., SA,* 555 Fed. Appx. 950 (Fed. Cir. 2014) (nonprecedential).

[18] *Cyberfone Sys.* v. *CNN Interactive Grp.,* 558 Fed. Appx. 988 (Fed. Cir. 2014) (nonprecedential).

[19] *Digitech Image Tech., LLC* v. *Electronics for Imaging, Inc.,* 758 F.3d 1344 (Fed. Cir. 2014).

[20] *Planet Bingo, LLC* v. *VKGS LLC,* ___ Fed. Appx. ___ (Fed. Cir. 2014) (nonprecedential).

[21] *Diamond* v. *Diehr,* 450 U.S. 175 (1981).

[22] *Parker* v. *Flook,* 437 U.S. 584 (1978).

[23] *Mackay Radio & Tel. Co.* v. *Radio Corp. of Am.,* 306 U.S. 86 (1939).

[24] *Benson,* 409 U.S. at 63.

ineligible products and merely refer to the types of products subject to the markedly different characteristics analysis used to identify ''product of nature'' exceptions. Courts have held that naturally occurring products and some man-made products that are essentially no different from a naturally occurring product are ''products of nature'' [25] that fall under the laws of nature or natural phenomena exception. To determine whether a claim that includes a nature-based product limitation recites a ''product of nature'' exception, use the markedly different characteristics analysis to evaluate the nature-based product limitation (discussed in section I.A.3.b). A claim that recites a nature-based product limitation that does not exhibit markedly different characteristics from its naturally occurring counterpart in its natural state is directed to a ''product of nature'' exception (*Step 2A: YES*).

Care should be taken not to overly extend the markedly different characteristics analysis to products that when viewed as a whole are not nature-based. For claims that recite a nature-based product limitation (which may or may not be a ''product of nature'' exception) but are directed to inventions that clearly do not seek to tie up any judicial exception, see Section I.B.3. regarding a streamlined eligibility analysis. In such cases, it would not be necessary to conduct a markedly different characteristics analysis.

A nature-based product can be claimed by itself (*e.g.,* ''a Lactobacillus bacterium'') or as one or more limitations of a claim (*e.g.,* ''a probiotic composition comprising a mixture of Lactobacillus and milk in a container''). The markedly different characteristics analysis should be applied only to the nature-based product limitations in the claim to determine whether the nature-based products are ''product of nature'' exceptions. When the nature-based product is produced by combining multiple components, the markedly different characteristics analysis should be applied to the resultant nature-based combination, rather than its component parts. In the example above, the mixture of Lactobacillus and milk should be analyzed for markedly different characteristics, rather than the Lactobacillus separately and the milk separately. The container would not be subject to the markedly different characteristics analysis as it is not a nature-based product, but would be evaluated in Step 2B if it is determined that the mixture of Lactobacillus and milk does not have markedly different characteristics from any naturally occurring counterpart and thus is a ''product of nature'' exception.

For a product-by-process claim, the analysis turns on whether the nature-based product in the claim has markedly different characteristics from its naturally occurring counterpart. (*See* MPEP 2113 for product-by-process claims.)

A process claim is not subject to the markedly different analysis for nature-based products used in the process, except in the limited situation where a process claim is drafted in such a way [26] that there is no difference in substance from a product claim (*e.g.,* ''a method of providing an apple.'').

b. Markedly Different Characteristics Analysis: Structure, Function and/or Other Properties [27]

The markedly different characteristics analysis compares the nature-based product limitation to its naturally occurring counterpart in its natural state. When there is no naturally occurring counterpart to the nature-based product, the comparison should be made to the closest naturally occurring counterpart. In the case of a nature-based combination, the closest counterpart may be the individual nature-based components that form the combination, *i.e.,* the characteristics of the claimed nature-based combination are compared to the characteristics of the components in their natural state.

Markedly different characteristics can be expressed as the product's structure, function, and/or other properties,[28] and will be evaluated based on what is recited in the claim on a case-by-case basis. As seen by the examples that are being released in conjunction with this Interim Eligibility Guidance, even a small change can result in markedly different characteristics from the product's naturally occurring counterpart. In accordance with this analysis, a product that is purified or isolated, for example, will be eligible when there is a resultant change in characteristics sufficient to show a marked difference from the product's naturally occurring counterpart. If the claim recites a nature-based product limitation that does not exhibit markedly different characteristics, the claim is directed to a ''product of nature'' exception (a law of nature or naturally occurring phenomenon), and the claim will require further analysis to determine eligibility based on whether additional elements add significantly more to the exception.

Non-limiting examples of the types of characteristics considered by the courts when determining whether there is a marked difference include:

- Biological or pharmacological functions or activities; [29]
- Chemical and physical properties; [30]
- Phenotype, including functional and structural characteristics; [31] and
- Structure and form, whether chemical, genetic or physical.[32]

If the claim includes a nature-based product that has markedly different characteristics, the claim does not recite a ''product of nature'' exception and is eligible (*Step 2A: NO*) unless the claim

[25] *Myriad,* 133 S. Ct. at 2111.

[26] *Alice Corp.,* 134 S. Ct. at 2360.

[27] This revised analysis represents a change from prior guidance, because now changes in functional characteristics and other non-structural properties can evidence markedly different characteristics, whereas in the March 2014 Procedure only structural changes were sufficient to show a marked difference.

[28] To show a marked difference, a characteristic must be changed as compared to nature, and cannot be an inherent or innate characteristic of the naturally occurring counterpart. *Funk Bros. Seed Co.* v. *Kalo Inoculant Co.,* 333 U.S. 127, 130 (1948) (''[The inventor did] not create a state of inhibition or of non-inhibition in the bacteria. Their qualities are the work of nature. Those qualities are of course not patentable.''); *In re Marden,* 47 F.2d 958 (CCPA 1931) (eligibility of a claim to ductile vanadium held ineligible, because the ''ductility or malleability of vanadium is . . . one of its inherent characteristics and not a characteristic given to it by virtue of a new combination with other materials or which characteristic is brought about by some chemical reaction or agency which changes its inherent characteristics''). Further, a difference in a characteristic that came about or was produced independently of any effort or influence by applicant cannot show a marked difference. *Roslin,* 750 F.3d at 1338 (Because ''any phenotypic differences came about or were produced 'quite independently of any effort of the patentee''' and were ''uninfluenced by Roslin's efforts'', they ''do not confer eligibility on their claimed subject matter'' (quoting *Funk Bros.*)).

[29] *See, e.g., Funk Bros.,* 333 U.S. at 130–31 (properties and functions of bacteria such as a state of inhibition or non-inhibition and the ability to infect leguminous plants); *Diamond* v. *Chakrabarty,* 447 U.S. 303, 310 (1980) (genetically modified bacterium's ability to degrade hydrocarbons); *In re King,* 107 F.2d 618 (CCPA 1939) (the ability of vitamin C to prevent and treat scurvy); *Myriad,* 133 S. Ct. at 2111, 2116–17 (the protein-encoding information of a nucleic acid).

[30] *See, e.g., Parke-Davis & Co.* v. *H.K. Mulford Co.,* 189 F. 95, 103–04 (S.D.N.Y. 1911) (the alkalinity of a chemical compound); *Marden,* 47 F.2d at 958 (the ductility or malleability of metals); *Funk Bros.,* 333 U.S. at 130 (''The qualities of these bacteria, like the heat of the sun, electricity, or the qualities of metals, are part of the store-house of knowledge of all men. They are manifestations of laws of nature, free to all men and reserved exclusively to none.'').

[31] *See, e.g., Roslin,* 750 F.3d at 1338 (phenotype, including functional and structural characteristics, *e.g.,* the shape, size, color, and behavior of an organism).

[32] *See, e.g., Chakrabarty,* 447 U.S. at 305 and n.1 (the physical presence of plasmids in a bacterial cell); *Parke-Davis,* 189 F. at 100, 103 (claimed chemical was a ''nonsalt'' and a ''crystalline substance''); *Myriad,* 133 S. Ct. at 2116, 2119 (nucleotide sequence of DNA); *Roslin,* 750 F.3d at 1338–39 (the genetic makeup (genotype) of a cell or organism).

recites another exception (such as a law of nature or abstract idea, or a different natural phenomenon). If the claim includes a product having no markedly different characteristics from the product's naturally occurring counterpart in its natural state, the claim is directed to an exception (*Step 2A: YES*), and the eligibility analysis must proceed to *Step 2B* to determine if any additional elements in the claim add significantly more to the exception. For claims that are to a single nature-based product, once a markedly different characteristic in that product is shown, no further analysis would be necessary for eligibility because no ''product of nature'' exception is recited (*i.e.,* Step 2B is not necessary because the answer to Step 2A is NO). This is a change from prior guidance because the inquiry as to whether the claim amounts to significantly more than a ''product of nature'' exception is not relevant to claims that do not recite an exception. Thus, a claim can be found eligible based solely on a showing that the nature-based product in the claim has markedly different characteristics and thus is not a ''product of nature'' exception, when no other exception is recited in the claim.

If a rejection under 35 U.S.C. 101 is ultimately made, the rejection should identify the exception as it is recited (*i.e.,* set forth or described) in the claim, and explain why it is an exception providing reasons why the product does not have markedly different characteristics from its naturally occurring counterpart in its natural state.

B. Flowchart Step 2B (Part 2 *Mayo* test)—Determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the judicial exception.

A claim directed to a judicial exception must be analyzed to determine whether the elements of the claim, considered both individually and as an ordered combination, are sufficient to ensure that the claim as a whole amounts to significantly more than the exception itself—this has been termed a search for an ''inventive concept.'' [33] To be patent-eligible, a claim that is directed to a judicial exception must include additional features to ensure that the claim describes a process or product that applies the exception in a meaningful way, such that it is more than a drafting effort designed to monopolize the exception. It is important to consider the claim as whole. Individual elements viewed on their own may not appear to add significantly more to the claim, but when combined may amount to significantly more than the exception. Every claim must be examined individually, based on the particular elements recited therein, and should not be judged to automatically stand or fall with similar claims in an application.

1. ''Significantly More''

The Supreme Court has identified a number of considerations for determining whether a claim with additional elements amounts to significantly more than the judicial exception itself. The following are examples of these considerations, which are not intended to be exclusive or limiting. Limitations that may be enough to qualify as ''significantly more'' when recited in a claim with a judicial exception include:

- Improvements to another technology or technical field; [34]
- Improvements to the functioning of the computer itself; [35]
- Applying the judicial exception with, or by use of, a particular machine; [36]
- Effecting a transformation or reduction of a particular article to a different state or thing; [37]
- Adding a specific limitation other than what is well-understood, routine and conventional in the field, or adding unconventional steps that confine the claim to a particular useful application; [38] or
- Other meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment.[39]

Limitations that were found not to be enough to qualify as ''significantly more'' when recited in a claim with a judicial exception include:

- Adding the words ''apply it'' (or an equivalent) with the judicial exception, or mere instructions to implement an abstract idea on a computer; [40]
- Simply appending well-understood, routine and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, *e.g.,* a claim to an abstract idea requiring no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry; [41]
- Adding insignificant extrasolution activity to the judicial exception, *e.g.,* mere data gathering in conjunction with a law of nature or abstract idea; [42] or
- Generally linking the use of the judicial exception to a particular technological environment or field of use.[43]

Section III provides examples of claims analyzed under this framework.

If the claim as a whole does recite significantly more than the exception itself, the claim is eligible (*Step 2B: YES*), and the eligibility analysis is complete. If there are no meaningful limitations in the claim that transform the exception into a patent-eligible application, such that the claim does not amount to significantly more than the exception itself, the claim is not patent-eligible (*Step 2B: NO*) and should be rejected under 35 U.S.C. 101. In the rejection, identify the exception by referring to where it is recited (*i.e.,* set forth or described) in the claim and explain why it is considered an exception. Then, if the claim includes additional elements, identify the elements in the rejection and explain why they do not add significantly more to the exception. Also see MPEP

[33] *Alice Corp.,* 134 S. Ct. at 2357.

[34] *Alice Corp.,* 134 S. Ct. at 2359 (citing *Diehr,* 450 U.S. at 177–78) (a mathematical formula applied in a specific rubber molding process).

[35] *Id.,* at 2359.

[36] *Bilski,* 130 S. Ct. at 3227 (''The Court's precedents establish that the machine-or-transformation test is a useful and important clue, an investigative tool, for determining whether some claimed inventions are processes under § 101.'').

[37] *Diehr,* 450 U.S. at 184 (''That respondents' claims [to a specific rubber molding process] involve the transformation of an article, in this case raw, uncured synthetic rubber, into a different state or thing cannot be disputed.''). *See also Benson,* 409 U.S. at 70 (''Transformation and reduction of an article 'to a different state or thing' is the clue to the patentability of a process claim that does not include particular machines. So it is that a patent in the process of 'manufacturing fat acids and glycerine from fatty bodies by the action of water at a high temperature and pressure' was sustained in *Tilghman,* 102 U.S. at 721'').

[38] *Mayo,* 132 S. Ct. at 1299, 1302 (claim ineligible because the recited ''instructions add nothing specific to the laws of nature other than what is well-understood, routine, conventional activity, previously engaged in by those in the field,'' which was ''[u]nlike, say, a typical patent on a new drug or a new way of using an existing drug'').

[39] *Alice Corp.,* 134 S. Ct. at 2360 (noting that none of the hardware recited ''offers a meaningful limitation beyond generally linking 'the use of the [method] to a particular technological environment,' that is, implementation via computers'' (citing *Bilski,* 561 U.S. at 610, 611)).

[40] *Id.* at 2358 (simply implementing a mathematical principle on a physical machine, namely a computer (citing *Mayo,* 132 S. Ct. at 1301)).

[41] *Id.* at 2359 (using a computer to obtain data, adjust account balances, and issue automated instructions); *Mayo,* 132 S. Ct. at 1300 (telling a doctor to measure metabolite levels in the blood using any known process).

[42] *Mayo,* 132 S. Ct. at 1297–98 (measuring metabolites of a drug administered to a patient); *Flook,* 437 U.S. at 589–90 (1978) (adjusting an alarm limit variable to a figure computed according to a mathematical formula).

[43] *Mayo,* 132 S. Ct. at 1300–01 (citing *Bilski,* 130 S. Ct. 3223–24) (limiting hedging to use in commodities and energy markets); *Flook,* 437 U.S. at 589–90.

2103(VI) and 2106(III) for instructions on making the rejection.

2. A Claim Reciting a Plurality of Exceptions

For a claim that is directed to a plurality of exceptions, conduct the eligibility analysis for one of the exceptions. If the claim recites an element or combination of elements that amount to significantly more than that exception, consider whether those additional elements also amount to significantly more for the other claimed exception(s), which ensures that the claim does not have a pre-emptive effect with respect to any of the recited exceptions. Additional elements that satisfy *Step 2B* for one exception will likely satisfy *Step 2B* for all exceptions in a claim. On the other hand, if the claim fails under *Step 2B* for one exception, the claim is ineligible, and no further eligibility analysis is needed.

3. Streamlined Eligibility Analysis

For purposes of efficiency in examination, a streamlined eligibility analysis can be used for a claim that may or may not recite a judicial exception but, when viewed as a whole, clearly does not seek to tie up any judicial exception such that others cannot practice it. Such claims do not need to proceed through the full analysis herein as their eligibility will be self-evident. However, if there is doubt as to whether the applicant is effectively seeking coverage for a judicial exception itself, the full analysis should be conducted to determine whether the claim recites significantly more than the judicial exception.

For instance, a claim directed to a complex manufactured industrial product or process that recites meaningful limitations along with a judicial exception may sufficiently limit its practical application so that a full eligibility analysis is not needed. As an example, a robotic arm assembly having a control system that operates using certain mathematical relationships is clearly not an attempt to tie up use of the mathematical relationships and would not require a full analysis to determine eligibility. Also, a claim that recites a nature-based product, but clearly does not attempt to tie up the nature-based product, does not require a markedly different characteristics analysis to identify a ''product of nature'' exception. As an example, a claim directed to an artificial hip prosthesis coated with a naturally occurring mineral is not an attempt to tie up the mineral. Similarly, claimed products that merely include ancillary nature-based components, such as a claim that is directed to a cellphone with an electrical contact made of gold or a plastic chair with wood trim, would not require analysis of the nature-based component to identify a ''product of nature'' exception because such claims do not attempt to improperly tie up the nature-based product.

II. Complete Examination

Regardless of whether a rejection under 35 U.S.C. 101 is made, a complete examination should be made for every claim under each of the other patentability requirements: 35 U.S.C. 102, 103, 112, and 101 (utility, inventorship and double patenting) and non-statutory double patenting. See MPEP 2103 *et seq.* and 2106(III).

III. Sample Analyses

The following examples, based upon Supreme Court decisions, use the Interim Eligibility Guidance and flowchart to analyze claims for subject matter eligibility.

Example 1. Diamond v. *Chakrabarty* [44] *(U.S. Patent No. 4,259,444)*

Background: Stable energy-generating plasmids that provide hydrocarbon degradative pathways exist within certain bacteria in nature. Different plasmids provide the ability to degrade different hydrocarbons, *e.g.,* one plasmid provides the ability to degrade camphor, and a different plasmid provides the ability to degrade octane. *Pseudomonas* bacteria are naturally occurring bacteria. Naturally occurring *Pseudomonas* bacteria containing one stable energy-generating plasmid and capable of degrading a single type of hydrocarbon are known.

Representative Claim:

A bacterium from the genus *Pseudomonas* containing therein at least two stable energy-generating plasmids, each of said plasmids providing a separate hydrocarbon degradative pathway.

Analysis: The claim is directed to a statutory category, *e.g.,* a manufacture or composition of matter (*Step 1: YES*) and recites a nature-based product (a bacterium). To determine whether the claim is directed to a ''product of nature'' exception, the nature-based product is analyzed using the markedly different characteristics analysis.

The claimed bacterium has a different functional characteristic from naturally occurring *Pseudomonas* bacteria, *i.e.,* it is able to degrade at least two different hydrocarbons as compared to naturally occurring *Pseudomonas* bacteria that can only degrade a single hydrocarbon. The claimed bacterium also has a different structural characteristic, *i.e.,* it was genetically modified to include more plasmids than are found in a single naturally occurring *Pseudomonas* bacterium. The bacterium is new with markedly different characteristics from any found in nature, due to the additional plasmids and resultant capacity for degrading multiple hydrocarbon components of oil. These different functional and structural characteristics rise to the level of a marked difference, and accordingly the claimed bacterium is not a ''product of nature'' exception. Thus, the claim is not directed to an exception (*Step 2A: NO*). The claim is eligible.

Example 2. Association for Molecular Pathology v. *Myriad Genetics, Inc. (U.S. Patent No. 5,747,282)*

Background: A human gene is a naturally occurring segment of DNA that codes for a protein. In nature, human genes are linked together by covalent bonds to form long chains of DNA called chromosomes. The inventors discovered the location and nucleotide sequence of a naturally occurring human gene called BRCA1. The BRCA1 gene encodes a polypeptide called BRCA1, which helps repair damaged DNA and prevent tumor formation. There are many naturally-occurring mutations in the BRCA1 gene. Some mutations are harmless, but others can dramatically increase a person's risk of developing breast and ovarian cancer.

Knowledge of the location and nucleotide sequence of the BRCA1 gene allows it to be isolated so that it can be studied, manipulated, or used. Isolated genes can be made in two different ways. The first way is to physically remove the gene from its natural location on the human chromosome by breaking two covalent bonds—one on each end of the gene—that connect the gene with the rest of the chromosome in nature. The second way is to synthesize the gene in a laboratory, *e.g.,* by linking together nucleotides to form the naturally occurring sequence of the gene. Both ways result in a gene that is ''isolated'' from its natural environment, *i.e.,* removed from the chromosome in which it occurs in nature.

The BRCA1 gene is about 80,000 nucleotides long, including several introns and several exons. In nature, the BRCA1 polypeptide is produced from the BRCA1 gene through an intermediate product called an mRNA. The natural creation of the BRCA1 mRNA in human cells involves splicing (removal) of the introns, and results in an exons-only molecule. The inventors used the mRNA to create an exons-only

[44] *Chakrabarty,* 447 U.S. at 303.

molecule called a complementary DNA (cDNA), which contains the same protein-encoding information as the BRCA1 gene, but omits the non-coding portions (introns) of the gene. The nucleotide sequence of this cDNA was disclosed as SEQ ID NO:1, and the amino acid sequence of the BRCA1 polypeptide as SEQ ID NO:2.

Representative Claims:

Claim 1. An isolated DNA coding for a BRCA1 polypeptide, said polypeptide having the amino acid sequence set forth in SEQ ID NO:2.

Claim 2. The isolated DNA of claim 1, wherein said DNA has the nucleotide sequence set forth in SEQ ID NO:1.

Analysis: The claims are directed to a statutory category, *e.g.,* a composition of matter (*Step 1: YES*), and recite nature-based products (a DNA). Thus, the markedly different analysis is used to determine if that nature-based product is a ''product of nature'' exception.

Claim 1: The claim encompasses isolated DNA that has the same nucleotide sequence as the naturally occurring BRCA1 gene. The isolation of the claimed DNA results in a different structural characteristic than the natural gene, because the natural gene has covalent bonds on the ends that connect the gene to the chromosome which the claimed DNA lacks. However, the claimed DNA is otherwise structurally identical to the natural gene, *e.g.,* it has the same genetic structure and nucleotide sequence as the BRCA1 gene in nature. The claimed DNA has no different functional characteristics, *i.e.,* it encodes the same protein as the natural gene. Under the holding of *Myriad,* this isolated but otherwise unchanged DNA is not eligible because it is not different enough from what exists in nature to avoid improperly tying up the future use and study of the naturally occurring BRCA1 gene. In other words, the claimed DNA is different, but not markedly different, from its naturally occurring counterpart (BRCA 1 gene), and thus is directed to a ''product of nature'' exception (*Step 2A: YES*).

A claim directed to an exception should be analyzed to determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to significantly more than the exception. Claim 1 does not include any additional features that could add significantly more to the exception (*Step 2B: NO*). The claim is not eligible and should be rejected under 35 U.S.C. 101.

Claim 2: The claim is limited to a DNA having the nucleotide sequence of SEQ ID NO: 1. As disclosed in the specification, SEQ ID NO: 1 is an exons-only sequence of a cDNA created by the inventors. The claimed DNA therefore has different structural characteristics than the naturally occurring BRCA1 gene, *e.g.,* in addition to lacking covalent bonds on its ends, it has a different nucleotide sequence (SEQ ID NO: 1 includes only exons, as compared to the natural sequence containing both exons and introns). The claimed DNA has no different functional characteristics, *i.e.,* it encodes the same protein as the natural gene. Here, the differences in structural characteristics between the claimed DNA and the natural gene are significant, *e.g.,* they are enough to ensure that the claim is not improperly tying up the future use of the BRCA1 gene. Thus, they rise to the level of a marked difference, and the claimed DNA is not a ''product of nature'' exception. Thus, the claim is not directed to an exception (*Step 2A: NO*). The claim is eligible.

Example 3. Diamond v. *Diehr (U.S. Patent No. 4,344,142)*

Background: The claimed invention is a process for molding raw, uncured synthetic rubber into cured precision products. The process uses a mold for precisely shaping the uncured material under heat and pressure and then curing the synthetic rubber in the mold so that the product will retain its shape and be functionally operative after the molding is completed. Achieving the perfect cure depends upon several factors including the thickness of the article to be molded, the temperature of the molding process, and the amount of time that the article is allowed to remain in the press. It is possible to calculate when to open the press and remove the cured product using well-known time, temperature, and cure relationships by means of the Arrhenius equation. The inventors characterize their invention as the process of constantly measuring the actual temperature inside the mold, and automatically feeding these temperature measurements into a computer that repeatedly recalculates the cure time by use of the Arrhenius equation. When the recalculated time equals the actual time that has elapsed since the press was closed, the computer signals a device to open the press.

Representative Claim:

Claim 1. A method of operating a rubber-molding press for precision molded compounds with the aid of a digital computer, comprising:

providing said computer with a data base for said press including at least, natural logarithm conversion data (ln), the activation energy constant (C) unique to each batch of said compound being molded, and a constant (x) dependent upon the geometry of the particular mold of the press,

initiating an interval timer in said computer upon the closure of the press for monitoring the elapsed time of said closure,

constantly determining the temperature (Z) of the mold at a location closely adjacent to the mold cavity in the press during molding,

constantly providing the computer with the temperature (Z),

repetitively calculating in the computer, at frequent intervals during each cure, the Arrhenius equation for reaction time during the cure, which is ln v = CZ+x, where v is the total required cure time, repetitively comparing in the computer at said frequent intervals during the cure each said calculation of the total required cure time calculated with the Arrhenius equation and said elapsed time, and

opening the press automatically when a said comparison indicates equivalence.

Analysis: The claim is directed to a statutory category, *i.e.,* a process (*Step 1: YES*). The claim recites the Arrhenius equation, which is the mathematical formula: ln v = CZ+x. The court noted that an algorithm, or mathematical formula, is like a law of nature, which cannot be the subject of a patent. The claimed process when viewed as a whole focuses on the use of the Arrhenius equation to cure synthetic rubber. Thus, the claim is directed to an exception (*Step 2A: YES*).

Next, the claim as a whole is analyzed to determine whether any element, or combination of elements, is sufficient to ensure that the claim amounts to significantly more than the exception. The specifically disclosed and claimed constant measurement of temperature at a mold cavity of a rubber-molding press and the claimed repetitive computer recalculation of the appropriate cure time using the constantly updated measurements are additional elements that provide ''something more'' than mere computer implementation of calculation of the Arrhenius equation. Further, the claimed steps act in concert to transform raw, uncured rubber to cured molded rubber. The combination of steps recited in addition to the mathematical formula show that the claim is not to the formula in isolation, but rather that the steps impose meaningful limits that apply the formula to improve an existing technological process. Thus, the claim amounts to significantly more than the judicial exception (*Step 2B: YES*). The claim is eligible.

Note: The Supreme Court has also characterized mathematical formulas as abstract ideas. As noted, all claims that are directed to a judicial exception, regardless of what the exception is called, are subject to the same analysis.

Example 4. Parker v. *Flook*

Background: The invention is a method of updating alarm limits using a mathematical formula. An ''alarm limit'' is a number. During catalytic conversion processes, operating conditions such as temperature, pressure, and flow rates are constantly monitored. When any of these ''process variables'' exceeds a predetermined alarm limit, an alarm may signal the presence of an abnormal condition indicating either inefficiency or perhaps danger. The formula for updating alarm limits is used in a catalytic conversion processing system; however, there is no disclosure relating to that system, such as the chemical processes at work, the monitoring of process conditions, the determination of variables in the formula from process conditions, or the means of setting off an alarm or adjusting an alarm system.

Representative Claim:

Claim 1. A method for updating the value of at least one alarm limit on at least one process variable involved in a process comprising the catalytic chemical conversion of hydrocarbons wherein said alarm limit has a current value of B_o+K wherein B_o is the current alarm base and K is a predetermined alarm offset which comprises:

(1) Determining the present value of said process variable, said present value being defined as PVL;

(2) Determining a new alarm base B_1, using the following equation: $B_1=B_o(1.0–F)$ + PVL(F) where F is a predetermined number greater than zero and less than 1.0;

(3) Determining an updated alarm limit which is defined as B_1+GK; and thereafter;

(4) Adjusting said alarm limit to said updated alarm limit value.

Analysis: The claim is directed to a statutory category, *i.e.,* a process (*Step 1: YES*). The claim recites the mathematical formula ''$B_1=B_o(1.0–F)$ + PVL(F)''. The claimed invention focuses on the calculation of the number representing the alarm limit value using the mathematical formula. Thus, the claim is directed to a mathematical formula, which is like a law of nature that falls within the exceptions to patent-eligible subject matter (*Step 2A: YES*).

A process is not unpatentable simply because it contains a law of nature or mathematical algorithm. The claim as a whole must be analyzed to determine what additional elements are recited in the claim. The claimed formula is limited by the steps of gathering the input variables and carrying out the calculation to update the number describing the alarm limit, and by the field of technology for which it is to be used. The determination of chemical process variables, and the use of a generic computer to calculate values, is routine and conventional in the field of chemical processing. Adjusting the alarm limit based on the solution to the mathematical formula is merely post-solution activity that could be attached to almost any formula. Limiting the claim to petrochemical and oil-refining industries, such that the claim does not seek to wholly preempt the mathematical formula, is a field-of-use limitation that does not impose meaningful limits on the mathematical formula. Moreover, when considered as an ordered combination, the claim is nothing more than a purely conventional computerized implementation of applicant's formula. Therefore, the claim as a whole does not provide significantly more than a generic computer upon which the claimed formula is calculated. Thus, the claim does not amount to significantly more than the judicial exception itself (*Step 2B: NO*). The claim is not eligible and should be rejected under 35 U.S.C. 101.

Example 5. Mayo v. *Prometheus (U.S. Patent No. 6,355,623)*

Background: The invention is a method of assisting doctors who use thiopurine drugs to treat patients with autoimmune diseases. The method helps doctors determine whether a given dosage level is too low or too high, based on the relationship between the concentration in the blood of a thiopurine metabolite (6-thioguanine) and the likelihood that the drug dosage will be ineffective or induce harmful side-effects. The relationship is a natural consequence of the ways in which thiopurine compounds are metabolized by the body, even though human action is needed to trigger a manifestation of the relationship.

Representative Claim:

Claim 1. A method of optimizing therapeutic efficacy for treatment of an immune-mediated gastrointestinal disorder, comprising:

(a) administering a drug providing 6-thioguanine to a subject having said immune-mediated gastrointestinal disorder; and

(b) determining the level of 6-thioguanine in said subject having said immune-mediated gastrointestinal disorder,

wherein the level of 6-thioguanine less than about 230 pmol per $8x10^8$ red blood cells indicates a need to increase the amount of said drug subsequently administered to said subject and wherein the level of 6-thioguanine greater than about 400 pmol per $8x10^8$ red blood cells indicates a need to decrease the amount of said drug subsequently administered to said subject.

Analysis: The claim is directed to a statutory category, *i.e.,* a process (*Step 1: YES*). The claim sets forth relationships between concentrations of certain metabolites in the blood and the likelihood that a dosage of a thiopurine drug will prove ineffective or cause harm. While it takes a human action (the administration of a thiopurine drug) to trigger a manifestation of this relation in a particular person, the relation itself exists in principle apart from any human action. The claim recites that relation and, thus, is directed towards a natural law (*Step 2A: YES*).

Next, the claim as a whole is analyzed to determine whether any element, or combination of elements, is sufficient to ensure that the claim amounts to significantly more than the exception. The ''administering'' step simply refers to the relevant audience, namely doctors who treat patients with certain diseases with thiopurine drugs. That audience is a pre-existing audience; doctors used thiopurine drugs to treat patients suffering from autoimmune disorders long before anyone asserted these claims. The ''wherein'' clauses simply tell a doctor about the relevant natural laws, at most adding a suggestion that the doctor should take those laws into account when treating the patient. The ''determining'' step tells the doctor to determine the level of the relevant metabolites in the blood, through whatever process the doctor or the laboratory wishes to use. The claims inform a relevant audience about certain laws of nature; any additional steps consist of well understood, routine, conventional activity already engaged in by the scientific community; and those steps, when viewed as a whole, add nothing significant beyond the sum of their parts taken separately. Even though the laws of nature at issue are narrow laws that may have limited applications, the claim does not amount to significantly more than the natural law itself (*Step 2B: NO*). The claim is not eligible and should be rejected under 35 U.S.C. 101.

Example 6. Alice Corp. v. *CLS Bank (U.S. Patent Nos. 5,970,479 and 7,725,375)*

Background: The claims at issue relate to a computerized scheme for mitigating ''settlement risk''; *i.e.,* the risk that only one party to an agreed-upon financial exchange will satisfy its obligation. In particular, the claims are designed to facilitate the exchange of financial obligations between two parties by using a computer system as a third-party intermediary. The intermediary creates ''shadow'' credit and debit records (*i.e.,* account ledgers) that mirror the balances in the parties' real-world accounts at ''exchange institutions'' (*e.g.,* banks). The

intermediary updates the shadow records in real time as transactions are entered, allowing only those transactions for which the parties' updated shadow records indicate sufficient resources to satisfy their mutual obligations. At the end of the day, the intermediary instructs the relevant financial institutions to carry out the ''permitted'' transactions in accordance with the updated shadow records, thus mitigating the risk that only one party will perform the agreed-upon exchange. The invention is claimed in the form of a computer-implemented process, a system enabling that process, and a computer-readable medium enabling that process to be performed by a computer.

Representative Method Claim (U.S. Patent No. 5,970,479)

Claim 33. A method of exchanging obligations as between parties, each party holding a credit record and a debit record with an exchange institution, the credit records and debit records for exchange of predetermined obligations, the method comprising the steps of:

(a) creating a shadow credit record and a shadow debit record for each stakeholder party to be held independently by a supervisory institution from the exchange institutions;

(b) obtaining from each exchange institution a start-of-day balance for each shadow credit record and shadow debit record;

(c) for every transaction resulting in an exchange obligation, the supervisory institution adjusting each respective party's shadow credit record or shadow debit record, allowing only these transactions that do not result in the value of the shadow debit record being less than the value of the shadow credit record at any time, each said adjustment taking place in chronological order; and

(d) at the end-of-day, the supervisory institution instructing one of the exchange institutions to exchange credits or debits to the credit record and debit record of the respective parties in accordance with the adjustments of the said permitted transactions, the credits and debits being irrevocable, time invariant obligations placed on the exchange institutions.[45]

Analysis: The claim is directed to a statutory category, *i.e.,* a process (*Step 1: YES*). The claim recites the concept of managing settlement risk through an intermediary, *i.e.,* intermediated settlement. The claimed invention describes the procedures an intermediary should take in managing settlement risk between two parties, *i.e.,* specific details of intermediating settlement. Intermediated settlement, like risk hedging in *Bilski,* is not a preexisting fundamental truth but rather is a longstanding commercial practice (a method of organizing human activity). The concept of intermediated settlement is a fundamental economic practice long prevalent in our system of commerce, which is in the realm of abstract ideas identified by the Supreme Court. Thus, the claim is directed to the abstract idea of intermediated settlement (*Step 2A: YES*).

Next, the claim as a whole is analyzed to determine whether any element, or combination of elements, is sufficient to ensure that the claim amounts to significantly more than the exception. Although a computer acts as the intermediary in the claimed method, the claims do no more than implement the abstract idea of intermediated settlement on a generic computer. Using a computer to create and maintain ''shadow'' accounts amounts to electronic recordkeeping, which is one of the most basic functions of a computer. The same is true with respect to the use of a computer to obtain data, adjust account balances, and issue automated instructions. All of these computer functions are ''well-understood, routine, conventional activit[ies]'' previously known to the industry. Each step does no more than require a generic computer to perform generic computer functions. Considered as an ordered combination, the computer components of the method add nothing that is not already present when the steps are considered separately, and thus simply recite the concept of intermediated settlement as performed by a generic computer. The claims do not purport to improve the functioning of the computer itself, or to improve any other technology or technical field. Use of an unspecified, generic computer does not transform an abstract idea into a patent-eligible invention. Thus, the claim does not amount to significantly more than the abstract idea itself (*Step 2B: NO*). The claim is not eligible and should be rejected under 35 U.S.C. 101.

Representative System Claim (U.S. Patent No. 7,725,375)

Claim 26. A data processing system to enable the exchange of an obligation between parties, the system comprising:

a communications controller,

a first party device, coupled to said communications controller,

a data storage unit having stored therein

(a) information about a first account for a first party, independent from a second account maintained by a first exchange institution, and

(b) information about a third account for a second party, independent from a fourth account maintained by a second exchange institution; and

a computer, coupled to said data storage unit and said communications controller, that is configured to

(a) receive a transaction from said first party device via said communications controller;

(b) electronically adjust said first account and said third account in order to effect an exchange obligation arising from said transaction between said first party and said second party after ensuring that said first party and/or said second party have adequate value in said first account and/or said third account, respectively; and

(c) generate an instruction to said first exchange institution and/or said second exchange institution to adjust said second account and/or said fourth account in accordance with the adjustment of said first account and/or third account, wherein said instruction being an irrevocable, time invariant obligation placed on said first exchange institution and/or said second exchange institution.

Analysis: The claim is directed to a statutory category, *i.e.,* a machine (*Step 1: YES*). As discussed for the method claim, the claim recites the concept of intermediated settlement and is directed to an abstract idea (*Step 2A: YES*).

Looking again to see what additional features are recited in the claim, the system includes a communications controller, a first party device, a data storage device, and a computer. The claimed hardware is generic hardware that nearly every computer will include. None of the hardware offers a meaningful limitation beyond generally linking the system to a particular technological environment, that is, implementation via computers. Put another way, the system claims are no different from the method claims in substance; the method claims recite the abstract idea implemented on a generic computer, while the system claims recite a handful of generic computer components configured to implement the same idea. The claim does not amount to significantly more than the underlying abstract idea (*Step 2B: NO*). The claim is not eligible and should be rejected under 35 U.S.C. 101.

IV. Summaries of Court Decisions Relating to Laws of Nature, Natural Phenomena, and Abstract Ideas

The following brief summaries are taken from decisions from the Supreme Court and the Federal Circuit in which claims were analyzed with respect to judicial exceptions to determine subject matter eligibility. Along with the examples in section III, these decisions demonstrate the various terms used by the courts to describe the exceptions

[45] In *Alice Corp.,* the parties stipulated that the method was performed by a computer, despite the lack of a computer recitation in the representative method claim.

and are provided simply to illustrate some of the different types of concepts found to fall within the exceptions. It should be noted that the courts' analyses in these decisions do not necessarily follow the eligibility framework explained in this Interim Eligibility Guidance as most of the cases were decided prior to *Alice Corp.* Therefore, instead of applying the eligibility analysis set forth in this Interim Eligibility Guidance to the facts of the decisions, a short description of the court's decision is provided for background purposes only. When considering these decisions, it is important to remember that the mere presence of an exception does not necessarily render a claim ineligible.

Part A presents several decisions from the Supreme Court, Part B presents several decisions from the Federal Circuit from 2010—2014 that dealt with abstract ideas, and Part C presents decisions from the Federal Circuit relating to abstract ideas since the *Alice Corp.* decision. Although the very small set of decisions from the Federal Circuit since *Alice Corp.* have resulted in findings of ineligibility, it should be recognized that the Supreme Court did not create a *per se* excluded category of subject matter, such as software or business methods, nor did it impose any special requirements for eligibility of software or business methods.

A. Supreme Court Decisions

1. *O'Reilly* v. *Morse* (U.S. Reissue Patent No. RE 117)

Claim 6. The claim was interpreted by the Supreme Court as a system of signs (signals) by closing a galvanic circuit rapidly for telegraphing, combined with machinery to record the signs.

Claim 8. I do not propose to limit myself to the specific machinery, or parts of machinery, . . . the essence of my invention being the use of the motive power of the electric or galvanic current, which I call electro-magnetism, however developed, for making or printing intelligible characters, signs, or letters, at any distances, being a new application of that power. . .

The claims are to the process of using electromagnetism to produce distinguishable signs for telegraphy, and in particular to print intelligible characters at any distance. While the format of the claims is outdated, it can be seen that claim 6 recites the system of signs in combination with the machinery for recording, which was found eligible. In contrast, claim 8 recites the use of electromagnetism without limits on the machinery for recording, which was found ineligible. The discovery of electromagnetism, which is a natural phenomenon, is not patentable by itself.

2. *Tilghman* v. *Proctor* (U.S. Patent No. 11,766)

The claim was interpreted by the Supreme Court as the process of subjecting to a high degree of heat a mixture continually kept up, of nearly equal quantities of fat and water in a convenient vessel strong enough to resist the effort of the mixture to convert itself into steam.

The claim is founded upon the chemical principle or scientific fact that the elements of neutral fat require that they be severally united with an atomic equivalent of water in order to separate from each other and become free. Although the claim recites the chemical union between the fatty elements and water, it is not directed to the mere principle. The claim is directed instead to a particular mode of bringing about the desired chemical union, *i.e.,* by heating the water under such pressure that the water does not become steam, and accordingly was found eligible.

3. *Mackay Radio & Telegraph Co.* v. *Radio Corp. of America* (U.S. Patent No. 1,974,387)

Claim 15. An antenna comprising a pair of relatively long conductors disposed with respect to each other at an angle substantially equal to twice $50.9(l/\lambda)^{-0.513}$ degrees, l being the length of the wire and λ the operating wave length in like units, and means in circuit with said antenna for exciting the conductors in phase opposition whereby standing waves of opposite instantaneous polarity are formed on the conductors throughout their length.

The claim is to an antenna system utilizing standing wave phenomena. To obtain the best directional radio propagation by a V type antenna, a mathematical formula is used to arrange the angle of the wires, their length, and the length of the wave propagated. The claim practically applies the mathematical formula to configure a particular antenna and thus was found eligible.

4. *Gottschalk* v. *Benson*

Claim 8. The method of converting signals from binary coded decimal form into binary which comprises the steps of:

(1) storing the binary coded decimal signals in a reentrant shift register,

(2) shifting the signals to the right by at least three places, until there is a binary '1' in the second position of said register,

(3) masking out said binary '1' in said second position of said register,

(4) adding a binary '1' to the first position of said register,

(5) shifting the signals to the left by two positions,

(6) adding a '1' to said first position, and

(7) shifting the signals to the right by at least three positions in preparation for a succeeding binary '1' in the second position of said register.

The claim recites a process for converting binary-coded-decimal (BCD) numerals into pure binary numerals. The procedures set forth in the claim are a generalized formulation for programs to solve mathematical problems of converting one form of numerical representation to another. The mathematical procedures can be carried out in existing computers long in use or can be performed without a computer. The end use is unlimited. The process claim was found to be so abstract and sweeping that it covered both known and unknown uses of the BCD to pure binary conversion. The mathematical formula in the claim has no substantial practical application except in connection with a digital computer, and thus the court found the claim ineligible as it would in effect be a patent on the algorithm itself.

5. *Bilski* v. *Kappos*

Claim 1. A method for managing the consumption risk costs of a commodity sold by a commodity provider at a fixed price comprising the steps of:

(a) initiating a series of transactions between said commodity provider and consumers of said commodity wherein said consumers purchase said commodity at a fixed rate based upon historical averages, said fixed rate corresponding to a risk position of said consumer;

(b) identifying market participants for said commodity having a counter-risk position to said consumers; and

(c) initiating a series of transactions between said commodity provider and said market participants at a second fixed rate such that said series of market participant transactions balances the risk position of said series of consumer transactions.

The claim explains the basic concept of hedging, or protecting against risk. The court found that the concept of hedging is an unpatentable abstract idea, just like the algorithms at issue in *Benson* and *Flook.* A dependent claim that narrows the concept to a mathematical formula was similarly found to be an abstract idea. The other dependent claims are broad examples of how hedging can be used in commodities and energy markets. Limiting an abstract idea to one field of use or adding token postsolution components does not make the concept patentable. The claims were found ineligible.

B. Abstract Idea Decisions From the Federal Circuit Prior to Alice Corp. (2010–2014)

1. *SiRF Technology* v. *ITC*[46] (U.S. Patent No. 6,417,801)

Claim 1. A method for calculating an absolute position of a GPS receiver and an absolute time of reception of satellite signals comprising:

providing pseudoranges that estimate the range of the GPS receiver to a plurality of GPS satellites;

providing an estimate of an absolute time of reception of a plurality of satellite signals;

providing an estimate of a position of the GPS receiver;

providing satellite ephemeris data;

computing absolute position and absolute time using said pseudoranges by updating said estimate of an absolute time and the estimate of position of the GPS receiver.

GPS is a satellite navigation system comprising satellites orbiting the Earth that permits a GPS-enabled receiver to detect signals from at least four satellites and use that information to calculate its distance from each satellite and thus its precise position on Earth through trilateration. The claim sets forth the steps of calculating the absolute position, which is a mathematical concept. The court interpreted the claim such that the method could not be performed without a GPS receiver, noting that the preamble expressly states ''calculating an absolute position of a GPS receiver'' and that a GPS receiver is required to generate pseudoranges and to determine its position. With this interpretation, the presence of the GPS receiver in the claim places a meaningful limit on the scope of the claim. It is essential to the operation of the claimed method and plays a significant part in permitting the claimed method to be performed. As such, although performance of the claim requires calculations, the claim was found eligible.

2. *Research Corp. Tech*. v. *Microsoft Corp.*[47] (U.S. Patent No. 5,111,310)

Claim 1. A method for the halftoning of gray scale images by utilizing a pixel-by-pixel comparison of the image against a blue noise mask in which the blue noise mask is comprised of a random non-deterministic, non-white noise single valued function which is designed to produce visually pleasing dot profiles when thresholded at any level of said gray scale images.

The claim is to digital image halftoning. Halftoning techniques allow computers to present many shades and color tones with a limited number of pixels, which allows computer displays and printers to render an approximation of an image by using fewer colors or shades of gray than the original image. One method of generating a digital halftoned image is called ''thresholding'' that uses a two-dimensional array called a ''mask.'' The claimed method incorporates algorithms and formulas that control the masks and halftoning, but apply them in a technique that improves the generated digital halftoned image. The invention presents functional and palpable applications in the field of computer technology with specific applications or improvements to technologies in the marketplace. So, although the claimed method uses algorithms and formulas, the claim was found eligible.

3. *Dealertrack Inc.* v. *Huber* (U.S. Patent No. 7,181,427)

Claim 1. A computer aided method of managing a credit application, the method comprising the steps of:

[A] receiving credit application data from a remote application entry and display device;

[B] selectively forwarding the credit application data to remote funding source terminal devices;

[C] forwarding funding decision data from at least one of the remote funding source terminal devices to the remote application entry and display device;

[D] wherein the selectively forwarding the credit application data step further comprises:

[D1] sending at least a portion of a credit application to more than one of said remote funding sources substantially at the same time;

[D2] sending at least a portion of a credit application to more than one of said remote funding sources sequentially until a finding source returns a positive funding decision;

[D3] sending at least a portion of a credit application to a first one of said remote funding sources, and then, after a predetermined time, sending to at least one other remote funding source, until one of the finding sources returns a positive funding decision or until all funding sources have been exhausted; or,

[D4] sending the credit application from a first remote funding source to a second remote finding source if the first funding source declines to approve the credit application.

The court reduced the claim to its most basic concept which was characterized as receiving data from one source (step A), selectively forwarding the data (step B, performed according to step D), and forwarding reply data to the first source (step C). This basic concept of processing information through a clearinghouse was found to be an abstract idea, similar to *Bilski*'s basic concept of hedging. The court held that simply adding a ''computer-aided'' limitation to a claim covering an abstract concept, without more, does not sufficiently limit the claim. The claim was found ineligible.

4. *SmartGene, Inc.* v. *Advanced Biological Laboratories, SA* (U.S. Patent No. 6,081,786)

Claim 1. A method for guiding the selection of a therapeutic treatment regimen for a patient with a known disease or medical condition, said method comprising:

(a) providing patient information to a computing device comprising:

a first knowledge base comprising a plurality of different therapeutic treatment regimens for said disease or medical condition;

a second knowledge base comprising a plurality of expert rules for evaluating and selecting a therapeutic treatment regimen for said disease or medical condition;

a third knowledge base comprising advisory information useful for the treatment of a patient with different constituents of said different therapeutic treatment regimens; and

(b) generating in said computing device a ranked listing of available therapeutic treatment regimens for said patient; and

(c) generating in said computing device advisory information for one or more therapeutic treatment regimens in said ranked listing based on said patient information and said expert rules.

The claims set forth the steps of comparing new and stored information and using rules to identify medical options. Claim 1 does no more than call on a ''computing device'' with basic functionality for comparing stored and input data and rules, to do what doctors do routinely. The court concluded that these are familiar mental steps performed by or with a computer, and as such the claim was found ineligible.

5. Cyberfone Systems v. CNN Interactive Group (U.S. Patent No. 8,019,060)

Claim 1. A method, comprising:

obtaining data transaction information entered on a telephone from a single transmission from said telephone;

forming a plurality of different exploded data transactions for the single transmission, said plurality of different exploded data transaction indicative of a single data transaction, each of said exploded data transactions having different data that is intended for a different destination that is included as part of the exploded data transactions, and each of said exploded data transactions formed based on said data transaction information from said single transmission, so that different data from the single data transmission is separated and sent to different destinations; and

sending said different exploded data transactions over a channel to said different destinations, all based on said data transaction information entered in said single transmission.

Using categories to organize, store, and transmit information is well-

[46] *SiRF Tech.* v. *ITC,* 601 F.3d 1319 (Fed. Cir. 2010).

[47] *Research Corp. Tech.* v. *Microsoft Corp.,* 627 F.3d 859 (Fed. Cir. 2010).

established. Here, the well-known concept of categorical data storage, *i.e.,* the idea of collecting information in classified form, then separating and transmitting that information according to its classification, is an abstract idea. The claim was found ineligible.

C. Abstract Idea Decisions From the Federal Circuit Since Alice Corp.

1. Digitech Image Tech., LLC v. Electronics for Imaging, Inc. (U.S. Patent No. 6,128,415)

Claim 10. A method of generating a device profile that describes properties of a device in a digital image reproduction system for capturing, transforming or rendering an image, said method comprising:

generating first data for describing a device dependent transformation of color information content of the image to a device independent color space through use of measured chromatic stimuli and device response characteristic functions;

generating second data for describing a device dependent transformation of spatial information content of the image in said device independent color space through use of spatial stimuli and device response characteristic functions;

and combining said first and second data into the device profile.

The court found the claim to be an abstract idea because it describes a process of organizing information through mathematical correlations and is not tied to a specific structure or machine. The claim recites the process of taking two data sets and combining them into a single data set, the device profile. The two data sets are generated by taking existing information—*i.e.,* measured chromatic stimuli, spatial stimuli, and device response characteristic functions—and organizing this information into a new form. The claim language does not expressly tie the method to an image processor. It generically recites a process of combining two data sets into the device profile; it does not claim the processor's use of that profile in the capturing, transforming, or rendering of a digital image. Without additional limitations, a process that employs mathematical algorithms to manipulate existing information to generate additional information is not patent eligible. All of the claims were found ineligible.

2. Planet Bingo, LLC v. VKGS LLC (U.S. Patent No. 6,398,646)

Claim 1. A system for managing a game of Bingo which comprises:

(a) a computer with a central processing unit (CPU) and with a memory and with a printer connected to the CPU;

(b) an input and output terminal connected to the CPU and memory of the computer; and

(c) a program in the computer enabling:

(i) input of at least two sets of Bingo numbers which are preselected by a player to be played in at least one selected game of Bingo in a future period of time;

(ii) storage of the sets of Bingo numbers which are preselected by the player as a group in the memory of the computer;

(iii) assignment by the computer of a player identifier unique to the player for the group having the sets of Bingo numbers which are preselected by the player wherein the player identifier is assigned to the group for multiple sessions of Bingo;

(iv) retrieval of the group using the player identifier;

(v) selection from the group by the player of at least one of the sets of Bingo numbers preselected by the player and stored in the memory of the computer as the group for play in a selected game of Bingo in a specific session of Bingo wherein a number of sets of Bingo numbers selected for play in the selected game of Bingo is less than a total number of sets of Bingo numbers in the group;

(vi) addition by the computer of a control number for each set of Bingo numbers selected for play in the selected game of Bingo;

(vii) output of a receipt with the control number, the set of Bingo numbers which is preselected and selected by the player, a price for the set of Bingo numbers which is preselected, a date of the game of Bingo and optionally a computer identification number; and

(viii) output for verification of a winning set of Bingo numbers by means of the control number which is input into the computer by a manager of the game of Bingo.

The court found the claims to be directed to the abstract idea of solving a tampering problem and also minimizing other security risks during bingo ticket purchases. The claims relate to managing a bingo game while allowing a player to repeatedly play the same sets of numbers in multiple sessions. Managing the game of bingo consists solely of mental steps which can be carried out by a human using pen and paper. The claims do not impose any requirements that would make the invention impossible to carry out manually. Although not drawn to the same subject matter at issue in *Bilski* and *Alice Corp.,* the court found managing a game of bingo to be similar to the kind of organizing human activity at issue in *Alice Corp.* The claims recite a generic computer implementation of the abstract idea and a program that is used for the generic functions of storing, retrieving, and verifying a chosen set of bingo numbers against a winning set of bingo numbers. There is no inventive concept sufficient to transform the claimed subject matter into a patent-eligible application. The court found no meaningful distinction between the method and system claims. All of the claims were found ineligible.

3. buySAFE, Inc. v. Google, Inc. (U.S. Patent No. 7,644,019)

Claim 1. A method, comprising:

receiving, by at least one computer application program running on a computer of a safe transaction service provider, a request from a first party for obtaining a transaction performance guaranty service with respect to an online commercial transaction following closing of the online commercial transaction;

processing, by at least one computer application program running on the safe transaction service provider computer, the request by underwriting the first party in order to provide the transaction performance guaranty service to the first party,

wherein the computer of the safe transaction service provider offers, via a computer network, the transaction performance guaranty service that binds a transaction performance guaranty to the online commercial transaction involving the first party to guarantee the performance of the first party following closing of the online commercial transaction.

Claim 14. The method according to claim 1, wherein the transaction performance guaranty is provided in one form of: a surety bond; a specialized bank guaranty; a specialized insurance policy; and a safe transaction guaranty provided by the safe transaction service provider.

Relying on *Bilski* in which an abstract idea was found in certain arrangements involving contractual relations, the court found the claims to be squarely about creating a contractual relationship—a ''transaction performance guaranty''—that is beyond question of ancient lineage. The claims' invocation of computers adds no inventive concept, with the computer functionality being generic. The transactions being performed online, at best, limits the use of the abstract guaranty idea to a particular technological environment. Although, dependent claim 14 narrows the abstract idea to particular types of relationships, that does not change the analysis because it does not make the idea non-abstract. The claims to the computer readable medium encoded with instructions to carry out the method were treated in the same way. All of the claims were found ineligible.

4. Ultramercial, LLC v. Hulu, LLC and WildTangent (U.S. Patent No. 7,346,545)

Claim 1: A method for distribution of products over the Internet via a facilitator, said method comprising the steps of:

a first step of receiving, from a content provider, media products that are covered by intellectual-property rights protection and are available for purchase, wherein each said media product being comprised of at least one of text data, music data, and video data;

a second step of selecting a sponsor message to be associated with the media product, said sponsor message being selected

from a plurality of sponsor messages, said second step including accessing an activity log to verify that the total number of times which the sponsor message has been previously presented is less than the number of transaction cycles contracted by the sponsor of the sponsor message;

a third step of providing the media product for sale at an Internet Web site;

a fourth step of restricting general public access to said media product;

a fifth step of offering to a consumer access to the media product without charge to the consumer on the precondition that the consumer views the sponsor message;

a sixth step of receiving from the consumer a request to view the sponsor message, wherein the consumer submits said request in response to being offered access to the media product;

a seventh step of, in response to receiving the request from the consumer, facilitating the display of a sponsor message to the consumer;

an eighth step of, if the sponsor message is not an interactive message, allowing said consumer access to said media product after said step of facilitating the display of said sponsor message;

a ninth step of, if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query;

a tenth step of recording the transaction event to the activity log, said tenth step including updating the total number of times the sponsor message has been presented; and

an eleventh step of receiving payment from the sponsor of the sponsor message displayed.

Using the *Alice Corp.* framework, the court first determined whether the claims at issue are directed to a patent-ineligible concept. The court found that the ordered combination of the eleven steps recites ''an abstraction—an idea, having no particular concrete or tangible form'' noting that the majority of limitations describe only the abstract idea of showing an advertisement before delivering content. The court then turned to the next step of the analysis to determine whether the claims do significantly more than simply describe the abstract method. The court explained that consulting and updating an activity log represent insignificant ''data-gathering steps,'' restricting public access represents only insignificant ''[pre]-solution activity,'' and narrowing the idea to the Internet is an attempt to limit the use of the abstract idea ''to a particular technological environment.'' Viewed both individually and as an ordered combination, the claimed steps were found insufficient to supply an inventive concept because the steps are conventional and specified at a high level of generality. The court concluded that the claim limitations do not transform the abstract idea that they recite into patent-eligible subject matter because ''the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity.'' All of the claims were found ineligible.

5. DDR Holdings, LLC v. Hotels.com, L.P. (U.S. Patent No. 7,818,399)

Claim 19: A system useful in an outsource provider serving Web pages offering commercial opportunities, the system comprising:

(a) a computer store containing data, for each of a plurality of first Web pages, defining a plurality of visually perceptible elements, which visually perceptible elements correspond to the plurality of first Web pages;

(i) wherein each of the first Web pages belongs to one of a plurality of Web page owners;

(ii) wherein each of the first Web pages displays at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants; and

(iii) wherein the selected merchant, the outsource provider, and the owner of the first Web page displaying the associated link are each third parties with respect to one other;

(b) a computer server at the outsource provider, which computer server is coupled to the computer store and programmed to:

(i) receive from the web browser of a computer user a signal indicating activation of one of the links displayed by one of the first Web pages;

(ii) automatically identify as the source page the one of the first Web pages on which the link has been activated;

(iii) in response to identification of the source page, automatically retrieve the stored data corresponding to the source page; and

(iv) using the data retrieved, automatically generate and transmit to the web browser a second Web page that displays: (A) Information associated with the commerce object associated with the link that has been activated, and (B) the plurality of visually perceptible elements visually corresponding to the source page.

The court found the claim patent eligible under the *Alice Corp.* framework. First, the court noted that, while in some instances abstract ideas are plainly identifiable and divisible from generic computer limitations recited by the remainder of a claim, in this case, identifying the precise nature of the abstract idea is not as straightforward. The court considered several proposed characterizations of the abstract idea, including '''making two Web pages look the same,' 'syndicated commerce on the computer using the Internet' and 'making two e-commerce Web pages look alike by using licensed trademarks, logos, color schemes and layouts,''' and ''that an online merchant's sales can be increased if two Web pages have the same 'look and feel.''' The court did not clearly indicate whether the claim was directed to one or more of these proposed abstract ideas, but stated that ''under any of these characterizations of the abstract idea, the '399 patent's claims satisfy *Mayo/Alice* step two.''

The court then explained its analysis of the second *Mayo/Alice* step, where it determined that the claim amounted to an inventive concept and thus was patent eligible. In particular, the claim addresses the problem of retaining Web site visitors from being diverted from a host's Web site to an advertiser's Web site, for which ''the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.'' The claim includes additional elements including ''1) stor[ing] 'visually perceptible elements' corresponding to numerous host Web sites in a database, with each of the host Web sites displaying at least one link associated with a product or service of a third-party merchant, 2) on activation of this link by a Web site visitor, automatically identif[ying] the host, and 3) instruct[ing] an Internet web server of an 'outsource provider' to construct and serve to the visitor a new, hybrid Web page that merges content associated with the products of the third-party merchant with the stored 'visually perceptible elements' from the identified host Web site.'' The court held that, unlike in *Ultramercial,* the claim does not generically recite ''use the Internet'' to perform a business practice, but instead recites a specific way to automate the creation of a composite Web page by an outsource provider that incorporates elements from multiple sources in order to solve a problem faced by Web sites on the Internet. Therefore, the court held that the claim is patent eligible.

Guidelines for Written Comments

It would be helpful to the USPTO if written comments include information about: (1) The name and affiliation of the individual responding; and (2) an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views. Information provided in response to this request for comments will be made part of a public record and may be available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise

submit the information in a way that will permit its public disclosure.

Dated: December 10, 2014.

Michelle K. Lee,

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

[FR Doc. 2014–29414 Filed 12–15–14; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2014–0011]

RIN 0651–AC94

Reduction of Fees for Trademark Applications and Renewals

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (''Office'' or ''USPTO'') is amending its regulations to reduce certain trademark fees, as authorized by the Leahy-Smith America Invents Act (''AIA''). The reductions will reduce total trademark fee collections and promote efficiency for the USPTO and customers. The reductions also will further USPTO strategic objectives to increase the end-to-end electronic processing of trademark applications by offering additional electronic application processing.

DATES: The changes in this final rule are effective on January 17, 2015.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by email at *TMPolicy@uspto.gov,* or by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION: *Executive Summary: Purpose:* Section 10 of the AIA authorizes the Director of the USPTO (''Director'') to set or adjust by rule any fee established, authorized, or charged under the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*) for any services performed by, or materials furnished by, the Office. *See* Section 10 of the AIA, Pub. L. 112–29, 125 Stat. at 316–17.

Section 10(c) of the AIA authorizes the Director to consult with the Trademark Public Advisory Committee (''TPAC'') on the advisability of reducing trademark fees and, following the required consultation, to reduce such fees. *See* Section 10(c) of the AIA, Pub. L. 112–29, 125 Stat. at 317. The Director consulted with the TPAC and thereafter determined that, in order to both improve the alignment of Office costs with revenues and incentivize electronic communications, it was advisable to propose reductions in the filing fees for: (1) Trademark, certification mark, collective membership mark, and collective trademark applications for registration on the Principal or Supplemental Register that are filed using the Trademark Electronic Application System (''TEAS''), if applicants authorize email communication and file specified documents electronically throughout the application process; (2) TEAS Plus applications for registration; and (3) TEAS applications for renewal of a registration. In addition, the reduction would also apply to TEAS requests for transformation of an extension of protection to the United States into a U.S. application, filed pursuant to 37 CFR 7.31.

Thereafter, a proposed rule was published in the **Federal Register** on May 9, 2014, at 79 FR 26664, and in the Official Gazette on June 3, 2014. The USPTO received comments from three intellectual property organizations and three attorneys and/or law firms. These comments are posted on the USPTO's Web site at *http://www.uspto.gov/trademarks/notices/TEAS_RF_comments.jsp* and are addressed below.

Prior to consulting with the TPAC, the USPTO also published a notice of inquiry to provide the public, including user groups, with an opportunity to comment on possible adjustments to trademark application fees (77 FR 49426 (Aug. 16, 2012)). The public comments overwhelmingly favored a fee reduction, and many expressed a desire for a lower-cost electronic filing option without any restrictions on the nature of the identification of goods and services, as is required under TEAS Plus.

The reduced fees will help to: (1) Continue with an appropriate and sustainable funding model; (2) support strategic objectives relating to online filing, electronic file management, and workflow; and (3) improve efficiency for USPTO operations and customers. The reductions will benefit the public by lowering the costs of seeking and renewing federal registration, including advantages to individual and pro se filers, who make greater use of lower-cost filing options. In addition, the rule includes an additional filing option for meeting applicants' needs and preferences.

General Comments

Comment: All commenters expressed support of the USPTO's efforts to increase the volume of end-to-end electronic processing of trademark applications and agreed that the proposed fee reductions will make filing for individuals and smaller entities more accessible and promote greater efficiency through electronic filing and communication.

Response: The USPTO appreciates the commenters' support of the general objectives of the rule changes.

Comment: One commenter suggested that the USPTO take additional steps to both further the USPTO's strategic objective and reduce burdens on small businesses. In particular, the commenter recommended that the USPTO collect and track the filing and renewal information related to small businesses and provide reduced filing fees to small entities and applicants that are part of business incubators and other such organizations. In addition, the commenter opined that providing small entities with reduced fees for renewals and maintenance would help incentivize registrants to maintain and renew their marks.

Response: The USPTO appreciates the commenter's suggestions and will consider them in the future, but notes that they are outside the scope of the current rulemaking. Moreover, the USPTO has considered whether and how it is appropriate to reduce any burden on small businesses through increased flexibility. The final rules provide streamlined and simplified procedures for all small entities (and others), given the ease of filing electronically through TEAS and communicating by email. In addition, the fee reductions promote greater efficiency from electronic filing and communication, as the procedures are simpler and not burdensome.

Comment: One commenter noted that although the data that becomes the equivalent of an application under Section 66(a) of the Trademark Act is not submitted by applicants directly, the Office's goals of increasing efficiency through electronic correspondence can be achieved with such applications by requiring that the applicant use TEAS to respond to provisional refusals and for subsequent prosecution.

Response: The USPTO notes that the reduced-fee option of filing using TEAS Plus is not currently available for requests for an extension of protection to the United States, *i.e.,* a Section 66(a) application, 15 U.S.C. 1141f(a), nor will the TEAS RF option be available for these applications. The USPTO has not

required electronic communication by any filers who have not voluntarily agreed to do so, and therefore the USPTO would not be inclined to impose such a requirement on Section 66(a) applicants.

Summary of Major Provisions: After reviewing the comments received in response to the notice of proposed rulemaking, the USPTO reduces by $50 the fee for an application filed using the regular TEAS application form, and a TEAS request for transformation of an extension of protection to the United States into a U.S. application pursuant to § 7.31, from $325 to $275 per class if the applicant authorizes email communication and agrees to file all responses and other specified documents electronically during the prosecution of the application. This option will be known as a TEAS Reduced Fee (''TEAS RF'') application. The USPTO also reduces by $50 the fee for a TEAS Plus application from $275 to $225 per class and reduces by $100 the fee for a TEAS application for renewal of a registration from $400 to $300 per class. As has been the case since the inception of TEAS Plus, TEAS Plus applicants who fail to fulfill the filing and examination requirements set out in the rules will be subject to a processing fee of $50 per class, and similarly, TEAS RF applicants who fail to fulfill the requirements under the rules will be subject to the existing processing fee of $50 per class.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.,* as amended. References to ''TMEP'' or ''*Trademark Manual of Examining Procedure''* refer to the October 2014 edition.

Discussion of Rules Changes

The USPTO amends §§ 2.6, 2.22, and 2.23.

First, the USPTO amends § 2.6(a)(1) to enumerate the revised application filing fee options. Section 2.6(a)(1)(iii) sets out the new, reduced fee of $275 for filing a TEAS Reduced Fee (*i.e.,* TEAS RF) application under revised § 2.23. Revised § 2.6(a)(i)(iv) for TEAS Plus is the same as the currently existing § 2.6(a)(1)(iii) except that the TEAS Plus fee is reduced from $275 to $225 per class and there is minor rewording for consistency with existing § 2.6(a)(1)(ii) and revised § 2.6(a)(1)(iii). The § 2.6(a)(1)(v) processing fee is the same as the currently existing § 2.6(a)(1)(iv) except for amended citations to revised §§ 2.22(c) and 2.23(c). The USPTO revises § 2.6(a)(5) to enumerate the revised fees for renewal of a registration. The new § 2.6(a)(5)(i) maintains the current fee of $400 as the fee for an application for renewal of a registration filed on paper and the new § 2.6(a)(5)(ii) sets out the reduced fee of $300 per class for a TEAS renewal of a registration.

Comment: Two commenters stated that they support efforts to reduce fees where appropriate and consistent with a sustainable funding model and as long as the current and future efficacy and efficiency of the USPTO will not be compromised.

Response: The USPTO appreciates the commenters' concerns. As one commenter noted, the Office has assured stakeholders that the reduction is possible due to efficiencies that have allowed the USPTO to create an operating reserve and that the revised fee structure maintains a reserve sufficient to manage operations and address long-term investments. Also, the Office regularly reviews fees, and may make adjustments in the future as needed.

Comment: All commenters were in favor of the fee reductions. One noted that in addition to reducing trademark application fees, which should lead to more applications being filed, result in a more accurate **Federal Register**, and thereby increase efficiency and value for everyone, the USPTO should provide filing-fee discounts when an applicant files companion applications together that feature overlapping information, so as to incentivize businesses to file trademark applications that they may otherwise not invest in and that would otherwise never become part of the pending application database or the **Register**. Similarly, the commenter suggested that when there are multiple classes in the same application, the filing fees for subsequent classes be reduced by $100, to encourage applicants to be comprehensive in listing the goods and services with which they use or intend to use their marks, making for a more accurate and complete **Register**. The commenter opined further that a discounted filing fee for new businesses might increase the percentage of trademarks that are filed with the USPTO. Lastly, the commenter noted that the 10-year renewal fee, even at a TEAS reduced rate, appears out of line with the initial application filing fees and the 6-year Section 8 filing fees, since the processing of the renewal by the USPTO is not nearly as substantial or complex as the handling of initial applications.

Response: The USPTO appreciates the commenter's suggestions for possible mechanisms by which to increase application filings and further reduce fees. To the extent that the Office finds additional opportunities for fee reductions in the future, these suggestions will be considered. They would require further exploration and review by the Office.

Comment: Two commenters provided comments regarding the filing fee for paper applications. One commenter suggested that increasing the filing fee for paper applications may provide a more direct incentive for paper filers to switch to filing electronically. A second commenter agreed with the USPTO's decision to retain the existing filing fee for paper applications and encouraged the USPTO to continue outreach efforts to identify and address the reasons why applicants continue to file paper applications and to develop an electronic solution to address those circumstances.

Response: At this time, the USPTO has no plan to increase any filing fee, and prefers to rely on other mechanisms to encourage electronic communication. It is anticipated that the TEAS RF reduced-fee option is a mechanism that will encourage such applicants to switch from paper to electronic filing.

Comment: One commenter sought to confirm that there was no intent to decrease the fees for filing an application under Section 66 of the Trademark Act and encouraged the Office to consider how the fee reduction could alter the incentives of foreign applicants to seek U.S. registration via national applications versus through the Madrid System.

Response: The USPTO confirms that no change is being made to the fee for a request for an extension of protection under Section 66(a), 15 U.S.C. 1141f(a). The USPTO notes that if the only country in which a foreign applicant sought extension of protection of a foreign registration was the United States, it might make it more cost effective to file directly with the U.S. using TEAS RF. However, as the vast majority of Madrid users designate more than one country, they may determine that the benefits of the Madrid System outweigh the $50 per-class savings available through the TEAS RF option.

Second, the USPTO makes the following format revisions to § 2.22 concerning TEAS Plus applications: revise the rule title; in § 2.22(a), cite to § 2.6(a)(1)(iv) instead of § 2.6(a)(1)(iii); in § 2.22(b), set forth the additional examination requirements for a TEAS Plus application that are currently set forth in existing § 2.23(a); in § 2.22(c), set forth the current text in existing §§ 2.22(b) and 2.23(b), and cite to

§ 2.6(a)(1)(v) instead of to § 2.6(a)(1)(iv); and, in § 2.22(d), set forth the text currently in existing § 2.22(c).

Comment: Three commenters expressed concerns regarding the TEAS Plus requirements. Two commenters noted that the fee reduction for TEAS Plus applications is not likely to cause applicants to switch from TEAS to TEAS Plus since a majority of those who do not use TEAS Plus choose not to use it because of the issues surrounding the identification of goods and services and/or the accounting and other difficulties that may ensue if TEAS Plus status is lost during the application process. For example, applicants may need to submit identifications not found in the U.S. Acceptable Identification of Goods and Services Manual (ID Manual) to accurately identify their goods and services. Revisions to the ID Manual to include all classes and types of goods and services, update recitations of goods and services, and make it more easily navigable to help address these concerns were suggested. The requirement to search for and select all relevant goods and/or services and separately assign a basis to each, and where applicable, attach a separate specimen, was thought to make the TEAS Plus application more time-consuming and cumbersome than regular TEAS applications. The commenters encouraged the USPTO to investigate and address the restrictions of TEAS Plus that currently lead some applicants to file by TEAS and to provide other options, such as lifting the identification requirement or providing expedited processing.

Response: The new TEAS RF option addresses these concerns. In response to public input on potential adjustments to trademark application fees, the comments overwhelmingly favored a fee reduction, and many expressed a desire for a lower-cost electronic filing option without any restrictions on the nature of the identification of goods and services, as is required under TEAS Plus. Accordingly, the USPTO proposed the introduction of the TEAS RF filing option. The filing fee for TEAS RF is the same as the current TEAS Plus fee, but the application does not require that applicants choose an identification of goods or services from the ID Manual. Nor are applicants required to comply with any of the other TEAS Plus requirements except the requirements to authorize email communication and file specified documents electronically throughout the application process.

In addition, the USPTO is implementing improvements to the ID Manual, such as basic and advanced search options, highlighting of search terms in results, inclusion of Notes in results table, and displaying initial results according to a ''relevance'' priority rather than by Class number.

The USPTO notes that the additional requirements of TEAS Plus cited by the commenter, *i.e.,* to search for and select all relevant goods and services, assign a basis to each, and, if applicable, attach a separate specimen for each class, merit the lower fee of TEAS Plus because they lower the cost of examination and reduce pendency in large part because most such applications are complete when filed, and will therefore, typically result in the issuance of fewer Office actions.

Third, the USPTO revises current § 2.23 to establish a TEAS RF option in the amount of $275. Existing § 2.23 lists the additional examination requirements for a TEAS Plus application. As noted above, the provisions in previous § 2.23 are consolidated into revised § 2.22. Filers using either the TEAS Plus or the new TEAS RF option are required to authorize email communication from the USPTO and submit specified documents electronically using TEAS during the prosecution of the application. However, filers using the new TEAS RF option are not required to comply with the additional TEAS Plus requirements.

Comment: One commenter also noted that the new TEAS RF application addresses many concerns applicants have with the TEAS Plus application and presents an option that its clients, many of which are small businesses, will likely use and benefit from.

Response: The USPTO appreciates the commenter's statement that the TEAS RF option will benefit applicants.

Comment: One commenter recommended that the Office confirm that informal communications with the examining attorney, including telephone and email communications, would not violate the requirement of an ''electronic communication'' for purposes of retaining TEAS RF status.

Response: The USPTO confirms that informal communications by telephone or email with an examining attorney would not violate the requirement that the applicant submit documents via TEAS during the prosecution of the application. Informal communications are not substitutes for formal responses to Office actions, but rather are conducted only if they serve to develop and clarify specific issues and lead to a mutual understanding between the examining attorney and the applicant regarding a particular application. *See* TMEP section 709.05. Therefore, such an informal communication need not be filed through TEAS to comply with the final rule. Notably, § 2.23 lists all the specific communications that TEAS RF applicants must file through TEAS or be subject to the processing fee of $50 per class.

Rulemaking Considerations

Administrative Procedure Act: This rulemaking reduces fees under Section 10(c) of the AIA. *See also* 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2. The other changes in this rulemaking establish procedures for applicants seeking these reduced fees. The procedural changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (stating that a rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (stating that rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (stating that rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the procedural changes are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(3)(A))). The Office, however, published these changes for comment as it sought the benefit of the public's views. The Office has also undertaken a Final Regulatory Flexibility Act Analysis of the final rule.

Final Regulatory Flexibility Analysis:

1. Description of the reasons that action by the USPTO is being undertaken:

The USPTO is reducing certain trademark fees as authorized by Section 10(c) of the AIA. The reductions will reduce total trademark fee collections and promote efficiency for the USPTO and customers through increased electronic communication. Specifically, the USPTO amends its rules to reduce application filing fees for certain applications for registration on the Principal or Supplemental Register under Section 1 and/or Section 44 of the Trademark Act, and for TEAS requests for transformation of an extension of

protection to the United States into a U.S. application filed pursuant to § 7.31, and to reduce the fee for renewal of a trademark registration that is filed through TEAS.

2. Succinct statement of the objectives of, and legal basis for, the final rulemaking:

The objectives of the final rulemaking are to reduce total trademark filing and renewal fees and fee collections, improve the alignment of Office costs with revenues, and promote efficiency for the USPTO and customers through electronic communication. Filing through TEAS and authorizing email communication expedites processing, shortens pendency, minimizes manual processing and the potential for data entry errors, and is more efficient for both the filer and the USPTO. TEAS-filed documents are automatically uploaded into the USPTO database. They require no manual scanning or creation of a paper file wrapper, and they often reduce or eliminate the need for manual data entry of amendments to the filings. Authorizing email communication provides similar benefits, by reducing the need for mailing and the creation of, or addition to, a file wrapper. Paper filings, on the other hand, necessitate: (1) Manual scanning and uploading of the documents into the USPTO database; (2) manual data entry of information; and (3) the creation of paper file wrappers in which to store the originals of the paper filings. Thus, the final rulemaking facilitates efficiency in numerous ways. As to the legal basis for the revisions, Section 10(c) of the AIA provides the authority for the Director to reduce trademark fees after consultation with the TPAC. *See also* Section 31 of the Trademark Act, 15 U.S.C. 1113. Both 15 U.S.C. 1123 and 35 U.S.C. 2 provide the authority for the Director to establish regulations for the conduct of trademark proceedings at the USPTO.

3. Description of and, where feasible, estimate of the number of affected small entities:

The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the final rulemaking. However, the USPTO will provide projected estimates of each type of filing affected by the final rulemaking. The overall impact of the lower fees on applicants and registrants will be overwhelmingly positive, as they will be afforded the opportunity to obtain a trademark registration for a reduced fee.

The final rulemaking could apply to any entity filing a trademark application, except those filing under Section 66(a), 15 U.S.C. 1141f(a). The USPTO estimates that during the first year under the final rulemaking, the USPTO would receive 103,633 classes of TEAS RF applications that, absent the rule change, likely would have been filed as regular TEAS applications, as well as 204,682 classes of TEAS Plus applications. Thus, the estimated financial impact of the reduced fees will be: (1) A $10,234,100 reduction in fees for TEAS Plus applicants; and (2) a $5,181,650 reduction in fees for TEAS RF applicants, or $5,065,100, when the estimated 2,331 classes of TEAS RF applicants who likely will be required to pay the $50 processing fee are taken into consideration. Turning to the renewal fee, the USPTO estimates that during the first year under the final rulemaking, the USPTO would receive 62,315 classes of renewals, 61,193 of which will be filed through TEAS, such that the financial impact will be a $6,119,300 reduction in fees for trademark owners. The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants to determine what subset of applicants would be small entities impacted by the final rule.

4. Description of the reporting, recordkeeping, and other compliance requirements of the final rulemaking, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

The final rules impose no new reporting or recordkeeping requirements.

The final rules reduce fees for applications, requests for transformation of an extension of protection to the United States into a U.S. application, and renewals of trademark registrations. The USPTO does not anticipate that the final rulemaking will have a disproportionate impact upon any particular class of small or large entities. Any entity that applies for or renews a registered trademark may choose to benefit from the final rules. The final rulemaking merely offers lower fees based on electronic filing of the renewal or application and other documents, and authorization for email communication from the USPTO. Because the fees for filing a paper application, a regular TEAS application, a paper request for transformation of an extension of protection to the United States into a U.S. application, and a paper application for renewal of a registration remain unchanged under the final rules, and applicants may continue to file on paper or via the regular TEAS application form, the filer may choose whether to undertake the requirements for the reduced-fee options in the final rules. Procedures for TEAS Plus filers remain the same, as the final rules merely reduce fees and consolidate the TEAS Plus procedures within one rule, without imposing any change in practice. Filers using the new TEAS RF option must submit specified documents electronically using TEAS during the prosecution of the application and must authorize email communication from the USPTO.

The USPTO estimates that filing electronically likely will take less time than filing the same type of document on paper and will not take any more time. The USPTO further estimates that communicating by email will not take any more time than receiving and reviewing a USPTO communication sent by regular mail and is likely to take less time.

5. Description of any significant alternatives to the final rulemaking which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rules on small entities:

The USPTO has considered whether and how it is appropriate to reduce any burden on small businesses through increased flexibility. The following options have been considered, but rejected, by the USPTO, since they are less protective of small businesses.

The alternative of not offering the identified reduced fees, or not offering them to small entities, would retain the status quo for small entities and therefore produce no economic impact on them, but that alternative has been rejected because the economic effect of the final rules will be favorable to small businesses, rather than burdensome. In addition, the alternative of not reducing fees would fail to accomplish the stated objectives of reducing overall trademark fee collections and increasing efficiency for the USPTO and filers.

The final rulemaking provides streamlined and simplified procedures for all small entities, as well as others, given the ease of filing electronically through TEAS and communicating by email. Thus, compliance will be streamlined and simplified for all affected entities. The fee reductions promote greater efficiency from electronic filing and communication, as the procedures are simpler and not burdensome.

Use of performance rather than design standards is not applicable to the final rulemaking because the USPTO is not issuing any sort of standard. Rather, the

final rulemaking offers reduced fees to applicants and registrants who file and communicate electronically with the USPTO.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the final rules:

The final rules do not duplicate, overlap, or conflict with any other Federal rules.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rules; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13132 (Federalism): This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing this final rule, the USPTO submitted a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this final rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this is not a ''major rule'' as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

Paperwork Reduction Act: This rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An information collection request was submitted to OMB under control numbers 0651–0009 and 0651–0055 at the time of the Notice of Proposed Rulemaking, and a pre-approval was given. Since that time no substantive changes to the burden have been made. Additionally, the agency will follow up with a change worksheet submission to reconcile any burden estimate adjustments, especially as regards OMB Control Number 0651–0051.

I. Summary

The USPTO is reducing certain trademark fees, as authorized by the AIA. The reductions will reduce total trademark fee collections and promote efficiency for the USPTO and customers through electronic communication and will further the USPTO's strategic objective to increase the end-to-end electronic processing of trademark applications including online filing, electronic file management, and workflow. Specifically, the USPTO amends its rules to permit a trademark applicant using the regular TEAS application form to file an application for registration on the Principal or Supplemental Register under Section 1 and/or Section 44 of the Trademark Act, and an applicant who files a TEAS request for transformation of an extension of protection to the United States into a U.S. application, to pay a reduced fee under certain circumstances. The reduced fee is available to a TEAS applicant if the applicant agrees to receive communications concerning the application by email and to file all responses and other documents through TEAS during the prosecution of the application. The reduced-fee option does not apply to applications filed pursuant to Section 66(a) of the Act because they cannot be filed through TEAS. The USPTO also amends its rules to reduce the filing fees for an application filed using the TEAS Plus form and a TEAS application for renewal of a registration.

II. Data

Needs and Uses: The public uses the various applications to apply for the registration of trademarks/service marks, collective trademarks/service marks, collective membership marks, and certification marks that identify goods and services classified in single or multiple classes. The public also uses applications under Section 44 to apply for a priority filing date and/or for registration based upon foreign registration of a mark. The USPTO uses information from the public to receive and process applications for registration of trademarks/service marks, collective trademarks/service marks, collective membership marks, and certification marks. The USPTO uses information from the public in response to Section 44 applications to process applications for registration of a mark based upon earlier-filed foreign applications or a foreign registration. In addition, the USPTO also uses the application information to determine whether the marks may be registered. The public uses the application for renewal to apply for the renewal of a registration. The USPTO uses information from the public to receive and process applications for renewal of a registration.

Title of Collection: Applications for Trademark Registration.

OMB Control Number: 0651–0009.

Form Number(s): PTO Forms 1478, 1480, 1481, 1482.

Type of Review: Revised Collection.

Method of Collection: By mail, facsimile, hand delivery, or electronically to the Office.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Responses: 359,560.

Estimated Time per Response: The Office estimates that the responses in this collection will take the public

approximately 18 to 30 minutes (0.3 to 0.5 hours).

Estimated Total Annual Respondent Burden Hours: 125,373 hours per year.

Estimated Total Annual Respondent Cost Burden: $48,770,097 per year.

Estimated Total Annual Non-hour Respondent Cost Burden: $97,548,226 per year.

Title of Collection: Post Registration (Trademark Processing).

OMB Control Number: 0651–0055.

Form Number(s): PTO Form 1963.

Type of Review: Revised Collection.

Method of Collection: By mail, facsimile, hand delivery, or electronically to the Office.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Responses: 51,929.

Estimated Time per Response: The Office estimates that the responses in this collection will take the public approximately 12 to 14 minutes (0.20 to 0.23 hours).

Estimated Total Annual Respondent Burden Hours: 10,414 hours per year.

Estimated Total Annual Respondent Cost Burden: $4,050,988 per year.

Estimated Total Annual Non-Hour Respondent Cost Burden: $20,865,550 per year.

Title of Collection: Madrid Protocol.

OMB Control Number: 0651–0051.

Form Number(s): PTO Global Form.

Type of Review: Revised Collection.

Method of Collection: By mail, facsimile, hand delivery, or electronically to the Office.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Responses: 6,623.

Estimated Time per Response: The Office estimates that the responses in this collection will take the public approximately 15 minutes to one hour and 15 minutes (0.25 to 1.25 hours).

Estimated Total Annual Respondent Burden Hours: 1,711 hours per year.

Estimated Total Annual Respondent Cost Burden: $634,781 per year.

Estimated Total Annual Non-Hour Respondent Cost Burden: $743,875 per year.

III. Solicitation

Comments were solicited to: (1) Evaluate whether the information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Regarding whether the collection of information enhances the quality, utility, and clarity of the information to be collected, the USPTO received two comments.

Comment: The commenters noted that the proposed changes will result in more accurate and carefully tailored trademark applications by allowing applicants to submit the most accurate and comprehensive designation of goods and services since they will not have to choose designations from the ID Manual, which the commenter contends results in inefficiencies not only for the companies seeking to register a mark, but also for the USPTO and other companies conducting trademark searches. The commenter also asserts that the proposed changes would help applicants receive the maximum benefits of the USPTO system. One commenter noted that requests for extensions of protection encounter a number of inefficiencies arising from the data transfer from WIPO to the Office and recommended that these inefficiencies be addressed by the Office as part of the rule or in a separate request for comment.

Response: The USPTO agrees with the commenters regarding the benefits of providing a reduced-fee option while permitting applicants to submit their own identifications of goods and services.

The USPTO appreciates the suggestions regarding requests for extension of protection but notes that the Office is unaware of the alleged inefficiencies of using an entry from the ID Manual and notes that these requests are not part of the information collection impacted by this final rulemaking. Any more detailed comments about this subject outside the scope of this final rulemaking may be submitted to the USPTO through *TMFeedback@USPTO.gov.*

As to whether changes minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, the USPTO received no comments.

Notwithstanding any other provision of law, no person is 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 currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in Section 10(c) of the AIA, 15 U.S.C. 1113, 15 U.S.C. 1123, and 35 U.S.C. 2, as amended, the USPTO amends part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10(c) of Pub. L. 112–29, unless otherwise noted.

■ 2. Amend § 2.6 by revising paragraphs (a)(1)(iii) and (iv), adding paragraph (a)(1)(v), and revising paragraph (a)(5) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) * * *

(1) * * *

(iii) For filing a TEAS Reduced Fee (RF) application through TEAS under § 2.23, per class—$275

(iv) For filing a TEAS Plus application through TEAS under § 2.22, per class—$225.00

(v) Additional processing fee under §§ 2.22(c) or 2.23(c), per class—$50.00

* * * * *

(5) Application for renewal of a registration fees.

(i) For filing an application for renewal of a registration on paper, per class—$400.00

(ii) For filing an application for renewal of a registration through TEAS, per class—$300.00

* * * * *

■ 3. Amend § 2.22 by revising the section heading, paragraph (a) introductory text, and paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 2.22 Requirements for a TEAS Plus application.

(a) A trademark/service mark application for registration on the Principal Register under section 1 and/or section 44 of the Act will be entitled to a reduced filing fee under § 2.6(a)(1)(iv) if it is filed through TEAS and includes:

* * * * *

(b) In addition to the filing requirements under paragraph (a) of this section, the applicant must:

(1) File the following communications through TEAS:

(i) Responses to Office actions (except notices of appeal under section 20 of the Trademark Act);

(ii) Requests to change the correspondence address and owner's address;

(iii) Appointments and/or revocations of power of attorney;

(iv) Appointments and/or revocations of domestic representative;

(v) Voluntary amendments;

(vi) Amendments to allege use under section 1(c) of the Act or statements of use under section 1(d) of the Act;

(vii) Requests for extensions of time to file a statement of use under section 1(d) of the Act; and

(viii) Requests to delete a section 1(b) basis.

(2) Maintain a valid email correspondence address and continue to receive communications from the Office by email.

(c) If an application does not fulfill the requirements of paragraphs (a) and (b) of this section, the applicant must pay the processing fee required by § 2.6(a)(1)(v). The application will retain its original filing date, provided that when filed, the application met the filing date requirements of § 2.21.

(d) The following types of applications cannot be filed as TEAS Plus applications:

(1) Applications for certification marks (see § 2.45);

(2) Applications for collective trademarks and service marks (see § 2.44);

(3) Applications for collective membership marks (see § 2.44); and

(4) Applications for registration on the Supplemental Register (see § 2.47).

■ 4. Revise § 2.23 to read as follows:

§ 2.23 Requirements for a TEAS RF application.

(a) A trademark, service mark, certification mark, collective membership mark, or collective trademark application for registration on the Principal or Supplemental Register under section 1 and/or section 44 of the Act will be entitled to a reduced filing fee under § 2.6(a)(1)(iii) if it is filed through TEAS and includes:

(1) An email address for correspondence; and

(2) An authorization for the Office to send correspondence concerning the application to the applicant or applicant's attorney by email.

(b) In addition to the filing requirements under paragraph (a) of this section, the applicant must:

(1) File the following communications through TEAS:

(i) Responses to Office actions (except notices of appeal under section 20 of the Trademark Act);

(ii) Requests to change the correspondence address and owner's address;

(iii) Appointments and/or revocations of power of attorney;

(iv) Appointments and/or revocations of domestic representative;

(v) Voluntary amendments;

(vi) Amendments to allege use under section 1(c) of the Act or statements of use under section 1(d) of the Act;

(vii) Requests for extensions of time to file a statement of use under section 1(d) of the Act; and

(viii) Requests to delete a section 1(b) basis.

(2) Maintain a valid email correspondence address, and continue to receive communications from the Office by email.

(c) If an application does not meet the requirements of paragraphs (a) and (b) of this section, the applicant must pay the processing fee required by § 2.6(a)(1)(v). The application will retain its original filing date, provided that when filed, the application met the filing date requirements of § 2.21.

Dated: December 10, 2014.

Michelle K. Lee,

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

[FR Doc. 2014–29413 Filed 12–15–14; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2009–0767; FRL–9915–61]

RIN 2070–AJ52

Ethylene Glycol Ethers; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is promulgating a significant new use rule (SNUR) for seven ethylene glycol ethers (also known as glymes). This rule will require persons who intend to manufacture (including import) or process any of the seven ethylene glycol ethers for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing such manufacture or processing. The required notifications would provide EPA with the opportunity to evaluate the intended use and, if necessary based on the information available at that time, an opportunity to protect against potential unreasonable risks, if any, from that activity before it occurs. EPA is also making a technical amendment to the codified list of control numbers for approved information collection activities so that it includes the control number assigned by the Office of Management and Budget (OMB) to the information collection activities contained in this rule.

DATES: This final rule is effective February 17, 2015.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0767, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), EPA Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kirsten Hesla, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–2984; email address: *hesla.kirsten@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import) or process any of the chemical substances covered by this final rule. The North American Industrial Classification System (NAICS) codes identified are 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:

- Manufacturers of one or more of subject chemical substances (NAICS codes 325 and 324110); *e.g.,* chemical manufacturing and petroleum refineries;
- All other basic organic chemical manufacturing (NAICS code 325199)
- Paint and coating manufacturing (NAICS code 325510);
- Adhesive manufacturing (NAICS code 325520);
- Printing ink manufacturing (NAICS code 325910); and
- Motor vehicle brake system manufacturing (NAICS code 336340).

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5 and 40 CFR 721.10299. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. What action is the Agency taking?

In the **Federal Register** of July 12, 2011 (76 FR 40850) (FRL–8877–8), EPA proposed a SNUR for 14 ethylene glycol ethers (Ref. 1). EPA's response to public comments received on the proposed rule appears in Unit X. Please consult the July 12, 2011 **Federal Register** document for further background information for this final rule.

This final SNUR applies to seven of the 14 ethylene glycol ethers identified in the proposed rule. EPA is not finalizing the SNUR for the other seven ethylene glycol ethers proposed because the Agency believes that these chemicals are not sufficiently similar to the seven chemicals subject to this SNUR and therefore do not raise the same concern for potential exposure to these chemicals. (See Unit X.A. for more information.) This final SNUR will require persons to notify EPA at least 90 days before commencing the manufacture (including import) or processing of:

- Monoethylene glycol dimethyl ether (monoglyme, CASRN 110–71–4) for any use in a consumer product;
- Diethylene glycol dimethyl ether (diglyme, CASRN 111–96–6) for any use in a consumer product;
- Ethylene glycol diethyl ether (ethylglyme, CASRN 629–14–1) for any use in a consumer product;
- Diethylene glycol diethyl ether (ethyldiglyme, CASRN 112–36–7) for any use in a consumer product, except as a component of inks, coatings and adhesives, and as a component of paint/graffiti removers;
- Triethylene glycol dimethyl ether (triglyme, CASRN 112–49–2) for any use in a consumer product, except as a solvent in consumer adhesives, in brake fluid, as a component of consumer paint/graffiti removers, and in consumer paints;
- Diethylene glycol dibutyl ether (butyldiglyme, CASRN 112–73–2) for any use in a consumer product, except as a component of inks, coatings and adhesives, and as a component in soldering compounds; or
- Triethylene glycol dibutyl ether (butyltriglyme, CASRN 63512–36–7) for any use.

D. Why is the Agency taking this action?

This SNUR is necessary to ensure that EPA receives timely advance notice of any future manufacturing and processing of these ethylene glycol ethers for new uses that may produce changes in human and environmental exposures. The rationale and objectives for this SNUR are explained in Unit III.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substances included in this final rule. This analysis, which is available in the docket, is discussed in Unit IX., and is briefly summarized here.

In the event that a SNUN is submitted, costs are estimated to be less than $8,700 per SNUN submission for large business submitters and $6,300 for small business submitters. These estimates include the cost to prepare and submit the SNUN and the payment of a user fee. In addition, for persons exporting a substance that is the subject of a SNUR, a one-time notice must be provided for the first export or intended export to a particular country, which is estimated to cost less than $100 on average per notification. Since EPA is unable to predict whether anyone might engage in future activities that would require reporting, potential total costs were not estimated.

II. Overview of the Chemical Substances Subject to This Rule

The ethylene glycol ethers and the significant new use for each chemical substance subject to this SNUR are identified in Table 1 of this unit.

TABLE 1—CHEMICALS WITH SIGNIFICANT NEW USE(S)

Chemical name	Chemical Abstracts (CA) index name	Chemical Abstracts Service Registry No. (CASRN)	Significant new use(s) [1]
Monoethylene glycol dimethyl ether or monoglyme.	Ethane, 1,2,-dimethoxy-	110–71–4	Any use in a consumer product.

TABLE 1—CHEMICALS WITH SIGNIFICANT NEW USE(S)—Continued

Chemical name	Chemical Abstracts (CA) index name	Chemical Abstracts Service Registry No. (CASRN)	Significant new use(s) [1]
Diethylene glycol dimethyl ether or diglyme.	Ethane, 1,1′-oxybis[2-methoxy-	111–96–6	Any use in a consumer product.
Diethylene glycol diethyl ether or ethyldiglyme.	Ethane, 1,1′-oxybis[2-ethoxy- ..	112–36–7	Any use in a consumer product except as a component of inks, coatings and adhesives, and as a component of paint/graffiti removers.
Triethylene glycol dimethyl ether or triglyme.	2,5,8,11-Tetraoxadodecane	112–49–2	Any use in a consumer product, except as a solvent in consumer adhesives, in brake fluid, as a component of consumer paint/graffiti removers, and in consumer paints.
Diethylene glycol dibutyl ether or butyldiglyme.	Butane, 1,1′-[oxybis(2,1-ethane diyloxy)]bis-.	112–73–2	Any use in a consumer product except as a solvent in consumer inks, coatings and adhesives, and as a component in soldering compounds.
Ethylene glycol diethyl ether or ethylglyme.	Ethane, 1,2-diethoxy	629–14–1	Any use in a consumer product.
Triethylene glycol dibutyl ether or butyltriglyme.	5,8,11,14-Tetraoxaoctadecane	63512–36–7	Any use.

[1] In defining the significant new use for each chemical, the exceptions listed in this table reflect the identified ongoing uses, where they exist, that are excluded from the definition of significant new use.

EPA notes that the seven chemical substances that are the subjects of this SNUR are not the only ethylene glycol ethers that are of concern based on toxicity. EPA has described the ethylene glycol ethers category more broadly under the TSCA New Chemicals Program and under Emergency Planning and Community Right-To-Know Act (EPCRA) section 313. (See the TSCA New Chemicals Program Chemical Categories document (Ref. 2) and the EPCRA section 313 List of Toxic Chemicals ''Certain Glycol Ethers'' category at 40 CFR 372.65(c) (Ref. 3). Both categories are based on a consideration of structural similarity and hazard.) These categories are broader than the category that is subject to this SNUR. For this rulemaking, EPA considered past and current patterns of use as one factor in determining which ethylene glycol ethers would be included within the scope of this SNUR. EPA believes that the seven ethylene glycol ethers that are the subjects of this SNUR have and/or had similar use patterns and can be anticipated to have at least some similar new uses. Thus, given the potential for similar uses and the potential impact that these will have on type, duration, and magnitude of exposure, EPA believes it is appropriate to focus on these seven ethylene glycol ethers.

III. Rationale and Objectives for This Final Rule

A. Rationale

EPA is concerned about the potential of the seven ethylene glycol ethers that are the subjects of this SNUR to cause reproductive and/or developmental toxicity, genotoxicity and toxicity to blood and blood forming organs and believes that individuals could suffer adverse effects from their use (Refs. 1–4). This concern is based on a combination of data and structure-activity relationships. While a specific hazard evaluation is not required by TSCA section 5(a)(2), EPA considered hazard in designating this category of ethylene glycol ethers. In deciding to focus on these chemical substances, EPA considered use patterns as well as toxicity data and structure-activity relationships. EPA considered these factors in conjunction with the statutory factors provided in section 5(a)(2). In designating the significant new uses for these chemical substances, EPA will have the opportunity to evaluate and control, where appropriate, activities associated with those uses, if such manufacturing or processing for the significant new uses were to start or resume. The required notification provided by a SNUN will provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, which may occur from exposure to these chemical substances.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to issue a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the Agency's action is based on EPA's determination that if the use begins or resumes, it may present a risk that EPA should evaluate under TSCA before the manufacturing or processing for that use begins. Since the new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical for the use, the notice allows EPA to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

B. Objectives

Based on the considerations in Unit III.A., EPA will achieve the following objectives with regard to the significant new uses that are designated in this rule:

1. EPA will receive notice of any person's intent to manufacture or process any of the chemical substances listed in Table 1 of Unit II. for the described significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing the chemical substances listed in Table 1 of Unit II. for the described significant new use.

3. EPA will be able to regulate the prospective manufacture or processing of the chemical substances before the described significant new use of the chemical substance listed in Table 1 of Unit II. occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new

use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

To determine what would constitute a significant new use of the chemical substances subject to this rule, as discussed herein, EPA considered relevant information about the potential toxicity of these substances, the range of uses for these chemicals and the four factors listed in section 5(a)(2) of TSCA.

EPA believes that potential new consumer uses could change the type and form of exposure and/or the magnitude and duration of exposure to humans and the environment relative to what currently exists. Use in consumer products could result in different types of exposure, *e.g.,* inhalation exposure through spray applications, dermal exposure if the consumer product is meant to be hand-applied to an object, than currently exist. Use in different consumer products can also change the duration of exposure, which will depend upon the type of consumer product in which the chemical substance is used. Also, new uses of any of these chemical substances would likely result in an increase of the magnitude of exposure relative to current exposures given that these uses would be in addition to ongoing uses. Consumers use a variety of products; thus, their potential exposures to a chemical substance in multiple consumer products would likely be additive.

New uses in consumer products would also result in differences in the processing of the chemical substances that are the subject of this SNUR because these chemical substances may be mixed with other chemicals and may be made part of consumer products with different properties, *e.g.,* different viscosities from existing consumer products. Based on these considerations of the statutory factors, EPA has determined that the uses identified in Table 1 of Unit II. are significant new uses. In addition, because there are no ongoing uses of triethylene glycol dibutyl ether, any new use would result in a change in the volume of manufacturing and processing of this chemical substance, as well as the type, form, magnitude and duration of exposure, and the manner and methods of manufacturing, processing, distribution in commerce, and disposal of this chemical substance.

V. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule.

Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submissions requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6 or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance(s) identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

VI. Applicability of the Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who may have begun commercial manufacture or processing of the chemical substance(s) subject to this rule after the proposal was published on July 12, 2011, must cease such activity before the effective date of this final rule. To resume their activities, these persons will have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. Uses arising after the publication of the proposed rule are distinguished from uses that exist at publication of the proposed rule. The former would be new uses, the latter ongoing uses. To the extent that additional ongoing uses were found in the course of rulemaking, EPA has excluded these uses from the final SNUR. EPA promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under 40 CFR 721.45(h), that person would be considered to have met the requirements of the final SNUR for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not usually require developing any particular test data before submission of a SNUN. There are two exceptions:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)); and
2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a section 4 test rule or a section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25, and 40 CFR 720.50). However, as a general matter, EPA recommends that SNUN submitters

include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture (including import), processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical substance.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

- Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

EPA recommends that entities consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the intended use of the chemical substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 721.25 and 40 CFR 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

A. SNUNs

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substance included in this rule (Ref. 5). In the event that a SNUN is submitted, costs are estimated at approximately $8,589 per SNUN submission for large business submitters and $6,189 for small business submitters. These estimates include the cost to prepare and submit the SNUN, and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)). The costs of submission of SNUNs will not be incurred by any company unless a company decides to pursue a significant new use as defined in this SNUR. EPA's complete economic analysis is available in the public docket for this rule (Ref. 5).

B. Export Notification

Under section 12(b) of TSCA and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under section 5. For persons exporting a substance that is the subject of a SNUR, a one-time notice must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical substance, depending on the number of required notifications (*i.e.,* the number of countries to which the chemical substance is exported). EPA is unable to make any estimate of the likely number of export notifications for the chemical substances covered in this SNUR.

X. Response to Comments

The Agency reviewed and considered all comments received related to the proposed rule. Copies of all non-CBI comments are available in the docket for this action (EPA–HQ–OPPT–2009–0767). A discussion of the major comments germane to the rulemaking and the Agency's responses follow. Responses to all germane comments received are in the document titled: ''Response to Comments on the Proposed Ethylene Glycol Ethers (Glymes) Significant New Use Rule (SNUR)'' (Ref. 6), which is also available in the docket.

A. Scope of Ethylene Glycol Ethers Category

1. *Comment.* One commenter contends that the term glymes, while technically correct, is a less well-known term for these ethylene glycol ethers. The commenter asserts it may not have been clear to many what chemicals are subject to this rulemaking.

Response. EPA disagrees that it was unclear what chemical substances were the subjects of the proposed SNUR. Even if an individual manufacturer or processor were unfamiliar with the term EPA used to designate the category (''glymes''), all of the chemical substances proposed to be included in the SNUR were also individually identified by their CASRN, CA Index Name, and ethylene glycol ether common name. Notice of the proposal was adequate; there were several ways in which stakeholders could have determined which chemical substances were the subjects of the proposal. However, to increase clarity, EPA will list the ''ethylene glycol ether'' name instead of the name ''glymes'' to characterize the chemicals subject to this SNUR.

2. *Comment.* One commenter contends that while the ethylene glycol ethers are structurally similar, they vary in molecular weight, in the number of ethylene glycol groups, and in the length of the terminal alkyl groups. The commenter asserts that the presence of characteristics, such as longer terminal alkyl groups and more ethylene glycol groups act to reduce the developmental and reproductive toxicity of the higher molecular weight ethylene glycol ethers, as compared to the lower molecular weight ethylene glycol ethers. The commenter states that there is a decrease in ethylene glycol ether toxicity with increasing terminal alkyl length and/or increasing ethylene glycol groups, and that the category should be limited to monoglyme, diglyme and ethylglyme. Another commenter contends that the category should be limited based on a consideration of metabolism. The commenter contends that the category should be limited to monoglyme, diglyme, ethyl diglyme and triglyme because only these will be metabolized in the body to chemical substances that have toxicity characteristics of ethylene glycol monomethyl ether and ethylene glycol monoethyl ether. The commenter contends that none of the other ethylene glycol ethers exhibit developmental or reproductive toxicity similar to that of these four chemical substances.

Response. A specific evaluation of hazard is not required by TSCA section 5(a)(2) to issue a SNUR. Nonetheless, EPA has based this SNUR in part on considerations of toxicity, so toxicity considerations are relevant in this instance.

EPA believes that based on both toxicity data and structure-activity relationships (Refs. 1–4) ethylene glycol ethers that consist of 1, 2 or 3 glycol ether groups and terminal alkyl groups

of 1 to 4 carbons can be anticipated to cause developmental and reproductive toxicity and/or hemolytic toxicity. Based on these same data and structure-activity relationships, EPA agrees with commenters that chemical substances with more than 3 repeating glycol ether units should not be included in the category because the toxicity of such substances is dissimilar from the remaining members of the category. Therefore, EPA removed seven of the proposed category members from the final rule.

While there is evidence that the toxicity is reduced going from methyl to butyl ether and with increasing number of ethylene glycol groups, toxicity is still observed (Refs. 3, 4). Indeed, data provided by one commenter demonstrate the developmental toxicity of six of the seven ethylene glycol ethers (Ref. 7). Among the seven substances listed in Table 1 of Unit II., EPA disagrees that the relevant evidence establishes sufficient variation in degree of toxicity to cull any further substances from the group. Differing doses at which toxicity occurs does not equate with lack of toxicity. Thus, EPA disagrees with the commenter that the category should be further limited to only those chemicals which induce toxicity at the lowest doses. Inclusion in the category is appropriately predicated on *similarity* of toxicity. (EPA notes also that the commenters' individual lists are not in agreement with respect to ethylene glycol ethers that they consider to be the most developmentally toxic, and that there is only partial overlap between these two lists.)

Further, ethylene glycol ethers cause adverse effects in addition to reproductive and developmental toxicity. Data for other toxic effects of ethylene glycol ethers with terminal alkyl groups of one to four carbons do not indicate a trend toward decreasing toxicity with increasing alkyl chain length (Ref. 4). Hemolysis has been reported in varying degrees for ethylene glycol ethers of one to five carbons in the alkyl chains (Ref. 4). Hemolysis is associated with chain length, and a chain length of four carbons causes this type of toxicity at the lowest dose (Ref. 4).

One commenter contends that ''the lower glymes that are generally considered to be toxic following repeated exposure are: Monoglyme, diglyme and ethylglyme. The higher glymes that are less toxic following repeated exposure are triglyme, tetraglyme, polyglyme, ethyldiglyme and butyldiglyme'' (Ref. 7). EPA disagrees that molecular weight can be appropriately applied, by itself, to establish which substances are sufficiently similar to be included in the SNUR. EPA notes that some level of variation within chemical categories is inevitable when placing similar chemicals into groups, and therefore, variation is expected. The similarity in the toxicity of the chemical substances that are the subject of this SNUR is not primarily based on molecular weight but as discussed above is based on both toxicity data and structure-activity relationships (Refs 1–4). Ethylene glycol ethers that consist of 1, 2 or 3 glycol ether groups and terminal alkyl groups of 1 to 4 carbons can be anticipated to cause developmental and reproductive toxicity and/or hemolytic toxicity. Based on these toxicity considerations, EPA notes that it did, in fact remove some of the higher molecular weight ethylene glycol ethers from the final rule. But EPA disagrees that varying molecular weight, in itself, should be a deciding factor in eliminating a chemical substance from a category of similar chemical substances. While the commenter provides limited data on developmental and reproductive toxicity, they provide no data with respect to other toxicity endpoints of concern (including toxicity to blood and blood forming organs, and potential for gene mutation) and the commenter does not speculate on possible similarities or differences among the chemical substances with respect to these endpoints (Ref. 7).

3. *Comment.* Several commenters contend that the ethylene glycol ether category is too broad. While the chemical substances in the category are similar because they have one or more repeating glycol ether groups and terminal alkyl chains, structural similarity is not sufficient to predict toxicity. One commenter further states that structural similarities alone should not be the basis for toxicity determinations, risk assessment and subsequent regulation.

Response. EPA acknowledges the commenters' assertions that the category of ethylene glycol ethers in the proposed SNUR was too broad, and is finalizing this SNUR for only seven of the original 14 chemicals.

The commenters' remaining arguments (about the relevance of structural similarities to risk assessment, and subsequent regulation) are premature. This SNUR is not based on a risk assessment, and it does not establish that subsequent regulation of the ethylene glycol ethers would be necessary in the event EPA receives a significant new use notice after promulgating this rule.

While EPA did consider toxicity in deciding to focus on these chemical substances, under TSCA section 5(a)(2), EPA is neither required to determine that a particular new use of any chemical substance presents, nor even that it may present, an unreasonable risk to human health or the environment. Rather, EPA issues a SNUR for a particular new use of a substance if it has reason to anticipate that the use would raise significant questions related to potential exposure, so that it should have an opportunity to review the use before such use could occur. EPA bases this judgment on a consideration of all relevant factors, including the specific factors identified at section 5(a)(2). EPA considered similarities in toxicity and potential toxicity among these chemical substances, similarities in uses and considered the extent to which the significant new uses that are the subject of this SNUR could result in changes to the processing of these chemical substances and the type, duration and magnitude of exposures to these chemicals.

B. Use

4. *Comment.* Two commenters request clarification on whether automobiles are considered consumer products. These commenters point to the definition of consumer product at section 3(a)(5) of the Consumer Product Safety Act (CPSA), which excludes motor vehicles. These commenters contend that the EPA definition at 40 CFR 721.3 should be clarified to be consistent with CPSA and exclude motor vehicles.

Response. CPSA is a different statute from TSCA. For purposes of significant new use rules issued pursuant to TSCA, consumer product is defined at 40 CFR 721.3 as ''. . . a chemical substance that is directly, or as part of a mixture, sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation.'' This is the pertinent regulatory text and it contains no exclusion for automobiles.

However, EPA would not consider ethylene glycol ethers to have been ''sold or made available to consumers for their use'' merely because they have been sold or made available to automobile manufacturers or commercial auto service establishments (for their use in manufacturing or maintaining customers' motor vehicles). By contrast, ethylene glycol ethers that are sold or made available to a consumer, for the consumer's own use in maintaining his or her own motor vehicle (*e.g.,* as part of an aftermarket brake fluid) would fall within the definition of ''consumer product.''

5. *Comment.* One commenter asks that EPA clarify the status of brake fluid contained in a new or used motor vehicle at point of sale.

Response. EPA would not consider an ethylene glycol ether to have been ''sold or made available to consumers for their use,'' merely because it has been made available to motor vehicle manufacturers (as part of a brake fluid mixture for their use in manufacturing customers' motor vehicles) or used car dealers. By contrast, ethylene glycol ethers that are sold or made available to a consumer, for the consumer's own use in maintaining his or her own motor vehicle (*e.g.,* as part of an aftermarket brake fluid) would fall within the definition of ''consumer product.''

6. *Comment.* One commenter requested that EPA clarify how aftermarket components are addressed in this rulemaking.

Response. An aftermarket component is any product offered for sale or installation in or on a motor vehicle after such vehicle has left the manufacturer's production line. Use in an aftermarket component would qualify as use in a consumer product if the chemical substances in an aftermarket component are ''sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation.'' 40 CFR 721.3.

7. *Comment.* Two commenters request that EPA modify the listed ongoing use for monoethylene glycol dimethyl ether (monoglyme) listed in the proposed rule—''any use in a consumer product except in electrolyte solution in sealed lithium batteries'' to ''any use in a consumer product except in electrolyte solutions for primary and secondary sealed lithium batteries''—because this would clarify that the ongoing use of monoglyme is in all primary and secondary batteries.

Response. For purposes of defining the scope of the significant new use, EPA has determined that the use of ethylene glycol ethers in sealed lithium batteries (whether primary or secondary) is not use in a consumer product. An ethylene glycol ether is not being ''sold or made available to consumers for their use,'' 40 CFR 721.3, merely because it is contained in the electrolyte of sealed lithium batteries, which are themselves used by consumers. With this clarification, EPA is finalizing the significant new use for monoethylene glycol dimethyl ether as ''any use in a consumer product.''

XI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA in developing this rule, including the documents referenced within the documents that are in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. US EPA. Glymes; Proposed Significant New Use Rule. 76 FR 40850, July 12, 2011.

2. US EPA. TSCA New Chemicals Program (NCP) Chemical Categories. Last revised August 2010, pages 68–69. *http://www.epa.gov/oppt/newchems/pubs/npcchemicalcategories.pdf.*

3. US EPA. Glycol Ethers Category; Toxic Chemical Release Reporting; Community Right-To-Know. 58 FR 36180, July 6, 1993.

4. US EPA. Glycol Ethers Category; Toxic Chemical Release Reporting; Community Right-To-Know. 59 FR 34386, July 5, 1994.

5. US EPA. Economic Analysis of the Significant New Use Rule for Seven Ethylene Glycol Ethers. Prepared by Nishkam Agarwal and Abt Associates Inc. September 30, 2013.

6. US EPA. Response to Comments on the Proposed Ethylene Glycol Ethers (Glymes) Significant New Use Rule (SNUR). October 30, 2013.

7. Novolyte Technologies. Attachment 1: Categorization of Glymes Based on Toxicology and Structural Characteristics. October 12, 2011, pages 1–21.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This final rule has been designated by OMB as a ''significant regulatory action'' under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993). Accordingly, EPA submitted this action to OMB for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). The information collection activities associated with existing chemical SNURs are already approved by OMB under OMB control number 2070–0038 (EPA ICR No. 1188); and the information collection activities associated with export notifications are already approved by OMB under OMB control number 2070–0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the Agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for an export notifications is less than 1.5 hours per notification. In both cases, burden is estimated to be reduced for submitters who have already registered to use the electronic submission system. Additional burden, estimated to be less than 10 hours, could be incurred where additional record keeping requirements are specified under 40 CFR 721.125(a), (b), and (c).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR, part 9, and included on the related collection instrument, or form, if applicable. EPA is amending the table in 40 CFR part 9 to list this SNUR. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of the PRA and OMB's implementing regulations at 5 CFR part 1320. Since the existing OMB approval was previously subject to public notice and comment before OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend the table is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this SNUR will not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. Since this SNUR will require a person who intends to engage in such activity in the future to first notify EPA by submitting a

SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to engage in such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. During the six year period from 2005–2011, only three submitters self-identified as small in their SNUN submission (Ref. 5). EPA believes the cost of submitting a SNUN is relatively small compared to the cost of developing and marketing a chemical new to a firm and that the requirement to submit a SNUN generally does not have a significant economic impact.

Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of UMRA, 2 U.S.C. 1531–1538.

E. Executive Order 13132: Federalism

This action does not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This rule does not have Tribal implications because it will not have any effect (*i.e.,* there will be no increase or decrease in authority or jurisdiction) on Tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this action is not intended to address environmental health or safety risks for children.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994), because EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action does not affect the level of protection provided to human health or the environment.

XIII. Congressional Review Act (CRA)

Pursuant to the CRA, 5 U.S.C. 801 *et seq.,* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 10, 2014.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following section in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10229	2070–0038
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10229 to subpart E to read as follows:

§ 721.10229 Ethylene glycol ethers.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified in Table 1 of this paragraph are subject to reporting under this section for the significant new uses described in Table 1 of this paragraph.

TABLE 1—ETHYLENE GLYCOL ETHERS AND SIGNIFICANT NEW USES SUBJECT TO REPORTING

Chemical name	Chemical Abstracts index name	Chemical Abstracts Service Registry No. (CASRN)	Significant new use(s)
Monoethylene glycol dimethyl ether or monoglyme.	Ethane, 1,2,-dimethoxy-	110–71–4	Any use in a consumer product.
Diethylene glycol dimethyl ether or diglyme.	Ethane, 1,1′-oxybis[2-methoxy-	111–96–6	Any use in a consumer product.
Diethylene glycol diethyl ether or ethyldiglyme.	Ethane, 1,1′-oxybis[2-ethoxy- ..	112–36–7	Any use in a consumer product except as a component of inks, coatings and adhesives, and as a component of paint/graffiti removers.
Triethylene glycol dimethyl ether or triglyme.	2,5,8,11-Tetraoxadodecane	112–49–2	Any use in a consumer product, except as a solvent in consumer adhesives, in brake fluid, as a component of consumer paint/graffiti removers, and in consumer paints.
Diethylene glycol dibutyl ether or butyldiglyme.	Butane, 1,1′-[oxybis(2,1-ethanediyloxy)]bis-.	112–73–2	Any use in a consumer product except as a solvent in consumer inks, coatings and adhesives, and as a component in soldering compounds.
Ethylene glycol diethyl ether or ethylglyme.	Ethane, 1,2-diethoxy	629–14–1	Any use in a consumer product.
Triethylene glycol dibutyl ether or butyltriglyme.	5,8,11,14-Tetraoxaoctadecane	63512–36–7	Any use.

(2) [Reserved]

(b) [Reserved]

[FR Doc. 2014–29429 Filed 12–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0703; FRL–9919–52–Region 9]

Revisions to the California State Implementation Plan, Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of particulate matter (PM), volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) from wood heating devices and open burning. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on February 17, 2015 without further notice, unless EPA receives adverse comments by January 15, 2015. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0703, by one of the following methods:

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

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

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

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
FRAQMD	3.17 (except E.8 ". . . or other method approved by the Air Pollution Control Officer." and F.2.e).	Wood Heating Devices	10/05/09	07/25/14
FRAQMD	2.0	Open Burning	10/06/08	08/07/14

On September 11, 2014, EPA determined that the submittals for FRAQMD Rules 3.17 and 2.0 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

When Rule 3.17 was amended on October 5, 2009, the resolution did not specifically direct the District to submit it to EPA as a SIP revision. The District adopted Resolution 2014–02 on February 3, 2014 directing staff to send Rule 3.17 to EPA as a SIP revision with minor changes discussed in EPA's technical support document (TSD).

B. Are there other versions of these rules?

There is no previous version of Rule 3.17 in the California SIP.

In the late-1970s and 1980s, Sutter County and Yuba County adopted open burning rules which were approved by the EPA for inclusion into the California SIP for these counties. In March 2004, these rules were locally merged into Rule 2.0, to apply District-wide and amended again locally in October 2008. On August 7, 2014, CARB submitted Rule 2.0 to the EPA for inclusion into the California SIP, specifying this rule would supersede the Sutter County and Yuba County rules currently in the California SIP as listed below.

TABLE 2—RULES TO BE SUPERSEDED [1]

Rule No.	Title	Approval date	Citation
	Sutter County		
2.1	Exceptions to Rule 2.0	04/12/1982	47 FR 15585
2.2	APCO May Issue Burn Permit	04/12/1982	47 FR 15585
2.3	Burning on "No-Burn" Days	04/12/1982	47 FR 15585
2.4	Exception to Rule 2.3	04/12/1982	47 FR 15585
2.5	Permit Regulations	02/03/1987	52 FR 3226
2.6	Burning Hours	04/12/1982	47 FR 15585
2.7	Agricultural Burning Requirement	04/12/1982	47 FR 15585
2.8	Range Improvement and Property Being Developed for Commercial or Residential Purposes	04/12/1982	47 FR 15585
2.82	Open Burning of Waste Wood on Property Where Grown	01/26/1982	47 FR 3550
2.9	Prohibited Burning	04/12/1982	47 FR 15585
2.10	Exceptions	04/12/1982	47 FR 15585
2.11	Fire Prevention	04/12/1982	47 FR 15585
2.12	Designated Agencies	04/12/1982	47/FR 15585
2.14	Reduction of Odorous Matter	09/22/1972	37 FR 19812
2.15	Orchard and Citrus Heaters	04/12/1982	47 FR 15585
2.16	Cost of Putting Out a Fire	04/12/1982	47 FR 15585
	Yuba County		
2.0	Open Fires	04/17/1987	52 FR 12523
2.1	Exceptions to Rule 2.0	04/17/1987	52 FR 12523
2.2	APCO May Issue Burn Permit	01/26/1982	47 FR 3550
2.3	Burning on "No Burn" Days	04/17/1987	52 FR 12523
2.4	Exceptions to Rule 2.3	01/26/1982	47 FR 3550
		04/12/1982	47 FR 15585
2.5	Permit Regulations	04/17/1987	52 FR 12523
2.6	Burning Hours	04/17/1987	52 FR 12523
2.7	Agricultural Burning Requirements	04/17/1987	52 FR 12523
2.8	Forest Management Range Improvement and Property Being Developed for Commercial or Residential Purposes.	01/26/1982	47 FR 3550
2.9	Prohibited Burning	04/17/1987	52 FR 12523
2.10	Exceptions	01/26/1982	47 FR 3550
2.11	Fire Prevention	04/17/1987	52 FR 12523
2.12	Designated Agencies	01/26/1982	47 FR 3550
2.14	Pressure Tank	09/22/1972	37 FR 19812
2.15	Orchard and Citrus Heaters	01/26/1982	47 FR 3550
2.16	Cost of Putting Out a Fire	04/17/1987	52 FR 12523

[1] In some places the rule numbers contain an addition "0" (*e.g.* 2.01, 2.02, etc.). However, the original rules, as approved into the California SIP, were numbered as shown in Table 2.

C. What is the purpose of the submitted rules?

Open burning emits PM, including particulate matter of ten microns or less (PM_{10}) and particulate matter of 2.5 microns or less ($PM_{2.5}$), directly, as well as volatile organic compounds (VOCs) and oxides of nitrogen (NO_X), which are precursors to ozone and $PM_{2.5}$. PM and ozone contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control direct PM, VOC and NO_X emissions.

Rule 3.17 reduces inhalable PM emissions from residential wood heating devices, to achieve the same emission limits as other wood appliances, and to increase public awareness in Yuba and Sutter Counties. The burning of unseasoned wood is prohibited and any new or used wood heating device must be an EPA certified wood heating device.

Rule 2.0 minimizes the impacts of smoke and other air pollutants generated by open burning and assures that it is managed consistent with state and federal law. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM_{10} and $PM_{2.5}$ nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM_{10} and $PM_{2.5}$ nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). In addition, CAA section 172(c)(1) requires nonattainment areas to implement all reasonably available control measures (RACM) as expeditiously as practicable.

FRAQMD is currently designated attainment for PM_{10}. Therefore, Rule 2.0, Open Burning, and Rule 3.17, Wood Heating Devices, are not required to implement RACM or BACM with respect to PM–10.

The Yuba City-Marysville area, which is under FRAQMD jurisdiction, is designated nonattainment for the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). However, on January 10, 2013 (78 FR 2211), EPA issued a determination that the area had attained the 2006 24-hour $PM_{2.5}$ standard based on complete, quality-assured, and certified ambient air monitoring data for the 2009–2011 monitoring period. Under EPA's Clean Data Policy and the regulations that embody it, 40 CFR 51.1004(c) (for $PM_{2.5}$), an EPA rulemaking determination that an area is attaining the relevant standard suspends the area's obligations to submit RACM for as long as the area continues to attain. As a result, we are not evaluating Rule 2.0 for compliance with RACM requirements for $PM_{2.5}$ at this time. In addition, on May 23, 2013, CARB requested that EPA redesignate the Yuba City-Marysville $PM_{2.5}$ nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS. If the Yuba City-Marysville area is redesignated to attainment, RACM requirements for $PM_{2.5}$ will no longer apply.

FRAQMD regulates a portion of the Sacramento Metro ozone nonattainment area, which is classified as Severe-15 under the 1997 and 2008 NAAQS for ozone (40 CFR 81.305). Therefore, FRAQMD must implement RACM for open burning and wood heating devices if those measures will advance attainment of ozone NAAQS, when considered collectively with other reasonable measures. Additional control measures may be required pursuant to CAA § 172(c)(1) if both: (1) Additional measures are reasonably available; and (2) these additional reasonably available measures will advance attainment in the area when considered collectively. EPA acts on the State's RACM demonstrations separately based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment date.

Guidance and policy documents that we use to evaluate enforceability include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

B. Do the rules meet the evaluation criteria?

We believe these rules area consistent with the relevant policy and guidance regarding enforceability, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describes additional rule revisions that we recommend for the next time the local agency modifies Rule 2.0, Opening Burning, and Rule 3.17, Wood Heating Devices.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 15, 2015, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 17, 2015. This will incorporate these rules into the federally enforceable SIP.

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.

III. 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 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 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 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 February 17, 2015. 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 52

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

Dated: October 16, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(447) and (c)(448) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(447) New and amended regulations were submitted on July 25, 2014, by the Governor's designee.

(i) Incorporation by Reference.

(A) Feather River Air Quality Management District.

(*1*) Rule 3.17 (except specific provisions of subsections E.8, F.2 and F.4), ''Wood Heating Devices,'' amended on October 5, 2009.

(448) New and amended regulations were submitted on August 15, 2014, by the Governor's designee.

(i) Incorporation by Reference.

(A) Feather River Air Quality Management District.

(*1*) Rule 2.0, ''Open Burning,'' amended on October 6, 2008.

[FR Doc. 2014–29285 Filed 12–15–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–8361]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a

particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia:				
Clinchport, Town of, Scott County	510143	March 11, 1974, Emerg; September 29, 1978, Reg; January 7, 2015, Susp.	Jan. 7, 2015	Jan. 7, 2015
Duffield, Town of, Scott County	510240	July 23, 1975, Emerg; May 25, 1978, Reg; January 7, 2015, Susp.	do*	Do.
Gate City, Town of, Scott County	510145	May 9, 1975, Emerg; March 15, 1979, Reg; January 7, 2015, Susp.	do	Do.
Scott County, Unincorporated Areas	510142	February 11, 1974, Emerg; November 1, 1979, Reg; January 7, 2015, Susp.	do	Do.
Weber City, Town of, Scott County	510146	March 15, 1974, Emerg; November 15, 1978, Reg; January 7, 2015, Susp.	do	Do.
Region V				
Indiana:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Carthage, Town of, Rush County	180222	May 5, 1975, Emerg; November 2, 1983, Reg; January 7, 2015, Susp.	.....do	Do.
Greene County, Unincorporated Areas	180436	January 31, 2003, Emerg; N/A, Reg; January 7, 2015, Susp.	.....do	Do.
Linton, City of, Greene County	180456	September 30, 1986, Emerg; March 19, 1990, Reg; January 7, 2015, Susp.	.....do	Do.
Rush County, Unincorporated Areas	180421	May 7, 1975, Emerg; December 1, 1982, Reg; January 7, 2015, Susp.	.....do	Do.
Rushville, City of, Rush County	180223	July 2, 1975, Emerg; November 3, 1982, Reg; January 7, 2015, Susp.	.....do	Do.
Worthington, Town of, Greene County	180079	July 29, 1975, Emerg; September 1, 1986, Reg; January 7, 2015, Susp.	.....do	Do.
Region VII				
Iowa:				
Charles City, City of, Floyd County	190128	March 3, 1972, Emerg; February 2, 1977, Reg; January 7, 2015, Susp.	.....do	Do.
Floyd County, Unincorporated Areas	190127	September 18, 1996, Emerg; December 1, 1997, Reg; January 7, 2015, Susp.	.....do	Do.

*-do- =Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: November 20, 2014.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–29416 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective December 16, 2014

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. Directs contracting officers to additional procedures and guidance by adding references to DFARS Procedures, Guidance, and Information PGI 204.7303 at DFARS 204.7302 and 204.7303. The existing DFARS 204.7303 is renumbered as 204.7304.

2. Updates the clause prescription reference at 252.204–7012.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.7302 [Amended]

■ 2. Amend section 204.7302 in paragraph (b)(2) by removing ''assessing contractor compliance'' and adding ''assessing contractor compliance (see PGI 204.7303–3(a)(2))'' in its place.

■ 3. Revise section 204.7303 to read as follows:

204.7303 Procedures.

Follow the procedures relating to safeguarding unclassified controlled technical information at PGI 204.7303.

■ 4. Add section 204.7304 to read as follows:

204.7304 Contract clause.

Use the clause at 252.204–7012, Safeguarding of Unclassified Controlled Technical Information, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7012 [Amended]

■ 5. Amend section 252.204–7012 by removing, in the introductory text, ''As prescribed in 204.7303'' and adding ''As prescribed in 204.7304'' in its place.

[FR Doc. 2014–29079 Filed 12–15–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BC09

Atlantic Highly Migratory Species; 2006 Consolidated Highly Migratory Species Fishery Management Plan; Amendment 7

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

ACTION: Notice of public webinars.

SUMMARY: NMFS will host two public webinars to provide the opportunity to

explain management measures and effective dates in the final rule for Amendment 7 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) (Amendment 7), which published December 2, 2014. The measures in the final rule took action to reduce and account for bluefin dead discards in all categories; optimize fishing opportunities in all categories within the U.S. quota; enhance reporting and monitoring; and adjust other management measures as necessary

DATES: The public webinars will be held on December 18, 2014, and December 22, 2014. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for dates, times, and log-in information for the two public webinars

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic tuna fisheries are managed under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (ATCA), and the authority to issue regulations has been delegated from the Secretary to the Assistant Administrator (AA) for Fisheries, NOAA. Management of these species is described in the 2006 Consolidated HMS FMP and its amendments, which are implemented by regulations at 50 CFR part 635. Copies of the 2006 Consolidated HMS FMP and previous amendments are available from the HMS Management Division Web page at *http://www.nmfs.noaa.gov/sfa/hms/documents/fmp/index.html* or from NMFS on request (see **FOR FURTHER INFORMATION CONTACT**).

On December 2, 2014, NMFS published a final rule on Amendment 7 to the 2006 Consolidated HMS FMP (79 FR 71509) to meet domestic management objectives of the Magnuson-Stevens Act, including preventing overfishing, achieving optimum yield, and minimizing bycatch to the extent practicable, as well as the objectives of ATCA and obligations pursuant to binding recommendations of ICCAT. NMFS is taking the management actions in Amendment 7 primarily to reduce and account for bluefin dead discards in all categories; optimize fishing opportunities in all categories within the U.S. quota; enhance reporting and monitoring; and adjust other management measures as necessary.

Public Webinar Date, Times and Locations

Public webinars will be held to provide the opportunity to explain management measures and effective dates in Amendment 7. Participants may join by phone or online.

The first webinar is on December 18, 2014, from 1:00 to 3:00 p.m. EST. To participate by phone, call number 1–800–779–8718; participant pass code 9570597. Participants can join the webinar online at *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=997375416&t=a;* password NOAA. The second webinar is on December 22, 2014, from 1:00 to 3:00pm EST. To participate by phone, call 1–800–779–8718; participant pass code 9570597. Participants can join the webinar online at *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=993403589&t=a;* password NOAA. To participate in either webinar online, enter your name and email address, and click the ''JOIN'' button. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar. Presentation materials and other supporting information will be posted on the HMS Web site at: *http://www.nmfs.noaa.gov/sfa/hms.*

Public Hearing Code of Conduct

The public is reminded that NMFS expects participants at public webinars to conduct themselves appropriately. At the beginning of each webinar, a representative of NMFS will explain the ground rules (*e.g.,* attendees will be called to ask questions in the order in which they registered to speak; each attendee will have an equal opportunity to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the webinar so that all participating members of the public will be able to speak, if they so choose, regardless of the controversial nature of the subject(s). Participants are expected to respect the ground rules, and those that do not will be asked to leave the webinar.

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

Dated: December 11, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–29438 Filed 12–11–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 241
Tuesday, December 16, 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.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Chapter I

[ACFR–2014–0001]

RIN 3095–AB84

Revision of Regulations

AGENCY: Administrative Committee of the Federal Register.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 28, 2014, the Administrative Committee of the Federal Register (ACFR) published a Notice of Proposed Rulemaking and requested comments through December 29, 2014. The ACFR received a formal request to extend the comment period. The ACFR is, therefore, extending the comment period until January 28, 2015.

DATES: The comment period for the proposed rule published on October 28, 2014 (79 FR 64133), has been extended. The ACFR will accept comments until January 28, 2015.

ADDRESSES: You may submit comments, identified using the subject line of this document, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *Fedreg.legal@nara.gov.* Include the subject line of this document in the subject line of the message.
- Mail: The Office of the Federal Register (F), The National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery/Courier: Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002.

Docket materials are available at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002, 202–741–6030. Please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection of docket materials. The Office of the Federal Register's official hours of business are Monday through Friday, 8:45 a.m. to 5:15 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Miriam Vincent, Acting Director of Legal Affairs and Policy, Office of the Federal Register, at *Fedreg.legal@nara.gov,* or 202–741–6030.

SUPPLEMENTARY INFORMATION: On October 28, 2014 (79 FR 64133), the Administrative Committee of the Federal Register (ACFR) published a Notice of Proposed Rulemaking and requested comments through December 29, 2014. The ACFR proposed to update its regulations for the Federal Register system to clarify certain policies and to reflect current procedures and technological advances. The proposal would also revise the regulatory text to make it more readable and consistent with plain language principles.

The ACFR received a formal request to extend the comment period on the petition for an additional 90 days, making the total time to comment 150 days. After considering the request, the ACFR decided to extend the comment period an additional 30 days, to January 28, 2015. This extension gives commenters additional time to consider the proposal and submit comments on its merits.

By Order of the Committee.

Amy P. Bunk,

Acting Secretary, Administrative Committee of the Federal Register.

[FR Doc. 2014–29415 Filed 12–15–14; 8:45 am]

BILLING CODE 1505–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. #AMS–CN–14–0050]

RIN 0581–AD38

Defining Bona Fide Cotton Spot Markets for the World Cotton Futures Contract

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to amend the regulatory language to designate which bona fide cotton spot markets will be used to determine actual commercial differences in value for various grades above or below the basis grade in the settlement of World cotton futures contracts on the Intercontinental Exchange (ICE). Designating bona fide cotton spot markets for the World cotton futures contract in the regulatory language will allow for AMS to collect spot market price data and publish spot quotes for the settlement of these specific contracts.

DATES: Comments must be received on or before January 16, 2015.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Comments may be submitted by mail to: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Comments should be submitted in triplicate. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments will be available for public inspection during regular business hours at Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to access all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting

flexibility. This action has been designated as a ''non-significant regulatory action'' under § 3(f) of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are approximately sixty cotton merchant organizations of various sizes active in trading U.S. cotton. Many of these cotton merchants are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Small business entities that are merchants in the U.S. cotton industry are defined as having fewer than 100 employees. Amendments to the regulation concerning bona fide cotton spot market designations will not significantly affect small businesses as defined in the RFA because:

(1) How spot prices are estimated are not expected to be impacted by this action;

(2) Business practices of the U.S. cotton industry are not expected to change as a result of this action;

(3) Costs associated with providing market news services will not be significantly changed by this action;

(4) Market news services are paid for by appropriated funds, therefore users are not charged fees for the provision of the services.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009, Cotton Classification and Market News Service.

Background

The Secretary of Agriculture is authorized under the United States Cotton Futures Act (7 U.S.C. 15b) to designate at least five bona fide cotton spot markets from which cotton price information can be collected. A spot market—also called the ''cash market'' or ''physical market''—is a market where commodities are sold on the spot for cash at current market prices and delivered immediately. Designation of these bona fide cotton spot markets and the determination of which counties and states compose each of these spot markets was most recently published in the **Federal Register** on April 30, 2013 (78 FR 25181). For each of these bona fide cotton spot markets, the Cotton and Tobacco Program of the Agricultural Marketing Service collects market price information under the United States Cotton Futures Act (7 U.S.C. 15b), the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)). This price information is then used to calculate price differences for the settlement of cotton futures contracts.

In order to better manage price risk in the global cotton market, the American Cotton Shippers Association (ACSA) and the International Cotton Association (ICA) requested that the Intercontinental Exchange (ICE) offer a World cotton futures contract. In response, ICE announced its intention to begin offering World cotton contracts beginning in the fourth quarter of 2015. To determine actual commercial differences in value for various grades above or below the basis grade in the settlement of this new World cotton futures contract, AMS has been asked by these same stakeholders to collect and publish cotton spot market price information relevant to the World cotton contract. Therefore, AMS proposes to amend § 27.94 to designate the same bona fide cotton spot markets for the World cotton futures contract as have been designated for the No. 2 cotton futures contract.

List of Subjects in 7 CFR Part 27

Commodity futures, cotton.

For the reasons set forth in the preamble, 7 CFR part 27 is proposed to be amended as follows:

PART 27—[Amended]

■ 1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 473b, 7 U.S.C. 1622(g).

■ 2. In § 27.94, paragraph (a) is revised to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

* * * * *

(a) For cotton delivered in settlement of any Cotton No. 2 or World Cotton contract on the Intercontinental Exchange (ICE); the spot markets are Southeastern, North and South Delta, Eastern Texas and Oklahoma, West Texas, and Desert Southwest.

* * * * *

Dated: December 11, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–29456 Filed 12–15–14; 8:45 am]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0703; FRL–9919–51–Region 9]

Revisions to the California State Implementation Plan, Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of particulate matter (PM), volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) from wood heating devices and open burning. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by January 15, 2015.

ADDRESSES: Submit comments, identified by docket number EPA–R09–

OAR–2014–0703, by one of the following methods:

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

2. Email: *steckel.andrew@epa.gov.*

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: (1) FRAQMD Rule 2.0, Open Burning and (2) FRAQMD Rule 3.17, Wood Heating Devices. In the Rules and Regulations section of this **Federal Register,** we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 16, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–29283 Filed 12–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2004–0505; FRL–9920–49–OAR]

RIN 2060–AS42

Completion of Requirement To Promulgate Emissions Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) proposes that it has completed its statutory obligation of the Clean Air Act to promulgate emissions standards for source categories accounting for not less than ninety percent of the aggregated emissions of each of the seven hazardous air pollutants enumerated in section 112(c)(6). This document explains the basis for the agency's conclusion that it completed this obligation in February of 2011, identifies the promulgated standards that collectively satisfy the obligation, and provides the public an opportunity to comment.

DATES: Comments must be received on or before February 17, 2015.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 22, 2014, a public hearing will be held on December 31, 2014 at the U.S. EPA building at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. If you are interested in requesting a public hearing or attending the public hearing, contact Ms. Virginia Hunt at (919) 541–0832 or at *hunt.virginia@epa.gov.* If the EPA holds a public hearing, the EPA will keep the record of the hearing open for 30 days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before January 15, 2015.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2004–0505, by one of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- Email: *a-and-r-docket@epa.gov.* Include EPA–HQ–OAR–2004–0505 in the subject line of the message.
- Fax: Fax your comments to: (202) 566–9744, Attention Docket ID Number EPA–HQ–OAR–2004–0505.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA–HQ–OAR–2004–0505, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for the EPA, 725 17th Street NW., Washington, DC 20503.
- Hand Delivery or Courier: EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2004–0505. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–HQ–OAR–2004–0505. The EPA policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided unless the comment includes information claimed to be confidential

business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket. The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2004–0505. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (*e.g.,* CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. If anyone contacts the EPA requesting a public hearing by December 22, 2014, the public hearing will be held on December 31, 2014 at the EPA's campus at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. The hearing will begin at 10:00 a.m. (Eastern Standard Time) and conclude at 5:00 p.m. (Eastern Standard Time). There will be a lunch break from 12:00 p.m. to 1:00 p.m. Please contact Ms. Virginia Hunt at (919) 541–0832 or at *hunt.virginia@epa.gov* to register to speak at the hearing or to inquire as to whether or not a hearing will be held. The last day to pre-register in advance to speak at the hearing will be December 29, 2014. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not be able to be accommodated. If you require the service of a translator or special accommodations such as audio description, please let us know at the time of registration. If you require an accommodation, we ask that you pre-register for the hearing, as we may not be able to arrange such accommodations without advance notice. The hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because these hearing are being held at U.S. government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact Mr. Nathan Topham, Office of Air Quality Planning and Standards; Sector Policies and Programs Division, Metals and Inorganic Chemicals Group (D243–02); Environmental Protection Agency; Research Triangle Park, NC 27111; telephone number: (919) 541–0483; fax number: (919) 541–3207; email address: *topham.nathan@epa.gov.*

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

I. General Information
A. What should I consider as I prepare my comments to the EPA?
B. Where can I get a copy of this document?
II. Background Information
A. What is the statutory background for this action?
B. What is the litigation history regarding this action?
III. How has the EPA satisfied its obligation under Clean Air Act section 112(c)(6)?
A. How did the EPA determine what regulations would collectively satisfy the 90 percent requirement under section 112(c)(6)?
B. What is the total updated 1990 baseline inventory of source categories that emit section 112(c)(6) HAP and which source categories are determined by the EPA to be necessary to meet the 90 percent requirement under section 112(c)(6)?
C. What changes have been made to the 1990 baseline inventory since the 1998 notice?
D. What are the emissions standards that the EPA has promulgated to meet the 90 percent requirement under section 112(c)(6)?
IV. Surrogate Pollutants Used by the EPA To Ensure That the Section 112(c)(6) Requirements Are Fulfilled
A. Surrogates for POM
B. Surrogates for Hexachlorobenzene (HCB)
V. Conclusion
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

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

I. General Information

A. What should I consider as I prepare my comments to the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD ROM or disk that does not contain CBI, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2004–0505.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the Internet through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/atw/eparules.html.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

A. What is the statutory background for this action?

Section 112(c)(6) of the Clean Air Act requires EPA to take action [1] with respect to seven specific persistent, bioaccumulative hazardous air pollutants (HAP). The section states, ''With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene,[2] mercury, polychlorinated biphenyls,[3] 2,3,7,8-tetrachlorodibenzofurans [4] and 2,3,7,8-tetrachlorodibenzo-p-dioxin,[5] the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section.''

Section 112(c)(6) requires the EPA to ensure that sources responsible for 90 percent of the aggregate emissions of each of the seven specified pollutants are subject to standards under sections (d)(2) or (d)(4) of this section. 42 U.S.C. 7412(c)(6). It requires the EPA to list, by November 15, 1995, source categories assuring that sources responsible for 90 percent of the aggregate emissions are subject to emission standards pursuant to section 112(d)(2) or (4), and to promulgate such standards by November 15, 2000. Under section 112(d)(2), the EPA imposes emission standards that require ''the maximum degree of reduction in emissions of the [HAPs]'' that the EPA concludes are achievable based on a consideration of factors identified in the statute. 42 U.S.C. 7412(d)(2). These are referred to as ''maximum achievable control technology'' or ''MACT.'' Section 112(d)(4) authorizes the EPA to set a health-based standard for a limited set of hazardous air pollutants for which a health threshold has been established, and that standard must provide for ''an ample margin of safety.'' 42 U.S.C. 7412(d)(4).

[1] Section 112(c)(6) also states that ''This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.''

[2] Referred to elsewhere in this document as ''HCB.''

[3] Referred to elsewhere in this document as ''PCBs.''

[4] Referred to elsewhere in this document as ''furan.''

[5] Referred to elsewhere in this document as ''dioxin.'' Note that dioxin and furan emissions are grouped together for the purpose of the 1990 baseline inventory in Table 1 of this preamble.

B. What is the litigation history regarding this action?

In 2001, Sierra Club filed suit in the U.S. District Court for the District of Columbia asserting, among other allegations, that the EPA had failed to promulgate emission standards sufficient to satisfy the 90 percent requirement in CAA section 112(c)(6). *See Sierra Club* v. *Jackson,* No. 01–1537 (D.D.C.). In an order issued March 31, 2006 (''2006 order''), the district court set a deadline (later extended) for the EPA to complete that task. *Sierra Club* v. *Johnson,* 444 F. Supp. 2d 46, 59 (D.D.C. 2006). In the course of that suit, the EPA explained that ''once [it] completes emission standards for the remaining source categories under section 112(c)(6), it intends to issue a notice that explains how it has satisfied the requirements of section 112(c)(6) in terms of issuing emission standards for the source categories that account for the statutory thresholds identified in section 112(c)(6).' '' *Id.*

On March 21, 2011, having promulgated standards sufficient to meet the 90 percent requirement under section 112(c)(6), the EPA published a notice in the **Federal Register** (FR) announcing it had met its statutory obligation. *Completion of Requirement to Promulgate Emission Standards,* 76 FR 15308 (March 21, 2011) (''90 Percent Notice'' or ''Notice''). The March 21, 2011, notice contained the EPA Administrator's conclusion that ''EPA has completed sufficient standards to meet the 90-percent requirement under . . . section 112(c)(6).'' 76 FR 15308. The Administrator based that determination on a technical memorandum ''document[ing] the actions the Agency has taken to meet these requirements.'' *Id.* The technical memorandum titled *Emission Standards for Meeting the Ninety Percent Requirement under Section 112(c)(6) of the Clean Air Act,* which is available in the docket for this action (Docket ID: EPA–HQ–OAR–2004–0505), included an updated 1990 baseline inventory, an updated list of the source categories necessary to meet the 90 percent requirement, and a list of emission standards the EPA has promulgated for these source categories.

In 2011, Sierra Club filed suit in U.S. Court of Appeals for the District of Columbia (D.C. Circuit) challenging the March 21, 2011, notice. The D.C. Circuit vacated the notice, holding that the notice was a legislative rulemaking that must be issued through a notice and comment rulemaking. *Sierra Club* v. *EPA,* 699 F.3d 530, 535 (D.C. Cir. 2012).

In 2013, Sierra Club filed a motion with the district court, seeking enforcement of the 2006 order. In an opinion dated July 25, 2014, the district court held that the EPA failed to comply with the 2006 order and directed the EPA to initiate a process of notice and comment rulemaking before the agency reissues, reconsiders or modifies its determination regarding section 112(c)(6). Therefore, the EPA is issuing this proposed rule as ordered by the district court and providing an opportunity for comment on the EPA's proposed determination that it has fulfilled the requirements of section 112(c)(6).

III. How has the EPA satisfied its obligation under clean air act section 112(c)(6)?

A. How did the EPA determine what regulations would collectively satisfy the 90 percent requirement under section 112(c)(6)?

In 1998, the EPA published an initial list of source categories and subcategories in the **Federal Register** that the agency at that time believed it needed to regulate under section 112(c)(6) to satisfy that provision's 90 percent requirement. 63 FR 17838, April 10, 1998. The EPA first developed a 1990 baseline inventory [6] which identified all known sources of the section 112(c)(6) HAPs at the time and included estimated national annual emissions for each source category as of 1990. 63 FR 17847, Table 1. The EPA then identified source categories considered subject to standards under 112(d)(2) and (d)(4), as well as those subject to section 129 standards.[7] 63 FR 17842. See also Table 2 of the 1998 Notice, 63 FR 17849. The EPA found that a majority of the source categories needed to achieve the 90 percent requirement were already subject to either section 112(d)(2) or (d)(4) standards or section 129 standards or listed for such regulation. 63 FR 17839. Based on the 1990 baseline emissions inventory, the EPA concluded that the 90 percent requirement had been met for five of seven 112(c)(6) HAP but that additional regulations were needed for polycyclic organic matter (POM) and alkylated lead to attain the 90 percent level for those two HAP. 63 FR 17846. Therefore, the EPA added two more categories to the initial section 112(c)(6) source category list. See Table 2, 63 FR 17850. However, the EPA also noted in that notice that ''many uncertainties remain concerning the accuracy of its identification of source categories and estimates of emissions.'' 63 FR 17845. The EPA forewarned that ''Given the uncertainties, the EPA recognizes that the list may be subject to change.'' 63 FR 17846. For example, in that notice, the EPA explained:

> As the Agency proceeds to develop appropriate emission standards, it will necessarily develop improved source category-specific information, which may affect the estimates of total emissions, the percentage of emissions subject to standards, allocation of emissions within a source category to major and area sources, and source categories for which standards need to be developed. As it proceeds to develop these standards and associated information, EPA intends to further evaluate this information against its obligation to assure that sources accounting for not less than 90 percent of emissions are subject to standards.
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> 63 FR 17845

In particular, the agency explained that, for regulations not yet developed, it would subject area source categories with significant emissions to the regulations required by section 7412(c)(6), but that ''[s]ome area categories may be negligible contributors to the 90 percent goal, and as such pose unwarranted burdens for subjecting to [MACT] standards.'' *Id.*

Subsequent to the publication of the initial section 112(c)(6) list, as the EPA continued evaluating source categories and developing standards, the EPA has updated the listing several times. The EPA issued the updates either as a separate notice or in conjunction with development of specific standards. The updates are as follows:

- *Section 112(c)(6) Source Category List: Tire Production,* 65 FR 47725, August 3, 2000. This action removed tire production manufacturing from the list.
- *National Emission Standards for Hazardous Air Pollutants; Revision of Source Category List for Standards Under Section 112(c)(6) and 112(k) of the Clean Air Act,* 67 FR 68124, November 8, 2002. This action added gasoline distribution Stage I to the list and removed area sources in the following categories: Asphalt hot mix production, fabricated metal products, paint and allied products, paper coated and laminated, packaging and transportation equipment manufacturing.
- *Revision of Source Category Lists for Standards Under Sections 112(c) and 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace; Proposed Rule,* 72 FR 53814, September 20, 2007. This action added the electric arc furnace (EAF) steelmaking facility area source category to the list.
- *National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities; Final Rule,* 73 FR 1916, January 10, 2008. This action finalized the decision not to regulate gasoline distribution area sources under section 112(c)(6).
- *National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category; and Addition to Source Category List for Standards; Final Rule,* 76 FR 9450, February 17, 2011. This action added the Gold Mine Ore Processing and Production source category to the list.
- *National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers; Final Rule,* 76 FR 15554, March 21, 2011. This action explained that area source wood and oil-fired boilers were not needed to meet the 90 percent requirement for POM and mercury under section 112(c)(6).
- *Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units; Final Rule,* 76 FR 15372, March 21, 2011. This action explained that sewage sludge incineration units were needed to meet the 90 percent requirement for mercury under section 112(c)(6). See 76 FR 15375.

[6] The EPA chose 1990 as the baseline year because that was when the section 112(c)(6) requirements came into force as part of the CAA Amendments of 1990. See 62 FR 33627.

[7] The EPA considers standards promulgated under section 129 as substantively equivalent to those promulgated under section 112(c)(6). 63 FR 17846.

• *Emission Standards for Meeting the Ninety Percent Requirement under Section 112(c)(6) of the Clean Air Act,* Docket ID: EPA–HQ–OAR–2004–0505–0006 (February 18, 2011). This technical memorandum documented the actions the EPA had taken to meet the 90 percent requirement under section 112(c)(6) and included an updated 1990 baseline inventory, an updated list of the source categories necessary to meet the 90 percent requirement, and a list of emission standards the EPA promulgated for these source categories.[8]

[8] As explained earlier in this document, this technical memorandum was the basis of the EPA's conclusion in a March 21, 2011, FR notice that it has completed its obligation under section 112(c)(6). See *Completion of Requirement to Promulgate Emission Standards,* 76 FR 15308, March 21, 2011. The 2011 notice was later vacated by the U.S. Court of Appeals for the District of Columbia, which held that the notice must be issued through a notice and comment rulemaking. *Sierra Club* v. *EPA,* 699 F.3d 530, 535 (D.C. Cir. 2012).

B. What is the total updated 1990 baseline inventory of source categories that emit 112(c)(6) HAP and which source categories are determined by the EPA to be necessary to meet the 90 percent requirement under section 112(c)(6)?

1. Updated 1990 Baseline Emissions Inventory for Section 112(c)(6) HAPs

Table 1 presents the updated 1990 baseline emission inventory for the section 112(c)(6) pollutants based on the history, actions, updates and documentation explained elsewhere in this document. Table 1 includes the updated estimated emissions (in tons per year or pounds per year) for year 1990 for each of the section 112(c)(6) pollutants for each source category and the percent of the total emissions for 1990. Table 1 also identifies the categories that the EPA is counting towards meeting the EPA's 90 percent requirement for each section 112(c)(6) HAP. Table 1 also identifies remaining source categories (which added together account for 10 percent or less of the total inventory) that emit section 112(c)(6) HAP. By February 21, 2011, the EPA had promulgated either MACT or equivalent standards under section 129 for each of the source categories identified in the top portion of Table 1 (*i.e.,* the portion labeled ''Categories Subject to Regulation'').

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Table 1. Updated 1990 Baseline Emission Inventory for the 112(c)(6) Pollutants

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Categories Subject to Regulation Counted Towards the 90 Percent Requirement												
Aerospace Industry (Surface Coating)	1640.0	20.6%			0.10	0.1%						
Agricultural Chemicals (major)	8.31	0.1%										
Alkylated Lead Production (major)											18.29	99.7%
Asphalt Roofing Production (major)	37.20	0.5%										
Blast Furnace and Steel Mills	499.00	6.3%										
Commercial/Institutional Coal Combustion (major sources)	34.50	0.4%										
Commercial/Institutional Coal Combustion (area sources)	138.00	1.7%										
Industrial Coal Combustion (major sources)	110.00	1.4%										
Industrial Coal Combustion (area sources)	47.10	0.6%										
Commercial/Institutional Oil Combustion (major sources)	10.70	0.1%										
Industrial Oil Combustion (major sources)	35.60	0.4%										
Commercial/Institutional Wood/Wood Residue Combustion (major sources)	7.16	0.1%										

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Industrial Wood/Wood Residue Combustion (major sources)	55.00	0.7%	0.08	0.8%								
Industrial/Commercial/Institutional Coal Boilers (major sources)					2.05	1.3%						
Industrial/Commercial/Institutional Coal Boilers (area sources)					1.06	0.6%						
Industrial/Commercial/Institutional Oil Boilers (major sources)					1.13	0.7%						
Industrial/Commercial/Institutional Wood/Wood Residue Boilers (major sources)					0.48	0.3%						
Chemical Manufacturing: Cyclic Crude and Intermediate Production (major)	101.00	1.3%										
Chlorinated Solvents Production									0.58	55.9%		
Coke Ovens: By-product Recovery Plants	77.80	1.0%										
Coke Ovens: Charging, Topside & Door Leaks	539.00	6.8%										
Coke Ovens: Pushing, Quenching & Battery Stacks	517.00	6.5%										
Commercial Printing, Gravure (major)	28.70	0.4%										

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Electric Arc Furnaces (EAF) (area) - Secondary Steel					7.80	4.8%						
Fabricated Metal Products (major)	107.00	1.3%										
Gasoline Distribution - stage 1 (major)	0.19	0.0%										
Gold Mine Ore Processing and Production (area)					4.40	2.7%						
Hazardous Waste Incineration	0.18	0.0%	0.07	0.6%	3.20	2.0%	0.03	17.7 %				
Industrial Organic Chemicals Manufacturing (major)	223.00	2.8%										
Industrial Stationary IC Engines - Diesel (major)	3.51	0.0%										
Industrial Stationary IC Engines - Natural Gas (major)	28.60	0.4%										
Lightweight Aggregate Kilns			0.01	0.1%	0.31	0.2%						
Medical Waste Incineration	0.80	0.0%	1.32	12.3 %	50.00	30.6 %	0.04	25.7 %				
Mercury Cell Chlor-Alkali Plants (major and area)					9.80	6.0%						
Municipal Waste Combustion	0.10	0.0%	7.30	68.2 %	55.00	33.7 %	0.08	51.1 %				
Naphthalene Production (major)	45.20	0.6%										
Paints and Allied Products (major)	23.70	0.3%										
Paper Coated and Laminated,	54.30	0.7%										

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Packaging (major)												
Pesticides Manufacture									0.46	44.1 %		
Petroleum Refining: All Processes (major)	1,070.00	13.5%										
Phthalic Anhydride Production (major)	18.30	0.2%										
Plastics Material and Resins Manufacturing (major)	8.29	0.1%										
Portland Cement Manufacture: Hazardous Waste Kilns	12.60	0.2%	0.95	8.9%	2.75	1.7%						
Portland Cement Manufacture: Non-Hazardous Waste Kilns	47.90	0.6%	0.09	0.8%	5.64	3.5%						
Primary Aluminum Production	662.00	8.3%										
Pulp and Paper - Kraft Recovery Furnaces	649.00	8.2%	0.00	0.0%	1.90	1.2%						
Pulp and Paper - Lime Kilns	183.00	2.3%										
Secondary Aluminum Smelting			0.38	3.5%								
Secondary Lead Smelting	70.00	0.9%	0.01	0.1%								
Sewage Sludge Incineration (area)					1.80	1.1%						
Ship Building and Repair (Surface Coating)	13.60	0.2%										
Transportation Equipment Manufacturing (SICs Combined)	38.70	0.5%										
Wood Household		0.1%										

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Furniture Manufacturing (major)	11.10											
Total Emissions and Percentage Contributions From Above	7,157.13	90.0%	10.20	95.3%	147.42	90.3%	0.15	94.5%	1.04	100.0%	18.29	99.7%
Categories Not Needed to Reach 90 Percent Requirement												
Abrasive Grain (Media) Manufacturing	24.80	0.3%										
Adhesives and Sealants (SICs Combined)	4.18	0.1%										
Agricultural Chemicals (area)	0.72	0.0%										
Asphalt Hot-mix Production (area)												
Asphalt Roofing Production (area)	6.37	0.1%										
Battery Production					0.02	0.0%						
Blast Furnace and Steel Mills					3.10	1.9%						
Industrial/Commercial/Institutional Oil Boilers (area sources)					0.49	0.3%						
Industrial/Commercial/Institutional Wood/Wood Residue Boilers (area sources)					0.12	0.1%						
Industrial Waste Oil Combustion (major and area sources)	7.82	0.1%										
Commercial/Institutional Oil Combustion (area sources)	42.60	0.5%										
Industrial Oil Combustion (area sources)	15.30	0.2%										

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Commercial/Institutional Wood/Wood Residue Combustion (area sources)	28.60	0.4%										
Industrial Wood/Wood Residue Combustion (area sources)	13.80	0.2%	0.02	0.2%								
Commercial/Institutional Natural Gas Combustion (major sources)	0.01	0.0%										
Industrial Natural Gas Combustion (major sources)	0.01	0.0%										
Commercial/Institutional Natural Gas Combustion	0.02	0.0%										
Industrial Natural Gas Combustion (area sources)	0.01	0.0%										
Carbamate Insecticides Production	4.08	0.1%										
Carbon Black Production	4.33	0.1%			0.25	0.2%						
Carbon Reactivation Furnaces			0.00	0.0%								
Chemical Manufacturing: Cyclic Crude and Intermediate Production (area)	3.20	0.0%										
Chemical Preparations (SICs Combined)	6.79	0.1%										
Mercury Cell Chlor-Alkali Plants (major and area)	4.52	0.1%										
Chromium Plating:						0.0%						

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Chromic Anodizing					0.00							
Clay Refractories (area)	0.50	0.0%										
Cleaning Products (SICs Combined)	1.38	0.0%										
Commercial Printing, Gravure (area)	0.19	0.0%										
Commercial Printing, Letterpress and Screen	10.40	0.1%										
Crematories (area)	0.00	0.0%	0.00	0.0%	0.60	0.4%						
Custom Compound Purchased Resins Manufacture					0.13	0.1%						
Dental Preparation and Use					0.80	0.5%						
Drum and Barrel Reclamation	0.00	0.0%	0.00	0.0%								
Electronic and Other Electric Equipment Manufacturing (SICs Combined)	30.50	0.4%			0.88	0.5%						
Fabricated Rubber Products	148.00	1.9%										
Ferroalloy Manufacture (area)	0.56	0.0%										
Fiber Cans, Drums, and Similar Products	5.06	0.1%										
Fluorescent Lamp Recycling					0.01	0.0%						
Food Products (SICs Combined)	3.54	0.0%										
Gasoline Distribution (Aviation)											0.02	0.1%
Gasoline Distribution -	1.73	0.0%									0.0	0.1%

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Stage 1 (area)											3	
Gasoline Distribution - Stage 1 (major)											0.00	0.0%
General Laboratory Activities					0.80	0.5%						
Geothermal Power					1.30	0.8%						
Gum and Wood Chemical	0.50	0.0%										
Industrial Gases Manufacturing	9.43	0.1%										
Industrial Inorganic Chemicals Manufacturing	15.70	0.2%			1.00	0.6%						
Industrial Machinery and Electrical Equipment (SICs Combined)	2.77	0.0%										
Industrial Organic Chemicals Manufacturing (area)	4.03	0.1%										
Industrial Organic Chemicals Manufacturing (major)					0.02	0.0%						
Industrial Stationary IC Engines - Diesel (area)	1.51	0.0%										
Industrial Stationary IC Engines - Natural Gas (area)	19.00	0.2%			0.00	0.0%						
Industrial Stationary IC Engines - Natural Gas (major)					0.00	0.0%						
Industrial Turbines - Diesel fired	0.02	0.0%			0.09	0.1%						

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Industrial Turbines : Natural Gas fired	13.80	0.2%			0.00	0.0%						
Inorganic Pigments Manufacturing					0.01	0.0%						
Instrument Manufacturing					0.50	0.3%						
Iron and Steel Foundries	0.19	0.0%	0.02	0.2%								
Lamp Breakage					1.50	0.9%						
Landfill (Gas) Flares	0.45	0.0%										
Lime Manufacturing					0.70	0.4%						
Lubricating Oils and Grease	0.06	0.0%										
Metal Household Furniture	0.00	0.0%										
Miscellaneous Manufacturing	6.58	0.1%										
Miscellaneous Plastics Products	5.76	0.1%										
Naphthalene - Miscellaneous Uses	1.25	0.0%										
Naphthalene Production (area)	19.40	0.2%										
Naphthalene Sulfonates Production	6.53	0.1%										
Nonmetallic Mineral Products	0.00	0.0%			0.01	0.0%						
Office Furniture, Except Wood Manufacturing	6.45	0.1%										
Other Biological Incineration			0.32	3.0%			0.00	1.6%				
Other Miscellaneous (SICs Combined)	1.45	0.0%			0.25	0.2%						
Other Secondary Nonferrous Metals Recovery					0.25	0.2%						

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
Other Structural Clay Products	0.56	0.0%			0.11	0.1%						
Paints and Allied Products (major)					0.01	0.0%						
Partitions and Fixtures	4.35	0.1%										
Petroleum Refining: All Processes (area)	26.87	0.3%										
Petroleum Refining: All Processes (major)					0.04	0.0%						
Pharmaceutical Preparations and Manufacturing (SICs Combined)	0.77	0.0%										
Phthalic Anhydride Production (area)	7.86	0.1%										
Plastic Foam Products Manufacturing	109.56	1.4%										
Plastics Material and Resins Manufacturing (area)	0.26	0.0%			0.00	0.0%						
Porcelain Electrical Supplies	2.08	0.0%										
Primary Copper Production					0.74	0.5%						
Primary Lead Smelting					1.30	0.8%						
Primary Metal Products Manufacturing (SICs Combined)	26.90	0.3%										
Public Building and Related Furniture	11.60	0.1%										
Pulp and Paper - Sulfite Recovery Furnaces	6.17	0.1%										
Scrap or Waste Tire Incineration	0.01	0.0%	0.00	0.0%			0.01	3.3%				

Source Category	16-PAH Emissions (tpy)	16-PAH (% of Emissions)	Dioxin and Furan Emissions (lbs per year)	Dioxin (% of Emissions)	Mercury (tpy)	Mercury (% of Emissions)	PCB Emissions (tpy)	PCB (% of Emissions)	HCB Emissions (tpy)	HCB (% of Emissions)	Alkylated Lead (tpy)	Alkylated Lead (% of Emissions)
(major)												
Secondary Copper Smelting			0.01	0.1%								
Secondary Lead Smelting					0.01	0.0%						
Secondary Mercury Production					0.75	0.5%						
Sewage Sludge Incineration (area)	1.64	0.0%	0.05	0.5%			0.00	0.7%				
Ship Building and Repair - subject to regulation (area)	0.81	0.0%										
Surface Active Agents Manufacturing	7.41	0.1%										
Textiles (SICs Combined)	9.68	0.1%										
Upstream Gasoline Distribution (Aviation) (major and area)											0.01	0.0%
Wood Household Furniture Manufacturing (area)	0.24	0.0%										
Wood Treatment/Wood Preserving	90.40	1.1%	0.08	0.7%								
Total Emissions and Percentage Contributions From Above	7948.2	100%	10.71	100%	163.2	100%	0.16	100%	1.04	100%	18.34	100%

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C. What changes have been made to the 1990 baseline inventory since the 1998 Notice?

The EPA made a number of updates to the section 112(c)(6) 1990 baseline inventory and source category list as a result of new information and further evaluation of the source categories during standard development. The EPA had explained some of those actions in prior notices, which the EPA has identified in section III.A above. With respect to updates that were not provided in prior notices, they are presented below.

1. Gasoline Distribution (Aviation)

In the 1998 Notice, the EPA identified the Gasoline Distribution (Aviation) source category as necessary for achieving the 90 percent requirement for alkylated lead. Aircraft use two general types of fuel: Aviation gasoline (avgas) and jet fuel. Avgas, which is used for powering piston engine aircraft, is the source of alkylated lead emissions in the Gasoline Distribution (Aviation) source category. Alkylated lead is added to avgas to reduce engine knock and help lubricate internal engine components. Research is underway to find alternatives to lead for use in avgas.

While characterizing evaporative emissions of alkylated lead compounds from aviation gasoline, we became aware of another stationary source of other alkylated lead compounds emissions in 1990. Specifically, we identified a U.S. facility that was manufacturing alkylated lead compounds in 1990. Through discussions with industry representatives and technical evaluation

of the information supplied, we were able to quantify an estimate of the alkylated lead emissions for the Alkylated Lead Production source category for the year 1990 and are adding this estimate to the section 112(c)(6) baseline inventory. Based on information provided in the Toxics Release Inventory (TRI), we identified reported annual emissions of total lead compounds from this single alkylated lead production facility of 22 tons in 1990. The TRI did not provide the amount of alkylated lead in the total. Further analysis of the emission inventory submitted to the state resulted in an estimate of actual alkylated lead emissions from this facility of approximately 18 tons in 1990. As shown in Table 1, the Alkylated Lead Production source category (which as explained above consists solely of this one facility) contributed 99.7 percent of the alkylated lead compounds emissions in the updated 1990 baseline inventory.[9] Alkylated lead compounds production is regulated by the Hazardous Organic NESHAP [10] (HON).[11] The EPA has therefore, through the HON, met the 90 percent requirement under section 112(c)(6) for alkylated lead. In light of the above, we conclude that we do not need Gasoline Distribution (Aviation) to meet the 90 percent requirement for alkylated lead under section 112(c)(6).

The 1990 baseline alkylated lead emissions from gasoline distribution source categories have also been updated since the 1998 Notice. A review of the 1990 alkylated lead emissions from the distribution of leaded gasoline revealed that the inventory data were based on inaccurate estimates of equipment component counts and leak emission factors.[12] Analysis showed that when the corrected equipment leak data are used, the total estimated 1990 alkylated lead emissions from leaded gasoline distribution would be less than one half of the estimate in the 1990 inventory published in the 1998 Notice. See 71 FR 66067. We have therefore revised the alkylated lead baseline emission estimates for all gasoline distribution source categories, including Gasoline Distribution (Aviation), accordingly.

2. Gasoline Distribution Stage I (Area Sources)

Alkylated lead emissions from this source category have been updated since the 1998 Notice in a manner consistent with Gasoline Distribution (Aviation), discussed in the previous section. A review of the 1990 alkylated lead emissions from the distribution of leaded gasoline revealed that the inventory data were based on inaccurate estimates of equipment component counts and leak emission factors.[13] Analysis showed that when the corrected equipment leak data are used, the total estimated 1990 alkylated lead emissions from leaded gasoline distribution would be less than one half of the estimate in the 1990 inventory published in the 1998 Notice. We have revised the alkylated lead baseline emission estimates for all gasoline distribution source categories, including Gasoline Distribution Stage I (Area Source), accordingly.

3. Upstream Gasoline Distribution (Aviation)

Upstream Gasoline Distribution (Aviation) is being added to the section 112(c)(6) inventory for emissions of alkylated lead. At the time we issued the 1998 Notice, we believed that avgas was transported directly from refineries to the airport terminals. Thus, we did not estimate alkylated lead emissions from the distribution of avgas ''upstream'' of the airport facilities in the section 112(c)(6) emission inventory published in 1998. However, we have since learned that avgas is distributed through bulk terminals located at refineries, as well as through some stand-alone bulk terminals, prior to being delivered to airport facilities. We have therefore updated the 112(c)(6) baseline inventory for alkylated lead to include estimated 1990-base year alkylated lead emissions from the distribution of avgas ''upstream'' of the airport facilities. The alkylated lead emissions for this category are presented in Table 1.

4. Use of 16–PAH Inventory for Polycyclic Organic Matter

In the Clean Air Act, POM is defined as ''organic compounds with more than one benzene ring and which have a boiling point greater than or equal to 100 °C''. As shown in the 1998 Notice, we created three inventories (7–PAH,[14] 16–PAH,[15] and extractable organic matter (EOM) [16]) to represent baseline POM emissions. Of the three POM baseline inventories, the 16–PAH inventory is the most robust, with data on 16–PAH emissions for 94 categories. In contrast, we have very limited data on EOM, with data on EOM emissions for only 18 source categories.[17] The lack of available data on EOM emissions creates a distorted picture of the relative contributions of source categories for which there are available EOM data. The lack of source categories making up the total EOM inventory makes the relative contribution of the few categories that do have data unrealistically inflated. We therefore cannot say with confidence that, by using the baseline inventory for EOM, we are capturing 90 percent of the baseline POM emissions, as required by section 112(c)(6). Similarly, we have data on 7–PAH for 32 categories, considerably fewer than the 94 categories for which we have 16–PAH data. Therefore, the 16–PAH inventory allows for the most accurate representation of the universe of categories that emit POM. Because the use of all three baseline inventories is neither required nor necessary, and in light of the concern described above with the EOM and 7–PAH inventories,

[9] In addition to adding the baseline emissions for the Alkylated Lead Production source category, the other updates to the section 112(c)(6) baseline inventory for alkylated lead include addition of the Upstream Gasoline Distribution (Aviation) (see section III.C.3) and revised baseline emission estimates for Gasoline Distribution (Stage I) (see sections III.A and III.C.2) and Gasoline Distribution (Aviation) discussed in this section.

[10] Also known as National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks. 59 FR 19402.

[11] We further note that U.S. production of alkylated lead compounds ended in 1993.

[12] In the section 112(c)(6) inventory published in 1998, the baseline alkylated lead emissions estimate for the Gasoline Distribution (Aviation) source category was based on emission factors from a 1994 proposed major source standard for Gasoline Distribution (Stage I) (*Background Information Document (BID) Volume I, Proposed National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution (Stage I),* EPA–453/R–94–002a). Based on analysis of public comments on that proposed rule, EPA applied updated equipment leak emission factors for the promulgated major source standard for Gasoline Distribution (Stage I) (*BID Volume II, Promulgated National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution (Stage I),* EPA–453/R–94–002b). The updated emission factors were also applied in the promulgation of area source standards for Gasoline Distribution (Stage I) (Area Source).

[13] See footnote 4.

[14] Composed of benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, and indeno(1,2,3-cd)pyrene.

[15] Composed of benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, acenaphthene, acenaphthylene, anthracene, benzo(ghi)perylene, fluoranthene, fluorene, naphthalene, phenanthrene, and pyrene.

[16] Any methylene chloride extractable organic matter, measured gravimetrically.

[17] When justifying its use in the 1998 inventory background document, we said that the EPA would undertake an effort to develop a robust inventory for EOM sources to feed into the CAA section 112(c)(6) inventory. Had more data been gathered, perhaps EOM would have proved to be a more useful indicator of POM. However, the anticipated inventory was not developed.

we decided to use only the 16–PAH baseline inventory for determining the 90 percent threshold for POM under section 112(c)(6).

5. Updates to the 1990 Baseline Emission Inventory for Mercury

As mentioned above, the EPA added 1990 mercury emission estimates for EAF and Gold Mine Ore Production and Processing area source categories into the section 112(c)(6) total baseline inventory for mercury. In addition, the EPA discovered that the 112(c)(6) inventory for mercury published in the 1998 **Federal Register** notice included inaccurate estimates for a number of source categories and updated these estimates. These updates are discussed below.

a. *Industrial/Commercial Boilers.* The estimate of mercury emissions from Industrial/Commercial Boilers that was presented in the 1998 **Federal Register** notice for section 112(c)(6) was 28.9 tons of mercury for year 1990. There were a number of technical problems with this estimate, especially for coal-fired boilers. One significant issue is that the activity level (2,820 trillion British thermal units (BTUs)) used in the calculations in the section 112(c)(6) inventory background document was incorrect. This activity level represented all coal use in industry, including boilers and other uses (*e.g.,* coke ovens). The activity level used should have been for boilers only. A more accurate activity level for 1990 would be about 1,633 trillion BTUs.[18]

Additionally, we also believe that the emissions factors used to calculate the original estimate from coal-fired boilers were inaccurate. The emission factors were based on an assumption of zero control and did not account for coal washing. At that time, the EPA stated ''because mercury reductions from coal washing and any other reductions that may occur across existing control devices are not accounted for, the emissions may be overestimated.'' [19] Applying emission factors used in the development of the major and area source Boiler NESHAP [20] to the revised activity level for coal-fired boilers yields estimates of roughly 2 tons and 1 ton of mercury emissions for major and area sources, respectively. Emissions factors for oil-fired boilers (6.8 lb/trillion BTUs and 7.2 lb/trillion BTUs) were also too high. Converting these emission factors into mercury concentrations in oil results in an estimate of about 100 parts per billion (ppb) mercury concentrations in oil. However, based on data gathered and analyzed for the 1998 EPA Utility Air Toxics Report to Congress, the average mercury concentration in oil is about 10 ppb. Moreover, the emissions factor for residual oil-fired boilers (of 0.4 lbs per trillion BTUs) provided in the 1997 EPA Locating and Estimating document [21] is about 10 times lower than the emission factors used for the original section 112(c)(6) estimates for oil-fired boilers. The information discussed above suggests that the emissions estimates for mercury provided in the 1998 Notice for oil-fired boilers were overestimated by an order of magnitude. A more accurate estimate of total mercury emissions from oil-fired boilers (major and area sources) is about 0.6 tons for 1990, as reflected in Table 1.

b. *Aerospace Industries (Surface Coating).* Aerospace Industries (Surface Coating) had an estimate of 4 tons of mercury emissions in the 112(c)(6) inventory published in the 1998 Notice. Another inventory developed for year 1990 for other regulatory purposes (the 112(k) 1990 inventory) had a much lower estimate for this category (0.0026 tpy). Because of the large discrepancy, we reviewed the 112(c)(6) inventory data for this category, including reviewing the original emissions factor and calculations. We also consulted with an industry representative. The estimate in the 1998 Notice was based on an extremely conservative assumption. According to a 1997 docket memo,[22] the emissions estimate was derived from reviewing Material Safety Data Sheets (MSDS) from five of the major coating suppliers. One of these MSDS showed trace amounts of mercury in only two products (0.00002 percent by weight), which was rounded up five orders of magnitude to 1 percent in the inventory analysis.

In light of the above, we concluded that this original estimate of mercury emissions (or 4 tons) from Aerospace Industries was substantially overestimated. Therefore, we searched and gathered information to calculate a more reasonable estimate. We obtained information on sales of aerospace coatings and mercuric mildewcides in 1990. Using these data, potential mercury emissions for 1990 were calculated, as described in the following paragraphs.

In 1990, aerospace coatings accounted for 0.1 percent of the volume of coatings produced. In 1990, approximately 400,000 pounds of mercuric mildewcide/fungicide (as mercury) were sold into the entire coatings market (this amount substantially decreased after 1990 to nearly zero). Assuming these products were used throughout the industry, we calculate that 400 lbs (*i.e.,* 0.1% * 400,000 pounds = 400 lbs) of mercuric mildewcides/fungicides were used in aerospace coatings in 1990. Thus, the maximum emissions would have been 400 lbs of mercury assuming 100 percent of mercury in coatings were released. However, mildewcides/fungicides are intended to retard the growth of fungi on applied surfaces over time. They are intended to remain to a large extent in the coating substrate. We believe that at least 50 percent of the mildewcide/fungicide remains in the substrate. Therefore, mercury releases from aerospace coatings are estimated to be up to 200 lbs in 1990. Given this information and calculations, we estimate that this source category emitted about 0.1 tons of mercury in 1990.

c. *Industrial Turbines and Internal Combustion Engines.* In the 1998 Notice, the mercury emissions from industrial turbines and internal combustion engines fired by natural gas were 1.6 tons and 4.7 tons, respectively. The emissions factors used in those original estimates for these two source categories were 6.63×10^{-6} lb/MMBTU and 1.14×10^{-5} lb/MMBTU, respectively. However, available data [23] indicate that the level of mercury in natural gas is very low and, therefore, mercury emissions from this category are very low. Based on this information, we updated the 1990 mercury emissions for this category. As shown in Table 1, the revised mercury emissions estimates

[18] Estimate based on 1990 historical statistics from the Department of Energy's Energy Information Administration Web site of coal use in industrial/commercial sectors (not including coke plants).

[19] *Mercury Study Report to Congress.* December 1997. Available at *http://www.epa.gov/hg/report.htm.*

[20] The revised emission factor for major source boilers for this inventory was generated using a weighted average of the six emission factors for various types of control used in the February 21, 2011, Boiler NESHAP. The revised emission factor for area sources was the uncontrolled group in the Boiler NESHAP because these sources were largely uncontrolled with respect to mercury emissions in 1990.

[21] US EPA (1997): Locating and Estimating Air Emissions From Sources of Mercury and Mercury Compounds. Report EPA–454/R–97–012, (NTIS PB98–117054), Office of Air Quality Planning and Standards, Research Triangle Park, NC. Available at: *http://www.epa.gov/ttn/chief/le/index.html.*

[22] Memo from Dave Reeves, Midwest Research Institute to Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards regarding HAP emission estimates for aerospace surface coating. November 17, 1997.

[23] *Mercury Study Report to Congress.* December 1997. Available at *http://www.epa.gov/hg/report.htm.* Locating and Estimating Air Emissions from Sources of Mercury and Mercury Compounds. December 1997. Available at *http://www.epa.gov/ttnchie1/le/.*

from these two source categories are 0.001 and 0.009 tons, respectively.

d. *Human Crematories.* The mercury emissions from human crematories in the 1998 baseline 112(c)(6) inventory (0.000377 tons per year) were revised based on data used to calculate mercury emissions in the 112(k) area source inventory, which was developed subsequent to the 1998 Notice. This emission factor led to a revised estimate of 0.6 tons of mercury in 1990 emitted from human crematories.

e. *Blast Furnaces and Steel Mills.* Mercury emissions from blast furnaces and steel mills were reported as 0.25 tons in the 1998 baseline 112(c)(6) inventory. Further review of this estimate led to revision of the mercury estimate from blast furnaces and steel mills as well as electric arc furnace steelmaking (as discussed in section III.C above). Based on a revised emission factor [24] from scrap steel, the revised estimated mercury emissions are 3.1 tons for blast furnaces and steel mills.

f. *Portland Cement.* We believe the estimate for mercury emissions from Portland Cement Manufacturing non-hazardous waste kilns (4.13 tons) in the 1998 Notice was slightly underestimated. We used the mercury emissions and installed clinker capacity from 2006 [25] to generate a ratio of mercury emissions per ton of clinker and applied this ratio to the 1990 clinker capacity. The mercury emissions in 1990 were revised upward to 5.64 tons for this category.

D. What are the emissions standards that the EPA has promulgated to meet the 90 percent requirement under section 112(c)(6)?

The EPA has promulgated emissions standards sufficient to satisfy the 112(c)(6) requirement that sources accounting for not less than 90 percent of the aggregate emissions of seven specific HAP are subject to standards under 112(d)(2) or 112(d)(4). Table 2 provides a list of the emissions standards, including the name of each of the source categories, name of the emissions standards that apply, and the rule citation for each (*i.e.,* CFR Part and Subpart). Table 2 provides cross-references for the 112(c)(6) category names with the associated emission standards (which may reference a source category by a name different from that used in the section 112(c)(6) baseline inventory and source category listing). Table 3 provides a list of the specific regulations (including CFR citations, Part and Subpart) that address 90 percent or more of each of the 112(c)(6) HAPs.

TABLE 2—CATEGORIES OF SOURCES WHOSE EMISSIONS OF 112(c)(6) HAPS ARE SUBJECT TO 112(d)(2), 112(d)(4), OR 129 STANDARDS [26]

Section 112(c)(6) category name	Emission standard name(s)	CFR part and subpart
Aerospace Industry (Surface Coating)	National Emission Standards for Hazardous Air Pollutants for the Aerospace Industries.	40 CFR part 63 subpart GG.
Alkylated Lead Production	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.
Asphalt Roofing Production	National Emission Standards for Hazardous Air Pollutants for the Asphalt Roofing Manufacturing.	40 CFR part 63 subpart LLLLL.
Blast Furnace and Steel Mills	National Emission Standards for Hazardous Air Pollutants for the Integrated Iron and Steel Manufacture.	40 CFR part 63 subpart FFFFF.
Chemical Manufacturing: Cyclic Crude and Intermediate Production.	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.
Chlorinated Solvents Production	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.

[24] *Analysis of Mercury Data for Electric Arc Furnace Steelmaking.* Prepared for U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Program Division, Metals and Minerals Group. July 18, 2007. Docket Item 0070 in EPA Docket Number OAR–2004–0083.

[25] Estimate of 2006 installed clinker capacity: 94,690,000 metric tons clinker per year. Estimate of 2006 mercury emissions from major and area sources: 7.27 tons. Estimate of 1990 installed clinker capacity: 73,518,000 metric tons clinker per year.

[26] Because many of these standards were developed to meet the EPA's obligation under CAA section 112(d)(1), the EPA had not focused on what was needed to meet its section 112(c)(6) obligation at the time of these rulemakings. Therefore, the EPA did not reference section 112(c)(6) in the preambles to some rules.

TABLE 2—CATEGORIES OF SOURCES WHOSE EMISSIONS OF 112(c)(6) HAPS ARE SUBJECT TO 112(d)(2), 112(d)(4), OR 129 STANDARDS [26]—Continued

Section 112(c)(6) category name	Emission standard name(s)	CFR part and subpart
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.
Coke Ovens: By-Product Recovery Plants	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants.	40 CFR part 61 subpart L.
Coke Ovens: Charging, Topside & Door Leaks	National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries.	40 CFR part 63 subpart L.
	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.	40 CFR part 63 subpart CCCCC.
Coke Ovens: Pushing, Quenching & Battery Stacks.	National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries.	40 CFR part 63 subpart L.
	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.	40 CFR part 63 subpart CCCCC.
Commercial Printing: Gravure	National Emission Standards for Hazardous Air Pollutants: Printing and Publishing Industry.	40 CFR part 63 subpart KK.
Electric Arc Furnaces (EAF)—Secondary Steel	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.	40 CFR part 63 subpart YYYYY.
Fabricated Metal Products	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products.	40 CFR part 63 subpart MMMM.
Gasoline Distribution (Stage 1)	National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).	40 CFR part 63 subpart R.
Gold Mines	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.	40 CFR part 63 subpart EEEEEEE.
Hazardous Waste Incineration	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.	40 CFR part 63 subpart EEE.
Industrial Organic Chemicals Manufacturing	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.
Industrial Stationary IC Engines—Diesel	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines.	40 CFR part 63 subpart ZZZZ.
Industrial Stationary IC Engines—Natural Gas	National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines.	40 CFR part 63 subpart ZZZZ.
Industrial/Commercial/Institutional Boilers	National Emission Standards for Hazardous Air Pollutants for Industrial/Commercial/Institutional Boilers and Process Heaters.	40 CFR part 63 subpart DDDDD.
	National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers.	40 CFR part 63 subpart JJJJJJ.
Lightweight Aggregate Kilns	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.	40 CFR part 63 subpart EEE.
Medical Waste Incineration	Standards of Performance and Emissions Guidelines for Hospitals/Medical/Infectious Waste Incinerators.	40 CFR part 60 subpart Ce, Ec; & 40 CFR part 62 subpart HHH.
Mercury Cell Chlor Alkali Production	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor Alkali Plants.	40 CFR part 63 subpart IIIII.
Municipal Waste Combustion	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustion Units.	40 CFR part 60 subpart Cb, Ea, Eb; & 40 CFR part 62 subpart FFF.
	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units.	40 CFR part 60 subpart AAAA, BBBB & 40 CFR part 62 subpart JJJ.

TABLE 2—CATEGORIES OF SOURCES WHOSE EMISSIONS OF 112(c)(6) HAPS ARE SUBJECT TO 112(d)(2), 112(d)(4), OR 129 STANDARDS [26]—Continued

Section 112(c)(6) category name	Emission standard name(s)	CFR part and subpart
Naphthalene Production	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.
Paints and Allied Products (Major)	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.	40 CFR part 63 subpart FFFF.
Paper Coated and Laminated, Packaging	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.	40 CFR part 63 subpart JJJJ.
Pesticides Manufacture & Agricultural Chemicals.	National Emission Standards for Hazardous Air Pollutants: Pesticide Active Ingredient Production.	40 CFR part 63 subpart HHH.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.
Petroleum Refining: All Processes	National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.	40 CFR part 63 subpart CC.
	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.	40 CFR part 63 subpart UUU.
Phthalic Anhydride Production	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	40 CFR part 63 subpart F.
	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	40 CFR part 63 subpart G.
	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.	40 CFR part 63 subpart H.
	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	40 CFR part 63 subpart I.
Plastics Material and Resins Manufacturing	National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.	40 CFR part 63 subpart JJJ.
Portland Cement Manufacture: Hazardous Waste Kilns.	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.	40 CFR part 63 subpart EEE.
Portland Cement Manufacture: Non-Hazardous Waste Kilns.	National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry.	40 CFR part 63 subpart LLL.
Primary Aluminum Production	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.	40 CFR part 63 subpart LL.
Pulp and Paper—Kraft Recovery Furnaces	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	40 CFR part 63 subpart MM.
Pulp and Paper—Lime Kilns	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.	40 CFR part 63 subpart MM.
Secondary Aluminum Smelting	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.	40 CFR part 63 subpart RRR.
Secondary Lead Smelting	National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting.	40 CFR part 63 subpart X.
Sewage Sludge Incineration	Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units.	40 CFR part 60 subparts LLLL, MMMM.
Ship Building and Repair (Surface Coating)	National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating).	40 CFR part 63 subpart II.
Transportation Equipment Manufacturing (SICs Combined).	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light Duty Trucks (Surface Coating of Plastic Parts and Products).	40 CFR part 63 subpart PPPP.

TABLE 2—CATEGORIES OF SOURCES WHOSE EMISSIONS OF 112(c)(6) HAPS ARE SUBJECT TO 112(d)(2), 112(d)(4), OR 129 STANDARDS [26]—Continued

Section 112(c)(6) category name	Emission standard name(s)	CFR part and subpart
Wood Household Furniture Manufacturing	National Emission Standards for Hazardous Air Pollutants from Wood Furniture Manufacturing Operations.	40 CFR part 63 subpart JJ.

TABLE 3—FEDERAL REGULATIONS [27] ENSURING THAT SOURCES ACCOUNTING FOR AT LEAST 90 PERCENT OF THE AGGREGATE EMISSIONS OF EACH 112(c)(6) POLLUTANT ARE SUBJECT TO 112(d)(2) OR 112(d)(4) STANDARDS

112(c)(6) pollutant	Percent of aggregate emissions subject to regulation	Code of Federal Regulations part and subparts that include 112(d)(2), 112 (d)(4), or 129 standards
Alkylated Lead Compounds	99.7	40 CFR part 63 subparts F, G, H, I.
Polycyclic Organic Matter (Using 16–PAH Inventory)	90.0	40 CFR part 63 subparts F, G, H, I, L, R, X, CC, GG, II, JJ, KK, LL, MM, EEE, JJJ, LLL, MMM, UUU, FFFF, JJJJ, MMMM, PPPP, ZZZZ, CCCCC, DDDDD, FFFFF, LLLLL, JJJJJJ; 40 CFR part 60 subpart Cb, Ce, Ea, Eb, AAAA, BBBB; 40 CFR part 62 subpart FFF, HHH, JJJ.
Hexachlorobenzene	100	40 CFR part 63 subparts F, G, H, I, HHH.
Mercury Compounds	90.3	40 CFR part 63 subparts GG, LL, MM, EEE, LLL, DDDDD, IIIII, YYYYY, JJJJJJ, EEEEEEE; 40 CFR part 60 subpart Cb, Ce, Ea, Eb, AAAA, BBBB, LLLL, MMMM; 40 CFR part 62 subpart FFF, HHH, JJJ.
Polychlorinated Biphenyls	94.5	40 CFR part 63 subparts EEE; 40 CFR part 60 subpart Cb, Ce, Ea, Eb, AAAA, BBBB; 40 CFR part 62 subpart FFF, HHH, JJJ.
2,3,7,8-Tetrachlorodibenzofurans (furan) and 2,3,7,8-Tetrachlorodibenzo-p-dioxin (dioxin).	95.3	40 CFR part 63 subparts X, LL, EEE, LLL, MMM, DDDDD, JJJJJJ; 40 CFR part 60 subpart Cb, Ce, Ea, Eb, AAAA, BBBB; 40 CFR part 62 subpart FFF, HHH, JJJ.

IV. Surrogate Pollutants Used by the EPA To Ensure That the Section 112(c)(6) Requirements are Fulfilled

The EPA has promulgated regulations, ''assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4).'' 42 U.S.C. 7412(c)(6). The EPA set the required standards under two approaches. In the course of promulgating MACT standards, the EPA has often established emission standards that directly regulated section 112(c)(6) HAP and explained that these standards contribute to fulfilling the agency's obligations under section 112(c)(6). For example, the NESHAPs for Gold Mine Ore Processing and Production (76 FR 9450), Portland Cement Manufacturing Industry (75 FR 54970), Municipal Waste Combustion Units (70 FR 75348), Hospitals/Medical/Infectious Waste Incinerators (74 FR 51368), Hazardous Waste Combustors (70 FR 59402), Sewage Sludge Incineration Units (76 FR 15372), and several other source categories, include emissions limits that specifically address mercury emissions. Likewise, the EPA has promulgated many regulations that specifically address dioxins and furans to achieve the 90 percent requirement (such as NESHAPs for Municipal Waste Combustion Units (70 FR 75348), Hospitals/Medical/Infectious Waste Incinerators (74 FR 51368), Hazardous Waste Combustors (70 FR 59402), and Secondary Aluminum Production (64 FR 6946)). The public was provided an opportunity to comment on the above mentioned agency statements regarding its section 112(c)(6) obligations, and comments on those statements were addressed in those rulemakings.

In some regulations, the EPA subjected section 112(c)(6) HAP to MACT level of control by setting emission limits for another HAP or compound,[28] which serves as a surrogate for the targeted section 112(c)(6) HAP. It is well established that ''EPA may use a surrogate [substance] to regulate hazardous pollutants if it is 'reasonable' to do so'' *Nat'l Lime Ass'n* v. *EPA,* 233 F.3d 625, 637 (D.C. Cir. 2000) (upholding EPA decision to regulate particulate matter (''PM'') emissions as a surrogate for regulation of HAP metal emissions from cement kilns, based on evidence that ''HAP metals are invariably present in cement kiln PM,'' *id.* at 639); see also, *e.g., Sierra Club* v. *EPA,* 353 F.3d 976, 982–85 (D.C. Cir. 2004) (upholding the EPA's use of particulate matter as a surrogate for HAP emissions in setting MACT standards for primary copper smelters); *Bluewater Network* v. *EPA,* 370 F.3d 1, 18 (D.C. Cir. 2004) (upholding the EPA's regulation of HC emissions as a surrogate for regulation of fine PM emissions). See also *Kennecott Greens Creek Min. Co.* v. *Mine Safety and Health Admin.,* 476 F.3d 946, 954–55 (D.C. Cir. 2007) (''there is nothing inherently problematic with an regulating one substance as a surrogate for another substance.''). Some examples of the EPA's regulation of section 112(c)(6) HAP through surrogates include:

- National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (64 FR 52828 and 70 FR 59402). POM and PCBs were regulated through surrogate substances (total hydrocarbons and carbon monoxide (CO)). See 64 FR 52847 and 70 FR 59432 for discussions of these surrogates.
- Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste

[27] An expanded version of this table, including Federal Register citations, is available in the docket for this action.

[28] Some standards used non-HAP compounds (or groups of compounds) as surrogates for HAP.

Incinerators (74 FR 51368). POM and PCBs were regulated through surrogate substances (CO and dioxins/furans). See 74 FR 51390, 51399 for discussion of these surrogates.

- Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors (70 FR 75348). POM and PCBs were regulated through surrogate substances (CO and dioxins/furans). See 70 FR 75356 for discussion of these surrogates.
- National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (76 FR 15608). POM was regulated using CO as a surrogate. See 76 FR 15653 for discussion of CO as a surrogate for POM.

In all of the above mentioned standards, which were promulgated through notice and comment rulemaking, the EPA had explained its section 112(c)(6) obligations and, to the extent surrogates were used, the surrogacy relationship to the relevant section 112(c)(6) HAP. We are not requesting comments on these prior rulemakings.

However, in some standards promulgated prior to the EPA's development of the baseline emissions inventory for section 112(c)(6) and publication of the initial listing of categories in the 1998 Notice, the EPA did not always explain the surrogacy relationship. As explained below, the surrogates chosen for section 112(c)(6) HAP in such rulemakings are reasonable and ensure that the section 112(c)(6) HAP are ''subject to standards'' for the purposes of section 112(c)(6).

A. Surrogates for POM

1. Coke Oven Emissions as a Surrogate for POM

The EPA promulgated emissions standards under section 112(d)(2) for coke oven emissions, which include emissions of POM and other HAP from coke oven batteries. See 40 CFR part 63, Subpart L and Subpart CCCCC. POM is a constituent of coke oven emissions. See 57 FR 57535 and 69 FR 48341. The EPA considered POM together with other HAP that compose coke oven emissions because of the difficulty of measuring specific pollutants, including POM, and because of the fugitive and variable nature of the emissions. See 66 FR 33533 (discussing the impracticality of measuring specific HAP compounds emitted from coke ovens). Coke oven batteries are not enclosed sources. Consequently, coke oven emissions are released from many different pieces of coke oven equipment through leaks that can change in size and location over time. The MACT standards for Coke Oven Batteries were designed to minimize coke oven emissions which include POM as well as other HAP (see 69 FR 48341). Because of the technological difficulty of collecting and measuring coke oven emission from coke oven batteries, the EPA concluded that a mass emission limitation for coke ovens was not technologically or economically practicable. See 66 FR 33533. Instead, the EPA found limits based on visible emissions to be the only feasible means of regulating coke oven emissions (including POM) from coke oven batteries at the time the MACT standards were developed. *Id.* Such limits are expressed in terms of the maximum allowable seconds of visible emissions per charge for the charging system and the maximum allowable percent of doors, lids, and offtake systems from which visible emissions may occur at any one time. For existing by-product batteries, the final rule limits visible emissions from coke oven doors, topside port lids, and offtake systems. Accordingly, the MACT standard requires a visible emission method to measure coke oven emissions and comply with the standard.

Under the standard, POM is controlled at the same time as other HAP. Observation and engineering theory indicate that a reduction in visible coke oven emissions results in a reduction in mass emissions. For the reasons stated above, the EPA has assured that coke oven emissions (which include POM) from coke oven batteries are subject to MACT level of control, as required under section 112(c)(6).

2. Total HAP, Total Organic Carbon, Total Hydrocarbons, and Total Organic HAP

Many of the source categories counted towards our 90 percent requirement for POM are surface coating operations. In the NESHAP for Aerospace Industries [29] (60 FR 45956), the EPA set MACT standards for total HAP in surface coatings, which serves as a surrogate for POM in coatings. Polycyclic organic matter is a constituent of total HAP. The Aerospace Industries NESHAP regulates POM through limitation of total HAP content in coatings applied (*i.e.,* grams of HAP per kilogram of coating used). HAP are effectively controlled by reducing those HAP in surface coatings, which prevents them from being subsequently emitted.

A number of other categories subject to MACT standards for the purposes of section 112(c)(6) are also surface coating processes (fabricated metal products manufacturing at major sources (NESHAP for Surface Coating of Miscellaneous Metal Parts and Products, 69 FR 130), coated and laminated paper and packages at major sources (NESHAP for Paper and Other Web Coating, 67 FR 72330), paint and allied products (NESHAP for Miscellaneous Organic Chemical Manufacturing, 68 FR 63852), wood household furniture manufacturing at major sources (NESHAP for Wood Furniture Manufacturing Operations, 60 FR 62930), transportation equipment manufacturing (NESHAP for Surface Coating of Automobiles and Light-Duty Trucks, 69 FR 22602), ship building and repair (NESHAP for Shipbuilding and Ship Repair (Surface Coating) Operations, 60 FR 64330), and commercial printing: Gravure at major sources (NESHAP for Printing and Publishing Industry, 67 FR 27132)). These source categories address POM (and other organic HAP emissions) by regulating total organic HAP in coatings and limiting emissions of those HAP from coatings to levels equivalent to those of the best performing coatings (*i.e.,* coatings with the lowest levels of total organic HAP) through MACT analyses, as required under section 112(d)(2). Total organic HAP serves as a surrogate for POM and other organic HAP compounds present in coatings in these NESHAPS. These NESHAPs employed identical rationales when limiting HAP in coatings and there was no technical basis in any of the above mentioned surface coating NESHAPs to differentiate between POM and other organic HAP present in coatings.

Some source categories that are subject to MACT standards for the purposes of section 112(c)(6) employ combustion processes that control organic HAP. In numerous rulemakings, the EPA has set standards for combustion processes based on the long term performance of a combustion device under conditions typically encountered in industrial applications.[30] In these NESHAPs, the EPA determined that limiting outlet concentrations of organic compounds to 20 parts per million by volume (ppmv) or reducing total organic compound emissions by 98 percent was MACT for combustion processes. Some standards counted towards meeting our 90 percent

[29] Note that the NESHAP for this source category also includes standards for volatile organic compounds. The POM emitted from this source category is naphthalene, which is considered a volatile organic compound.

[30] See memorandum titled ''Thermal Incinerators and Flares,'' available in the docket to this action.

requirement for the purposes of section 112(c)(6) set such MACT standards.

Two section 112(c)(6) categories (pulp and paper—kraft recovery furnaces and pulp and paper—lime kilns) are combustion processes that are subject to the NESHAPs for Pulp and Paper Production (63 FR 18504 and 66 FR 3180). Kraft recovery furnaces and lime kilns at pulp and paper mills are combustion processes that are used to recover chemicals in the paper production process as well as to control HAP emissions from other sources at pulp and paper mills. The EPA determined that a properly operated kraft recovery furnace or lime kiln would reduce total HAP exiting the combustion process by at least 98 percent (or to a level below 20 parts per million) and established this standard as a surrogate for organic HAP, including POM. See 63 FR 18508. This level of control was determined to be MACT for these sources and the two equivalent forms of the standard (98 percent reduction of total HAP or a numerical emission limit of 20 ppmv of total HAP) ensure that organic HAP are effectively controlled. *Id.* Effective operation of the kraft recovery furnace or lime kiln will indiscriminately destroy POM along with other HAP present in the exhaust gases and is considered MACT.[31] There was no technical basis for differentiating between POM and other organic HAP emitted from these chemical recovery processes since they are present together and controlled using the same combustion process.

Other section 112(c)(6) source categories subject to standards for total organic HAP as a surrogate for POM include industrial organic chemicals manufacturing and naphthalene production. Total organic HAP is used as a surrogate for regulating POM emissions from industrial organic chemicals manufacturing and naphthalene production, both of which are subject to the HON NESHAP.[32] POM is indiscriminately and effectively controlled through the same combustion processes as other organic HAP regulated by the HON. In the HON, the EPA grouped all of the organic HAP (including POM) together and looked at the total organic HAP for purposes of applying controls and projecting emissions reductions (except for wastewater where HAP-specific standards were promulgated). For the industrial organic chemicals manufacturing and naphthalene production source categories, this was appropriate because emissions of POM come from the same types of activities and operations as emissions of the other HAP and the MACT combustion controls used to limit POM have essentially the same performance regardless of the individual compound. In other words, the EPA had no technical reason to make distinctions among various organic HAP except in the case of wastewater, for which the EPA promulgated organic HAP-specific standards. As a result, the control measures required by the HON reduce emissions of POM and other organic HAP from process vents, storage vessels, transfer racks, and equipment leaks. Emissions of POM generated from these source categories are not controlled differently than emissions of other organic HAP. By contrast, the EPA did not group all of the organic HAP together for wastewater because different HAP compounds have different physical properties when mixed with water. The analyses for wastewater streams were conducted on an organic HAP-specific basis, and the EPA promulgated organic HAP-specific standards for wastewater streams, including a specific standard for naphthalene, based upon physical property information for each HAP. See 40 CFR part 63, subpart G, app. (table 9) listing the control requirements for each, including a 99 percent control requirement for naphthalene. The control requirement for naphthalene is designed to reduce emissions of POM from wastewater streams generated during industrial inorganic chemicals manufacturing and naphthalene production.

The section 112(c)(6) category ''petroleum refining—all processes'' is subject to two NESHAPs for petroleum refineries (NESHAP for Petroleum Refineries, 60 FR 43244, and NESHAP for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, 67 FR 17762). In the NESHAPs for petroleum refineries, the EPA set MACT standards for total organic carbon,[33] which serves as a surrogate for POM emitted from combustion processes. POM is a constituent of total organic carbon and is controlled through the same combustion process as other organic carbon-containing compounds emitted by this source category. Sources subject to standards for total organic carbon in the NESHAP for petroleum refineries subject organic compounds, including POM, to MACT levels of control through combustion. POM, as well as other organic compounds, are indiscriminately and effectively destroyed through combustion and there is no technical reason to distinguish between POM and other organic compounds controlled through this process. The MACT standard for total organic carbon in the NESHAP is 98 percent destruction of organic compounds including POM or an outlet concentration of 20 ppmv. See 63 FR 48896.

The NESHAP for Asphalt Roofing Manufacturing (68 FR 24561) regulates POM and other organic HAP through total hydrocarbons (THC) as a surrogate. As explained in the final rule, the combustion controls required in the NESHAP effectively control hydrocarbons, including POM and other organic HAP. Emissions of POM and other organic HAP are controlled equally with other hydrocarbons and there was no technical reasons to differentiate between POM and other hydrocarbons when establishing the MACT standard. See 68 FR 24566.

3. Carbon Monoxide

In the NESHAP for Reciprocating Internal Combustion Engines (RICE) (69 FR 33474), the EPA established emission standards for carbon monoxide as a surrogate for emissions of organic hazardous air pollutants (including POM). POM and carbon monoxide are both emitted due to incomplete combustion. Low levels of carbon monoxide are an indicator of good combustion practices. POM is a by-product of combustion and good combustion practices minimize emissions of POM. While the relationship between CO and POM was not discussed in the context of section 112(c)(6) in the RICE rulemaking, it was discussed in a number of other rules such as the Major Source Boilers NESHAP (76 FR 15608) and the section 129 standard for Hospital/Medical/Infectious Waste Incinerators (74 FR 51368). This approach is based on the demonstrated relationship between the combustion process and these pollutants. Combustion, such as occurs in the units subject to the RICE NESHAP and other rules, is the process of breaking apart the organic (*i.e.,* carbon-containing) molecules in the fuel and converting them to carbon dioxide. Perfectly complete combustion would

[31] Use of a properly operated thermal oxidizer (operated at a minimum temperature of 1,600 °F and a minimum residence time of 0.75 seconds) was also an equivalent control option.

[32] Plastics material and resins manufacturing at major sources are subject to the NESHAP for Group IV Polymers and Resins, 61 FR 48208. The requirements in this NESHAP mirror those found in the HON. POM is regulated through the same surrogate as the HON, as described in this section. This category references the HON in its regulatory requirements and the rationale for surrogates chosen is identical to the HON.

[33] This NESHAP also allows sources to measure total organic HAP for compliance purposes.

convert all of the carbon in the fuel to carbon dioxide. Completeness of the combustion process is dependent on several variables, including temperature, amount of oxygen, and mixing of the fuel and oxygen. Incomplete combustion results in production of partly broken down and partially oxidized organic compounds, including CO and POM. Because the conversion of CO to carbon dioxide is a difficult step, and the last one in the destruction of hydrocarbons, including organic HAPs, it is a good indicator of the completeness of combustion. Thus, decreasing levels of CO are correlated with increasing destruction of organic compounds until a threshold is reached where, because combustion of CO is the last step in combustion, the combustion of organic materials is essentially complete. CO concentration is thus an indicator of the level of destruction of organic compounds, and accordingly can be used as a surrogate to control the emissions of organic HAPs.

B. Surrogates for Hexachlorobenzene (HCB)

As shown in the updated 1990 baseline inventory (Table 1), two source categories (pesticides manufacturing and chlorinated solvents production) composed 100 percent of the 1990 baseline HCB emissions.

Chlorinated solvents production is subject to the HON. 59 FR 19402. In the HON NESHAP, EPA subject HCB emissions from chlorinated solvent production to MACT level of control by regulating total organic HAP, which serves as a surrogate for HCB. Consistent with section 112(c)(6), the EPA considered HCB emissions in developing the HON. HCB was identified as an organic HAP that would be subject to the HON. See 59 FR 19463 (Table 1 to subpart F). The EPA assumed that production of HCB would result in air emissions from gaseous discharges from reactors and other equipment as well as losses of process fluids from equipment seal failures, emissions from product storage and transfer, and emissions from wastewater containing HCB. The estimates of emissions from these processes were derived from information on the processes, physical property information for HCB, and well-established engineering calculations for different types of releases.

In most of the analyses, the EPA grouped all of the organic HAP (including HCB) together and looked at the total organic HAP for purposes of applying controls and projecting emissions reductions. For the chlorinated solvents production source category, this was appropriate because emissions of HCB come from the same types of activities and operations as emissions of the other HAP and because most of the control technologies required under section 112(d) were expected to have essentially the same performance regardless of the individual compound. In other words, the EPA had no technical reason to make distinctions among various organic HAP except in the case of wastewater, for which the EPA promulgated organic HAP-specific standards (discussed below). As a result, the control measures required by the HON reduce emissions of HCB and other organic HAP from process vents, storage vessels, transfer racks, and equipment leaks. Emissions of HCB during its production are not controlled differently than emissions of other organic HAP.

By contrast, the EPA did not group all of the organic HAP together for wastewater because different HAP compounds have different physical properties when mixed with water. The analyses for wastewater streams were conducted on an organic HAP-specific basis, and the EPA promulgated organic HAP-specific standards for wastewater streams, including a specific standard for HCB, based upon physical property information for each HAP. See 40 CFR part 63, subpart G, Appendix (Table 9, listing the removal requirements for each, including a 99 percent removal requirement for HCB). The removal requirement for HCB is designed to reduce emissions of HCB from wastewater streams generated during HCB production.

The section 112(c)(6) source categories, ''pesticide manufacture and agricultural chemicals'' are subject to the NESHAP for Pesticide Active Ingredient Production (64 FR 33550). In this NESHAP, the EPA set MACT standards for total organic carbon and total organic HAP, which serve as surrogates for hexachlorobenzene. 64 FR 33549 (June 23, 1999). HCB is a constituent of each surrogate and the same logic for the choice of surrogate discussed for the HON above applies here (*i.e.,* the combustion processes that serve as the basis for MACT indiscriminately and effectively control HCB along with other organic HAP compounds). Other sources, such as wastewater, were required to comply with organic HAP-specific standards found in the HON, which specifically lists HCB as one of the HAP emitted from the source category and provided HCB-specific control requirements. See 59 FR 19463, table listing HCB as one of the section 112 organic HAP subject to the rule.

V. Conclusion

In light of the information presented in this document, the EPA proposes that we have fulfilled the 90 percent requirements for all section 112(c)(6) HAP. The EPA proposes that sources accounting for at least 90 percent of the aggregate emissions of each section 112(c)(6) HAP are ''subject to standards'' for the purposes of section 112(c)(6).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the OMB for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not alter any of the standards discussed in this document.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications, as specified in Executive Order 13175. This proposed action does not materially alter the stringency of any standards discussed in this document. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed in this action present a disproportionate risk to children. A health and risk assessment was not performed for this action because it does not alter any of the regulations discussed in this action.

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

This action is not a subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low income or indigenous populations because it does not affect the level of protection provided to human health or the environment. An environmental justice evaluation was not performed for this action because it does not alter any of the regulations discussed in this action.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous materials, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 10, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–29482 Filed 12–15–14; 8:45 am]

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AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 702, 703, 704, 705, 706, 707, 709, 711, 713, 714, 715, 716, 717, 719, 722, 725, 726, 727, 728, 731, 732, 733, 736, 742, 745, 747, 750, and 752

RIN 0412–AA76

Incorporate Various Administrative Changes and Internal Policies Into the USAID Acquisition Regulation (AIDAR)

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: This proposed rule is a companion document to the U.S. Agency for International Development (USAID) direct final rule (published in the ''Rules and Regulations'' section of this **Federal Register**), amending the Agency for International Development Acquisition Regulation (AIDAR). AIDAR is revised to maintain consistency with the Federal Acquisition Regulation (FAR) and conform the regulation to previously implemented policy. Obsolete material is removed and numerous clarifications and editorial amendments are made to better specify the regulation.

DATES: Submit comments on or before January 15, 2015.

ADDRESSES: Address all comments concerning this document to Marcelle Wijesinghe, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867, SA–44, Washington, DC 20523–2052. Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: Submit electronic comments to both *mwijesinghe@usaid.gov* and *lbond@usaid.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

Mail: USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867, SA–44, Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–567–4753 or Email: *lbond@usaid.gov.*

SUPPLEMENTARY INFORMATION: USAID is publishing the amendment as a direct final rule because the Agency views it as a conforming and administrative amendment and does not anticipate any adverse comments. A detailed discussion of the rule is set forth in the preamble of the direct final rule.

If no adverse comments are received in response to the direct final rule, no further action will be taken related to this proposed rule.

If adverse comments are received on the direct final rule, USAID will publish a timely partial withdrawal in the **Federal Register** informing the public what sections of the direct final rule will not take effect. Any portions of the final rule for which no adverse or critical comments are received will become final after the designated period.

All public comments received on the direct final rule will be addressed in a subsequent final rule based on this proposed rule. USAID will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the Addresses section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Comments submitted by email must be included in the text of the email or attached as a PDF file. Please avoid using special characters and any form of encryption. Please note, however, that because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal.

All comments will be made available for public review without change, including any personal information provided, from three workdays after receipt to finalization of action at *http://www.regulations.gov.* Do not submit information that you consider to be Confidential Business Information (CBI), Personally Identifiable Information or any information that is otherwise protected from disclosure by statute.

As noted above, in the ''Rules and Regulations'' section of this **Federal Register,** USAID is publishing a direct final rule with the same title that announces revisions to the Agency for International Development Acquisition Regulation (AIDAR). For detailed information on these revisions, please see the direct final rule.

Dated: October 7, 2014.

Aman S. Djahanbani,

Chief Acquisition Officer.

[FR Doc. 2014–26050 Filed 12–15–14; 8:45 am]

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Application of Laboratories, Transactions, and Exemptions.

OMB Control Number: 0583–0082.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et. seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are wholesome, not adulterated, and properly labeled and packaged. FSIS requires FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records. FSIS will collect information using several FSIS forms.

Need and Use of the Information: FSIS will collect information to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories accord with FSIS regulations. In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from FSIS's inspection do not commingle inspected and non-inspected meat and poultry products, and to ensure that retail firms qualifying for a retail store exemption and who have violated the provision of the exemption are no longer in violation.

Description of Respondents: Business or other for-profit.

Number of Respondents: 19,997.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 113,848.

Food Safety and Inspection Service

Title: Public Health Inspection System.

OMB Control Number: 0583–0153.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statues mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

Need and Use of the Information: FSIS developed a Web-based system that will improve FSIS inspection operations and facilitate industry members' application for inspection, export, and import of meat, poultry, and egg products. Industry members use FSIS forms in the Public Health Information System (PHIS). Industry is able to submit some of these forms. Paper forms will also be available to firms that do not wish to use PHIS. To submit information through PHIS, firms' employees will need to register for a USDA eAuthentication account with Level 2 access.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2,447.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 142,981.

Food Safety and Inspection Service

Title: Salmonella Initiative Program.

OMB Control Number: 0583–0154.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. The Salmonella initiative Program (SIP) offers incentives to meat and poultry slaughter establishments to control Salmonella in their operations. SIP benefits public health because it encourages establishments to test for microbial pathogens, which is a key feature of effective process control.

Need and Use of the Information: Under SIP, establishments will share their data with the Food Safety and Inspection Service (FSIS); this will help the Agency in formulating its policy. Establishments that want to enter SIP must send a protocol to FSIS informing the Agency about their plans for implementing SIP in their establishment, including data collection, objectives and methods of evaluating the new technology for

which they are receiving the regulator waiver.

Description of Respondents: Individuals or households.

Number of Respondents: 94.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 53,776.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–29453 Filed 12–15–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 10, 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 January 15, 2015 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.

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Animal Plant and Health Inspection Service

Title: Self Certification Medical Statement.

OMB Control Number: 0579–0196.

Summary of Collection: The United States Department of Agriculture is responsible for ensuring consumers that food and farm products are moved from producer to consumer in the most efficient, dependable, economical, and equitable system possible. 5 CFR part 339 authorizes an agency to obtain medical information about the applicant's health status to assist management in making employment decisions concerning positions that have specific medical standards or physical requirements in order to determine medical/physical fitness. The Marketing and Regulatory Programs (MRP) of the Animal Plant and Health Inspection Service (APHIS) of the U.S. Department of Agriculture hires individuals each year in commodity grading and inspection positions. These positions involve arduous duties and work under conditions, around moving machinery, slippery surfaces, and high noise level areas. APHIS will collect information using the MRP–5 form (Self-Certification Medical Statement).

Need and Use of the Information: The information collected from the prospective employees assists the MRP officials, administrative personnel, and servicing Human Resources Offices in determining an applicant's physical fitness and suitability for employment in positions with approved medical standards and physical requirements and direct contact with meat, dairy, fresh or processed fruits and vegetables, and poultry intended for human consumption and cotton and tobacco products intended for consumer use. If the information was not collected, APHIS would not be able to accurately determine the physical and/or mental fitness for the position which the applicant has applied and still meet the provisions of the Act.

Description of Respondents: Individuals or households.

Number of Respondents: 322.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 54.

Animal and Plant Health Inspection Service

Title: Trichinae Certification Program.

OMB Control Number: 0579–0323.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control and eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. Trichinelia spiralis is a contagious nematode affecting animals and people. The disease, trichinellosis, is transmitted by consuming the meat of an infected animal. The Animal and Plant Health Inspection Service (APHIS) will collect information using a certificate site audit, program audit form, request for information during a spot audit, animal disposal plan and recordkeeping, animal movement record and recordkeeping, rodent control logbook and recordkeeping, trichinae herd certification feed mill quality assurance affidavit and recordkeeping, and records for slaughter testing and recordkeeping.

Need and Use of the Information: APHIS will collect information to certify swine are raised using practices that will reduce or eliminate *T spiralis* exposure. If this information is not collected, it will compromise APHIS' ability to determine the trichinae infection status of pork produced in the United States.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 260.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2,118.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–29445 Filed 12–15–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–59–2014]

Foreign-Trade Zone (FTZ) 90—Onondaga County, New York; Authorization of Proposed Production Activity; PPC Broadband, Inc.; Subzone 90C (Coaxial Jumper Cables); Dewitt, New York

On August 12, 2014, the Onondaga County Office of Economic Development, grantee of FTZ 90, submitted a notification of proposed production activity to the Foreign-Trade

Zones (FTZ) Board on behalf of PPC Broadband, Inc., within Subzone 90C, in Dewitt, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400) including notice in the **Federal Register** inviting public comment (79 FR 51138, August 27, 2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: December 10, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–29383 Filed 12–15–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 130214141–4999–02]

RIN 0648–XC515

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petitions To List the Northwest Atlantic Population of the Dusky Shark as Threatened or Endangered Under the Endangered Species Act (ESA)

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

ACTION: Notice of 12-month finding and availability of status review report.

SUMMARY: We, NMFS, announce a 12-month finding on two petitions to list the Northwest Atlantic and Gulf of Mexico population of dusky shark (*Carcharhinus obscurus*) as a threatened or endangered distinct population segment (DPS) under the Endangered Species Act (ESA). We completed a comprehensive status review of the dusky shark in response to these petitions. Based on the best scientific and commercial information available, including the status review report (McCandless *et al.,* 2014), we have determined that the Northwest Atlantic and Gulf of Mexico (henceforth abbreviated as NWA) population constitutes a DPS but does not warrant listing at this time. We conclude that the NWA DPS is not currently in danger of extinction throughout all or a significant portion of its range and is not likely to become so within the foreseeable future.

DATES: This finding was made on December 17, 2014.

ADDRESSES: The status review document for the dusky shark is available electronically at: *http://www.nmfs.noaa.gov/pr/species/fish/duskyshark.htm.* You may also receive a copy by submitting a request to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, Attention: Dusky Shark 12-month Finding.

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2012, we received a petition from WildEarth Guardians (WEG) to list the dusky shark (*Carcharhinus obscurus*) as threatened or endangered under the ESA throughout its entire range, or, as an alternative, to list the Northwest Atlantic/Gulf of Mexico DPS as threatened or endangered. The petitioners also requested that critical habitat be designated for the dusky shark under the ESA. On February 1, 2013, we received a second petition from Natural Resources Defense Council (NRDC) to list the Northwest Atlantic DPS of dusky shark as threatened, or, as an alternative, to list the dusky shark range-wide as threatened, and a request that critical habitat be designated. On May 17, 2013, we published a positive 90-day finding (78 FR 29100) announcing that the petitions presented substantial scientific or commercial information indicating the petitioned action of listing may be warranted for the NWA population of dusky shark, but not for the species range-wide, and explained the basis for that finding. We also announced the initiation of a status review of the NWA population of dusky shark, as required by section 4(b)(3)(a) of the ESA, and requested information to inform the agency's decision on whether the species warranted listing as endangered or threatened under the ESA.

Listing Species Under the Endangered Species Act

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we consider first whether a group of organisms constitutes a ''species'' under section 3 of the ESA, and then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a DPS of a taxonomic species (the DPS Policy; 61 FR 4722). The DPS policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future. In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened). In addition, we interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following five threat factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation to protect the species.

If we determine that a petitioned species meets the ESA definition of a ''species'' and warrants listing as threatened or endangered, we publish a proposed rule in the **Federal Register** and seek public comment on the

proposed listing. To determine if a species warrants listing as threatened or endangered, first we determine if it is threatened or endangered throughout its entire range. If it is not, then we need to consider whether it may qualify as threatened or endangered in a significant portion of its range per the Significant Portion of its Range Policy (79 FR 37577; July 1, 2014). This policy clarifies the Services' interpretation of the phrase ''significant portion of its range'' (SPR) in the definitions of ''threatened species'' and ''endangered species.'' Under the policy, if we find that a species is threatened or endangered only in an SPR, individuals of the entire ESA species are listed wherever found. Under the SPR policy, the word ''range'' is defined as the range occupied by the species at the time the Services make a listing determination under section 4 of the ESA. A portion of a species' range is defined as ''significant'' if: ''the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.'' Finally, if the species is threatened or endangered in an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

Status Review

We convened a team of agency scientists to conduct the status review for the NWA dusky shark and prepare a report. The status review team (SRT) was comprised of two research fishery biologists from NMFS' Northeast and Southeast Fisheries Science Centers, a research mathematical statistician from the Alaska Fisheries Science Center, a fishery management specialist from NMFS' Highly Migratory Species Management Division, and two fishery biologists from NMFS' Greater Atlantic Regional Fisheries Office and the Office of Protected Resources. The SRT had group expertise in dusky shark biology and ecology, population dynamics, highly migratory species management, and stock assessment science.

The status review report of the NWA dusky shark (McCandless *et al.,* 2014) compiles the best available information on the status of the NWA dusky shark as required by the ESA, provides an evaluation of the discreteness and significance of the NWA population in terms of the DPS policy, and assesses the current and future extinction risk for the NWA dusky shark, focusing primarily on the impacts of threats to the status of the species related to the five statutory factors set forth above.

In assessing extinction risk, the SRT considered the demographic viability factors developed by McElhany *et al.* (2000) and the risk matrix approach developed by Wainwright and Kope (1999) to organize and summarize extinction risk considerations. The status review report presents the SRT's professional judgment of the extinction risk facing the NWA dusky shark but makes no recommendation as to the listing status of the species. The status review report is available electronically at *http://www.nmfs.noaa.gov/pr/species/fish/duskyshark.htm.*

The status review report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). It was peer reviewed by three independent specialists selected from the academic and scientific community, with expertise in shark biology, conservation and management, stock assessment science, and knowledge of dusky sharks. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the status review report as well to evaluate the methods to assess extinction risk and the conclusions of the report. All peer reviewer comments were addressed prior to dissemination of the final status review report and publication of this determination.

We subsequently reviewed the status review report, its cited references, and peer review comments, and believe the status review report, upon which this listing determination is based, provides the best available scientific and commercial information on the NWA dusky shark. Much of the information discussed below on dusky shark biology, distribution, abundance, threats, and extinction risk is attributable to the status review report. However, in making the listing determination, we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in section 4(a)(1)(A)–(E); our regulations regarding listing determinations; our DPS policy; and our SPR Policy.

Life History, Ecology, and Abundance of the Petitioned Species

Species Description

The dusky shark is classified as a requiem shark within the family Carcharhinidae. This family falls under the largest order of sharks, Carcharhiniformes, also known as ground sharks. Dusky sharks, like many requiem sharks, appear gray or bluish-gray in color dorsally and white ventrally. The sharks within the genus *Carcharhinus* also have an internal nictitating eyelid, lack a spiracle, have a second dorsal fin that is less than half the height of the first, have well-developed pre-caudal pits, and a heterocercal caudal fin (Castro, 2011).

Range and Distribution

Dusky sharks are coastal-pelagic sharks inhabiting temperate and tropical waters worldwide ranging from the surf zone, across continental and insular shelves, and adjacent oceanic waters from the surface down to 400 meters (m) depth (Compagno, 1984). In the NWA, dusky sharks range from off Cape Cod, Massachusetts and Georges Bank south to Florida, and also occur within the Gulf of Mexico and Caribbean Sea (Kohler *et al.,* 1998; Kohler and Turner, 2010). This species does not use waters with reduced salinities and rarely enters estuarine environments (Compagno, 1984; Musick *et al.,* 1993). During the summer months, small juveniles use nearshore coastal waters as nursery habitat in the NWA from off New Jersey to South Carolina (Castro, 1993; McCandless *et al.,* 2007; NMFS, unpublished data).

Movement and Habitat Use

The dusky shark is a highly migratory species that begins moving north during the spring and returns south during the fall months, often traveling the full extent of its range during these seasonal migrations (Compagno, 1984; Musick and Colvocoresses, 1986; Kohler *et al.,* 1998, Kohler and Turner, 2010). Mark/recapture data from the NMFS Cooperative Shark Tagging Program between 1963 and 2013 show a maximum straight-line distance traveled of 2,052 nautical miles (nm; 3,800 kilometers (km)), with a mean distance traveled of 572 nm (1,059 km) for dusky sharks tagged in the NWA (number tagged = 8,776 sharks; recaptures = 181 sharks; Kohler and Turner, 2010; NMFS, unpublished data). Movements between the U.S. Atlantic and Gulf of Mexico (GOM), as well as between the U.S. GOM and Mexican Gulf waters were common, but there were no recaptures in the southwest Atlantic, and only one recapture off Central America (Barra de Colorado, Costa Rica) in the Caribbean Sea (Kohler and Turner, 2010; NMFS, unpublished data). Satellite tagging data from an aggregation site in the north central GOM during the summer months revealed dusky shark movements in

excess of 200 km (108 nm, Hoffmayer *et al.,* 2014). These sharks primarily used offshore GOM waters associated with the continental shelf edge, spending 87 percent of their time in waters between 20 and 125 m depth and 23 °C and 30 °C (Hoffmayer *et al.,* 2014). Carlson and Gulak (2012) also tracked three dusky sharks off the U.S. Atlantic coast with pop up satellite tags and found that these sharks spent the majority of their time in water depths between 0 and 40 meters with dives down to depths of 400 m. These sharks spent nearly 60 percent of their time in water temperatures between 20 °C to 24 °C. The dusky sharks generally traveled about 10 km per day. Two of the sharks were tagged near Key Largo, FL with one shark tagged in January traveling north to the North Carolina/Virginia border by June and the other tagged in March heading south towards Cuba two weeks later (Carlson and Gulak, 2012).

Diet

The dusky shark is an apex predator with a high trophic level and diverse diet including bony fishes, cephalopods, elasmobranchs, decapod crustaceans, mollusks, and occasionally marine mammals (Cortés, 1999). Juveniles primarily consume pelagic bony fishes and cephalopods with an increase in the consumption of elasmobranch prey as their body size increases (Gelsleichter *et al.,* 1999; Simpfendorfer *et al.,* 2001). Stable isotope analysis has also shown a shift to shelf edge foraging in large dusky sharks (Hussey *et al.,* 2011).

Reproduction and Growth

The dusky shark is a placental, viviparous species, giving birth to between 2 and 16 pups per litter (Compagno, 1984; Romine, 2009; Castro, 2011) with an average litter size of 7.13 pups for NWA dusky sharks (Romine, 2009). Size-at-birth for dusky sharks ranges from 85 to 100 centimeter (cm) fork length (FL, Castro, 1983; Compagno, 1984). Available data on reproduction suggests a 3-year reproductive cycle (Castro, 2009; Romine, 2009) with a gestation period of 18 months (Castro, 2009). Female and male size at maturity in the NWA is 235 and 231 cm FL (17.6 and 17.4 years of age), respectively (Natanson *et al.,* 1995; Natanson *et al.,* 2013). Maximum validated age estimates are between 38 and 42 years, confirming longevity to at least 42 years of age (Natanson *et al.,* 2013). Logistic growth parameters derived from validated vertebral length-at-age data are L_∞ = 261.5 cm FL, L_o = 85.5 cm FL, t_o = 4.89 years and g = 0.15 year^{-1} for the sexes combined (Natanson *et al.,* 2013).

Genetics

Genetic data can be used to provide information on a species' range as well as stock structure. Global phylogeographic studies of the dusky shark using maternally inherited mitochondrial DNA and nuclear microsatellite DNA analyses detected significant differentiation between dusky sharks from the NWA and Indo-Pacific regions, with waters off South America serving as a possible historical connection between these populations (Benavides *et al.,* 2011; Gray *et al.,* 2012). Despite the history of severe population declines in the NWA, dusky sharks from all regions showed remarkably similar allelic richness and gene diversity (Gray *et al.,* 2012).

The low nucleotide diversity for the dusky shark and the existence of a morphologically and genetically similar species (Galapagos shark, *Carcharhinus galapagensis*) indicates the dusky shark is recently derived on an evolutionary timescale (Naylor, 1992; Musick *et al.,* 2004; Benevides *et al.,* 2011). An ongoing genetic study using mitochondrial DNA sequencing found that specimens identified as Galapagos sharks from oceanic islands in the NWA are indistinguishable from specimens identified as dusky sharks collected off the U.S. east coast from New Jersey to Florida (Gavin Naylor, College of Charleston, personal communication, 2014). These findings could possibly be attributed to an ancient hybridization event where there was a directional transfer of mitochondrial DNA genes, which are maternally inherited, from one species to another. Alternatively, they could represent two forms of the same species, an offshore and an inshore form. However, at this time, the evolutionary genetic relationship between the NWA dusky shark and Galapagos shark remains unresolved. Work continues on this using a wider global sampling scheme and multiple nuclear markers, which reflects the genetics of both parents, to address the possibility that the observed pattern might be the consequence of an ancient hybridization event. Whether or not these two species have the ability to interbreed (*e.g.,* if the timing and location of opposite sexes ever co-occur during mating season), or if they would produce viable offspring is unknown.

Abundance Trends

In 2011, the NWA dusky shark was assessed through the Southeast Data, Assessment, and Review (SEDAR) process, which is a cooperative Fishery Management Council process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, GOM, and Caribbean. Results from this SEDAR stock assessment base model indicated that NWA dusky shark abundance had declined 74 percent from virgin (unexploited) levels by 2004, but was gradually increasing throughout the remainder of the time series modeled through 2009 (NMFS, 2011a). The only two fishery-independent surveys that were used in this model, the Northeast Fisheries Science Center Coastal Shark Bottom Longline Survey (NELL) and the Virginia Institute of Marine Science Shark Longline Survey (VIMS LL), were recently updated with data from 2010 to 2012 (for NELL) and to 2013 (for VIMS LL) using the same methodology (delta-lognormal generalized linear mixed modelling) as was conducted for the SEDAR stock assessment (NMFS, 2011a; McCandless *et al.,* 2014). With these updates, the surveys show that the NWA relative abundance trends (based on numbers) have continued to increase.

In addition, analysis of the University of North Carolina Shark Longline Survey (UNC LL) data, another fishery-independent time series that is still being conducted, also shows an increasing trend in abundance in recent years (McCandless *et al.,* 2014). Although NWA dusky sharks are only second to the blacknose shark (*Carcharhinus acronotus*) in terms of numbers caught in the UNC LL survey, dusky sharks are transient in the sampled area and could easily be missed by the two fixed sampling stations. Because of these limitations, the UNC LL time series was recommended for use only in the sensitivity model runs for the SEDAR stock assessment to examine uncertainty in data inputs and model configuration (NMFS, 2011a). Analysis of data from this time series through 2009, included in the sensitivity model runs, revealed a declining trend in abundance for dusky sharks from the mid-1970s to the mid-1990s, with abundance appearing to stabilize at low levels into the 2000s (Schwartz *et al.* 2010; NMFS, 2011a). However, the addition of recent data from 2010 to 2012 in the analysis has since given the model more information to determine a trend in recent years, and has, in fact, revealed an increasing trend in dusky shark abundance that began around 2006 (McCandless *et al.,* 2014). In other words, with the data updates to all three of the above fishery-independent surveys, it appears that the NWA dusky shark abundance has been on a positive trajectory for almost the past decade.

Species Finding

Based on the best available scientific and commercial information described above, we determined that *Carcharinus obscurus* is a taxonomically-distinct species and, therefore, meets the definition of ''species'' pursuant to section 3 of the ESA. As noted above, the ESA's definition of ''species'' also includes ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Below, we evaluate whether the petitioned NWA population of *Carcharinus obscurus* qualifies as a DPS based on the elements of discreteness and significance as defined in our DPS policy, to determine whether it is eligible for listing under the ESA.

Distinct Population Segment Analysis

According to the SRT, the NWA population can be considered a discrete segment because it is markedly separate from other populations of dusky sharks as a consequence of genetic and physical/behavioral factors. Dusky shark populations have been reported in temperate and tropical waters worldwide, including the western Atlantic in the north from Nova Scotia to Cuba and the Gulf of Mexico, and in the south from Nicaragua to southern Brazil. Dusky sharks are also found in the Mediterranean, Indian, and western Pacific waters including off Madagascar and Australia, and in the eastern Pacific from southern California to the Gulf of California. Genetic studies, using both mitochondrial and nuclear microsatellite DNA, showed significant genetic differentiation between the western North Atlantic, South African, and Australian dusky shark populations, with a low frequency of migration between these populations (Benavides *et al.,* 2011; Gray *et al.,* 2012). Specifically, Benavides *et al.* (2011) found 25 mitochondrial control region haplotypes and rejected a null hypothesis of panmixia (analysis of molecular variance, $\Phi_{ST} = 0.55$, $p < 0.000001$), detecting significant differentiation between dusky sharks from the U.S. Atlantic, South Africa, and Australia. Work by Gray *et al.* (2012) supports these findings by identifying a strong divergence among NWA, South African, and Australian samples using microsatellite markers ($\Phi_{ST} = 0.01–0.15$, $p < 0.05$).

Within the western Atlantic, there is qualitative evidence of population structure between the NWA dusky sharks and dusky sharks caught off Brazil. The most common haplotype from Brazil is intermediate to the NWA and Indo-Pacific haplotype clusters, indicating this region may have provided a historical connection between the NWA and Indo-Pacific regions (Benavides *et al.,* 2011). However, there was no evidence of genetic differentiation between dusky sharks from waters off the U.S. east coast and the GOM based on analysis of mitochondrial control regions (Benavides *et al.,* 2011), suggesting that these populations readily mix.

These genetic findings of a discrete population occurring within northwest Atlantic waters are further supported by tagging data collected from the NMFS Cooperative Shark Tagging Program between 1963 and 2013 (Kohler *et al.,* 1998; Kohler and Turner, 2010). Mark/recapture data from this program indicate that NWA dusky sharks commonly move between the U.S. Atlantic and GOM, as well as between the U.S. GOM and Mexican Gulf waters, but do not venture south of the Caribbean Sea (Kohler and Turner, 2010; NMFS, unpublished data). Although populations of dusky sharks occur off Brazil and South America, to date, no recaptures of the 8,776 tagged NWA dusky sharks have been identified from these areas, and only one has been recaptured within the Caribbean Sea (Kohler and Turner, 2010; NMFS, unpublished data). Given this behavioral information, it is likely that the dusky sharks found off Brazil and South America are independent from the NWA population of dusky sharks. Overall, based on the genetic and tagging study findings discussed above, we consider the NWA population of dusky sharks to be a discrete population.

In terms of significance, the SRT determined that loss of the NWA segment would translate to a significant gap in the current range of the species, specifically the entire northwest Atlantic. Although qualitative data in Benavides *et al.* (2011) show a potential historical connection between the NWA and Indo-Pacific populations through the southwest Atlantic waters, the study indicates that recovery of depleted NWA populations would likely rely on reproduction by surviving local females as opposed to replenishment from immigrant females from the southwest Atlantic or Indo-Pacific. In other words, loss of the NWA population would leave a significant gap in the range of the species, extending from the Gulf of Maine south to Florida, and including the GOM and Caribbean Sea. As such, we consider the discrete NWA population of dusky sharks to be significant to the taxon as a whole.

In conclusion, we agree with the SRT that the best available information indicates that the NWA population segment of dusky shark qualifies as a DPS under our DPS policy.

Summary of Factors Affecting the NWA DPS of Dusky Sharks

We thoroughly reviewed the available information regarding historical, current, and potential threats to the NWA DPS of dusky sharks (McCandless *et al.,* 2014). In the following section, we summarize information regarding each of these threats according to the factors specified in section 4(a)(1) of the ESA and consider whether any one or a combination of the factors are contributing to the extinction risk of the NWA DPS of dusky sharks.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Based on our review of the best available information regarding historical and current range and habitat of the NWA DPS (McCandless *et al.,* 2014), we found no evidence to suggest that the species has experienced a curtailment of its habitat or range, and there is little information that would suggest habitat destruction or modification is presently contributing or will contribute significantly to the NWA DPS' risk of extinction.

In the U.S. exclusive economic zone (EEZ), the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires us to identify and describe essential fish habitat (EFH) in fishery management plans (FMPs), minimize the adverse effects of fishing on EFH, and identify actions to encourage the conservation and enhancement of EFH. The MSA defines EFH as ''those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'' (16 U.S.C. 1802 (10)). Towards that end, we have funded two cooperative survey programs intended to help delineate shark nursery habitats in the Atlantic and GOM. The Cooperative Atlantic States Shark Pupping and Nursery Survey and the Cooperative Gulf of Mexico States Shark Pupping and Nursery Survey are designed to assess the geographical and seasonal extent of shark nursery habitat, determine which shark species use these areas, and gauge the relative importance of these coastal habitats for use in EFH determinations. We also used fishery observer data, tagging data and fishery-independent sampling data to determine EFH for dusky sharks, as described in Amendment 1 to the 2006 Consolidated Atlantic Highly Migratory

Species (HMS) FMP (the FMP which manages the conservation of the domestic fisheries for Atlantic swordfish, tunas, sharks, and billfish) (NMFS, 2006; NMFS, 2009). These data resulted in the designation of EFH areas for neonate, juvenile, and adult dusky sharks in coastal and offshore waters from Florida to Cape Cod, which could provide important nursery habitats and breeding areas for this species.

Next, we analyzed fishing and non-fishing impacts on EFH in the 2006 Consolidated HMS FMP and concluded that while bottom longline gear (BLL), in general, may have an effect on EFH, shark BLL gear as currently used in the Atlantic shark fishery was not having more than a minimal and temporary effect on EFH. This BLL gear (which normally consists of a mainline between 3 and 8 km long with 200–400 hooks attached and is set for 2 to 20 hours) is primarily used in sandy and/or muddy habitats where it is expected to have minimal to low impacts. Likewise, other HMS gears are not considered to have an impact on EFH. HMS gears do not normally affect the physical characteristics that define dusky shark habitat such as salinity, temperature, dissolved oxygen, and depth. Similarly, other state and federally managed gears were also determined not to have an impact on HMS EFH, with the possible exception of some bottom-tending gears in shark nursery areas in coastal bays and estuaries. However, we anticipate that any impacts resulting from these gears would be minimal and only temporary in nature (NMFS, 2009).

We also found no information to suggest that non-fishing related activities are affecting dusky shark habitat in a significant way. Estuarine environments, which are most easily prone to degradation by human activity other than fishing, are rarely used by dusky sharks. Additionally, the NWA DPS is highly mobile throughout its range (as evidenced by results from tagging studies: Kohler and Turner, 2010; Carlson and Gulak, 2012; Hoffmayer *et al.,* 2014; NMFS, unpublished data), and we found no evidence to suggest its access to suitable habitat is or will be restricted in the future.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The NWA DPS of dusky shark is currently a prohibited species in U.S. Atlantic HMS fisheries (NMFS, 1999), meaning that neither U.S. commercial nor recreational fishermen are allowed to legally land this species; however, this was not always the case. During the late 1930s, a shark fishery developed off the east coast of Florida, in the GOM, and in the Caribbean Sea (Wagner, 1966), areas where the NWA DPS is known to occur. The shark fishery grew in response to the demand for vitamin A obtained from shark livers, but by the 1950s, most of these shark fisheries were abandoned due to the development of synthetic vitamin A (Wagner, 1966). In the late 1970s, the U.S. Atlantic shark fishery developed rapidly once again, this time due to increased demand for shark meat, fins, and cartilage worldwide. At the time, sharks were perceived to be underutilized as a fishery resource. The high commercial value of shark fins led to the controversial practice of ''finning,'' or removing the valuable fins from sharks and discarding the carcasses during this time. Growing demand for shark products encouraged expansion of the commercial fishery throughout the late 1970s and the 1980s. Tuna and swordfish vessels began to retain a greater proportion of their shark incidental catch and some directed fishery effort expanded as well. As catches accelerated through the 1980s, shark stocks started to show signs of decline.

The NWA DPS of dusky shark was not immune to this exploitation and followed the same trend as many of the other shark stocks off the U.S. east coast. Historically, the fishing mortality of the NWA DPS was estimated to be low from 1960 through the early 1980s, with the size of the NWA DPS predicted as being close to virgin levels until the late 1980s (NMFS, 2011a). Fishing mortality was then thought to have increased to unsustainably high levels in the 1990s, before declining following the prohibition of dusky shark landings in 2000 (NMFS, 2011a).

In 2006, we assessed the status of the NWA dusky shark stock under the MSA and found it to be ''overfished'' with ''overfishing'' occurring (Cortés *et al.,* 2006; NMFS, 2007). The 2006 stock assessment predicted that dusky sharks could rebuild within 100 to 400 years (Cortés *et al.,* 2006). In 2011, the NWA dusky shark stock was re-assessed through the more comprehensive SEDAR process (NMFS, 2011a). Based on the results from this SEDAR assessment, we declared that the NWA dusky shark stock was still overfished and continues to experience overfishing (76 FR 62331; October 7, 2011); however, there was considerable uncertainty in the SEDAR stock assessment model about whether overfishing has occurred during the last several years of the time series (NMFS, 2011a; McCandless *et al.,* 2014).

The fishery management terms of ''overfishing'' and ''overfished'' are defined under the MSA and are based on different criteria than threatened or endangered statuses under the ESA. As such, they do not automatically indicate that a species may warrant listing under the ESA because they do not necessarily have any relationship to a species' extinction risk. Overutilization under the ESA means that a species has been or is being harvested at levels that pose a risk of extinction. Therefore, the analysis of the results from this most recent SEDAR stock assessment (NMFS, 2011a), catch and bycatch trends, and new data that have become available since the terminal year of the SEDAR stock assessment, are evaluated below in terms of insight into threats to the DPS and its likelihood of extinction.

Although the NWA DPS of dusky sharks is currently a prohibited species in U.S. waters, individuals are still incidentally caught in the U.S. commercial BLL and pelagic longline (PLL) fisheries and U.S. gillnet fisheries (although rarely), and they have also been reported as landed in NMFS recreational fishing survey data. The SRT identified this bycatch as potential overutilization of the NWA DPS because it is the primary source of anthropogenic mortality of the DPS in U.S. waters. In assessing the impact of this bycatch mortality on extinction risk, we examined the results from the SEDAR stock assessment because the model implicitly included bycatch mortality in the calculations of total fishing mortality of the species. Due to the uncertainty about the magnitude of total catches and discards, an alternative modeling methodology was used in the SEDAR stock assessment, the Age-structured Catch Free Model (ASCFM), which re-scales the model population dynamics as proportional to unexploited conditions. Fishing mortality rates were estimated by the ASCFM using a correlated random walk prior. Although estimates of commercial at-vessel and commercial and recreational post-release mortality for dusky sharks were included in the ''Data Workshop Report'' section of the SEDAR stock assessment report, these estimates were not directly inputted in the actual model (NMFS, 2011a). Pup survival was also estimated and given an informative lognormal prior (median=0.81, CV=0.3, and was bounded between 0.50 and 0.99). Relative effort series for the three primary U.S. fishing fleets that incidentally catch the NWA DPS (BLL, PLL, and recreational fleets) were used to determine a single, annual weighted

selectivity vector for modeling fishing mortality. In other words, although the SEDAR stock assessment used an ASCFM modeling approach, it still factored in total mortality attributable to fishing for its projections, which implicitly includes both discard mortality as well as mortality of those sharks retained in the catch. For these reasons, the at-vessel and post-release mortality associated with current trends of catch and bycatch should not negatively impact future stock projections. As such, the ASCFM base model stock assessment allows us to examine whether overutilization is still considered a threat to the species by modeling the effect of historical and current fishing mortality rates, including bycatch mortality, on the abundance trends and spawning stock biomass of the population.

As mentioned before, overutilization under the ESA means that a species has been or is being harvested at levels that pose a risk of extinction and is most often indicated by a declining abundance and a low likelihood of a reversal of this trend due to this threat, or a combination of threats, and demographic risks. However, based on the SEDAR stock assessment model outputs, this does not appear to be the case. Although recruitment and spawning stock biomass have declined rather substantially since the late 1980s, spawning stock biomass levels are projected to maintain near 15 percent of unexploited levels into the future, indicating that the level of bycatch and landings and associated mortality at the time of the model (*i.e.,* 2008 levels) is sustainable. In other words, recent exploitation levels do not appear to pose a risk of extinction to the NWA DPS as its biomass is projected to remain stable through the future.

In addition, based on the estimates and trends of dusky shark bycatch from the available U.S. commercial BLL, PLL, gillnet, commercial handgear, and recreational fisheries data, we do not foresee a significant reversal in this biomass trend in the future, at least not in the negative direction. In terms of bycatch on BLL gear, the primary commercial gear employed for targeting large coastal sharks in all regions, the U.S. National Bycatch Report (NMFS, 2011b; NMFS 2013a) provides a comparison of estimates of dusky shark bycatch over the years from the GOM Reef Fish BLL commercial fishery. This comparison allows for insight into the bycatch trend for this fishery. For the time period of 2005 to 2006, the report estimated that annual dusky shark bycatch was approximately 798 individuals in the GOM Reef Fish BLL fishery (NMFS, 2011b). In an update to the report, for the years covering 2006 to 2010, the dusky shark bycatch in this fishery remained rather stable, with an annual estimate of 804 individuals (NMFS, 2013a).

Dusky shark bycatch in the U.S. Atlantic and GOM shark BLL fishery was included in the U.S. National Bycatch Report in pounds only and for the years of 2005 and 2006, but with the caveat that the estimates given were being refined due to discrepancies in the calculation of total effort (NMFS, 2011b). There was no reported dusky shark bycatch in the report update for the Atlantic and GOM shark BLL fishery so we are unable to evaluate the trend using this information (NMFS, 2013a). However, examination of observer data from the U.S. Atlantic and GOM shark BLL fishery indicates that NWA dusky sharks made up a small percentage of the total large coastal shark catch from 2005 to 2009 and showed a relatively stable trend across years (Hale *et al.,* 2010). Out of 879 observed sets over the 5 years, only 8.2 percent of these sets caught dusky sharks (n=192 individuals). In the NMFS Shark Research Fishery, which has had 100 percent observer coverage since its creation in 2008 (NMFS, 2007), very low numbers of dusky sharks have been caught as bycatch (average=161 individuals from 2009 to 2012; Hale *et al.,* 2010; NMFS, 2011c; NMFS, 2012a; NMFS, 2013b) compared to overall bycatch estimates (NMFS 2011b; NMFS 2013a). Although there appears to be a minor increasing trend in the annual dusky shark bycatch in this fishery ($y=38.9x-78047.2$, $R^2=0.45$, McCandless *et al.,* 2014), analysis of fishing effort indicates there has been little change in effort from 2009 through 2012. In other words, the increase in the bycatch amounts may be more likely attributed to increases in the relative abundance of dusky sharks within the NMFS Shark Research Fishery area, suggesting potential recovery of the NWA DPS within this area.

In terms of bycatch on U.S. PLL gear, analysis of reported dusky shark catches from U.S. PLL logbook and observer data from 1992–2009 showed similar trends, marked by an initial decrease in catch per unit effort (CPUE) in the 1990s followed by a more stable trend through the 2000s (Cortés, 2010), indicating that bycatch in the U.S. PLL fishery has potentially stabilized in recent years. The annual number of hooks deployed in the U.S. Atlantic PLL fishery, which is a representation of the level of fishing effort, has ranged from 5,662,000 to 7,679,000 from 2003 to 2012, with no distinct pattern of increasing or decreasing effort (NMFS 2013a).

In the U.S. gillnet fishery, NWA dusky shark bycatch is negligible. Since the implementation of Amendment 2 to the Consolidated Atlantic HMS FMP (NMFS, 2007), the directed large coastal shark (LCS) gillnet fishery has been greatly reduced. The 33-head LCS trip limit has essentially ended the strike net fishery and limited the number of fishermen targeting LCS with drift gillnet gear. As a result, many gillnet fishermen who historically targeted sharks are now targeting teleost species such as Spanish mackerel, king mackerel, and bluefish. In 2012, 316 sets comprising various gillnet fisheries were observed. During the strike gillnet trips, no dusky sharks were observed on trips that targeted king mackerel and only one dusky shark was caught during an observed sink net trip targeting smoothhound (Mathers *et al.,* 2013).

U.S. commercial handgears, including handline, harpoon, rod and reel, buoy gear and bandit gear, are also used to fish for Atlantic HMS by fishermen on private vessels, charter vessels, and headboat vessels. However, the shark commercial handgear fishery presently contributes very little to the overall dusky shark landings. The estimated annual NWA dusky shark bycatch in the GOM Reef Handline (vertical line) fisheries was approximately 256 individuals from 2006 to 2010, based on updated data to the U.S. National Bycatch Report (NMFS, 2013a). This reflects an 87 percent decrease from the previous annual estimate of approximately 1,941 individuals in 2006 (NMFS, 2011b) and was mainly attributed to the establishment and implementation of an individual fishing quota system for the GOM commercial red snapper fishery before the start of the 2007 fishing season.

In terms of U.S. recreational catch, most Atlantic HMS are targeted by domestic recreational fishermen using a variety of handgear including rod and reel gear. Given that the NWA DPS is currently a prohibited species, only catch and release is allowed in the U.S. recreational fishery; however, landings of dusky sharks are still reported in NMFS recreational fishing survey data and, thus, are considered to be due to misidentification of the species (as dusky sharks are commonly confused with other Carcharhinid sharks (*e.g.,* sandbar and silky sharks, *Carcharhinus falciformis*)) or fishermen not understanding the regulations. Given these issues, estimates of U.S. recreational catches of the NWA DPS are considered highly uncertain.

Analysis of three data sources that estimated U.S. recreational dusky shark catches (the Marine Recreational Fishery Statistics Survey (MRFSS), the NMFS Headboat Survey (HBOAT) operated by the SEFSC Beaufort Laboratory, and the Texas Parks and Wildlife Department Recreational Fishing Survey (TXPWD)) shows that, by weight, the recreational landings and recreationally caught sharks that were killed but not landed appear to be of similar magnitude to the commercial discards in recent years, but shows no clear trend (Cortés and Baremore, 2010). When data from these three surveys are combined by number, the total estimated recreationally landed and killed sharks from 2000 to 2009 depicts an overall decreasing trend (y=-346.7+696865, R^2=0.30; data from Cortés and Baremore, 2010). Although these data are highly uncertain, the available information indicates that mortality from recreational bycatch is not likely increasing.

Analysis of the NMFS Large Pelagics Survey data from 1986 to 2009, where dusky sharks are primarily caught and released, shows that recreational NWA dusky shark catches exhibited a pattern of declines from the 1980s into the 1990s and a recent pattern of slight increases since 2000. Analysis of effort (shark directed trips) from 2003 to 2009 also suggests very little change in total effort in recent years (y=7.8214x-15139, R^2=0.0525, data from Walter and Brown, 2010), indicating that the increasing trend in catch rates may be attributed to increases in the relative abundance of dusky sharks within the areas fished (McCandless *et al.,* 2014).

Available data on Mexican shark landings and fishing effort indicate that even though Mexican fisheries likely contribute to dusky shark mortality, these impacts appear to have stabilized or be decreasing in recent years and are unlikely to lead to a significant reversal in the projected biomass trend of the NWA DPS. The Mexican shark fishery is part of a diverse multi-species artisanal fishery (Oviedo, 2010; Soriano-Velásquez, 2011). The fleet uses both gillnet and longline gear to harvest sharks (Oviedo, 2010). The PLL gear is a selective gear, with yellowfin tuna making up over 70 percent of the catches (Brown and Ramírez-López, 2012). In 2006, shark species made up only 1.4 percent of the catch by numbers, and no dusky sharks were caught that year (Oviedo, 2010). During spring and summer, fleet activity is concentrated in the central, southern, and western portions of the Mexican EEZ and expands into the northern and eastern portions of the Mexican EEZ in the fall and winter (Brown and Ramírez-López, 2012). However, an analysis of PLL effort from 2001 to 2006 indicates that there has been very little change in fishing effort (y=30x-58212, R^2=0.003, data from Brown and Ramírez-López, 2012).

Based on an intensive monitoring study of Mexican artisanal shark landings from November 1993 to December 1994, Castillo-Géniz *et al.* (1998) reported that the Campeche region in the southeastern Gulf had the highest landings and effort, where Bonfil (1997) reported that dusky shark catches are rare. In 2010, Oviedo reported that there were 1,813 fishing vessels documented fishing in Mexican waters in the GOM. Areas with the highest shark landings are reported to occur in Veracruz and Tamaulipas (Oviedo, 2010), where Bonfil (1997) reported that dusky shark catches were common with the addition of the Yucatan region. There is no known nursery habitat for dusky sharks in GOM waters within Mexico's EEZ, with primarily large juveniles and adults >1.5 m total length caught in the artisanal fisheries (Bonfil 1994, Bonfil 1997).

In general, however, there has been an overall decline in Mexican shark landings from GOM fisheries in recent years (Soriano-Velásquez, 2011). A qualitative frequency analysis of landings from the southeastern GOM fisheries showed moderate dusky shark catches in the 1980s followed by low catches in the 1990s and no recorded dusky catches in the 2000s (Perez, 2011). The decline in shark landings is thought to be a result of past fishing pressure as well as rising fuel costs and shifts to other targets, such as rays and octopi (Soriano-Velásquez, 2011; Excartín, 2011). Socio-economic research on Mexican artisanal fisheries reports that the artisanal fisheries in general are ''stagnant'' as many of the fishermen are older and younger people are less attracted to fishing as a career (Excartín, 2011). This study also indicates that the decline in shark catches within this region may be partially attributed to fishermen changing their target species to more profitable species such as the octopus, which is currently one of the most important commercial species and has increased landings in recent years (Excartín, 2011). Therefore, based on the above information, it appears that the level of harvest of the NWA dusky shark by Mexican fishermen is likely minimal and also on the decline, as indicated by the decreasing trends in fishing effort.

Overall, the combination of (1) the stable levels of the NWA DPS biomass into the future projected by the SEDAR stock assessment, indicating that the level of exploitation in 2008 was sustainable; (2) the evidence of stable and even decreasing NWA dusky shark bycatch, harvest trends, and fishing effort in U.S. commercial fisheries and Mexican fisheries; and (3) the catch rates from the NMFS Large Pelagics Survey, the NMFS Shark Research Fishery, and updated analyses of U.S. fishery-independent surveys (see Abundance Trends section), which all suggest increasing abundance trends in recent years, indicate that overutilization of the species in the form of U.S. bycatch and Mexican landings appears to no longer be a threat contributing significantly to the risk of the DPS' extinction.

In terms of illegal harvest of the DPS, we did not find evidence that this is significantly contributing to the overutilization of the DPS. Since the mid-1990s, the United States Coast Guard (USCG) has been aware of Mexican fishing vessels fishing for sharks and other species in the U.S. Exclusive Economic Zone (EEZ) off the coast of Texas. The vessels originate from Matamoros, Mexico, and fish in the area surrounding South Padre Island, Texas, anywhere from zero to 20 miles (32 km) offshore. These vessels, or lanchas, fish during the day with gillnet and longline gear in U.S. waters for shark and red snapper, which are believed to be more prevalent in the U.S. EEZ off Texas than in the Mexican EEZ near Matamoros (Brewster-Geisz *et al.,* 2010). However, analysis of detected fishery-related lancha incursions from 2000 to 2009 show a recent decreasing trend since 2004 (y=-22.6x+45470, R^2=0.81, Brewster-Geisz *et al.,* 2010). In fact, since 2005, there has been a 46 percent decrease in the number of detected incursions (Brewster-Geisz *et al.,* 2010). In addition, the majority of the sharks found on these lanchas are not dusky but rather blacktip and hammerhead sharks (Brewster-Geisz and Eytcheson, 2005).

These illegally caught sharks are usually finned and the fins sold; however, the best available information on the international shark fin trade does not indicate that this level of utilization is likely of the magnitude to affect the status of the NWA DPS. In fact, a study by Clarke *et al.* (2006) estimated that dusky shark fins made up only 1.4 percent (1.2–1.7 percent) of the auctioned fins in Hong Kong, the world's largest fin trading center. It was the second least encountered species in the fin auction (the first being tiger shark fins, *Galeocerdo cuvier,* comprising 0.13 percent of the fins at market, Clarke *et al.,* 2006). It is also

unclear what proportion of the total dusky shark fins belonged to the prohibited NWA DPS. In addition, the primer that was used in the study to genetically identify fins of dusky sharks was unable to distinguish between dusky shark fins and Galapagos shark (*C. galapagensis*) fins; therefore, it is likely the reported percentage of dusky sharks in the fin market is overestimated (Clarke *et al.,* 2006).

Therefore, although some illegal harvest for dusky shark fins in the NWA may occur, the available information indicates that the present level of such illegal activity, especially for the fin trade, is minimal and we find it is unlikely to contribute significantly to the risk of the DPS' extinction.

Disease or Predation

Various parasitic copepods have been documented on dusky sharks, including *Alebion carchariae, Paralebion elongates, Perrisoppus communis, Pandarus satyrus, Pandarus sinuatus, Pandarus smithii, Pandarus cranchii, Nessipus alatus, Nessipus gracilis, Nessipus orientalis, Nemesis pallida, Nemesis spinulosis, Eudactylina spinifera, Kroyeria gracilis,* and *Opimia exilis* (Bere, 1936; Cressey, 1970). Though there are many different types of parasitic copepods associated with dusky sharks, there are also species of diskfishes (Echenidae) that rely on the dusky shark for the host-fish relationship they provide for feeding on those copepods. Cressey and Lachner (1970) found the *Remora remora* and the ''white suckerfish'' (*R. albescens*) feed on copepods attached to dusky sharks. The connection between the host fish and *R. remora* was noted to be a stable, long-term relationship and that the white suckerfish is rarely caught apart from the host fish, which may indicate that these fish maintain a relationship with and/or close proximity to the host-fish (Cressey and Lachner, 1970).

Acanthocephala, cestodes and trematodes have also been documented on dusky sharks (Linton, 1901; Linton, 1908; Linton, 1921; Bullard *et al.,* 2004). Bullard *et al.* (2004) found a dusky shark in the Indian Ocean with *Dermophthirius carcharhini,* documenting the first record of the *D. carcharhini* distribution extending outside of the Atlantic Ocean. A dusky shark captured in the New York Bight and held in the New York Aquarium for 5 months suffered a mortal infection with *D. carcharhini* that was thought to show host specificity as it did not infect the other sharks present in the same tank (Cheung and Ruggieri, 1983). Sea lampreys have also been documented on dusky sharks, though the extent of this occurrence is not known as sea lampreys tend to be opportunistic, feeding on a wide variety of bony and cartilaginous fish (Jensen and Schwartz, 1994; Wilkie *et al.,* 2004; Gallant *et al.,* 2006).

Although dusky sharks experience some degree of parasitic disease, this does not appear to be a significant factor affecting the abundance or persistence of dusky shark populations in the wild, with the only mortality event due to parasitic disease recorded from a fish in captivity (Bullard *et al.,* 2004). Additionally, as noted above, there are diskfishes that serve in a mutually beneficial relationship with dusky sharks feeding on the parasites.

Like many other large coastal shark species, dusky sharks tend to be opportunistic feeders and occupy high trophic levels in the marine communities where they occur. Primarily a coastal species, but also found in the outer continental shelf and sometimes in pelagic waters (Castro, 2011), dusky sharks have a wide trophic spectrum that includes mostly fishes, cephalopods (squid, octopuses), other elasmobranchs (rays, other sharks), and crustaceans (Cortés, 1999). Although some of their prey species may have experienced population declines, no information exists to indicate that depressed populations of these prey species are negatively affecting dusky shark population abundance. In addition, not much is known of resource partitioning and competition for resources in elasmobranch fishes in general, although both are likely to occur in marine communities of which sharks are a part (Wetherbee *et al.,* 2012; Heithaus and Vaudo, 2012). It is possible that juvenile dusky sharks, in particular, may have to compete for food resources with other co-occurring sharks and teleosts, but it is unlikely that this competition for food would be important enough to affect their abundance, especially considering the high trophic plasticity and opportunistic behavior of large predatory species like the dusky shark (Cortés *et al.,* 2008).

It is also very unlikely that predation on dusky sharks is a factor influencing their abundance. Adult dusky sharks reach a size of almost 4 m and are considered the largest of the carcharhinid sharks (Castro, 2011), with no major predators known. Owing to their large size at birth of about 1 m, it is also unlikely that newborn and juvenile dusky sharks have major predators that would regulate population size.

The Inadequacy of Existing Regulatory Mechanisms

The NWA dusky shark receives a significant degree of regulatory protection in U.S. waters. In 2000, the dusky shark was added to list of prohibited shark species in the U.S. Atlantic. Since that time, U.S. commercial fishermen have not been allowed to retain, possess, land, sell, or purchase NWA dusky sharks, and recreational retention has also been prohibited, essentially affording the NWA DPS the highest level of fisheries protection under the MSA. (A review of Federal regulations pertaining to the NWA DPS prior to 2000 can be found in McCandless *et al.* (2014).) Projected apical fishing mortality relative to maximum sustainable yield levels for the NWA DPS has declined dramatically since 2000, indicating that this prohibition on the U.S. commercial and recreational retention of dusky sharks has directly and significantly decreased fisheries-related mortality of the species.

In terms of state regulations, state fishery management agencies have authority for managing fishing activity only in state waters (0–3 miles (0–5 km) in most cases; 0–9 miles (0–14 km) off Texas and the Gulf coast of Florida). In the case of federally permitted shark fisherman, fishermen are required to follow Federal regulations in all waters, including state waters, unless the state has more restrictive regulations. The Atlantic States Marine Fisheries Commission approved the Interstate FMP for Atlantic Coastal sharks in August 2008 to create consistent regulations across the Atlantic states from Maine to Texas. All Atlantic states, along with Puerto Rico and the U.S. Virgin Islands, have adopted the same prohibited status for the NWA DPS as the Federal regulations and those in the Interstate FMP for Coastal Sharks; therefore, commercial and recreational retention of NWA dusky sharks is prohibited in all U.S. Atlantic state and Federal waters.

In addition to the prohibition, the NWA DPS also directly and indirectly receives a significant degree of protection from overutilization and fisheries-related mortality through the implementation of a number of other Federal regulations. For example, in 2005, we created the Mid-Atlantic Shark Closure Area, which encompasses North Carolina habitat for many dusky sharks. The area was closed to protect both dusky sharks and juvenile sandbar sharks from January through July. Data collected in the Shark Research Fishery and by NMFS scientists conducting BLL surveys in the Mid-Atlantic Shark

Closure Area indicate elevated interactions with dusky sharks during the time/area closure compared to outside the closed areas (NMFS, 2012b), suggesting that this Mid-Atlantic Shark Closure area is providing protection to NWA dusky sharks from incidental fishing mortality.

In the U.S. directed shark BLL fishery, where dusky sharks are known to suffer quite high at-vessel mortality (with an 81 percent at-vessel mortality rate estimate, Morgan and Burgess, 2007; Romine *et al.* 2009), commercial fishing impacts on dusky sharks have been greatly reduced since 2008 due to existing regulatory mechanisms. This is mainly a result of the U.S. management measure prohibiting the commercial harvest of sandbar sharks outside of the NMFS Shark Research Fishery (NMFS, 2012b), as implemented by Amendment 2 to the 2006 Consolidated HMS FMP (NMFS, 2007). This prohibition ultimately resulted in shark fishermen targeting other species of sharks (*e.g.,* blacktip, lemon, and bull sharks) that tend to occur in areas closer to shore than sandbar and dusky sharks (NMFS, 2014). Anecdotal evidence suggests that in the Atlantic Ocean, vessels that targeted sandbar sharks were more likely to catch dusky sharks because of similar habitat preferences, including depth and water temperature (NMFS, 2012b). Therefore, with the implementation of this regulation and the resultant shift in species targeted by commercial BLL fishermen, fishery-related mortality from the U.S. directed commercial BLL shark fishery has been significantly reduced and is considered to have only negligible impacts on the extinction risk of the species. This reduction has also likely led to the observed increase in the abundance of the species as indicated by the increasing trend in annual dusky shark bycatch in the NMFS Shark Research Fishery from 2009 through 2012 with little change in fishing effort (McCandless *et al.,* 2014).

Based on the findings above, the SRT concluded that the majority of current anthropogenic mortality of the NWA dusky shark can be attributed to U.S. PLL bycatch mortality, Mexican landings, and possibly mortality in the U.S. recreational fisheries from landings misidentifications and/or misunderstanding of the existing regulations. However, the U.S. PLL is a heavily managed gear type and the fishery is strictly monitored. Based on analyses using Pelagic Longline Observer Program data, the at-vessel mortality rate for dusky sharks in the U.S. PLL fishery has been estimated to be approximately 34 percent using data from 1992–2012 (NMFS, unpublished data) and 27.9 percent using data from 1995 to 2012 (Gallagher *et al.,* 2014), significantly lower than rates on BLL gear. In other words, there is a higher likelihood that incidentally caught individuals on PLL gear can be released alive and continue to contribute to the viability of the NWA DPS. Regardless, additional measures to reduce interactions (*e.g.,* time/area closures) with dusky sharks in the U.S. PLL fishery were proposed in Draft Amendment 5 to the 2006 Consolidated HMS FMP, but were not implemented, with further analyses being conducted on these measures in another FMP Amendment (Amendment 5b; NMFS, 2014). Management measures to correct the problems of misidentification or misunderstanding of U.S. recreational regulations have also not been implemented at this time; however, we have increased outreach efforts and education on proper identification and safe release practices for recreational shark fishing, including the publication of shark identification guides for U.S. recreational fishermen. Thus, although existing management measures may not suffice to further decrease the level of dusky shark mortality in the U.S. PLL and recreational fisheries, the current level of anthropogenic mortality experienced by the NWA DPS under these measures has been identified as sustainable (see Overutilization section) with the potential to decrease even further with current outreach efforts . Therefore, we do not find existing regulatory measures to be inadequate to the degree that they pose a threat to the species or contribute significantly to its risk of extinction.

Additionally, states such as Delaware, Hawaii, Washington, California, Oregon, Illinois, New York, Maryland, and Massachusetts have implemented or are working towards the implementation of shark fin bans. These bans have been developed by states individually, but generally prohibit the purchase or sale of shark fin in the state. These bans may not have much of a direct impact on NWA DPS because of its prohibited status, but may have a broader impact on the shark fishing industry in general, especially if they lead to decreases in shark fishing effort which could indirectly lower the likelihood of dusky shark bycatch.

In terms of Mexican regulations, the General Law of Sustainable Fishery and Aquaculture (Ley General de Pesca y Acuacultura Sustentables) regulates the use of living marine resources. Fishery management plans and regulations are implemented through the National Fishing Charter (CNP: Carta Nacional de Pesca). With authority under the CNP, and the National Plan of Action for the Conservation and Management of Sharks, Rays and Similar Species in Mexico (NPOA-Sharks), the National Fisheries Institute (INAPESCA: Instituto Nacional de Pesca) and the management agency, Comisión Nacional de Acuacultura y Pesca (CONAPESCA), implemented NOM 029–PESC–2006 (NOM: Norma Oficial Mexicana) called ''Responsible Fishery of Sharks and Rays; specifications for use.'' NOM 029–PESC–2006 regulates harvesting, designates prohibited species, specifies fishing zones and seasons, authorizes gears, and requires permit holders to report data. It promotes full use of shark catch by prohibiting finning. The goals are to maintain sharks at sustainable levels and reduce incidental catch of sea turtles and marine mammals. Additionally, CONAPESCA recently implemented an annual shark fishing prohibition in Mexican jurisdictional waters which began on the date of publication of the Agreement (June 11, 2012) through June 30, 2012, and in subsequent years is in effect during the period of May 1 to June 30 of each year. The prohibition extends to August 31 of each year in the Campeche Bank region. This regulation should help protect the NWA DPS from harvest mortality and may also deter future illegal fishing by Mexican fishermen, at least during the prohibition period.

Challenges with existing Mexican regulations include poor enforcement, lack of compliance, and inaccurate logbook reporting due to its complex format. In response, CONAPESCA and INAPESCA prepared a shark ID guide, and are working to create a friendlier format. Overall, vast improvements in monitoring and regulating Mexican fisheries have been made in recent years, but many challenges still exist that may jeopardize the ability of NWA dusky shark populations to increase beyond current sustained levels. However, based on the evidence of stable and even decreasing NWA dusky shark fishing effort in Mexican fisheries coupled with low to no levels of catch in recent years, at this time, we do not find these existing regulatory measures to be inadequate to the point where they are contributing or will contribute significantly to the NWA DPS' risk of extinction.

Other Natural or Manmade Factors

Many sharks are considered to be biologically vulnerable to overexploitation due to their life history traits, with demographic analyses often the tool used to assess this vulnerability. Productivity expressed as the intrinsic

rate of population increase (r) is the key parameter estimated from these analyses, with low estimates of r indicating a species that will be slow to recover from depletion. Musick (1999) suggested the following ranges for evaluating the productivity of marine species based on r (yr^{-1}) values: High = >0.50, medium = 0.16–0.50, low = 0.05–0.15, and very low = <0.05. Given the late age at maturity, slow growth rate, long life span, and low fecundity of many elasmobranchs, sharks are often at the low to very low end of this scale. In 2010, Cortés *et al.* conducted an ecological risk assessment (ERA) of sharks caught in Atlantic PLL fisheries. The International Commission for the Conservation of Atlantic Tunas (ICCAT) recently updated this ERA in 2012 by adding five previously unassessed sharks, including the dusky shark. In this ERA (ICCAT, 2012), productivity for the dusky shark was modeled using updated life history information on age and growth from Natanson *et al.* (2013) and a 3-year reproductive cycle (Castro, 2009; Romine, 2009). Out of the 20 Atlantic shark stocks assessed by ICCAT (2012), the dusky shark stock had the fifth lowest intrinsic rate of population increase (r = 0.043 per year). Generation time was estimated at 29.6 years (ICCAT, 2012), which is 10 years shorter than the estimate that was used in the recent SEDAR dusky shark stock assessment (NMFS, 2011a). Although the productivity estimated by ICCAT (2012) nearly doubles the r (yr^{-1}) values estimated during previous studies (r = 0.020, Smith *et al.,* 1998; r = 0.028, Cortés, 1998; r = 0.018, Romine *et al.,* 2009), bringing the relative rating of productivity from very low to borderline between very low and low (Musick, 1999), it still depicts a species vulnerable to overexploitation and susceptible to demographic and density-independent risks in the face of significant depletion. However, based on the evidence of increasing abundance and sustainable levels of exploitation of the NWA DPS, and the assessment of its current demographic and density-independent risks (discussed below in the ''*Assessment of Demographic Viability Factors*''), we do not find this biological vulnerability as currently inhibiting recovery or a threat that will contribute significantly to the NWA DPS' risk of extinction.

Another factor that was evaluated as a potential threat to the NWA DPS was climate change. The effects of climate change are a growing concern for fisheries management as the distributions of many marine organisms are shifting in response to their changing environment. Factors having the most potential to affect marine species are changes in water temperature, salinity, ocean acidification, ocean circulation, and sea level rise. Two recent studies have addressed the vulnerability of dusky sharks to climate change. Chin *et al.* (2010) conducted a vulnerability assessment of sharks and rays on Australia's Great Barrier Reef (GBR) and we are in the process of finalizing a vulnerability assessment of U.S. northeast fish stocks (Jon Hare, NEFSC, personal communication, 2014). These studies identified similar factors for use in their vulnerability assessments, ranked the level of exposure and sensitivity to these factors using current knowledge and expert opinion, and based the resulting relative vulnerability for each species on simple logic rules. Dusky shark exposure rankings were highly influenced by water temperature, but sensitivity to this factor was ranked low for both the NWA and Australia's GBR sharks. NWA dusky sharks were assessed a high vulnerability ranking with respect to climate change, but this was primarily influenced by its MSA-defined stock status and population growth rate. Although the population growth rate was taken into account in the GBR study, little is known about the population status of sharks in this area (Chin *et al.,* 2010; McAuley *et al.,* 2012). GBR dusky sharks were assessed a low vulnerability ranking with respect to climate change. If the factor of stock status is removed from the NWA climate vulnerability analysis (or status is significantly improved) the overall vulnerability of dusky sharks to climate change would be assessed as low (Jon Hare, NEFSC, personal communication, 2014).

Dusky sharks are not reliant on estuarine habitats, which are the habitats thought to be the most vulnerable to climate change. In addition, dusky sharks appear to prefer warmer temperatures and are frequently found in temperate to tropical water temperatures between 23 °C and 30 °C. Although at-vessel mortality rates of dusky sharks were found to positively correlate with bottom water temperatures on BLL gear (Morgan and Burgess, 2007; Gallagher *et al.,* 2014), the effects of climate change on increased fishery-related mortality of the NWA DPS are likely to be minimal as previously discussed regulatory mechanisms have significantly reduced the likelihood of dusky shark capture in the U.S. commercial shark BLL fishery. Dusky sharks are also highly migratory and opportunistic predators, which gives them the ability to shift their range or distribution to remain in an environment conducive to their physiological and ecological needs. Based on the above information and analysis, we do not find that the impacts of warming water temperature from climate change will significantly contribute to the species' risk of extinction.

Assessment of Demographic Viability Factors

In addition to the identification of threats, we also considered the collective condition of individual populations at the species level according to demographic viability factors but did not find evidence to indicate that these factors are appreciably reducing the fitness of the species. The NWA DPS is highly migratory and is not spatially restricted during any life stage, which contributes to its dispersal and re-colonization ability. The NWA DPS also exhibits high genetic diversity, with no indication that it is experiencing reduced reproductive fitness, fecundity, or survival due to loss of phenotypic diversity. Although the life history characteristics of the NWA DPS (long lived, late sexual maturity, low fecundity) limit the productivity of the species, rendering it less resilient to high levels of exploitation, its maximum rate of population increase is not decreasing nor are there indications that this productivity level could lead to extinction. In terms of abundance, it is difficult to make absolute statements about the number of dusky sharks in the NWA DPS because of the lack of reliable retention and discard data; however, fishery-independent surveys suggest that there are still a large number of dusky sharks in the U.S. Atlantic and GOM. In addition, although its current abundance has been significantly reduced from unexploited levels, there are multiple lines of evidence that indicate this number could be increasing (see Abundance section and analyses of data from the NMFS Shark Research Fishery and NMFS Large Pelagics Survey in Overutilization section). Overall, the NWA DPS does not appear to be at a point where normal environmental changes, anthropogenic perturbations, current fisheries-related mortality, habitat destruction, or demographic stochasticity could lead to its extinction.

Extinction Risk

After considering the extent to which demographic viability factors may be indicating a risk of extinction and our evaluation of the ESA section 4(a)

factors impacts on the status of the species as discussed above, we find that the NWA DPS is presently at a low risk of extinction. This finding is in agreement with the SRT conclusions (McCandless *et al.,* 2014). The 2011 SEDAR stock assessment for this DPS indicated the population was depleted to around 85 percent of pre-exploitation levels; however, this assessment also suggested that the prohibition on dusky shark retention has come close to ending overfishing, with the projected biomass under existing management measures stabilizing near current values. Fishing mortality has significantly decreased since the U.S. commercial and recreational retention prohibition in 2000, with the present mortality of dusky sharks mainly attributed to bycatch mortality in the U.S. PLL fisheries and harvest by Mexican fishermen. However, U.S. PLL bycatch and Mexican landings appear to have stabilized at low levels in recent years, with trends that do not indicate any increases in fishing effort that would lead to extinction of this population. Additionally, fishery-independent survey indices (*i.e.,* NELL, VIMS LL, UNC LL) and bycatch from the NMFS Shark Research Fishery and the NMFS Large Pelagic survey indicate that abundance trends for the NWA DPS have continued on a positive trajectory since the terminal year of the SEDAR stock assessment. There will always be some level of extinction risk associated with this DPS, given its inherent vulnerability to overexploitation and potential to suffer mortality when bycaught. However, based on the best available data that show stable to decreasing fishing effort, U.S. bycatch levels, and Mexican harvest, stabilizing spawning stock biomass, and increasing abundance trends, we consider the species to be at a low risk of extinction.

In assessing the extinction risk of the species through the foreseeable future, the SRT defined the foreseeable future as the timeframe over which the threats to the species could be reliably predicted to impact the biological status of the species. Anthropogenic mortality from U.S. bycatch and Mexican landings and the species' natural biological vulnerability to overexploitation were the main operative threats that were likely to contribute significantly to the extinction risk of the NWA DPS. Since the main sources of NWA dusky shark bycatch (U.S. BLL and PLL fisheries) and Mexican landings appear to have stable, if not decreasing, trends since the last assessment, and the only change to management measures in place since that time has been the Mexican seasonal closure implemented in 2012, the SRT relied on the 2011 SEDAR stock assessment projection using the fishing mortality estimated for the final year of the assessment (F = 0.055; NMFS, 2011a) as a precautionary approach to determine the foreseeable future. As discussed previously, this SEDAR stock assessment model takes into account the species' life history information and projects the effects of anthropogenic mortality on the biomass of the species. However, due to the exponential increase in uncertainty seen in the projections of spawning stock biomass beyond 2045 (*i.e.,* $F_{current}$ projection; NMFS, 2011a), the SRT decided that 30 years was the extent of time over which they could confidently predict the impact of the operative threats on the species status. Thus, foreseeable future was defined as 30 years.

In terms of extinction risk, we find that the NWA DPS will be at a low risk of extinction through the foreseeable future. This is also in agreement with the SRT, who was fairly certain that the NWA dusky shark DPS will have a low to no risk of extinction in the foreseeable future and will likely show improvement from its current status. For all SEDAR projection scenarios using data from the most recent SEDAR stock assessment, spawning stock biomass is predicted to either stabilize through the foreseeable future (based on the 2008 estimated fishing mortality) or increase (based on alternate projections taking into account potential changes in fishing mortality that likely would require changes to current management measures) (NMFS, 2011a). The SRT did note that the greatest source of uncertainty in the SEDAR stock assessment data was the amount of human induced removals, with the projections of NWA dusky shark status most sensitive to the inclusion of different abundance indices and the weighting of these indices. For example, if total fishing mortality was underestimated or productivity was overestimated, there could be some cause for concern regarding the future status of the species (as exhibited by the lower 5–10 percent quantiles of biomass projections; NMFS, 2011a). However, recent and sustained positive trends in dusky shark abundance indices with updated data that was not considered in the projection suggests that the point estimates for exploitation levels (fishing mortality) may have been biased high and estimates of stock biomass may have been biased low given that an increase in biomass was not predicted for 2010–2012 by the SEDAR stock assessment model (NMFS, 2011a). Additionally, estimates of the species' productivity have increased, based on updated life history information since the last assessment was conducted, suggesting the potential biases mentioned above are not operative.

Final Determination

Section 4(b)(1) of the ESA requires that we make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information including the petition, public comments submitted on the 90-day finding (78 FR 29100; May 17, 2013), the status review report (McCandless *et al.,* 2014), and other published and unpublished information, and have consulted with species experts and individuals familiar with the dusky shark.

We conclude that the dusky sharks occurring in the NWA are discrete and significant from other members of their species and, therefore, we consider this population to be a DPS. Next, we considered each of the ESA section (4)(a)(1) factors to determine whether it presented an extinction risk to the NWA DPS on its own. We also considered the combination of those factors to determine whether they collectively contributed to the extinction of the species. Our determination set forth below is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the NWA DPS throughout its entire range.

We conclude that the NWA DPS of dusky shark is not presently in danger of extinction, nor is it likely to become so in the foreseeable future throughout all of its range. We summarize the factors supporting this conclusion as follows: (1) The DPS is highly migratory, occurring throughout its range, with no barrier to dispersal; (2) its current range is indistinguishable from its historical range, and there is no evidence of habitat loss, destruction, or modification that is significantly contributing to the species' extinction risk; (3) there is no evidence that disease, predation, or competition is contributing to increasing the risk of extinction of the species; (4) while the species possesses life history characteristics that increase its susceptibility to depletion, current abundance levels are sufficient to

maintain population viability now and into the foreseeable future; (5) stock assessment projections and trends in catch data and updated fishery-independent time series indicate increasing abundance of the NWA DPS, with spawning stock biomass stabilizing through the foreseeable future; (6) while the main threat to the species is fishery-related mortality from bycatch in U.S. commercial and recreational fisheries and Mexican landings, U.S. bycatch and Mexican harvest under existing management measures has decreased and/or stabilized at low levels in recent years, with current levels deemed sustainable through the foreseeable future; (7) existing regulatory mechanisms throughout the DPS' range, including the U.S. retention prohibition as well as time and area closures in both U.S. and Mexican waters and strict management of the U.S. line fisheries, appear effective in addressing the most important threat to the species (*i.e.,* exploitation through bycatch mortality and harvest); and (8) while the NWA DPS has declined from historical numbers, there is no evidence that the species is currently suffering from depensatory processes (such as reduced likelihood of finding a mate or mate choice or diminished fertilization and recruitment success) or is at risk of extinction due to environmental variation or anthropogenic perturbations. Accordingly, the NWA DPS of dusky shark does not meet the definition of a threatened or endangered species, and our listing determination is that the NWA DPS of dusky shark does not warrant listing as threatened or endangered at this time.

Significant Portion of Its Range

Because we find that the species does not warrant listing as threatened or endangered throughout its range, we must evaluate whether there is substantial information indicating that a portion of the species' range is both significant and either threatened or endangered per the Significant Portion of its Range Policy (79 FR 37577; July 1, 2014). However, after a review of the best available information, we could not identify a portion of the NWA DPS range where its contribution to the viability of the species is so important that, without the members in that portion, the NWA DPS would be at risk of extinction, or likely to become so in the foreseeable future, throughout all of its range. The NWA DPS is highly mobile throughout its range. Loss of any portion of its range would not likely isolate the species to the point where the remaining portions would be at risk of extinction from demographic processes. Similarly, we did not find that loss of any portion would severely fragment and isolate the NWA DPS to the point where individuals would be precluded from moving to suitable habitats or have an increased vulnerability to threats. In fact, we found no information that would suggest that the remaining populations could not repopulate the lost portion. There are very few restrictions governing their movements, with individuals of the DPS commonly moving between the U.S. Atlantic, U.S. GOM and Mexican Gulf waters based on mark/recapture studies (Kohler and Tuner 2010; Carlson and Gulak, 2012; NMFS, unpublished data). Individuals of the species also tend to travel the extent of their range during their seasonal migrations (Compango, 1984; Musick and Colvocoresses, 1986; Kohler *et al.,* 1998; Kohler and Turner, 2010). Areas exhibiting source-sink dynamics, which could affect the survival of the species, were not evident in any part of the NWA DPS range.

There is no information that the loss of genetic diversity from one portion (such as the Atlantic Ocean) would result in the remaining population lacking enough genetic diversity to allow for adaptations to changing environmental conditions. Dusky sharks from all regions show remarkable similar allelic richness and gene diversity, and within the NWA there was no evidence of genetic differentiation between dusky sharks from waters off the U.S. east coast and the GOM (Benavides *et al.,* 2011; Gray *et al.,* 2012).

There is also no evidence of a portion that encompasses aspects that are important to specific life history events but another portion that does not, where loss of the former portion would severely impact the growth, reproduction, or survival of the entire species. EFH areas, which could provide important nursery, breeding, and feeding grounds, have been identified along the length of the U.S. east coast, with smaller localized areas in the central GOM, southern Texas, the Florida Panhandle, mid-west coast of Florida, and Florida Keys (NMFS, 2009). Given that the environmental characteristics that constitute this EFH, such as warm waters with reduced salinities, nearshore coastal waters, and waters associated with the continental shelf edge, can be found throughout the species' range, we do not consider them to be limiting factors for the species' survival. In other words, the viability of the species does not appear to depend on the productivity of the population or the environmental characteristics in any one portion.

Additionally, in our evaluation of the potential threats to the species, including the likelihood of fishery-related mortality, we did not find information to show that these threats are significantly concentrated or substantially greater in any specific portion of the species' range. The dusky shark is susceptible to being caught as bycatch in U.S. commercial and recreational fisheries throughout the entire extent of its range and is landed in Gulf waters by Mexican fishermen; however, we found no information to suggest that increased effort in a certain area is leading to a higher risk of extinction for that portion. Again, there are no barriers to the shark's movement and existing management measures appear adequate in protecting the NWA DPS from extinction throughout all portions of its range.

In conclusion, we find that there is no portion of the NWA DPS range that can be considered significant under the SPR Policy. Therefore, we find that the NWA DPS is not presently in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the foreseeable future, and, as such, does not warrant listing at this time.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 9, 2014.

Samuel D. Rauch III,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD611

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Groundfish and Halibut Observer Program Standard Ex-Vessel Prices

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

ACTION: Notification of standard ex-vessel prices.

SUMMARY: NMFS publishes standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the North Pacific Groundfish and Halibut Observer Program (Observer Program). This notice is intended to provide information to vessel owners, processors, registered buyers, and other participants about the standard ex-vessel prices that will be used to calculate the observer fee liability for landings of groundfish and halibut made in 2015. NMFS will send invoices to processors and registered buyers subject to the fee by January 15, 2016. Fees are due to NMFS on or before February 15, 2016.

DATES: Effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: For general questions about the observer fee and standard ex-vessel prices, contact Sally Bibb at 907–586–7389. For questions about the fee billing process, contact Troie Zuniga, Fee Coordinator, 907–586–7105. Additional information about the Observer Program is available on NMFS Alaska Region's Web site at *http://alaskafisheries.noaa.gov/sustainablefisheries/observers/.*

SUPPLEMENTARY INFORMATION:

Background

The Observer Program deploys NMFS-certified observers (observers) who collect information necessary for the conservation and management of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish and halibut fisheries. Fishery managers use information collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected information for stock assessments and marine ecosystem research.

The Observer Program is divided into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors are included in one of these two categories. The partial observer coverage category includes vessels and processors that are not required to have an observer at all times; the full observer coverage category includes vessels and processors required to have all of their fishing and processing operations off Alaska observed. Vessels and processors in the full coverage category arrange and pay for observer services from a permitted observer provider. Observer coverage for the partial coverage category is funded through a system of fees based on the ex-vessel value of groundfish and halibut.

Landings Subject to Observer Coverage Fee

The objective of the observer fee assessment is to levy a fee on all landings accruing against a Federal total allowable catch (TAC) for groundfish or a commercial halibut quota made by vessels that are subject to Federal regulations and not included in the full coverage category. A fee is only assessed on landings of groundfish from vessels designated on a Federal Fisheries Permit or from vessels landing individual fishing quota (IFQ) or community development quota (CDQ) halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against the Federal TAC are included in the fee assessment. A table with additional information about which landings are and are not subject to the observer fee is in NMFS regulations at § 679.55(c) and is on page 2 of an informational bulletin titled ''Observer Fee Collection'' on the NMFS Alaska Region Web page at *https://alaskafisheries.noaa.gov/sustainablefisheries/observers/observerfees.pdf.*

Fee Determination

A fee equal to 1.25 percent of the ex-vessel value is assessed on the landings of groundfish and halibut subject to the fee. Ex-vessel value is determined by multiplying the standard price for groundfish by the round weight equivalent for each species, gear, and port combination, and the standard price for halibut by the headed and gutted weight equivalent. NMFS will assess each landing report submitted via eLandings and each manual landing entered into the IFQ landing database and determine if the landing is subject to the observer fee and, if it is, which groundfish in the landing are subject to the observer fee. All IFQ or CDQ halibut in a landing subject to the observer fee will be assessed as part of the fee liability. For any groundfish or halibut subject to the observer fee, NMFS will apply the appropriate standard ex-vessel prices for the species, gear type, and port, and calculate the observer fee liability associated with the landing.

Processors and registered buyers access the landing-specific, observer fee liability information through NMFS Web Application (*https://alaskafisheries.noaa.gov/webapps/efish/login*) or eLandings (*https://elandings.alaska.gov/*). For IFQ halibut, CDQ halibut, and IFQ sablefish, this information is available as soon as the IFQ report is submitted. For groundfish and sablefish that accrue against the fixed gear sablefish CDQ reserve, the observer fee liability information is generally available within 24 hours of receipt of the report. The time lag on the groundfish and sablefish CDQ fee information is necessary because NMFS must process the landings report through the catch accounting system computer programs to determine if all of the groundfish in the landings are subject to the observer fee. Information about which groundfish in a landing accrues against a Federal TAC is not immediately available from the processor's data entry into eLandings.

The intent of the North Pacific Fishery Management Council and NMFS is for vessel owners to split the fee liability 50/50 with the processor or registered buyer. While vessels and processors are responsible for their portion of the fee, the owner of a shoreside processor or a stationary floating processor and the registered buyer are responsible for collecting the fee, including the vessel's portion of the fee, and remitting the full fee liability to NMFS.

NMFS will send invoices to processors and registered buyers for their total fee liability, which is determined by the sum of the fees reported for each landing for that processor or registered buyer for the prior calendar year, by January 15, 2016. Processors and registered buyers must pay the fees to NMFS using NMFS Web Application by February 15, 2016. Processors and registered buyers have access to this system through a User ID and password issued by NMFS. Instructions for electronic payment will be provided on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov* and on the observer fee liability invoice to be mailed to each permit holder.

Standard Prices

This notice provides the standard ex-vessel prices for groundfish and halibut species subject to the observer fee in 2015. Data sources for ex-vessel prices are:

- For groundfish other than sablefish IFQ and sablefish accruing against the fixed gear sablefish CDQ reserve, the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross revenue data, which are based on the Commercial Operator Annual Report (COAR) and Alaska Department of Fish and Game fish tickets; and
- For halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish accruing against the fixed gear sablefish CDQ reserve, the IFQ Buyer Report that is submitted annually to NMFS under § 679.5(l)(7)(i).

The standard prices in this notice were calculated using applicable guidance for protecting confidentiality of data submitted to or collected by NMFS. NMFS does not publish any price information that would permit the identification of an individual or business. At least four persons must make landings of a species with a particular gear type at a particular port in order for NMFS to publish that price data for that species-gear-port combination. Similarly, at least four processors in a particular port must purchase a species harvested with a particular gear type in order for NMFS to publish a price for that species-gear-port combination. Price data that is confidential because fewer than four persons contributed data to a particular species-gear-port combination has been aggregated to protect confidential data.

Groundfish Standard Ex-Vessel Prices

Table 1 shows the groundfish species standard ex-vessel prices for 2015. These prices are based on the CFEC gross revenue data, which are based on landings data from Alaska Department of Fish and Game fish tickets and information from the COAR. The COAR contains statewide buying and production information, and is considered the most accurate routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska.

The standard ex-vessel prices for groundfish were calculated by adding ex-vessel value from the CFEC gross revenue files for 2011, 2012, and 2013 by species, port, and gear category, and adding the volume (weight) the CFEC gross revenue files for 2011, 2012, and 2013 by species, port, and gear category, and then dividing total ex-vessel value over the 3-year period in each category by total volume over the 3-year period in each category. This calculation results in a weighted average ex-vessel price per pound by species, port, and gear category. Three gear categories were used for the standard ex-vessel prices: pelagic trawl gear, non-pelagic trawl gear, and other gear (hook-and-line, pot, and jig).

CFEC ex-vessel value data are available in the fall of the year following the year the fishing occurred. Thus, it is not possible to base ex-vessel fee liabilities on standard prices that are less than 2 years old.

If a particular species is not listed in Table 1, the standard ex-vessel price for a species group, if it exists in the management area, will be used. If price data for a particular species remained confidential once aggregated to the ALL level, data is aggregated by species group (Flathead Sole, GOA Deep-water Flatfish; GOA Shallow-water Flatfish; GOA Skate, Other; and Other Rockfish). Standard prices for the species groups are shown in Table 2.

If a port-level price does not meet the confidentiality requirements, the data are aggregated by port-group. Port-group data is first aggregated by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA) and by subarea in the BSAI (BS subarea and AI subarea). Port-group data for Southeast Alaska (SEAK) and the Eastern GOA excluding Southeast Alaska (EGOAxSE) also are presented separately when price data are available. If confidentiality requirements are still not met by aggregating prices across ports at these levels, the prices are aggregated at the level of BSAI or GOA, then statewide (AK) and ports outside of Alaska (OTAK), and finally all ports, including those outside of Alaska (''ALL'').

Standard prices are presented separately for non-pelagic trawl and pelagic trawl when non-confidential data is available. NMFS also calculated prices for a ''Pelagic Trawl/Non-pelagic Trawl Combined'' category that can be used when combining trawl price data for landings of a species in a particular port or port group will not violate confidentiality requirements. Creating this standard price category allows NMFS to assess a fee on 2015 landings of some of the species with pelagic trawl gear based on a combined trawl gear price for the port or port group.

If no standard ex-vessel price is listed for the species or species group and gear category combination, no fee will be assessed on that landing. Volume and value data for that species will be added to the standard ex-vessel prices in future years, if that data becomes available and display of a standard ex-vessel price meets confidentiality requirements.

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Table 1. Standard Ex-vessel Prices for Groundfish Species for 2015 Observer Coverage Fee Liability (based on volume and value from 2011, 2012, and 2013).

Species[1,2]	Port/ Area[3,4]	HAL/ POT/JIG	NPT	PTR	PTR/NPT
Alaska Plaice Flounder (133)	Kodiak	----	$0.08	----	$0.08
	CGOA	----	$0.08	----	$0.08
	GOA	----	$0.08	----	$0.08
	AK	----	$0.08	----	$0.08
	ALL	----	$0.08	----	$0.08
Arrowtooth Flounder (121)	Kodiak	----	$0.06	$0.06	----
	CGOA	----	$0.06	$0.06	----
	GOA	$0.07	$0.06	$0.06	----
	AK	$0.07	$0.06	$0.06	----
	ALL	$0.07	$0.06	$0.06	----
Black Rockfish (142)	AK	$0.46	$0.28	----	$0.28
Bocaccio Rockfish (137)	Sitka	$0.54	----	----	----
	SEAK	$0.42	----	----	----
	EGOA	$0.42	----	----	----
	GOA	$0.42	----	----	----
	AK	$0.42	----	----	----
	ALL	$0.42	----	----	----
Butter Sole (126)	Kodiak	----	$0.15	$0.15	----
	CGOA	----	$0.15	$0.15	----
	GOA	----	$0.15	$0.15	----
	AK	----	$0.15	$0.15	----
	ALL	----	$0.15	$0.15	----
Canary Rockfish (146)	Sitka	$0.56	----	----	----
	SEAK	$0.49	----	----	----
	EGOA	$0.49	----	----	----
	Seward	$0.40	----	----	----
	CGOA	$0.40	----	----	----
	GOA	$0.48	----	----	----
	AK	$0.48	----	----	----
	ALL	$0.48	----	----	----
China Rockfish (149)	SEAK	$0.55	----	----	----
	EGOAxSE	$0.27	----	----	----
	Homer	$0.45	----	----	----
	Seward	$0.72	----	----	----
	CGOA	$0.64	----	----	----
	GOA	$0.37	----	----	----
	AK	$0.37	----	----	----
	ALL	$0.37	----	----	----

Copper Rockfish (138)	Sitka	$0.57	----	----	----
	SEAK	$0.56	----	----	----
	EGOA	$0.35	----	----	----
	Homer	$0.51	----	----	----
	CGOA	$0.51	----	----	----
	GOA	$0.37	----	----	----
	AK	$0.37	----	----	----
	ALL	$0.37	----	----	----
Dover Sole (124)	Kodiak	----	$0.10	$0.10	----
	CGOA	----	$0.10	$0.10	----
	GOA	----	$0.10	$0.10	----
	AK	----	$0.10	$0.10	----
	ALL	----	$0.10	$0.10	----
Dusky Rockfish (172)	Sitka	$0.47	----	----	----
	SEAK	$0.45	----	----	----
	EGOAxSE	$0.28	----	----	----
	Homer	$0.35	----	----	----
	Kodiak	$0.32	$0.19	$0.17	----
	Seward	$0.41	----	----	----
	CGOA	$0.32	$0.19	$0.33	----
	GOA	$0.35	$0.19	$0.33	----
	AK	$0.35	$0.19	$0.33	----
	ALL	$0.35	$0.19	$0.33	----
English Sole (128)	Kodiak	----	$0.16	----	$0.16
	CGOA	----	$0.16	----	$0.16
	GOA	----	$0.16	----	$0.16
	AK	----	$0.16	----	$0.16
	ALL	----	$0.16	----	$0.16
Flathead Sole (122)	Kodiak	----	$0.15	$0.15	----
	CGOA	----	$0.15	$0.15	----
	GOA	----	$0.15	$0.08	----
	AK	----	$0.15	$0.07	----
	ALL	----	$0.15	$0.07	----
Northern Rockfish (136)	Kodiak	----	$0.19	$0.18	----
	CGOA	----	$0.19	$0.18	----
	GOA	----	$0.19	$0.18	----
	AK	----	$0.19	$0.18	----
	ALL	----	$0.19	$0.18	----
Octopus (870)	Homer	$0.77	----	----	----
	Kodiak	$0.51	$0.54	$0.50	----
	CGOA	$0.53	$0.54	$0.50	----

	GOA	$0.49	$0.54	$0.49	----
	DH/Unalaska	$0.25	----	----	----
	BS	$0.23	----	----	----
	BSAI	$0.24	----	----	----
	AK	$0.48	$0.54	$0.49	----
	ALL	$0.48	$0.54	$0.49	----
Pacific Cod (110)	Craig	$0.17	----	----	----
	Hoonah	$0.57	----	----	----
	Juneau	$0.62	----	----	----
	Ketchikan	$0.44	----	----	----
	Petersburg	$0.26	----	----	----
	Sitka	$0.54	----	----	----
	SEAK	$0.58	----	----	----
	Cordova	$0.42	----	----	----
	Whittier	$0.31	----	----	----
	EGOAxSE	$0.39	----	----	----
	Homer	$0.37	----	----	----
	Kodiak	$0.34	$0.30	$0.28	----
	Seward	$0.35	----	----	----
	CGOA	$0.34	$0.30	$0.28	----
	King Cove	$0.30	----	----	----
	WGOA	$0.29	----	----	----
	GOA	----	$0.30	$0.20	----
	Adak	$0.27	----	----	----
	AI	$0.27	----	----	----
	DH/Unalaska	$0.33	$0.30	----	$0.30
	BS	$0.33	$0.29	----	$0.29
	BSAI	----	$0.29	----	$0.29
	AK	$0.32	$0.29	$0.19	----
	ALL	$0.32	$0.29	$0.19	----
Pacific Ocean Perch (141)	Kodiak	----	$0.19	$0.18	----
	CGOA	----	$0.19	$0.19	----
	GOA	$0.15	$0.19	$0.20	----
	AK	$0.17	$0.19	$0.20	----
	ALL	$0.17	$0.19	$0.20	----
Pollock (270)	Homer	$0.35	----	----	----
	Kodiak	$0.14	$0.18	$0.18	----
	CGOA	$0.15	$0.18	$0.18	----
	GOA	$0.15	$0.18	$0.17	----
	DH/Unalaska	$0.08	$0.16	----	$0.16
	BS	$0.07	$0.16	----	$0.15

	BSAI	$0.07	$0.16	----	$0.15
	AK	$0.15	$0.17	$0.17	----
	ALL	$0.15	$0.17	$0.17	----
Quillback Rockfish (147)	Hoonah	$0.51	----	----	----
	Ketchikan	$0.45	----	----	----
	Sitka	$0.82	----	----	----
	SEAK	$0.89	----	----	----
	Cordova	$0.29	----	----	----
	EGOAxSE	$0.28	----	----	----
	Homer	$0.33	----	----	----
	Seward	$0.37	----	----	----
	CGOA	$0.37	----	----	----
	GOA	$0.62	----	----	----
	AK	$0.62	----	----	----
	ALL	$0.62	----	----	----
Redbanded Rockfish (153)	Ketchikan	$0.31	----	----	----
	Petersburg	$0.21	----	----	----
	Sitka	$0.50	----	----	----
	SEAK	$0.35	----	----	----
	EGOAxSE	$0.30	----	----	----
	Homer	$0.31	----	----	----
	Kodiak	$0.21	$0.18	----	$0.18
	Seward	$0.38	----	----	----
	CGOA	$0.31	$0.18	----	$0.18
	GOA	$0.34	$0.18	----	$0.18
	AK	$0.34	$0.18	----	$0.18
	ALL	$0.34	$0.18	----	$0.18
Redstripe Rockfish (158)	EGOA	$0.48	----	----	----
	Homer	$0.28	----	----	----
	CGOA	$0.28	----	----	----
	GOA	$0.30	----	----	----
	AK	$0.30	----	----	----
	ALL	$0.30	----	----	----
Rex Sole (125)	Kodiak	----	$0.29	$0.29	----
	CGOA	----	$0.29	$0.29	----
	GOA	----	$0.29	$0.28	----
	AK	----	$0.29	$0.28	----
	ALL	----	$0.29	$0.28	----
Rock Sole (123)	Kodiak	----	$0.25	$0.25	----
	CGOA	----	$0.25	$0.25	----
	GOA	----	$0.25	$0.25	----

	AK	----	$0.25	$0.25	----
	ALL	----	$0.25	$0.25	----
Rosethorn Rockfish (150)	SEAK	$0.45	----	----	----
	EGOA	$0.51	----	----	----
	GOA	$0.48	----	----	----
	AK	$0.48	----	----	----
	ALL	$0.48	----	----	----
Rougheye Rockfish (151)	Hoonah	$0.30	----	----	----
	Ketchikan	$0.31	----	----	----
	Petersburg	$0.25	----	----	----
	Sitka	$0.49	----	----	----
	SEAK	$0.39	----	----	----
	Cordova	$0.26	----	----	----
	EGOAxSE	$0.27	----	----	----
	Homer	$0.32	----	----	----
	Kodiak	$0.35	$0.21	$0.21	----
	Seward	$0.37	----	----	----
	CGOA	$0.35	$0.21	$0.21	----
	GOA	$0.35	$0.22	$0.21	----
	DH/Unalaska	$0.29	----	----	----
	BS	$0.29	----	----	----
	BSAI	$0.29	----	----	----
	AK	$0.34	$0.22	$0.21	----
	ALL	$0.35	$0.22	$0.21	----
Sablefish (blackcod) (710)	Kodiak	n/a[5]	$3.68	$3.43	----
	CGOA	n/a	$3.68	$4.03	----
	GOA	n/a	$3.68	$4.03	----
	AK	n/a	$3.68	$4.03	----
	ALL	n/a	$3.68	$4.03	----
Shortraker Rockfish (152)	Ketchikan	$0.31	----	----	----
	Petersburg	$0.25	----	----	----
	Sitka	$0.49	----	----	----
	SEAK	$0.37	----	----	----
	Cordova	$0.34	----	----	----
	Whittier	$0.32	----	----	----
	EGOAxSE	$0.48	----	----	----
	Homer	$0.34	----	----	----
	Kodiak	$0.32	$0.22	$0.23	----
	Seward	$0.38	----	----	----
	CGOA	$0.37	$0.22	$0.22	----
	GOA	$0.38	$0.26	$0.22	----

	DH/Unalaska	$0.13	----	----	----
	BS	$0.20	----	----	----
	BSAI	$0.21	----	----	----
	AK	$0.37	$0.26	$0.22	----
	ALL	$0.37	$0.26	$0.22	----
Silvergray Rockfish (157)	Craig	$0.31	----	----	----
	Ketchikan	$0.33	----	----	----
	Sitka	$0.49	----	----	----
	SEAK	$0.40	----	----	----
	EGOA	$0.40	----	----	----
	Homer	$0.37	----	----	----
	Seward	$0.38	----	----	----
	CGOA	$0.38	----	----	----
	GOA	$0.40	----	----	----
	AK	$0.40	----	----	----
	ALL	$0.40	----	----	----
Skate, Alaska (703)	EGOA	$0.40	----	----	----
	GOA	$0.40	----	----	----
	AK	$0.40	----	----	----
	ALL	$0.40	----	----	----
Skate, Aleutian (704)	AK	$0.39	----	----	----
	ALL	$0.39	----	----	----
Skate, Big (702)	EGOAxSE	$0.41	----	----	----
	EGOA	$0.41	----	----	----
	Homer	$0.40	----	----	----
	Kodiak	$0.43	$0.44	$0.44	----
	Seward	$0.38	----	----	----
	CGOA	$0.42	$0.44	$0.44	----
	GOA	$0.42	$0.44	$0.44	----
	AK	$0.42	$0.44	$0.44	----
	ALL	$0.42	$0.44	$0.44	----
Skate, Longnose (701)	SEAK	$0.40	----	----	----
	EGOAxSE	$0.40	----	----	----
	Homer	$0.37	----	----	----
	Kodiak	$0.44	$0.45	$0.45	----
	Seward	$0.41	----	----	----
	CGOA	$0.43	$0.45	$0.45	----
	GOA	$0.43	$0.45	$0.45	----
	AK	$0.43	$0.44	$0.45	----
	ALL	$0.43	$0.44	$0.45	----
Skate, Other (700)	Kodiak	$0.45	----	----	----

	CGOA	$0.47	----	----	----
	GOA	$0.42	----	----	----
	AK	$0.34	----	----	$0.05
	ALL	$0.34	----	----	$0.05
Squid (875)	Kodiak	----	----	$0.06	$0.06
	CGOA	----	----	$0.06	$0.06
	GOA	----	----	$0.06	$0.06
	AK	----	$0.04	$0.06	----
	ALL	----	$0.04	$0.06	----
Starry Flounder (129)	Kodiak	----	$0.07	----	$0.07
	CGOA	----	$0.07	----	$0.07
	GOA	----	$0.07	----	$0.07
	AK	----	$0.07	----	$0.07
	ALL	----	$0.07	----	$0.07
Thornyhead Rockfish (Idiots) (143)	Hoonah	$1.00	----	----	----
	Ketchikan	$1.21	----	----	----
	Petersburg	$0.99	----	----	----
	Sitka	$1.17	----	----	----
	SEAK	$1.11	----	----	----
	Cordova	$0.52	----	----	----
	EGOAxSE	$0.85	----	----	----
	Homer	$0.81	----	----	----
	Kodiak	$0.65	$0.48	----	$0.48
	Seward	$0.84	----	----	----
	CGOA	$0.77	$0.48	----	$0.48
	WGOA	$0.73	----	----	----
	GOA	----	$0.49	----	$0.49
	Adak	$0.43	----	----	----
	AI	$0.56	----	----	----
	Dutch Harbor/ Unalaska	$0.74	----	----	----
	BS	$0.71	----	----	----
	AK	$0.86	$0.49	----	$0.49
	ALL	$0.86	$0.49	----	$0.49
Tiger Rockfish (148)	SEAK	$0.42	----	----	----
	EGOAxSE	$0.26	----	----	----
	Homer	$0.28	----	----	----
	Seward	$0.38	----	----	----
	CGOA	$0.36	----	----	----
	GOA	$0.36	----	----	----
	AK	$0.36	----	----	----

	ALL	$0.36	----	----	----
Vermilion Rockfish (184)	ALL	$0.33	----	----	----
Widow Rockfish (156)	Sitka	$0.46	----	----	----
	SEAK	$0.30	----	----	----
	EGOA	$0.30	----	----	----
	GOA	$0.31	----	----	----
	AK	$0.31	----	----	----
	ALL	$0.31	----	----	----
Yelloweye Rockfish (145)	Craig	$1.45	----	----	----
	Hoonah	$0.53	----	----	----
	Ketchikan	$1.21	----	----	----
	Petersburg	$1.13	----	----	----
	Sitka	$1.67	----	----	----
	SEAK	$1.51	----	----	----
	Cordova	$0.97	----	----	----
	Whittier	$0.82	----	----	----
	EGOAxSE	$0.95	----	----	----
	Homer	$0.76	----	----	----
	Kodiak	$0.40	$0.24	----	$0.24
	Seward	$0.65	----	----	----
	CGOA	$0.63	$0.24	----	$0.24
	WGOA	$0.47	----	----	----
	GOA	----	$0.24	----	$0.24
	DH/Unalaska	$0.21	----	----	----
	BS	$0.19	----	----	----
	BSAI	$0.19	----	----	----
	AK	$1.30	$0.24	----	$0.24
	ALL	$1.29	$0.24	----	$0.24
Yellowtail Rockfish (155)	Sitka	$0.52	----	----	----
	SEAK	$0.52	----	----	----
	EGOA	$0.51	----	----	----
	CGOA	$0.23	----	----	----
	GOA	$0.33	----	----	----
	AK	$0.33	----	----	----
	ALL	$0.33	----	----	----

---- = no landings in last 3 years or the data is confidential

[1] If species is not listed, use price for the species group in Table 2 if it exists in the management area. If no price is available for the species or species group, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] For species codes, see Table 2a to 50 CFR part 679.

[3] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[4] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[5] n/a = ex-vessel prices for sablefish landed with hook-and-line, pot, or jig gear are listed in Table 3 with the prices for IFQ and CDQ landings.

Table 2. Standard Ex-vessel Prices for Groundfish Species Groups for 2015 Observer Coverage Fee Liability (based on volume and value from 2011, 2012, and 2013).

Species Group[1]	Port/ Area[2, 3]	HAL/ POT/JIG	NPT	PTR
Flathead Sole (FSOL)	CGOA	----	$0.15	$0.15
	GOA	----	$0.15	$0.08
	AK	----	$0.15	$0.08
GOA Deep-water Flatfish [4] (DFL4)	CGOA	----	$0.10	$0.10
	GOA	----	$0.10	$0.10
GOA Shallow-water Flatfish[5] (SFL1)	CGOA	----	$0.23	$0.24
	GOA	----	$0.23	$0.24
GOA Skate, Other (USKT)	SEAK	$0.38	----	----
	EGOA	$0.38	----	----
	CGOA	$0.47	----	----
	GOA	$0.41	----	----
Other Rockfish[6,7] (ROCK)	SEAK	$0.36	----	----
	EGOAxSE	$0.85	----	----
	CGOA	$0.57	$0.21	$0.23
	WGOA	$0.47	----	----
	GOA	----	$0.21	$0.24
	AI	$0.56	----	----
	BS	$0.69	----	----
	AK	----	$0.21	$0.24

---- = no landings in last 3 years or the data is confidential

[1] If species is not listed in Table 1, use price for the species group if it exists in the management area. If no price is available for the species or species group, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[3] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[4] "Deep-water flatfish" in the GOA means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[5] "Shallow-water flatfish" in the GOA means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] In the GOA:

"Other rockfish (slope rockfish)" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergray), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. reedi (yellowmouth), S. entomelas (widow), and S. flavidus (yellowtail).

"Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye).

"Other rockfish" in the Western and Central Regulatory Areas means "other rockfish (slope rockfish)" and demersal shelf rockfish.

"Other rockfish" in the West Yakutat District of the EGOA means "other rockfish (slope rockfish)," northern rockfish, S. polyspinous, and demersal shelf rockfish.

"Other rockfish" in the SEO District of the GOA (and SEAK for Table 2) means "other rockfish (slope rockfish) and northern rockfish, S. polyspinous.

[7] "Other rockfish" in the BSAI includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

Halibut and Sablefish IFQ and CDQ Standard Ex-vessel Prices

Table 3 shows the observer fee standard ex-vessel prices for halibut and sablefish. These standard prices are calculated as a single annual average price, by port or port group. Volume and ex-vessel value data collected on the 2014 IFQ Buyer Report for landings made from October 1, 2013, through September 30, 2014, were used to calculate the standard ex-vessel prices for the 2015 observer fee liability for halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish landings that accrue against the fixed gear sablefish CDQ reserve.

Table 3. Standard Ex-vessel Prices for Halibut IFQ, Halibut CDQ, Sablefish IFQ, and Sablefish Accruing Against the Fixed Gear Sablefish CDQ Reserve for the 2015 Observer Fee Liability (based on 2014 IFQ Buyer Report).

Species	Port/Area[1]	Price[2]
Halibut (200)	Ketchikan	$6.35
	Petersburg	$6.53
	SEAK	$6.14
	Cordova	$6.53
	Yakutat	$6.28
	EGOAxSE	$6.14
	Homer	$6.45
	Kenai	$6.65
	Kodiak	$6.04
	Seward	$6.41
	CGOA	$6.14
	WGOA	$6.14
	AI	$6.14
	Dutch Harbor/ Unalaska	$5.50
	BS	$6.14
	AK	$6.14
	OTAK	$6.14
	ALL	$6.14
Sablefish (710)	SEAK	$3.50
	EGOAxSE	$3.50
	Homer	$3.35
	Kodiak	$3.42
	CGOA	$3.50
	WGOA	$3.50
	AI	$3.50
	Dutch Harbor/ Unalaska	$4.79
	BS	$3.50
	AK	$3.50
	OTAK	$3.50
	ALL	$3.50

[1] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; OTAK = Outside Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska)

[2] If a price is listed for the species and port combination, that price will be applied to the round weight equivalent for sablefish landings and the headed and gutted weight equivalent for halibut landings. If no price is listed for the port, use port group.

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

Dated: December 10, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–29348 Filed 12–15–14; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD646

Notice of Intent To Issue Guidelines

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

ACTION: Notice, request for public comment.

SUMMARY: The Marine Mammal Protection Act (MMPA) allows for persons to employ measures to deter marine mammals from damaging fishing gear and catch, damaging personal or public property, or endangering personal safety, as long as these measures do not result in death or serious injury of marine mammals. The MMPA also allows the Secretary of Commerce, through NOAA's National Marine Fisheries Service (NMFS), to develop national guidelines on safely deterring marine mammals under NOAA's jurisdiction (*e.g.,* whales, dolphins, seals, and sea lions). To inform development of these national guidelines, NMFS requests input on which deterrents the public would like NMFS to evaluate and consider for approval. Any subsequent national guidelines for safely deterring marine mammals would then be released for public notice and comment as required by the MMPA. Such national guidelines would likely be tailored to each species group (pinnipeds, large cetaceans, and small cetaceans) as differences in physiology and behavior would affect whether a deterrent is appropriate for one or more species group. National guidelines would also address relevant implementation considerations. Deterrents could be considered ''passive'' or ''active'' in nature. Deterrents may include physical barriers, acoustic deterrent and harassment devices, visual repellents, boat hazing, noisemakers, and physical contact. For each deterrent device or technique submitted to NMFS for consideration and evaluation, NMFS requests information on the specifications (*e.g.,* source and frequency levels, pulse rate, type of fencing, size of flags, etc.) for each deterrent or technique, which marine mammal species or species group (large cetaceans, small cetaceans, pinnipeds) would be deterred, how a deterrent would be employed (*e.g.,* attached to fishing gear, launched some distance from a marine mammal), any evidence that the deterrent will not result in mortality or serious injury, and any other implementation considerations. This information will help NMFS determine which devices or techniques are appropriate for the development of guidelines and specific measures for safely deterring both non-ESA listed and ESA listed marine mammals.

DATES: Written comments from interested parties on the non-lethal deterrents for NMFS' consideration must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on January 15, 2015.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2014–0146, by any of the following methods during the 30-day comment period:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2014–0146 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- Mail: Submit written comments to Kristy Long, Office of Protected Resources, 7600 Sand Point Way NE., Building 4, Room 2122–4, Seattle, WA 98115.
- Fax: 301–713–0376; Attn: Kristy Long.

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

FOR FURTHER INFORMATION CONTACT: Kristy Long (ph. 206–526–4792, email *Kristy.Long@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

The deterrence provisions of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) provide an exception to otherwise prohibited acts, allowing the use of measures that may deter a marine mammal from, among other things, damaging private property or endangering personal safety, so long as those deterrents do not result in the death or serious injury of a marine mammal. NMFS has defined ''serious injury'' as any injury that will likely result in death (50 CFR 229.2) and has further interpreted that definition and developed a process to distinguish serious from non-serious injuries (*www.nmfs.noaa.gov/pr/pdfs/serious_injury_policy.pdf*).

Specifically, MMPA section 101(a)(4)(A) allows for the owner of fishing gear or catch or private property, or an employee or agent of such owner, to deter marine mammals from damaging fishing gear and catch or private property, respectively. Additionally, it allows any person to deter a marine mammal from endangering personal safety and any government employee to deter a marine mammal from damaging public property, so long as such measures do not result in mortality or serious injury of a marine mammal.

MMPA section 101(a)(4)(B) directs the Secretary of Commerce, through NMFS, to publish guidelines for safely deterring marine mammals and recommend specific measures to non-lethally deter marine mammals listed as endangered or threatened under the Endangered Species Act (ESA). Deterring marine mammals consistent with such guidelines or approved measures would not be a violation of the MMPA.

MMPA section 101(a)(4)(C) provides for the prohibition of certain forms of deterrence if NMFS determines, using the best scientific information available, and subsequent to public comment, that the deterrence measure has a significant adverse effect on marine mammals.

Types of Deterrents

Passive Deterrents

''Passive'' deterrence measures are those that prevent marine mammals from gaining access to fishing gear, property, or people. The proper use of

these passive deterrence devices provides for human safety and does not increase the risk of death or serious injury of marine mammals. Such measures have been most commonly deployed for deterring pinnipeds and could include rigid fencing and other fixed barriers such as gates and fence skirting, closely spaced posts, and visual deterrents (*e.g.,* flags, pinwheels, flashing lights). For small cetaceans, modifying fishing behavior to prevent interactions is another option. For example a fishing vessel could minimize the number of turns made while trawling and reduce tow times at night.

Active Deterrents

''Active'' deterrence measures introduce a stimulus into a marine mammal's environment to dissuade an animal from interacting with property, people, or fishing gear or catch or stopping a dangerous or damaging interaction. Examples of active measures include underwater acoustic devices (*e.g.,* pingers, seal scarers, noisemakers such as horns or whistles) that generate sounds known to be annoying but not harmful to marine mammals, physical contact such as prodding a marine mammal with blunt poles, pushing or herding an animal, and spraying water at an animal, as well as, for seals and sea lions, some light explosives to induce a startle response.

Request for Public Comment

Pursuant to MMPA section 101(a)(4)(B), NMFS intends to develop national guidelines for deterring marine mammals under NOAA's jurisdiction (see *www.nmfs.noaa.gov/pr/species/mammals*). NMFS is soliciting public input on which deterrents the public would like NMFS to evaluate and consider for approval through these national guidelines. For each device or technique submitted for consideration, NMFS requests any available information on the specifications for each deterrent, which marine mammal species or species group would be deterred, how a deterrent would be deployed, and any other implementation considerations. NMFS would also appreciate any details, if known, on the nature of the interaction for which deterrence measures are being sought or already employed.

NMFS is not requesting that individuals undertake new research to inform this process. Further, please note that some devices or techniques may not be appropriate for use on certain species or in certain areas and may be subject to prohibition or permitting requirements under federal, state, or local ordinances.

For each deterrent device or technique submitted, please include information on the following:

- The intended species and/or species group (*i.e.,* large cetaceans, small cetaceans, or pinnipeds) that could be deterred by a particular device or technique.
- Details on the nature of the interaction that warrants deterrence, including, if known, the associated marine mammal behavior (*e.g.,* depredation of bait or catch, bycatch, begging, damage to fishing gear or property) and location of the interaction (*e.g.,* at sea, on land, on a dock, on private property).
- A description of the device or technique, including all available manufacturer specifications of the device and photographs or graphics, if possible. For example, for acoustic deterrent or harassment devices, please include source level (*e.g.,* decibel level (dB)), reference pressure (*e.g.,* peak, root mean square (RMS)), frequency levels (in Hertz or kilohertz), pulse rates and duration, battery requirements, and recommended spacing. For example, one type of acoustic harassment device, a 10 kHz pinger, emits sound at 132 dB (± 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (± 15 milliseconds), and repeating every 4 seconds (± 0.2 seconds).
- Reports, literature, or data from any field trials or pilot studies evaluating the device or technique, including any observed death or serious injury that resulted from using the device or technique.
- Any other information relative to the potential risk that a specific device or technique may have in causing the death or serious injury of a marine mammal.
- The manner in which the device or technique would be deployed. Specifically, details on how the deterrent would be attached to fishing gear (*e.g.,* number of devices, distance between deterrents, etc.), launched at some distance, deployed on a dock or vessel, etc. For example, for acoustic pingers deployed to deter harbor porpoises from gillnets, a 10 kHz pinger would be attached at each end of a gillnet string and at the bridle of every net within a string of nets (every 300 ft (91.44 m)). For a physical barrier on private property intended to prevent pinnipeds from gaining access, the barrier should be made of galvanized metal to withstand the marine environment and block haul-out attempts, and the rungs should be spaced no more than 18 inches (45.72 cm) apart.
- Potential effects on other marine mammals, ESA-listed species, or the environment in the area where a deterrent would be used.
- Any other implementation considerations that NMFS should consider.

In summary, NMFS is soliciting input on which deterrents the public would like NMFS to evaluate and consider for approval through the development of national guidelines for safely deterring marine mammals. NMFS will consider these suggested deterrents and others, as appropriate, for inclusion in the guidelines and will subsequently publish any such guidelines developed as a part of this process in the **Federal Register** for public notice and comment, as required by MMPA section 101(a)(4)(B).

Dated: December 11, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–29394 Filed 12–15–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD505

Endangered Species; File No. 18688

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that NMFS Pacific Islands Regional Office, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814 [Responsible Party: Michael Tosatto], has applied in due form for a permit to take hawksbill (*Eretmochelys imbricata*), olive ridley (*Lepidochelys olivacea*), leatherback (*Dermochelys imbricata*), loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before January 15, 2015.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18688 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division by email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email), by facsimile to (301) 713–0376, or at the address listed above.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

On September 22, 2014 notice (79 FR 56573) was published that the applicant requests a five-year research permit to conduct research on sea turtles bycaught in three longline fisheries in the Pacific Ocean around Hawaii and American Samoa to assess sea turtle post-hooking survival, movements, and ecology in pelagic habitats. NMFS is currently processing this request. The applicant is requesting to revise the number of turtles that could be taken for research in the Hawaii deep-set longline fishery. Each species' take numbers would be reduced except for leatherback sea turtles which would increase from 13 to 24 turtles annually. This change is needed to keep the requested research take activities consistent with a new 2014 Biological Opinion which changed the number of sea turtles that may be incidental bycaught in this commercial fishery. All other aspects of the application would remain the same.

Dated: December 8, 2014.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–29346 Filed 12–15–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD075

[Endangered Species; File No. 18136]

Issuance of Permit

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Larry Wood, LDWood BioConsulting, Inc., 425 Kennedy Street, Jupiter, FL 33468 has been issued a permit to take hawksbill sea turtles (*Eretmochelys imbricata*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Brendan Hurley, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On January 17. 2014, notice was published in the **Federal Register** (79 FR 3181) that a request for a scientific research permit to take hawksbill sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Mr. Wood has been issued a research permit to continue to describe the abundance and movements of an aggregation of hawksbill sea turtles found on the barrier reefs of southeast Florida. Up to 50 sea turtles may be approached during dives for observation and photographs annually. Up to 25 additional animals may be hand captured, measured, flipper and passive integrated transponder tagged, photographed, tissue sampled, and released annually. In addition, up to six sub-adult and six adult hawksbills may be captured for the above procedures and fitted with a satellite transmitter prior to their release. The permit is valid through September 30, 2019.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 5, 2014.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–29347 Filed 12–15–14; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0023, Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the continued registration requirements relating to commodity pool operators and commodity trading advisors.

DATES: Comments must be submitted on or before February 17, 2015.

ADDRESSES: You may submit comments, identified by ''Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations'' by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as Mail, above.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the

instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Amanda Olear, Associate Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581; (202) 418–5283; email: *aolear@cftc.gov,* and refer to OMB Control No. 3038–0023.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: ''Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations,'' (OMB Control No. 3038–0023). This is a request for extension of a currently approved information collection.

Abstract: Pursuant to the Commodity Exchange Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), the CFTC promulgated rules and forms relating to registration with the Commission applicable to intermediaries, and employees and principals thereof, operating in the futures, options, swaps, and retail forex markets. There were no new requirements imposed; however, due to amendments to the Commodity Exchange Act made by the Dodd-Frank Act, there was an increase in registrants in certain registration categories.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be 0.09 hours per response.

Respondents/Affected Entities: Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators, Commodity Trading Advisors, Associated Persons, Retail Foreign Exchange Dealers.

Estimated number of respondents: 77,857.

Estimated total annual burden on respondents: 7,029.8 hours.

Frequency of collection: Periodically.

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

Dated: December 11, 2014.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–29442 Filed 12–15–14; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; correction.

SUMMARY: This document contains corrections to the Information Collection Request (ICR) notice section ''Burden Statement,'' which the Commodity Futures Trading Commission published in the **Federal Register** on November 19, 2014. The ICR describes the nature of the information collection and its expected costs and burden.

FOR FURTHER INFORMATION CONTACT: Dana Brown, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5093; email: *dbrown@cftc.gov.* This contact can also provide a copy of the ICR.

Correction

In the **Federal Register** of November 19, 2014, in FR Doc. 2014–27402, on page 68870, correct the table entitled ESTIMATED ANNUAL REPORTING BURDEN, which appears across three columns following the *Burden Statement* paragraph in the **SUPPLEMENTARY INFORMATION**, to read:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

17 CFR 20	
Annual Number of Respondents	3,998
Total Annual Responses	88,768
Hours per Response	0.71225
Total hours	63,225

Dated: December 11, 2014.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2014–29436 Filed 12–15–14; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are those in which the United States Government as represented by the

Secretary of the Navy has an ownership interest and are made available for licensing by the Department of the Navy.

Navy Case No. 100035: U.S. Patent Application Serial No. 14/535,384 FLOATING POINT MULTIPLY–ADD–SUBTRACT IMPLEMENTATION filed 11/7/2014// Navy Case No. 300005: U.S. Patent Application Serial No. 14/549,586 A DELAMINATION AND CRACK PREVENTION LAYER FOR STRUCTURAL SANDWICH PANEL filed 11/21/2014// Navy Case No. 300083: NUWC XP–1 POLYURETHANE// Navy Case No. 101048: U.S. Patent Application Serial No. 13/361,312 DYNAMIC ACOUSTIC IMPEDANCE MATCHING DEVICE AND METHOD filed 7/27/2012//

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Head, Technology Partnerships Office, Naval Undersea Warfare Center Division, Newport, 1176 Howell St., Newport, RI 02841–1703, telephone: 401–832–8728, email *Theresa.baus@navy.mil.* (Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: December 10, 2014.

N.A. Hagerty-Ford

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–29411 Filed 12–15–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0143]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2015–16 National Postsecondary Student Aid Study (NPSAS:16) Field Test Student Data Collection

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 January 15, 2015.

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–0143 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: 2015–16 National Postsecondary Student Aid Study (NPSAS:16) Field Test Student Data Collection.

OMB Control Number: 1850–0666.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 4,818.

Total Estimated Number of Annual Burden Hours: 4,422.

Abstract: The National Postsecondary Student Aid Study (NPSAS), a nationally representative study of how students and their families finance postsecondary education, was first implemented by the National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. The next major data collection will occur in 2016, with a field test collection in 2015. This submission is for the ninth cycle in the series, NPSAS:16, which will also serve as the base year study for the 2016 Baccalaureate and Beyond Longitudinal Study (B&B) which provides data on the various paths of recent college graduates into employment and additional education. The NPSAS:16 field test sample will include about 300 institutions (full-scale sample about 1,680) and about 4,500 students (126,000 full-scale). Institution contacting for the field test began in September 2014 and student data collection (interviews and institution record data) will be conducted from March through June 2015 (full-scale institution contacting will begin in October 2015 and student data will be collected January through October 2016). Packages to request clearance for the full-scale data collection effort (institution list collection, cognitive testing, student interview, and institution record collection) will be submitted beginning in 2015. This submission for the 2015 field test includes facsimiles of the student interview and student records abstraction instruments as well as student and institution contacting materials.

Dated: December 11, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–29390 Filed 12–15–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0135]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Freedom of Information Act (FOIA) Third Party Perjury Form

AGENCY: Office of Management (OM), 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 new information collection.

DATES: Interested persons are invited to submit comments on or before January 15, 2015.

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–0135 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 Elise Cook, 202–401–3769.

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: Freedom of Information Act (FOIA) Third Party Perjury Form.

OMB Control Number: 1880–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 62,000.

Total Estimated Number of Annual Burden Hours: 31,000.

Abstract: This collection is necessary to certify the identity of individuals requesting information under the Freedom of Information Act (FOIA) and Privacy Act (PA). This certification is required under 5 U.S.C. Section 552a(b). The form is used by Privacy Act requesters to obtain personal records via regular mail, fax or email. The department will use the information to help identify first-party or third party requesters with same or similar name when requesting retrieval of their own documents.

Dated: December 10, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–29325 Filed 12–15–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. 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: Thursday, January 8, 2015, 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

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

- Call to Order, Introductions, Review of Agenda
- Approval of November Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy 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 comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above.

Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on December 10, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–29457 Filed 12–15–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. 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: Thursday, January 15, 2015, 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Jennifer Woodard, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (270) 441–6820.

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:

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks taken as appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer Woodard as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jennifer Woodard at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy 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 comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Jennifer Woodard at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2014Meetings.html.*

Issued at Washington, DC, on December 10, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–29451 Filed 12–15–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). 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, January 14, 2015, 2:00 p.m.–4:00 p.m.

ADDRESSES: NNMCAB Office, 94 Cities of Gold Road, Santa Fe, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *menice.santistevan@nnsa.doe.gov.*

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.

Purpose of the Environmental Monitoring and Remediation Committee (EM&R): The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory (LANL) operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda

1. 2:00 p.m. Approval of Agenda
2. 2:02 p.m. Approval of Minutes from November 12, 2014
3. 2:05 p.m. Update from Executive Committee—Doug Sayre, Chair
4. 2:10 p.m. Update from DOE—Lee Bishop, Deputy Designated Federal Officer
5. 2:30 p.m. Public Comment Period
6. 2:45 p.m. Sub-Committee Breakout Session
   - Discuss Topics for Committee Sponsored Draft Recommendations
   - Compile Information for Waste Isolation Pilot Plant Recommendation
   - General Committee Business
7. 4:00 p.m. Adjourn

Public Participation: The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting 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 Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy 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 comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC, on December 10, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–29452 Filed 12–15–14; 8:45 am]

BILLING CODE 6405–01–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: RP15–250–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: § 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (BP K37–18) to be effective 12/6/2014.

Filed Date: 12/8/14.

Accession Number: 20141208–5205.

Comments Due: 5 p.m. ET 12/22/14.

Docket Numbers: RP15–251–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) rate filing per 154.204: Amendment to Neg Rate Agmt (Chevron 41610–4) to be effective 12/8/2014.

Filed Date: 12/8/14.

Accession Number: 20141208–5233.

Comments Due: 5 p.m. ET 12/22/14.

Docket Numbers: RP15–252–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) rate filing per 154.204: 12/08/14 Negotiated Rates—Cargill Incorporated (RTS) Amend 1 3085–23 to be effective 12/8/2014.

Filed Date: 12/8/14.

Accession Number: 20141208–5301.

Comments Due: 5 p.m. ET 12/22/14.

Docket Numbers: RP15–253–000.

Applicants: Natural Gas Pipeline Company of America.

Description: § 4(d) rate filing per 154.204: Intergrys Energy Negotiated Rate to be effective 1/1/2015.

Filed Date: 12/8/14.

Accession Number: 20141208–5329.

Comments Due: 5 p.m. ET 12/22/14.

Docket Numbers: RP15–254–000.

Applicants: WBI Energy Transmission, Inc.

Description: § 4(d) rate filing per 154.204: Non-conforming Service Agreement—DB Energy Cancellation to be effective 12/31/2014.

Filed Date: 12/8/14.

Accession Number: 20141208–5338.

Comments Due: 5 p.m. ET 12/22/14.

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.

Filings in Existing Proceedings

Docket Numbers: RP14–977–002.

Applicants: East Cheyenne Gas Storage, LLC.

Description: Compliance filing per 154.203: Amended Compliance Filing in Response to Show Cause Order to be effective 10/16/2014.

Filed Date: 11/26/14.

Accession Number: 20141126–5078.

Comments Due: 5 p.m. ET 12/8/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 9, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–29303 Filed 12–15–14; 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 corporate filings:

Docket Numbers: EC15–46–000.

Applicants: Verso Bucksport LLC, Verso Bucksport Power LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Requests for Expedited Action and Confidential Treatment of Verso Bucksport LLC, et. al.

Filed Date: 12/8/14.

Accession Number: 20141208–5375.

Comments Due: 5 p.m. ET 12/29/14.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–24–000.

Applicants: Stephens Ranch Wind Energy II, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Stephens Ranch Wind Energy II, LLC.

Filed Date: 12/9/14.

Accession Number: 20141209–5102.

Comments Due: 5 p.m. ET 12/30/14.

Docket Numbers: EG15–25–000.

Applicants: Milo Wind Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Milo Wind Project, LLC.

Filed Date: 12/9/14.

Accession Number: 20141209–5103.

Comments Due: 5 p.m. ET 12/30/14.

Docket Numbers: EG15–26–000.

Applicants: Roosevelt Wind Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Roosevelt Wind Project, LLC.

Filed Date: 12/9/14.

Accession Number: 20141209–5105.

Comments Due: 5 p.m. ET 12/30/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1246–009; ER10–1982–010; ER10–1253–009; ER10–1252–009; ER13–764–009; ER14–1927–001; ER12–2498–009; ER12–2499–009; ER14–1776–003.

Applicants: Consolidated Edison, Inc., Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Solutions, Inc., CED White River Solar, LLC, CED White River Solar 2, LLC, Alpaugh 50, LLC, Alpaugh North, LLC, Broken Bow Wind II, LLC.

Description: Notice of Change in Status of the Consolidated Edison Inc. subsidiaries.

Filed Date: 12/5/14.

Accession Number: 20141205–5350.

Comments Due: 5 p.m. ET 12/26/14.

Docket Numbers: ER10–2835–005.

Applicants: Google Energy LLC.

Description: Notice of Change in Status of Google Energy LLC.

Filed Date: 12/9/14.

Accession Number: 20141209–5130.

Comments Due: 5 p.m. ET 12/30/14.

Docket Numbers: ER14–1750–002.

Applicants: New York Independent System Operator, Inc., Consolidated Edison Company of New York.

Description: Compliance filing per 35: Agreement No. 2013 Composite Between Con Edison and NYPA to be effective 4/23/2014.

Filed Date: 12/9/14.

Accession Number: 20141209–5123.

Comments Due: 5 p.m. ET 12/30/14.

Docket Numbers: ER15–35–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing per 35: 2014–12–09_External Resource Qual Compliance to be effective 12/2/2014.

Filed Date: 12/9/14.

Accession Number: 20141209–5158.

Comments Due: 5 p.m. ET 12/30/14.

Docket Numbers: ER15–114–001.

Applicants: Alterna Springerville LLC.

Description: Tariff Amendment per 35.17(b): Supplement to MBR Filing to be effective 1/1/2015.

Filed Date: 12/8/14.

Accession Number: 20141208–5345.

Comments Due: 5 p.m. ET 12/29/14.

Docket Numbers: ER15–601–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: § 205(d) rate filing per 35.13(a)(1): Member Rate Schedule Tariff Filing to be effective 1/1/2015.

Filed Date: 12/8/14.

Accession Number: 20141208–5342.

Comments Due: 5 p.m. ET 12/29/14.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: EL15–28–000; QF96–54–004.

Applicants: Pasadena Cogeneration L.P.

Description: Petition for Temporary Waiver of Operating and Efficiency Standards for Qualifying Cogeneration Facility of Pasadena Cogeneration L.P. under EL15–28, et. al.

Filed Date: 12/9/14.

Accession Number: 20141209–5119.

Comments Due: 5 p.m. ET 12/9/14.

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: December 9, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–29301 Filed 12–15–14; 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: RP15–217–000.

Applicants: Kinder Morgan Pipelines.

Description: Petition of Kinder Morgan Pipelines for Limited Waiver of Order No. 787 and for Expedited Action.

Filed Date: 11/25/14.

Accession Number: 20141125–5401.

Comments Due: 5 p.m. ET 12/8/14.

Docket Numbers: RP15–240–000.

Applicants: Southwestern Energy Services Company, WPX Energy Appalachia, LLC, WPX Energy Keystone, LLC, WPX Energy Marketing, LLC.

Description: Joint Petition of WPX Energy Appalachia, LLC, WPX Energy Keystone, LLC, WPX Energy Marketing, LLC, and Southwestern Energy Services Company for Temporary Waiver of Capacity Release and Certain Other Regulations and Policies and Related Tariff Provisions.

Filed Date: 12/3/14.

Accession Number: 20141203–5257.

Comments Due: 5 p.m. ET 12/10/14.

Docket Numbers: RP15–241–000.

Applicants: Rice Drilling B LLC, Rice Energy Marketing LLC.

Description: Joint Petition of Rice Drilling B LLC and Rice Energy Marketing LLC for Temporary Waiver of Capacity Release Regulations, Policies and Related Tariff Provisions, and Request for Shortened Comment Period and Expedited Treatment.

Filed Date: 12/3/14.

Accession Number: 20141203–5258.

Comments Due: 5 p.m. ET 12/10/14.

Docket Numbers: RP15–242–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) rate filing per 154.204: 2014112014 MOPS Abandonment to be effective 1/6/2015.

Filed Date: 12/4/14.

Accession Number: 20141204–5074.

Comments Due: 5 p.m. ET 12/16/14.

Docket Numbers: RP15–243–000

Applicants: Young Gas Storage Company, Ltd.

Description: § 4(d) rate filing per 154.204: ATC Rate Adjustment 2014 to be effective 12/1/2014.

Filed Date: 12/4/14.

Accession Number: 20141204–5104.

Comments Due: 5 p.m. ET 12/16/14.

Docket Numbers: RP15–244–000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) rate filing per 154.204: Negotiated Rate Filing—December 2014—LER 0222 Att A to be effective 12/4/2014.

Filed Date: 12/4/14.

Accession Number: 20141204–5161.

Comments Due: 5 p.m. ET 12/16/14.

Docket Numbers: RP15–245–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) rate filing per 154.204: Volume No. 2—MEX Gas Supply, S.L. SP307989 to be effective 1/1/2015.

Filed Date: 12/4/14.

Accession Number: 20141204–5162.

Comments Due: 5 p.m. ET 12/16/14.

Docket Numbers: RP15–246–000.

Applicants: Gulfstream Natural Gas System, L.L.C.

Description: § 4(d) rate filing per 154.204: Posting Offers to Purchase Capacity to be effective 1/4/2015.

Filed Date: 12/4/14.

Accession Number: 20141204–5177.

Comments Due: 5 p.m. ET 12/16/14.

Docket Numbers: RP15–247–000.

Applicants: Enable Mississippi River Transmission, L.

Description: § 4(d) rate filing per 154.204: Negotiated Rate Filing to

Amend LER 5680's Attachment A_12–05–14 to be effective 12/5/2014.

Filed Date: 12/5/14.

Accession Number: 20141205–5236.

Comments Due: 5 p.m. ET 12/17/14.

Docket Numbers: RP15–248–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) rate filing per 154.204: Volume No. 2—Cargill Incorporated SP308194 to be effective 1/1/2015.

Filed Date: 12/5/14.

Accession Number: 20141205–5308.

Comments Due: 5 p.m. ET 12/17/14.

Docket Numbers: RP15–249–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) rate filing per 154.204: Average Thermal Content Adjustment Filing to be effective 12/1/2014.

Filed Date: 12/8/14.

Accession Number: 20141208–5002.

Comments Due: 5 p.m. ET 12/22/14.

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.

Filings in Existing Proceedings

Docket Numbers: RP14–883–001.

Applicants: Trailblazer Pipeline Company LLC.

Description: Compliance filing per 154.203: Date Fix for Compliance to Show Cause to be effective 10/16/2014.

Filed Date: 12/5/14.

Accession Number: 20141205–5122.

Comments Due: 5 p.m. ET 12/17/14.

Docket Numbers: RP14–885–001.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing per 154.203: Compliance—Date Fix for Order to Show Cause to be effective 10/16/2014.

Filed Date: 12/5/14.

Accession Number: 20141205–5121.

Comments Due: 5 p.m. ET 12/17/14.

Docket Numbers: RP14–896–001.

Applicants: Tallgrass Interstate Gas Transmission, L.

Description: Compliance filing per 154.203: Date Fix Compliance for Order to Show Cause to be effective 10/16/2014.

Filed Date: 12/5/14.

Accession Number: 20141205–5123.

Comments Due: 5 p.m. ET 12/17/14.

Docket Numbers: RP15–47–002.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing per 154.203: Negotiated & Non-Conforming Service Agmt—WestSide Compliance Filing.

Filed Date: 12/5/14.

Accession Number: 20141205–5260.

Comments Due: 5 p.m. ET 12/17/14.

Docket Numbers: RP15–55–001.

Applicants: Columbia Gulf Transmission, LLC.

Description: Compliance filing per 154.203: Negotiated & Non-Conforming Service Agmts—West Side Compliance Filing.

Filed Date: 12/5/14.

Accession Number: 20141205–5261.

Comments Due: 5 p.m. ET 12/17/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 8, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–29302 Filed 12–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–26–000]

Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corp., Rochester Gas and Electric Corp., and Central Hudson Gas and Electric Corp., Complainants v. New York Independent System Operator, Respondent; Notice of Complaint

Take notice that on December 4, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., New York State Electric and Gas Corp., Rochester Gas and Electric Corp. and Central Hudson Gas and Electric Corp. (collectively, Complainants) filed a complaint against the New York Independent System Operator (NYISO or Respondent). Complainants request that the Commission order the Respondent to amend its buyer-side market mitigation rules found in Section 23 of the NYISO's Market Services Tariff (Services Tariff) to include a competitive entry exemption as more fully explained in the complaint.

The complainants certify that copies of the Complaint were served on the contacts of the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 24, 2014.

Dated: December 5, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–29304 Filed 12–15–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP13–113–000	11–24–14	Eileen Hadley.
2. ER14–2862–000	11–24/25–14	Grouped letters.[1]
3. 3. CP14–17–000	11–25–14	Grouped emails.[2]
4. ER14–2862–000	12–1/2–14	Grouped letters.[3]
5. CP14–96–000, PF14–22–000	12–5–14	Grouped emails.[4]
Exempt:		
1. CP14–96–000	10–17–14	FERC Staff.[5]
2. CP14–96–000	10–24–14	FERC Staff.[6]
3. CP13–483–000, CP13–492–000	11–14–14	FERC Staff.[7]
4. CP13–483–000, CP13–492–000	11–19–14	FERC Staff.[8]
5. CP14–503–000	11–20–14	FERC Staff.[9]
6. CP14–96–000	11–21–14	FERC Staff.[10]
7. ER14–2862–000	11–21–14	Patricia A. Weinreis, President, Tahquamenon School Board.
8. ER14–2862–000	11–21–14	Sugar Island Township
9. CP09–6–001	11–25–14	FERC Staff[11]

[1] Limited mass mailing: 6 letters have been sent to FERC Commissioners and staff under this docket number.
[2] Limited mass mailing: 3 emails have been sent to FERC Commissioners and staff under this docket number.
[3] Limited mass mailing: 2 letters have been sent to FERC Commissioners and staff under this docket number.
[4] Limited mass mailing: 3 emails have been sent to FERC Commissioners and staff under this docket number.
[5] Phone record.
[6] Phone record.
[7] Email record.
[8] Phone record.
[9] Phone record.
[10] Email record.
[11] Phone record.

Dated: December 5, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–29305 Filed 12–15–14; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 16, 2014, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Final Rule Integrating OTS and FDIC Flood Insurance Regulations.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda: Memorandum and resolution re: Proposed 2015 Corporate Operating Budget.

Memorandum and resolution re: Regulatory Capital Rules, Liquidity

Coverage Ratio, Proposed Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions.

The meeting will be held in the Board Room temporarily located on the fourth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *https://fdic.primetime.mediaplatform.com/#!channel/123200 3497484/Board+Meetings* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: December 11, 2014.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–29506 Filed 12–12–14; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision of the following report:

Report title: Capital Assessments and Stress Testing information collection.

Agency form number: FR Y–14A/Q/M.

OMB Control number: 7100–0341.

Effective Dates: September 30, 2014, December 31, 2014, and March 31, 2015.

Frequency: Annually, semi-annually, quarterly and monthly.

Reporters: Any top-tier U.S. bank holding company (BHC) that has $50 billion or more in total consolidated assets, as determined based on: (i) The average of the BHC's total consolidated assets in the four most recent quarters as reported quarterly on the BHC's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128); or (ii) the average of the BHC's total consolidated assets in the most recent consecutive quarters as reported quarterly on the BHC's FR Y–9Cs, if the BHC has not filed an FR Y–9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Federal Reserve.

Estimated annual reporting hours: FR Y–14A: Summary, 67,848 hours; Macro scenario, 2,046 hours; Operational Risk, 456 hours; Regulatory capital transitions, 759; and Regulatory capital instruments, 660 hours. FR Y–14Q: Securities risk, 1,584 hours; Retail risk, 2,112 hours; Pre-provision net revenue (PPNR), 93,852 hours; Wholesale corporate loans, 8,556 hours; Wholesale commercial real estate (CRE) loans, 8,280 hours; Trading risk, 69,336 hours; Regulatory capital transitions, 3,036 hours; Regulatory capital instruments, 5,280 hours; Operational risk, 6,600 hours; Mortgage Servicing Rights (MSR) Valuation, 1,152 hours; Supplemental, 528 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,408 hours; Counterparty credit risk (CCR), 16,632 hours; and Balances, 2,112 hours; FR Y–14M: Retail 1st lien mortgage, 171,360 hours; Retail home equity, 165,240 hours; and Retail credit card, 110,160 hours. FR Y–14 Implementation, 21,600 hours; and On-Going Automation for existing respondents, 14,400 hours.

Estimated average hours per response: FR Y–14A: Summary, 1,028 hours; Macro scenario, 31 hours; Operational Risk, 12 hours; Regulatory capital transitions, 23; and Regulatory capital instruments, 20 hours. FR Y–14Q: Securities risk, 12 hours; Retail risk, 16 hours; PPNR, 711 hours; Wholesale corporate loans, 69 hours; Wholesale CRE loans, 69 hours; Trading risk, 1,926 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 40 hours; Operational risk, 34 hours; MSR Valuation, 24 hours; Supplemental, 4 hours; and Retail FVO/HFS, 16 hours; CCR, 441 hours; and Balances, 16 hours; FR Y–14M: Retail 1st lien mortgage, 510 hours; Retail home equity, 510 hours; and Retail credit card, 510 hours. FR Y–14 Implementation, 7,200 hours; and On-Going Automation for existing respondents, 480 hours.

Number of respondents: 33.

General description of report: The FRY–14 series of reports are authorized by section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), which requires the Federal Reserve to ensure that certain bank holding companies (BHCs) and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States (12 U.S.C. 5365). Additionally, Section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs (12 U.S.C. 1844).

As these data are collected as part of the supervisory process, they are subject to confidential treatment under exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under exemption 4 of FOIA (5 U.S.C. 552(b)(4)). Such exemptions would be made on a case-by-case basis.

Abstract: The data collected through the FR Y–14A/Q/M schedules provide the Federal Reserve with the additional information and perspective needed to help ensure that large BHCs have strong,

firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The annual Comprehensive Capital Analysis and Review (CCAR) exercise is also complemented by other Federal Reserve supervisory efforts aimed at enhancing the continued viability of large BHCs, including continuous monitoring of BHCs' planning and management of liquidity and funding resources and regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Federal Reserve may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

The semi-annual FR Y–14A collects large BHCs' quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[1] The quarterly FR Y–14Q collects granular data on BHCs' various asset classes and PPNR for the reporting period. The monthly FR Y–14M comprises three loan- and portfolio-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections. Both the FR Y–14Q and the FR Y–14M are used to support supervisory stress test models and for continuous monitoring efforts.

Current Actions: On October 1, 2014, the Federal Reserve published a final **Federal Register** notice (79 FR 59264) implementing several changes to the FR–14A/Q/M and extending the public comment period by 30 days regarding the agreement-level/asset category counterparty information. The comment period expired on October 31, 2014. The Federal Reserve received one comment. The comment is summarized and addressed below.

Summary of Comment

The Federal Reserve received one comment letter addressing the agreement-level/asset category counterparty information. The commenter requested clarification on several items, which will be provided through updated instructions as appropriate. More substantively, the commenter stated that the information collection as originally proposed on July 15, 2014 (79 FR 41276) could be provided, but noted that the information collected by sub-schedules L.5 and L.6 would require a significant amount of resources. Specifically, the commenter requested that implementation of these sub-schedules be delayed to March 31, 2015.

As stated in the October 1, 2014, **Federal Register** publication, more detailed counterparty data would allow the Federal Reserve to assess the reasonableness of the BHC's model-based estimates used as key inputs to the supervisory stress test as well as ensure the comparability of results across BHCs. Therefore, the Federal Reserve will keep sub-schedules L.5 and L.6 as finalized October 1, 2014 for the September 30, 2014 and December 31, 2014 reporting periods, with two minor exceptions noted below. Furthermore, the Federal Reserve will implement FR Y–14Q Schedule L as originally proposed on July 15, 2014 effective March 31, 2015.

FR Y–14Q

Counterparty Schedule

As noted above, effective March 31, 2015, Schedule L (Counterparty) of the FR Y–14Q will be revised to collect information as originally proposed on July 15, 2014. Specifically, the schedule will require that tables L.5.2 and L.6.2 be reported at a legal-entity, netting-agreement level. Furthermore, table L.5.2 will include the asset sub-categories as originally proposed for L.5.2. Tables L.5.1 and L.6.1 will remain as finalized on October 1, 2014, and continue to require reporting at a legal-entity, netting-agreement level. However, the commenter specifically also noted that the items ''CDS Hedge Stressed CR01'' and ''CSA Contractual Features'' of table L.6.1 would be difficult to provide for the September 30, 2014, reporting period. The Federal Reserve appreciates the commenter's concerns regarding these items and makes these items optional through the December 31, 2014, reporting period, after which they will be mandatory.

Board of Governors of the Federal Reserve System, December 10, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–29296 Filed 12–15–14; 8:45 am]

BILLING CODE 6210–01–P

[1] BHCs that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 2014.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Tommy Charles Fitzgerald,* Byrdstown, Tennessee; to acquire an additional voting shares of Upper Cumberland Bancshares, Inc., and thereby indirectly acquire additional voting shares of People's Bank and Trust Company of Pickett County, both in Byrdstown, Tennessee.

Board of Governors of the Federal Reserve System, December 11, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–29406 Filed 12–15–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance for the FTC's enforcement of the information collection requirements in its Fair Packaging and Labeling Act regulations (''FPLA Rules''). That clearance expires on May 31, 2015.

DATES: Comments must be filed by February 17, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''FPLA Rules, PRA Comment, P074200'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/fplaregspra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Megan Gray, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3405, 600 Pennsylvania Ave. NW., Room 9541, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The FPLA, 15 U.S.C. 1451–1461, was enacted to eliminate consumer deception concerning product size and package content. Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of the company responsible for the product. The FPLA regulations, 16 CFR parts 500–503, specify how manufacturers, packagers, and distributors of ''consumer commodities'' must do this.[1]

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC seeks clearance for the disclosure requirements under the FPLA Rules and the FTC's associated PRA burden estimates that follow.[2]

A. Estimated number of respondents: 801,514 [3]

B. Burden Hours: 8,015,140 hours, cumulative (yearly recurring burden of 10 hours per respondent to modify and distribute notices × 801,514 respondents)

C. Labor Costs: $185,149,734

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use employees to create compliant labels. Of the 10 hours spent by each respondent, Commission staff assumes the hour breakdown will be as follows: 1 hour of managerial and/or professional time per covered entity, at an hourly wage of $60,[4] 2 hours of specialized clerical support, at an hourly wage of $26,[5] 7 hours of clerical time per covered entity, at an hourly wage of $17,[6] for a total of $185,149,734 ($231 blended labor cost per covered entity × 801,514 entities).

D. Capital/Non-Labor Costs: $0

Commission staff believes that the FPLA Rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.,* offices and computers) for the information collections discussed above.

Request for Comment: Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 17, 2015. Write ''FPLA Rules, PRA Comment, P074200'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section

[1] ''The term consumer commodity or commodity means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.'' 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-packaging-labeling-act.*

[2] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate ''cents off,'' ''introductory offer,'' and/or ''economy size'' claims, Commission staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

[3] Commission staff identified categories of entities under its jurisdiction that supply consumer commodities as defined in the FPLA Rules. Those categories include retailers, wholesalers, and manufacturers. Commission staff estimated the number of retailers (735,038) based on Census data (under NAICS subsectors 445, 452, and 453, respectively, for food and beverage stores, general merchandise stores, and miscellaneous store retailers) compiled by PricewaterhouseCoopers, LLC for the National Retail Federation report, ''Retail's Impact Across America'': *https://nrf.com/advocacy/retails-impact.* Commission staff estimated the number of wholesalers (42,160) and manufacturers (24,316) based on 2007 Census data (comparable 2012 Census data for them have not yet been released). *See generally http://www.census.gov/econ/census/data/historical_data.html.* Although the stated number of respondents suggests precision, it is an estimate in that it aggregates the number of establishments under industry codes that FTC staff believes reflect entities subject to the FPLA. But, even allowing for industries that may apply, the Census data do not separately break out non-household products from household use. Accordingly, the source information is over-inclusive and thus overstates what is actually subject to the FPLA.

[4] Based on an average of ''General and Operations Managers'' ($55.81) and ($63.46), resulting in $59.64, rounded up to $60, available from ''Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, ''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013.'' *http://www.bls.gov/news.release/ocwage.nr0.htm.*

[5] ''Specialized clerical support'' consists of computer support personnel who design the appearance and layout of product packaging, including appropriate display of the disclosures required by the FPLA regulations. The wage estimate is based on mean hourly wages for ''Computer support specialist.'' *See* Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, ''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013.*http://www.bls.gov/news.release/ocwage.nr0.htm.*

[6] *See id.* The clerical wage estimate is a rounded average of mean hourly wages for ''computer operators'' ($19.25) and ''data entry and information processing workers'' ($15.28).

6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to treat your comment as confidential, you must file it in paper form, with a request for confidentiality, and you have to follow the procedure explained in FTC Rule 4.9(c).[7] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/fplaregspra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''FPLA Rules, PRA Comment, P074200'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 17, 2015. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–29441 Filed 12–15–14; 8:45 am]

BILLING CODE 6750–01–P

[7] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day 15–0910]

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

Message Testing for Tobacco Communication Activities (OMB No. 0920–0910, exp. 1/31/2015)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2012, CDC's Office on Smoking and Health obtained OMB approval of a generic clearance to support the development and testing of tobacco-related health messages, including messages disseminated through multiple phases of an ACA-funded media campaign (Message Testing for Tobacco Communication Activities (MTTCA), OMB No. 0920–0910, exp. 1/31/2015). CDC has employed the MTTCA clearance to collect information about adult smokers' and nonsmokers' attitudes and perceptions, and to pre-test draft messages and materials for clarity, salience, appeal, and persuasiveness. Information collection modes that are supported include in-depth interviews, in-person focus groups, online focus groups, computer-assisted, in-person, or telephone interviews, and online surveys. Messages have been developed for multiple media channels including television, radio, print, and digital formats.

CDC requests OMB approval to extend the MTTCA clearance, with changes, for three years. The Revision information collection request will propose a 20% increase in the annualized estimated number of respondents (from 36,847 to 44,216) and a 52% increase in the annualized estimated burden hours (from 7,219 to 10,998). The increases will be used for short, medium and in-depth surveys which are in line with activities proposed in the initial generic clearance. These increases are needed to support CDC's planned information collections and to accommodate additional needs that CDC may identify during the next three years. For example, the MTTCA generic clearance may be used to facilitate the development of tobacco-related health communications of interest for CDC's collaborative efforts with other federal partners including, but not limited to, the Food and Drug Administration (FDA), the Substance Abuse and Mental Health Services Administration (SAMHSA), the National Institutes of Health (NIH), and the National Cancer Institute (NCI). At this time the revised MTTCA clearance is expected to be sufficient to test tobacco related messages developed by CDC for the

general US population and subpopulations of interest. The MTTCA clearance should not replace the need for additional generic clearance mechanisms of HHS and other federal partners that may need to test tobacco messages related to their campaigns and initiatives.

CDC's revised MTTCA clearance also describes expansion of the target audience(s) that may be involved in message testing, such as youth ages 13–17 years. Media campaigns have been shown to be effective as part of a comprehensive tobacco control program to decrease the initiation of tobacco use among youths and young adults.

Finally, there may be a need to test prevention and cessation messages related to products that are not currently regulated, including non-combustible tobacco products (electronic nicotine delivery systems such as electronic cigarettes or e-cigarettes) and some combustible products (such as cigars/little cigars and cigarillos). In the event that the FDA receives authority to regulate these products and decides to do a campaign about them, CDC will continue to work closely with FDA to avoid duplication. Additionally, CDC will share with FDA the findings from any formative work related to the youth audience.

CDC will continue to use the MTTCA clearance to develop and test messages and materials. Participation is voluntary and there are no costs to respondents other than their time. The total estimated annualized burden hours are 10,998.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General Public and Special Populations.	Screening and Recruitment	20,000	1	2/60
	In-depth Interviews (In Person, telephone, etc.)	96	1	1
	Focus Groups (In Person)	160	1	90/60
	Focus Groups (Online)	120	1	1
	Short Surveys/information needed to screen individuals being considered for inclusion in campaign ads (Online, Bulletin Board, etc.).	9,800	1	10/60
	Medium Surveys (Online)	9,940	1	25/60
	In-depth Surveys (Online)	4,100	1	1

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. 2014–29291 Filed 12–15–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Report/ACF 204 (State MOE)—1 collection.

OMB No.: 0970–0248.

Description: The Administration for Children and Families (ACF) is requesting a three-year extension of the ACF–204 (Annual MOE Report). The report is used to collect descriptive program characteristics information on the programs operated by States and Territories in association with their Temporary Assistance for Needy Families (TANF) programs. All State and Territory expenditures claimed toward States and Territories MOE requirements must be appropriate, *i.e.,* meet all applicable MOE requirements. The Annual MOE Report provides the ability to learn about and to monitor the nature of State and Territory expenditures used to meet States and Territories MOE requirements, and it is an important source of information about the different ways that States and Territories are using their resources to help families attain and maintain self-sufficiency. In addition, the report is used to obtain State and Territory program characteristics for ACFs annual report to Congress, and the report serves as a useful resource to use in Congressional hearings about how TANF programs are evolving, in assessing State the Territory MOE expenditures, and in assessing the need for legislative changes.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–204	54	1	118	6,372

Estimated Total Annual Burden Hours: 6,372.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office

of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–29423 Filed 12–15–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Reunification Procedures for Unaccompanied Alien Children.

OMB No.: 0970–0278.

Description: Following the passage of the 2002 Homeland Security Act (Pub. L. 107–296), the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is charged with the care and placement of unaccompanied alien children in Federal custody, and implementing a policy for the release of these children, when appropriate, upon the request of suitable sponsors while awaiting immigration proceedings. In order for ORR to make determinations regarding the release of these children, the potential sponsors must meet certain conditions pursuant to section 462 of the Homeland Security Act and the *Flores* v. *Reno* Settlement Agreement No. CV85 4544–RJK (C.D. Cal. 1997).

The proposed information collection requests information to be utilized by ORR for determining the suitability of a sponsor/respondent for the release of a minor from ORR custody. The proposed instruments are the Family Reunification Application, the Family Reunification Checklist for Sponsors, and the Authorization for Release of Information.

Respondents: Sponsors requesting release of unaccompanied alien children to their custody.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Family Reunification Application	55,200	1	.25	13,800
Family Reunification Checklist for Sponsors	55,200	1	.75	41,400
Authorization for Release of Information	55,200	1	.25	13,800

Estimated Total Annual Burden Hours: 69,000.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–29439 Filed 12–15–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures.

OMB No.: 0970–0230.

Description: There is no longer a High Performance Bonus associated with this information collection. The Deficit Reduction Act of 2005 (Pub. L. 109–171) eliminated the funding for the High Performance Bonus (HPB), but we are still requesting that States continue to submit data necessary to calculate the work measures previously reported under the HPB.

Specifically, The TANF program was reauthorized under the Deficit Reduction Act of 2005. The statute eliminated the funding for the HPB under section 403(a)(4). Nevertheless the Department is required under section 413(d) to annually rank State performance in moving TANF recipients into private sector employment. We are, therefore, requesting that States continue to transmit monthly files of adult TANF recipients necessary to calculate the work measures performance data. To the extent States do not provide the requested information, we will extract the matching information from the TANF Data Report. This may result in calculation of the work performance measures based on sample data, which would provide us less precise information on States' performance.

The Transmission File Layouts form provides the format that States will continue to use for the quarterly electronic transmission of monthly data on TANF adult recipients. States that have separate TANF–MOE files on these programs are also requested to transmit similar files. We are not requesting any changes to the Transmission File Layouts form.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	25	2	12	600

Estimated Total Annual Burden Hours: 600.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–29421 Filed 12–15–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Intellectual and Developmental Disabilities (AIDD); Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID).

ACTION: Notice of meeting.

DATES: Tuesday, January 27, 2015 from 9:00 a.m. to 4:30 p.m.; and Wednesday, January 28, 2015 from 9:00 a.m. to 4:00 p.m.

These meetings will be open to the general public.

ADDRESSES: These meetings will be held in the U.S. Department of Health and Human Services/Hubert H. Humphrey Building located at 200 Independence Avenue SW., Conference Room 505A, Washington, DC 20201.

Individuals who would like to participate via conference call may do so by dialing toll-free 888–935–0260, when prompted enter pass code: 3656064. Individuals whose full participation in the meeting will require special accommodations (*e.g.,* sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify Dr. MJ Karimi, PCPID Team Lead, via email at *MJ.Karimie@acl.hhs.gov,* or via telephone at 202–357–3588, no later than Friday, January 16, 2015. The PCPID will attempt to accommodate requests made after that date, but cannot guarantee the ability to grant requests received after this deadline. All meeting sites are barrier free, consistent with the Americans with Disabilities Act (ADA) and the Federal Advisory Committee Act (FACA).

Agenda: The Committee Members will discuss preparation of the PCPID 2015 Report to the President, including its content and format, and related data collection and analysis required to complete the writing of the Report. They will also receive presentations from selected experts in the field of Technology for People with Intellectual and Developmental Disabilities.

Additional Information: For further information, please contact Dr. MJ Karimi, Team Lead, President's Committee for People with Intellectual Disabilities, One Massachusetts Avenue NW., Room 4206, Washington, DC 20201. Telephone: 202–357–3588. Fax: 202–205–8037. Email: *MJ.Karimie@acl.hhs.gov*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Intellectual and Developmental Disabilities, on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (A) Expansion of educational opportunities; (B) promotion of homeownership; (C) assurance of workplace integration; (D) improvement of transportation options; (E) expansion of full access to community living; and (F) increasing access to assistive and universally designed technologies.

Dated: December 3, 2014.

Aaron Bishop,

Commissioner, Administration on Intellectual and Developmental Disabilities (AIDD).

[FR Doc. 2014–29417 Filed 12–15–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0809]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements for Submission of Bioequivalence Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 15, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0630. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requirements for Submission of In Vivo Bioequivalence Data—21 CFR parts 314 and 320.

OMB Control Number 0910–0630—Extension

In the **Federal Register** of January 16, 2009 (74 FR 2849), the Agency published a final rule revising FDA regulations to require applicants to submit data on all bioequivalence (BE) studies, including studies that do not meet passing bioequivalence criteria, which are performed on a drug product formulation submitted for approval under an abbreviated new drug application (ANDA), or in an amendment or supplement to an ANDA that contains BE studies. In the final rule, FDA amended 314.94(a)(7)(i), 314.96(a)(1), 320.21(b)(1), and 314.97 (21 CFR 314.94(a)(7)(i), 314.96(a)(1), 320.21(b)(1), and 314.97) to require an ANDA applicant to submit information from all BE studies, both passing and nonpassing, conducted by the applicant on the same drug product formulation as that submitted for approval under an ANDA, amendment, or supplement.

In table 1, FDA has estimated the reporting burden associated with each section of this requirement. FDA believes that the majority of additional BE studies will be reported in ANDAs (submitted under 314.94), rather than supplements (reported in 314.97) because it is unlikely than an ANDA holder will conduct BE studies with a drug after the drug has been approved. With respect to the reporting of additional BE studies in amendments (submitted under 314.96), this should also account for a small number of reports because most BE studies will be conducted on a drug prior to the submission of the ANDA and will be reported in the ANDA itself.

FDA estimates applicants will require approximately 120 hours of staff time to prepare and submit each additional complete BE study report and approximately 60 hours of staff time for each additional BE summary report. The Agency believes that a complete report will be required approximately 20 percent of the time, while a summary will suffice approximately 80 percent of the time. Based on a weighted-average calculation using the information presented previously in this document, the submission of each additional BE study is expected to take 72 hours of staff time ($[120 \times 0.2] + [60 \times 0.8]$).

In the **Federal Register** of June 26, 2014 (79 FR 36320), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
314.94(a)(7)	84	1	84	72	6,048
314.96(a)(1)	1	1	1	72	72
314.97	1	1	1	72	72
Total					6,192

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 10, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29425 Filed 12–15–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1409]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Records and Reports Concerning Experiences With Approved New Animal Drugs: Adverse Event Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 15, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0284. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Road; COLE–14526, Silver Spring, MD 20993–0002 *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Records and Reports Concerning Experiences With Approved New Animal Drugs: Adverse Event Reports on Paper Forms FDA 1932, 1932a, and 2301—21 CFR 514.80; OMB Control Number 0910–0284—Extension

Section 512(*l*) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(*l*) and 514.80 (21 CFR 514.80) of FDA regulations require applicants of approved new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) to report adverse drug experiences and product/manufacturing defects (see 514.80)(b)). Additionally, section 571(e)(3) of the FD&C Act (21 U.S.C. 360ccc(e)(3)) requires that

applicants for conditional approval of new animal drugs (CNADAs) maintain adequate reports and records of adverse drug experiences and product/manufacturing defects as applicable under section 512(*l*) of the FD&C Act.

The continuous monitoring of approved NADAs, ANADAs, and CNADAs affords the primary means by which FDA obtains information regarding potential problems with the safety and efficacy of marketed approved new animal drugs as well as potential product/manufacturing problems. Post-approval marketing surveillance is important because data previously submitted to FDA may not be adequate as animal drug effects can change over time and less apparent effects may take years to manifest.

Under 514.80(d), an applicant must report adverse drug experiences and product/manufacturing defects on Form FDA 1932, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report.'' Periodic drug experience reports and special drug experience reports must be accompanied by a completed Form FDA 2301, ''Transmittal of Periodic Reports and Promotional Material for New Animal Drugs,'' (see 514.80). Form FDA 1932a, ''Veterinary Adverse Drug Reaction, Lack of Effectiveness or Product Defect Report,'' allows for voluntary reporting of adverse drug experiences or product/manufacturing defects.

In 2010, electronic versions of Forms FDA 1932 and 1932a were incorporated into the FDA Safety Reporting Portal. This electronic system is used for collecting, submitting, and processing adverse event reports and other safety information for all FDA regulated products. Burden for the electronic version of these forms is accounted for under OMB control number 0910–0645. This approval request accounts for the collection of information using existing paper Forms FDA 1932, 1932a, and 2301 and is currently approved under OMB control number 0910–0284. FDA estimates that, at this time, approximately 50 percent of the respondents utilize paper forms for submitting this information. We expect this number to decrease as more respondents avail themselves of the FDA Safety Reporting Portal.

In the **Federal Register** of September 29, 2014 (79 FR 58355), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section/section of the FD&C act	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
514.80(b)(1), 514.80(b)(2)(i) and (ii), 514.80(b)(3)	1932	22	81.05	1,783	1	1,783
Voluntary reporting FDA Form 1932a for the public	1932a	197	1	197	1	197
514.80(b)(4)	2301	200	8.11	1,622	16	25,952
514.80(b)(5)(i)	2301	200	0.57	114	2	228
514.80(b)(5)(ii)	2301	200	20.12	4,024	2	8,048
514.80(b)(5)(iii)	2301	190	0.1	20	2	40
Total Hours						36,248

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
514.80(e)	646	7.20	4651	14	65,117

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 10, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29426 Filed 12–15–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1842]

Crabmeat—Fresh and Frozen—Adulteration With Filth, Involving the Presence of Escherichia coli; Compliance Policy Guide; Draft Guidance for Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for FDA staff entitled ''Compliance Policy Guide Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of *Escherichia coli*.'' The draft Compliance Policy Guide (CPG), when finalized, will update the previously issued ''CPG Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of the Organism *Escherichia coli*.'' This revised draft provides guidance for FDA staff on the level of *Escherichia coli* (*E. coli*) in crabmeat at which we may consider the crabmeat to be adulterated with filth.

DATES: Although you can comment on any guidance at any time (see 21 CFR

10.115(g)(5)), to ensure that FDA considers your comment on this draft CPG before it begins work on the final version of the CPG, submit either electronic or written comments on the draft CPG by February 17, 2015.

ADDRESSES: Submit written requests for single copies of the draft CPG to the Office of Policy and Risk Management, Office of Regulatory Affairs, Office of Global Regulatory Operations and Policy, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG.

Submit electronic comments on the draft CPG to *http://www.regulations.gov.* Submit written comments on the draft CPG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary E. Losikoff, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2300.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of the draft CPG entitled ''Compliance Policy Guide Sec. 540.275 Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of *Escherichia coli.*'' The draft CPG, when finalized, will update the previously issued ''CPG Sec. 540.275 Crabmeat—Fresh and Frozen—Adulteration with Filth, Involving the Presence of the Organism *Escherichia coli,*'' which provides guidance for FDA staff on the level of *E. coli* in crabmeat (*i.e.,* 3.6 Most Probable Number per gram (MPN/g) of *E. coli*) at which FDA may consider the crabmeat to be adulterated with filth under section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 342(a)(4)). We revised the CPG for clarity and to update the format. Revisions generally include the addition of sections on Background and Policy, updates to the sections on Regulatory Action Guidance and Specimen Charges, and FDA office names. Specifically, in the section on Regulatory Action Guidance, we clarify that FDA's Districts have direct reference authority for both domestic seizure and import refusal based on the criteria described in the draft CPG. We also clarify the specific types of legal action to which the criteria for recommendations apply. In addition, we provide specimen charges relating to domestic seizure and import refusal. The draft CPG also contains information that may be useful to the regulated industry and to the public.

We are issuing the draft CPG consistent with our good guidance practices regulation (21 CFR 10.115). The draft CPG, when finalized, will represent our current thinking on the level of *E. coli* in fresh or frozen crabmeat at which we may consider the crabmeat to be adulterated with filth under section 402(a)(4) of the FD&C Act.

The draft CPG does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding the draft CPG to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the document from FDA's Office of Regulatory Affairs CPG history page at *http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/default.htm* or *http://www.regulations.gov.* Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: December 10, 2014.

Melinda K. Plaisier,

Associate Commissioner for Regulatory Affairs, Office of Regulatory Affairs.

[FR Doc. 2014–29314 Filed 12–15–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1697]

Privacy Act of 1974; Report of a New System of Records; Food and Drug Administration Commissioning of State and Local Officials; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 8, 2014. The document misstated the effective date of the new system of records. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Regulations Editorial Section, Regulations Policy and Management Staff, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–9148.

SUPPLEMENTARY INFORMATION: The December 8, 2014 (79 FR 72687) notice published with an incorrect effective date of December 8, 2014, for the new system of records. This document corrects that error. For the convenience of the reader, the complete **DATES** language is set out below.

In 79 FR 72687, published on December 8, 2014, we are correcting the **DATES** section to read as follows:

DATES: *Effective Date:* The new system of records and related routine uses will be effective on January 22, 2015. Submit either electronic or written comments by January 22, 2015.

Dated: December 10, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–29424 Filed 12–15–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day comment request; Generic Clearance for Satisfaction Surveys of Customers (CSR)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection

listed below. This proposed information collection was previously published in the **Federal Register** on August 21, 2014, page 49523 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to request an additional 30 days for public comment and reinstatement without change. The Center for Scientific Review (CSR), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 31, 2014, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project contact: Dr. Mary Ann Guadagno, Project Clearance Liaison, Center for Scientific Review, NIH, Room 3182, 6701 Rockledge Drive, Bethesda, MD 20892, or call non-toll-free number (301) 435–1251 or Email your request, including your address to: *guadagma@csr.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Generic Clearance for Satisfaction Surveys of Customers (CSR), 0925–0474 expired October 31, 2014-reinstatement without change, Center for Scientific Review (CSR), National Institutes of Health (NIH).

Need and Use of Information Collection: The information collected in these surveys will be used by the Center for Scientific Review management and personnel: (1) To assess the quality of the modified operations and processes now used by CSR to review grant applications; (2) to assess the quality of service provided by CSR to our customers; (3) to enable identification of the most promising biomedical research that will have the greatest impact on improving public health by using a peer review process that is fair unbiased from outside influence, timely; and (4) to develop new modes of operation based on customer need and customer feedback about the efficacy of implemented modifications. These surveys will almost certainly lead to quality improvement activities to enhance and/or streamline CSR's operations. The major mechanism by which CSR will request input is through surveys. The major initiatives ongoing at the present time include: Evaluation of the peer review process, surveys of new and early stage investigators, satisfaction with study section meetings using alternative review platforms, quick feedback for peer review, satisfaction with new reviewer orientation sessions, teleworker space needs, improving study section alignment to ensure the best reviews, and others. Surveys will be collected via Internet or in focus groups. Information gathered from these surveys will be presented to, and used directly by, CSR management to enhance the operations, processes, organization of, and services provided by the Center.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 4323.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
A	Adult scientific professionals (via Mail/Telephone/Internet)	7925	1	30/60	3963
B	Adult scientific professionals (via focus groups)	240	1	90/60	360

Dated: December 10, 2014.

Mary Ann Guadagno,

Project Clearance Liaison, Center for Scientific Review, National Institutes of Health.

[FR Doc. 2014–29460 Filed 12–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Microscopy System for Distinguishing Stimulated Emissions as a Means of Increasing Signal

Description of Technology: The invention pertains to a system and method for distinguishing stimulated emissions as a means of enhancing signal strength of fluorescent markers in fluorescence microscopy applications. The system is arranged such that an excitation beam (*e.g.,* laser beam) illuminates a sample along some axis exciting the fluorescent markers used in the sample. A second light beam, a stimulation beam, illuminates the sample along another axis, possibly the same as that of the excitation beam. It has been found that if the excited fluorescent molecules are illuminated with light of a stimulation beam at a

particular wavelength after initial excitation, the fluorescent molecules will emit light at this wavelength that can be separately detected. An excited fluorescent molecule may be stimulated by light at a wavelength different from the initial excitation beam to boost the signal. The stimulated emission then generated by the fluorescent molecules travels along the same access as the stimulation beam and, as such, the system is configured by a stimulation beam block component associated with an objective lens that prevents or reduces stimulation beam detection but allows detection of the stimulated emission. Another way the invention achieves this is by refocusing both the excitation and stimulation beams through capture by an excitation objective. A filter is then used to filter out light focused by the excitation objective from the simulated emission sent back by the fluorescent molecule.

Potential Commercial Applications:

- Fluorescent microscopy
- Sample detection

Competitive Advantages: Enhanced signal strength in small or dilute samples.

Development Stage:

- Early-stage
- Prototype

Inventors: Andrew York (NIBIB), Sanjay Varma (Johns Hopkins University).

Intellectual Property: HHS Reference No. E–247–2014/0—U.S. Provisional Patent Application 62/072,218 filed October 29, 2014.

Licensing Contact: Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Biological Imaging and Bioengineering is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Fluorescent Microscopy resolution enhancement. For collaboration opportunities, please contact Cecilia Pazman at *pazmance@mail.nih.gov*.

A Novel Virus-Based Expression System

Description of Technology: The present invention is related to a recombinant viral vector for vaccines.

Currently available poxvirus vectors for humans and other animals exhibit suboptimal expression of recombinant gene(s) and high expression of vector proteins which causes weak immunogenicity and high anti-vector immune response.

The present novel virus-based expression vectors are non-replicating in human and animals, have high expression of exogenous genes to achieve strong immunogenicity, demonstrate low expression of vector proteins to minimize anti-vector immune responses and minimize competition with expression of recombinant proteins and are capable of stable propagation in a continuous cell line. The present virus based expression vectors may be suitable for manufacturing vaccines for inducing an immune response in vaccinated individuals.

Potential Commercial Applications:

- Vaccine
- Tool for studying immune responses

Competitive Advantages:

- Non-replicating in human and animals
- Achieve high expression of recombinant genes
- Low expression of vector genes
- Stable propagation in a continuous cell line

Development Stage:

- Early-stage
- In vitro data available
- Prototype

Intellectual Property: HHS Reference No. E–181–2014/0—U.S. Provisional Application No. 62/055,989 filed September 26, 2014.

Related Technologies:

- Moss B, et al. Recombinant poxviruses having foreign DNA expressed under the control of poxvirus regulatory sequences. U.S. Patent 6,998,252 issued February 14, 2006.
- Moss B, et al. Prokaryotic expression in eukaryotic cells. U.S. Patent 5,550,035 issued August 27, 1996.

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Viral Diseases, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize A Novel Virus-Based Expression System. For collaboration opportunities, please contact Chris Kornak at *chris.kornak@nih.gov.*

Ultra-Sensitive Diagnostic Detects fg/mL-pg/mL Pathogen/Disease Protein by Visual Color Change

Description of Technology: This technology is an ultra-sensitive colorimetric assay, based on an enzyme-catalyzed gold nanoparticle growth process, for detection of disease-associated proteins (biomarkers) and disease diagnosis. Current detection methods, such as ELISA immunoassays, measure concentrations above 0.1 ng/mL in a sample. PCR, although more sensitive than ELISA, requires expensive and specialized equipment and reagents, skilled labor, and complex analysis techniques. This assay detects fg/mL to pg/mL concentrations, allowing detection and diagnosis in the earliest stage of disease or infection. A simple to read colorless-to-red change of gold nanoparticle is read with the naked eye, without the need for advanced instruments. This assay can be performed in a standard ELISA plate. Prototype, proof of concept tests using this platform have been designed for enterovirus 71 (EV71) and prostate specific antigen (PSA). The limit of detection (LOD) for a PSA prototype exceeded the commercial ELISA by more than four orders of magnitude. This assay may be particularly well suited for field use/point-of-care detection of infections and early stage disease.

Potential Commercial Applications: Infectious pathogen and disease diagnostics.

Competitive Advantages:

- Orders of magnitude more sensitive than most ELISA (detects fg/mL to pg/mL)
- Plain sight color-based confirmation does not require complex equipment
- Field use/point-of-care detection

Development Stage:

- Early-stage
- In vitro data available
- Prototype

Inventors: Dingbin Liu and Xiaoyuan Chen (NIBIB)

Publication: Liu D, et al. Glucose oxidase-catalyzed growth of gold nanoparticles enables quantitative detection of attomolar cancer biomarkers. Anal Chem. 2014 Jun 17; 86(12):5800–6. [PMID 24896231]

Intellectual Property:

- HHS Reference No. E–167–2014/0—U.S. Provisional Application No. 61/994,622 filed May 16, 2014
- HHS Reference No. E–167–2014/1—U.S. Provisional Application No. 62/052,866 filed September 19, 2014

Licensing Contact: Edward (Tedd) Fenn; 424–297–0336; *tedd.fenn@nih.gov*.

Collaborative Research Opportunity: The National Institute of Biomedical Imaging and Bioengineering is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Cecilia Pazman, Ph.D. at *pazmance@mail.nih.gov.*

Cannabinoid Receptor Meditating Compounds for Metabolic Disease

Description of Technology: There is evidence that the metabolic effects of endocannabinoids are mediated by CB1 receptors in peripheral tissues. While prior attempts at generating CB1 receptor blockers have had serious neuropsychiatric side effects, inventors at NIH have discovered compounds that block CB1 receptors with reduced brain penetrance. In addition, some of these compounds also have a direct inhibitory effect on inducible nitric oxide synthase (iNOS), whereas another group of the compounds directly activates AMP kinas. These dual-target compounds may be useful for treating metabolic disease and related conditions such as obesity and diabetes and their complications, including liver or kidney fibrosis, without the dangerous the side effects.

Potential Commercial Applications: Treatment of metabolic disease and related conditions such as diabetes, obesity and fibrotic disease.

Competitive Advantages: Cannabinoid receptor blockers with reduced brain penetrance relative to older drugs of this class, also having secondary target for improved therapeutic efficacy.

Development Stage: Early-stage.

Inventors: George Kunos (NIAAA), Malliga R. Iyer (NIAAA), Resat Cinar (NIAAA), Kenner C. Rice (NIDA).

Intellectual Property: HHS Reference No. E–140–2014/0—U.S. Provisional Application No. 61/991,333 filed May 9, 2014.

Related Technologies:

- HHS Reference No. E–211–2006/0—U.S. Patent No. 8,293,724 issued October 23, 2012
- HHS Reference No. E–282–2012/0—PCT Application No. PCT/US2013069686 filed December 11, 2013
- HHS Reference No. E–103–2013/0—PCT Application No. PCT/US2014/043924 filed June 24, 2014

Licensing Contact: Jaime M. Greene; 301–435–5559; *greenejaime@mail.nih.gov*.

Octopod (8-Pointed Star-Shape) Iron Oxide Nanoparticles Enhance MRI T_2 Contrast

Description of Technology: The octopod-shaped iron oxide nanoparticles of this technology significantly enhance contrast in MRI imaging compared to spherical superparamagnetic iron oxide nanoparticle T_2 contrast agents. These octopod iron oxide nanoparticles show a transverse relaxivity that is over five times greater than comparable spherical agents. Because the unique octopod shape creates a greater effective radius than spherical agents, but maintains similar magnetization properties, the relaxation rate is improved. The improved relaxation rate greatly enhances the contrast of images. These octopod agents appear to be bio-compatible and may be suitable for intravenous delivery. The synthesis of these agents is also easily reproducible and scaled. The superior contrast greatly improves diagnostic sensitivities, compared to current FDA approved spherical contrast agents. These octopod-shaped iron oxide nanoparticle T_2 contrast agents may have a number of medical imaging uses, such as tumor detection, atherosclerosis imaging and delivery of therapeutic treatments.

Potential Commercial Applications: Medical imaging, such as tumor detection, atherosclerosis imaging and delivery of therapeutic treatments.

Competitive Advantages:

- Enhanced T_2 contrast
- Reproducible and scalable synthesis
- Improved imaging and diagnostic capability

Development Stage: In vivo data available (animal).

Inventors: Xiaoyuan Chen (NIBIB), Jinhao Gao (Xiamen University, China), Zhenghuan Zhao (Xiamen University, China).

Publication: Zhao Z, et al. Octapod iron oxide nanoparticles as high-performance T_2 contrast agents for magnetic resonance imaging. Nat Commun. 2013; 4:2266. [PMID 23903002].

Intellectual Property: HHS Reference No. E–314–2013/0—PCT Application No. PCT/CN2013/076645 filed June 3, 2013.

Licensing Contact: Edward (Tedd) Fenn; 424–297–0336; *tedd.fenn@nih.gov*.

Collaborative Research Opportunity: The National Institute of Biomedical Imaging and Bioengineering is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Cecilia Pazman, Ph.D. at *pazmance@mail.nih.gov.*

Dated: December 9, 2014.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–29319 Filed 12–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 Neurological Disorders and Stroke Special Emphasis Panel; Translational.

Date: January 23, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20004.

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3205, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *joel.saydoff@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 9, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29322 Filed 12–15–14; 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) and NIAID Clinical Trail Implementation Grant (R01).

Date: January 9, 2015.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers lane Room F30B, Rockville, MD 20852, 240–669–5029, battlesja@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: December 10, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29321 Filed 12–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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 Cancer Institute Special Emphasis Panel; Training and Career Development Application Review.

Date: March 11, 2015.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Robert E. Bird, Ph.D., Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute 9609 Medical Center Drive, Room 7W110, Bethesda, MD 20892–9750, 240–276–6344, *birdr@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: December 10, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29320 Filed 12–15–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension without change of a currently approved collection, 1601–0014.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on Tuesday, September 9, 2014 at 79 FR 53435 for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments

DATES: Comments are encouraged and will be accepted until January 15, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be

eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Analysis

Agency: The Department of Homeland Security.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1601–0014.

Frequency: One per Request.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Number of Respondents: 500,000.

Estimated Time Per Respondent: 10 minutes.

Total Burden Hours: 83,350 Hours.

Dated: December 9, 2014.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2014–29351 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0108]

RIN 1601–ZA11

Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may approve petitions for H–2A and H–2B nonimmigrant status only for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 68 countries whose nationals are eligible to participate in the H–2A and H–2B programs for the coming year.

DATES: *Effective Date:* This notice is effective January 18, 2015, and shall be without effect at the end of one year after January 18, 2015.

FOR FURTHER INFORMATION CONTACT: Francis Cissna, Office of Policy, Department of Homeland Security, Washington, DC 20528, (202) 447–3835.

SUPPLEMENTARY INFORMATION:

Background

Generally, USCIS may approve H–2A and H–2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as participating countries. Such designation must be published as a notice in the **Federal Register** and expires after one year. USCIS, however, may allow a national from a country not on the list to be named as a beneficiary of an H–2A or H–2B petition based on a determination that such participation is in the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F) and 8 CFR 214.2(h)(6)(i)(E).

In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) The country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Examples of factors serving the U.S. interest that could result in the non-inclusion of a country or the removal of a country from the list include, but are not limited to, fraud, abuse, and non-compliance with the terms and conditions of the H–2 programs by nationals of that country.

In December 2008, DHS published in the **Federal Register** two notices, ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2A Visa Program,'' and ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2B Visa Program,'' which designated 28 countries whose nationals are eligible to participate in the H–2A and H–2B programs. *See* 73 FR 77,043 (Dec. 18, 2008); 73 FR 77,729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010 and January 18, 2010, respectively. *See* 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. *See* 75 FR 2,879 (Jan. 19, 2010) (adding 11 countries); 76 FR 2,915 (Jan. 18, 2011) (removing Indonesia and adding 15 countries); 77 FR 2,558 (Jan. 18, 2012) (adding 5 countries); 78 FR 4,154 (Jan. 18, 2013) (adding 1 country); FR 79 3,214 (Jan.17, 2014) (adding 4 countries).

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 63 countries previously designated in the January 17, 2014 notice continue to meet the standards identified in that notice for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H–2A and H–2B programs. Further, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has determined that it is now appropriate to add 5 countries whose nationals are eligible to participate in the H–2A and H–2B programs. This determination is made taking into account the four regulatory factors identified above. The Secretary of Homeland Security also considered other pertinent factors including, but not limited to, evidence of past usage of the H–2A and H–2B programs by nationals of the country to be added, as well as evidence relating to the economic impact on particular U.S. industries or regions resulting from the addition or continued non-inclusion of specific countries. In consideration of all of the above, this notice designates for the first time the Czech Republic, Denmark, Madagascar, Portugal, and Sweden as countries whose nationals are eligible to participate in the H–2A and H–2B programs.

Designation of Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2A and H–2B nonimmigrant worker programs:

Argentina
Australia
Austria
Barbados
Belize
Brazil
Bulgaria
Canada
Chile
Costa Rica
Croatia
Czech Republic
Denmark
Dominican Republic
Ecuador
El Salvador
Estonia
Ethiopia
Fiji
Grenada
Guatemala
Haiti
Honduras
Hungary
Iceland
Ireland
Israel
Italy
Jamaica
Japan
Kiribati
Latvia
Lithuania
Macedonia
Madagascar
Mexico
Moldova
Montenegro
Nauru
The Netherlands
Nicaragua
New Zealand
Norway
Panama
Papua New Guinea
Peru
The Philippines
Poland
Portugal
Romania
Samoa
Serbia
Slovakia
Slovenia
Solomon Islands
South Africa
South Korea
Spain
Sweden
Switzerland
Thailand
Tonga
Turkey
Tuvalu
Ukraine
United Kingdom
Uruguay
Vanuatu

This notice does not affect the status of aliens who currently hold valid H–2A or H–2B nonimmigrant status. Persons currently holding such status, however, will be affected by this notice should they seek an extension of stay in H–2 classification, or a change of status from one H–2 status to another. Similarly, persons holding nonimmigrant status other than H–2 status are not affected by this notice unless they seek a change of status to H–2 status.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his or her designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2014–29353 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0068]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—002 Employee Assistance Program Records System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard Employee Assistance Program Records System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to administer the United States Coast Guard Employee Assistance Program for military personnel. As a result of the biennial review of this system, the system manager and address category has been updated. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before January 15, 2015. This updated system will be effective January 15, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0068 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Coast Guard—002 Employee Assistance Program Records System of Records.'' The collection and maintenance of this information will allow the DHS/USCG to administer the United States Coast Guard Employee Assistance Program for military personnel. As a result of a biennial review of the system, the system manager and address category

has been updated to reflect the new mail stop.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–002 Employee Assistance Program Records System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–002 Employee Assistance Program Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/USCG–002

SYSTEM NAME:

DHS/USCG–002 Employee Assistance Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USCG active duty, reserve, and retired active duty and reserve military personnel and their eligible dependents/individuals who have been referred for assistance or counseling, are being assisted or counseled, or have been assisted or counseled by the USCG Employee Assistance Program. Eligibility will vary based on status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Military personnel's name;
- Eligible dependent/individual's name, if applicable;
- Social Security number;
- Employee identification number;
- Date of birth;
- Addresses;
- Email address;
- Telephone numbers;
- Job-related information including: Job title; rank; duty station; supervisor's name and telephone number; documents received from supervisors or personnel regarding work place problems or performance; leave and attendance records; and workplace-related recommendations made to supervisors as a result of a team meeting;
- Counseling and intervention-related information including: Notes and documentation of Employee Assistance Program counselors; records of treatment, including non-clinical educational interventions; counseling referrals; team reports; records of employee attendance at treatment and counseling programs; prognosis of individuals in treatment or counseling programs; insurance data; addresses and contact information of treatment facilities; name and address of individuals providing treatment or counseling or intervention; and Privacy Act notification forms and written consent forms;
- USCG Workplace Violence and related Critical Incident Team records of the Workplace Violence Prevention Program, maintained by USCG Work-Life personnel. These records may include written reports and recommendations to leadership personnel regarding alleged work place violence incidents;
- USCG Critical Incident Stress Management-related records, which may include descriptions of incidents, consultations, interventions, and may contain personally-identifying information (for the purpose of follow-on contacts with those thought to be impacted by the critical incident);
- USCG Sexual Assault Prevention and Response Program case records maintained by USCG Work-Life personnel. These records are used to facilitate services for victims and their family members as appropriate. In addition to information cited above, these records may contain Victim Reporting Preference Statement, case notes, and safety plan. Record may also contain descriptions of alleged assaults;
- USCG Victim Support Person or Victim Advocate maintained by USCG Work-Life personnel. These are maintained in conjunction with efforts to provide assistance to victims of crime. Records will contain signed Victim Support Person or Victim Advocate Statement of Understanding and Victim Support Person or Victim Advocate Supervisor;
- Statement of Understanding, assignment information, and notes regarding results of screening interview, relevant training received, and any other information relevant to the Victim Support Person's or Victim Advocate's provision of support services to victims;
- USCG Critical Incident Stress Management Peer Volunteers maintained by USCG Work-Life personnel. These records contain statement of understanding, notes regarding screening interview, record of related training received, and any other information relevant to the peer's provision of services when deployed after a critical incident;
- Case records maintained by USCG Work-Life personnel on USCG Active Duty members who have demonstrated suicidal behavior. The purpose of these records is to facilitate continuity of care for personnel who have exhibited suicidal behavior. These records will contain reports regarding each incident and follow-up case notes;
- Reports of USCG active duty suicidal behavior incidents, work place violence incidents, critical incidents, and sexual assaults are maintained by USCG Headquarters (CG–1112). These reports are received from Work-Life Offices, which are responsible for providing services for the related programs described above. Their purpose is to ensure continuity of care and to identify any systemic issues found in aggregate data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7361, 7362, 7901, and 7904; 5 U.S.C. 301; Federal Records Act, 44 U.S.C. 3101.

PURPOSE(S):

The Employee Assistance Program will maintain information gathered by and in the possession of the USCG Employee Assistance Program, an internal agency program designed to

assist employees of USCG and, in certain instances, their eligible dependents/individuals, in regard to a variety of personal and/or work related problems. The program involves counseling, educational, and consultative services provided through the internal and external Employee Assistance Program for alcohol, drug, emotional, or behavioral problems, and addresses mandatory and voluntary counseling following exposure to a traumatic incident, responses to critical incidents that impact employees, and workplace incidents involving actual violence or the threat of violence and necessary follow up.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of substance abuse records is limited to the parameters set forth in 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e). Accordingly, a Federal employee's substance abuse records may not be disclosed without the prior written consent of the employee, unless the disclosure would be one of the following:

A. To the Department of Justice (including Offices of the United States Attorneys) or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) or harm to the individual who relies upon the compromised information;

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

C. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

D. To appropriate State and local authorities to report, under State law, incidents of suspected child abuse or neglect to the extent described under 42 CFR 2.12.

E. To any person or entity to the extent necessary to prevent an imminent and potential crime that directly threatens loss of life or serious bodily injury.

F. To report to appropriate authorities when an individual is potentially at risk to harm himself or herself or others.

G. To medical personnel to the extent necessary to meet a bona fide medical emergency.

H. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation provided that employees are individually identified.

I. To the employee's medical review official.

J. To the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating.

K. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee.

L. Pursuant to the order of a court of competent jurisdiction when required by the United States Government to defend against any challenge against any adverse personnel action. See 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media.

RETRIEVABILITY:

USCG may retrieve records/data by a Military personnel's or eligible dependent's name. USCG Critical Incident Stress Management-related records are filed by unit name and are not retrievable by individual name, but instead, by unit name.

SAFEGUARDS:

USCG safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG imposes strict controls to minimize the risk of compromising the information in this system. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCG maintains and disposes of records in accordance with National Archives and Records Administration-approved agency Records Schedule, SSIC 1754, item 1 (AUTH: N1–026–07–1, Item1) Employee Assistance Program (EAP) Coordinator Case Records; if not disclosed under the Privacy Act, records are retained for three years after the client has ceased contact and then destroyed.

Employee Assistance Program client records may contain Department of Transportation-required Substance Abuse evaluations and USCG Sexual Abuse Prevention and Response Program client records; if not disclosed under the Privacy Act, these are destroyed with the EAP Coordinator case records three years after the last contact with the client.

Employee Assistance Program Coordinator Case Records that USCG discloses are retained until five years after the client has ceased contact or, if later, for five years after last disclosure of information from the record, as authorized by General Records Schedule 14, item 23.

All records will be retained beyond their normal maintenance period until any pending litigation is completed. This will be true whether or not the client has terminated employment with DHS/USCG. Individual states may require longer retention. The rules in this system notice should not be construed to authorize any violation of such state laws that have greater restrictions.

USCG will destroy files only after the required period of maintenance, with a witness present, by either (1) a DHS or USCG Employee Assistance Program Administrator or an Employee Assistance Program Administrator from another organization that contracts with DHS or USCG for Employee Assistance Program services, or (2) by designated staff of a private or governmental organization under contract with DHS or USCG to provide document destruction services. The witness must be trained in the proper handling of records covered by the Privacy Act and 42 CFR part 2.

USCG destroys written records by shredding or burning. USCG destroys records stored on hard drives using software tools that ensure the protection of the confidential information by making reconstruction or compromise by reuse impracticable. USCG disposes of records contained on back-up tapes/diskettes by either physically destroying the tapes/diskettes or by deleting them using software tools which ensure the protection of the confidential information by making reconstruction or compromise by reuse impracticable.

USCG transfers records located away from the destruction site in a confidential manner. No other information about Employee Assistance Program clients may be maintained once these files have been destroyed.

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–111), United States Coast Guard, Mail Stop 7907, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593.

If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are retained from the following sources:

USCG Employee Assistance Program: the client, the licensed mental health provider, and collateral sources and resources intended to help the client;

USCG Workplace Violence and related Critical Incident Team: investigation records, personnel records, critical incident team assembled to make recommendations to command, subject's supervisors, and the subject;

USCG Critical Incident Stress Management-related records: Work-Life staff, Peers, Incident commander, command(s) affected, individuals impacted by incident, and other support persons who may be mobilized to assist those impacted by the event;

USCG Sexual Assault Prevention and Response Program: victim, victim support person, medical personnel assisting victim, criminal investigations and investigators, and other support personnel intended to assist victim;

USCG Victim Support Persons (VSP): the victim support person, Work-Life staff, VSP's or Victim Advocate's work supervisor, and other support persons who may assist in training;

USCG Critical Incident Stress Management Peer Volunteers: Peer, Peer's supervisor, Work-Life staff, and other support persons who may assist in training;

Case records maintained by USCG Work-Life personnel on USCG Duty members who have demonstrated suicidal behavior: the patient, medical personnel, patient's command, and Work-Life staff and other support persons who may assist in helping the patient; and

Reports of USCG active duty suicidal behavior incidents, work place violence incidents, critical incidents, and sexual assaults maintained by USCG Headquarters (CG–1112): Work-Life staff and others as described above under their related programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 18, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–29379 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0070]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—016 Adjudication and Settlement of Claims System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard Adjudication and Settlement of Claims System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and preserve the records associated with military personnel salary claims. As a result of the biennial review of this system, the system manager and address and record source categories have been updated. Additionally, this notice includes non-substantive changes to simplify the

formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before January 15, 2015. This updated system will be effective January 15, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0070 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Coast Guard—016 Adjudication and Settlement of Claims System of Records. The collection and maintenance of this information will assist DHS/USCG in meeting its statutory obligation to adjudicate and settle salary claims received by USCG military personnel. The DHS/USCG–016 Adjudication and Settlement of Claims System of Records is the USCG's record system used for the collection and maintenance of records that concern the adjudication and settlement of claims concerning the amounts of pay received by USCG military personnel. As a result of a biennial review of the system, the system manager and address and record source categories have been updated to include the new command name, office symbol, and mail stop.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–016 Adjudication and Settlement of Claims System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–016 Adjudication and Settlement of Claims System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/USCG–016

SYSTEM NAME:

DHS/USCG–016 Adjudication and Settlement of Claims System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

USCG maintains records at the United States Coast Guard Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include active duty, reserve, retired active duty, and retired reserve military personnel who submit claims against USCG related to monetary disputes.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual's name;
- Social Security number or Employee ID Number (EMPLID);
- Leave and earnings statements; and
- Other related information regarding claims arising out of disputes concerning amounts of pay received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations, 5 U.S.C. 301, 5512–5514; 10 U.S.C. 939, 1442, 1453, 2774–2775; 14 U.S.C. 461; 31 U.S.C. 3716; 37 U.S.C. 1007; the Federal Records Act, 44 U.S.C. 3101; Debt Collection Act of 1982, Public Law 97–276, Section 124; Debt Collection Improvement Act of 1996, Public Law 104–132; Federal Claims Collection Standards, 31 CFR Chapter IX.

PURPOSE(S):

The purpose of this system is to adjudicate and settle claims related to salary disputes, overpayments resulting from travel and transportation entitlement, claims from spouses, former spouses or widows of military personnel involving an annuity, and other similar activities when submitted by USCG active duty, reserve, and retired active duty and retired reserve military personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To authorized officials of the Internal Revenue Service, General Accountability Office (GAO), and the Civil Service Commission, as required, to address salary claims submitted by USCG military and civilian personnel.

I. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings or in response to a subpoena.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media.

RETRIEVABILITY:

USCG retrieves records by claimant's name, employee ID (EMPLID), or Social Security number.

SAFEGUARDS:

USCG safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG imposes strict controls to minimize the risk of compromising the information. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCG retains records until adjudication and settlement. USCG retains most submissions for present setting value, as required. USCG retains records for 10 years, 3 months after the year in which the Government's right to collect first accrued. (AUTH: GRS 6, Item 10b(2)(a))(Records Officer).

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–12), United States Coast Guard, Mail Stop 7907, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

USCG obtains records from individuals, USCG payroll offices, legal staff, investigators, Personnel Directorate, Comptroller General, GAO, and congressional correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 18, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–29381 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0071]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—017 Federal Medical Care Recovery Act System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard Federal Medical Care Recovery Act System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and maintain Federal Medical Care Recovery Act claims (FMCRA). As a result of the biennial review of this system, the system manager and address category has been updated. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before January 15, 2015. This updated system will be effective January 15, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0071 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Coast Guard-017 Federal Medical Care Recovery Act System of Records. The collection and maintenance of this information will assist DHS/USCG in meeting its statutory obligation to address FMCRA claims. As a result of a biennial review of the system, the system manager and address category has been updated to reflect the new mail stop.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–017 Federal Medical Care Recovery Act System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–017 Federal Medical Care Recovery Act System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/USCG–017

SYSTEM NAME:

DHS/USCG–017 Federal Medical Care Recovery Act.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC and field offices and at USCG health care facilities where the USCG military personnel or eligible dependent receives treatment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include active duty, reserve, and retired active duty, retired reserve, and their eligible dependents. Also included are insurance company employees, related legal staff, the alleged tortfeasor. Finally, individuals such as Search and Rescue victims, employees, volunteers, or others who

are provided emergency care by the USCG.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Military personnel's name;
- Eligible dependent's name;
- Social Security number;
- Gender;
- Date of birth;
- Case number;
- Insurance company's name and representative's name;
- Legal firm's name and legal representative's name;
- Addresses;
- Telephone numbers;
- Correspondence, memoranda, and related documents concerning potential and actual FMCRA claims;
- Police reports;
- Witness statements;
- Court documentation;
- Basic contact information for insurance companies, legal staff, and tortfeasor;
- Copies of medical and dental treatment provided to the individual subject of the claim;
- Copies of medical bills associated with civilian care provided at government expense; and
- Automated data processing (ADP) records containing identifying data on individuals, unit of assignment and address, home address, the amount of the claim, the amount paid to the government on the claim, dates of correspondence sent, due dates of reply, claim number, date claim opened, and date claim closed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations, 5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; 14 U.S.C. 632.; 10 U.S.C. 1095, Uniformed Services Medical and Dental Care; 42 U.S.C. 2651 *et seq.,* Federal Medical Care Recovery Act. 3 CFR 25.131, 133.

PURPOSE(S):

The purpose of this system is to collect and maintain FMCRA claims for the United States Coast Guard.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: For records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes limit disclosures otherwise permitted by the Privacy Act of 1974 to the extent that disclosure is more limited. Thus, the Routine Uses set forth below do not apply to this information. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

A. To medical personnel to the extent necessary to meet a bona fide medical emergency;

B. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, provided that employees are individually identified;

C. To the employee's medical review official;

D. To the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

E. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or

F. Pursuant to the order of a court of competent jurisdiction when required by the United States Government to defend against any challenge against any adverse personnel action. See 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e).

Note: For all other records besides those noted above, this system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act of 1996 applies to most of such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. Therefore, routine uses outlined below may not apply to such health information.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice including Offices of the United States Attorneys or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration (GSA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity); and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or

implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To attorneys and insurance companies involved in settling and litigating claims pursuant to Health Information Portability and Accountability Act.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media.

RETRIEVABILITY:

USCG may retrieve records by name, Social Security number, case number, or address of military personnel or eligible dependent. USCG can also retrieve records by attorney's or other parties' names.

SAFEGUARDS:

USCG safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG imposes strict controls to minimize the risk of compromising the information. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCG retains records at USCG Headquarters for 2 years; transfers the records to a Federal Records Center for an additional 4 years, for a total of 6 years, and destroys the records thereafter. (AUTH: GRS 1, Item 19.)

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–1), United States Coast Guard, Mail Stop 7907, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

USCG obtains records from the individual, or if a minor, the parent or guardian, and witnesses; Medical facilities (USCG, Department of Defense, Uniformed Services Treatment Facility, or Civilian Facility) where beneficiaries are treated; injury investigations, attorneys, and insurance companies involved in the claim.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 18, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–29349 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0067]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—006 Great Lakes Registered Pilot and Applicant Pilot Eligibility System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard Great Lakes Registered Pilot and Applicant Pilot Eligibility Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and preserve the records related to applicant and registered pilots that assist USCG in meeting its statutory obligation to establish, regulate, and oversee the operations of a pilotage system on the Great Lakes. As a result of the biennial review of this system USCG had modified or amended: (1) System location records category; (2) categories of records; (3) system manager and address category; and (4) notification procedure categories. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before January 15, 2015. This updated system will be effective January 15, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0067 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–343–4010.

• *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Coast Guard–006 Great Lakes Registered Pilot and Applicant Pilot Eligibility System of Records. The collection and maintenance of this information will assist DHS/USCG in meeting its statutory obligation to establish, regulate, and oversee the operations of a pilotage system on the Great Lakes. The DHS/USCG–006 Great Lakes Registered Pilot and Applicant Pilot Eligibility System of Records is the USCG's record system used to maintain records of individuals who are registered as Great Lakes pilots to perform pilotage duties aboard foreign trade vessels on the Great Lakes, and to maintain applications of mariners seeking registration as a Great Lakes registered pilot. As a result of a biennial review of the system, USCG has updated, (1) the system location to declare the new command name (Office of Waterways and Ocean Policy, Great Lakes Pilotage Division) and the new office symbol (CG–WWM–2); (2) the categories of records in the system to remove the annual report of physical examination and drug testing records no longer maintained by this system; and (3) the system manager and address category to include the new command name, office symbol, and mail stop.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–006 Great Lakes Registered Pilot and Applicant Pilot Eligibility Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–006 Great Lakes Registered Pilot and Applicant Pilot Eligibility Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/USCG—006

SYSTEM NAME:

DHS/USCG–006 Great Lakes Registered Pilot and Applicant Pilot Eligibility Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

USCG maintains records at USCG Headquarters in the Office of Waterways and Ocean Policy, Great Lakes Pilotage Division, (CG–WWM–2) in Washington, DC 20593. Merchant Mariner Licensing and Documentation (MMLD) System is the information technology repository for Great Lakes registered pilot and applicant pilot records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All United States Great Lakes registered pilots who are qualified to perform pilotage duties aboard foreign trade vessels on the Great Lakes; those individuals seeking selection as an applicant pilot on the Great Lakes; and those individuals whose applications were rejected as a pilot on the Great Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Full name (including maiden name, if applicable);
- Home address;
- Date and place of birth;
- Photograph;
- Country of citizenship;
- Social Security number;
- Color of eyes, hair, weight, and height;
- Application for registration;
- Renewal of registration;
- Coast Guard license and merchant mariner document data;
- Examination and test results for registration; and
- Sea service record and other related documentation provided by pilot or applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations, 5 U.S.C. 301; 14 U.S.C. 632; the Federal Records Act, 44 U.S.C. 3101; 49 CFR 1.45, 1.46; 46 U.S.C. 9301–9308.

PURPOSE(S):

The purpose of this system is to assist USCG in meeting its statutory obligation to establish, regulate, and oversee the operations of a pilotage system on the Great Lakes, to maintain records of individuals who are registered as Great Lakes pilots to perform pilotage duties aboard foreign trade vessels on the Great Lakes, and to maintain applications of mariners seeking registration as a Great Lakes pilot.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To assist training program needs, retirements, statistical compilations, and negotiations with Canadian authorities to ensure equitable participation by U.S. registered pilots with Canadian registered pilots.

I. To an appropriate Federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media.

RETRIEVABILITY:

USCG may retrieve records by name and pilot registration number.

SAFEGUARDS:

USCG safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG imposes strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCG destroys records 6 years after the individual's license expires, upon death of the individual, or when the individual turns 70 years old, whichever is sooner. (AUTH: N1–26–05–2, Item 1).

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–WWM–2), Chief, Great Lakes Pilotage Division, United States Coast Guard, Mail Stop 7509, Washington, DC 20593.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant, (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593.

If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from

the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

USCG obtains records from the individual's original application for U.S. pilot's registration and individual's yearly report of medical examination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 18, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–29380 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0072]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—060 Homeport System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard Homeport System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to validate the suitability and identify the eligibility of those who request permission and/or have access to the system. As a result of the biennial review of this system, the system manager and address category has been updated. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before January 15, 2015. This updated system will be effective January 15, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0072 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/United States Coast Guard-060 Homeport System of Records. The collection and maintenance of this information will assist DHS/USCG in meeting its maritime security requirements under the Maritime Transportation Security Act (MTSA) of 2002. As a result of a biennial review of the system, the system manager and address category has been updated to include the new office symbol, and mail stop.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–060 Homeport System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–060 Homeport System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/USCG –060

SYSTEM NAME:

DHS/USCG–060 Homeport System of Records.

SECURITY CLASSIFICATION:

Classified, sensitive, and unclassified

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC, the USCG Operations Systems Center, 600 Coast Guard Drive, Kearneysville, WV, and field offices. Homeport is the information technology (IT) system in which records associated with this function are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

Representatives of the maritime industry, such as: Members of Area Maritime Security Committees (AMSC); National Harbor Safety Committees and Environmental Committees (NHSCEC); and other entities regulated under the Maritime Transportation Security Act (MTSA).

Federal, State and local government agency members involved in maritime safety, security, and environmental protection missions. These persons may complete on-line forms and/or request an account to provide the information required by the USCG, access sensitive but unclassified information, and participate in collaboration communities.

Individuals for whom background screening will be conducted for the purpose of facilitating the establishment of AMSC membership and to inform owners, operators, and security officers of MTSA regulated entities of the names of persons who have passed the background screening including, but not limited to Owners and Operators and their employees, and non-employees who require regular access privileges to such regulated vessels and facilities, as well as many credentialed merchant mariners.

CATEGORIES OF RECORDS IN THE SYSTEM:

To participate in the Homeport portal for information dissemination and collection, the following information may be included in this record system:

- Full name;
- Complete address;
- Country;
- Company or organization name;
- Work phone;
- Mobile phone;
- 24 hour contact phone;
- Fax;
- Pager;
- Email address;
- Alternate email address; and
- Referral full name/work and cell phone/email address.

For USCG active duty and civilian personnel, the following fields are pre-populated using data from the Direct Access system, the USCG's enterprise human resource system:

- Employee ID;
- Billet control number;
- Government Service Grade or Military Rate/Rank; and
- Position number.

For purposes of establishing AMSC membership, the following information will be included in accordance with 33 CFR 103.305 ''Composition of an Area Maritime Security (AMS) Committee:''

- Full name;
- Date of birth; and
- Alien identification number (if applicable).

For purposes of establishing Transportation Worker Identification Credential (TWIC) New Hire query, the following information will be included in accordance with Navigation and Vessel Inspection Circulars (NVIC) 03–07:

- Full name; and
- Social Security number (last 4 digits only) should it be provided (not required).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 U.S.C. 3717; 46 U.S.C. 12501; 44 U.S.C. 3507; 33 U.S.C. 1223; 50 U.S.C. 191; 14 U.S.C. 93(a)(6); and 33 CFR part 125.

PURPOSE(S):

The Homeport system is an enterprise tool that facilitates compliance with the requirements set forth in the Maritime Transportation Security Act (MTSA) of 2002, by providing secure information dissemination, advanced collaboration, electronic submission and approval for vessel and facility security plans, and complex electronic and telecommunication notification capabilities. The collection of personally identifiable information concerning those with access to the Homeport system allows the USCG to validate the suitability and identify the eligibility of those who request permission and/or have access to the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores Homeport information electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media.

RETRIEVABILITY:

USCG retrieves homeport records by first name, last name, city, state, Captain of the Port Zone, vessel role, facility role, committee membership, vessel association, case identification number, or facility association.

SAFEGUARDS:

USCG safeguards Homeport records in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG imposes strict safeguards to minimize the risk of compromising the information stored in Homeport. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with NARA disposition Authority Number N1–026–06–06, records of registration information are destroyed upon account termination. Maritime personnel screening data is destroyed after two years. Response-associated information, such as personal data needed for search and rescue purposes, is destroyed 120 days following completion of response operations.

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–633), United States Coast Guard, Mail Stop 7710, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained by registered users; the general public (if completing an on-line form during marine casualty incidents or natural disasters); individuals who are authorized to have access to maritime facilities; government agencies; and USCG personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 18, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–29354 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–1064; OMB Control Number 1625—NEW]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of the following collection of information: 1625—NEW, District Five, Coast Guard Auxiliary Safety Survey. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before January 15, 2015.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2013–1064] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) Online: (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov*.

(2) Mail: (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) Hand Delivery: To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Anthony Smith, Office of Information Management, telephone 202–475–3532 or fax 202–372–8405, for questions on these documents. Contact Ms. Cheryl Collins, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2013–1064], and must be received by January 15, 2015. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2013–1064]; indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2013–1064'' in the ''Search'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Search'' box insert ''USCG–2013–1064'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625—NEW.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (79 FR 13318, March 10, 2014) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

1. *Title:* District Five, Coast Guard Auxiliary Safety Survey.

OMB Control Number: 1625—NEW.

Type of Request: This is a new Collection.

Respondents: District Five Auxiliarists.

Abstract: This information collection is associated with Safety and Risk Management (SARM) Council initiatives to enhance operational safety throughout District Five. The SARM Council plans to utilize an online survey to conduct a safety/hazard assessment for organizational volunteers engaged in Coast Guard operations.

Forms: None.

Burden Estimate: This is a new Information Collection Request (ICR).

The estimated burden is 533 annual hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. 35, as amended.

Dated: December 5, 2014.

Thomas P. Michelli,

Acting Chief Information Officer, U.S. Coast Guard.

[FR Doc. 2014–29440 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1454]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 24, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Shelby	Unincorporated areas of Shelby County (14–04–4029P).	The Honorable Lindsey Allison, Chair, Shelby County Commission, 454 Valley View Drive, Pelham, AL 35124.	Shelby County Engineer's Office, 506 Highway 70, Columbiana, AL 35051.	*http://www.msc.fema.gov/lomc*	Feb. 19, 2015	010191
Tuscaloosa	City of Tuscaloosa (14–04–4663P).	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, 2201 University Boulevard, Tuscaloosa, AL 35401.	Engineering Department, 2201 University Boulevard, Tuscaloosa, AL 35401.	*http://www.msc.fema.gov/lomc*	Jan. 15, 2015	010203
Arizona:						
Maricopa	City of Chandler (14–09–2082P).	The Honorable Jay Tibshraeny, Mayor, City of Chandler, P.O. Box 4008, Chandler, AZ 85244.	Public Works Department, 215 East Buffalo Street, Chandler, AZ 85244.	*http://www.msc.fema.gov/lomc*	Jan. 23, 2015	040040
Maricopa	City of Phoenix (14–04–2027P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 Washington Street, 5th Floor, Phoenix, AZ 85003.	*http://www.msc.fema.gov/lomc*	Jan. 29, 2015	040051
Maricopa	City of Surprise (14–09–2037P).	The Honorable Sharon Wolcott, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Community Development Services Department, 12425 West Bell Road, Suite D–100, Surprise, AZ 85374.	*http://www.msc.fema.gov/lomc*	Jan. 16, 2015	040053
Pima	Unincorporated areas of Pima County (14–09–3325P).	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	Feb. 26, 2015	040073
Santa Cruz	Unincorporated areas of Santa Cruz County (14–09–3102P).	The Honorable John Maynard, Chairman, Santa Cruz County Board of Supervisors, 2150 North Congress Drive, Nogales, AZ 85621.	Santa Cruz County Flood Control District, 2150 North Congress Drive, Nogales, AZ 85621.	*http://www.msc.fema.gov/lomc*	Feb. 2, 2015	040090
California:						
Los Angeles	City of Los Angeles (14–09–3226P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Suite 303, Los Angeles, CA 90015.	Public Works Department, 1149 South Broadway, Suite 810, Los Angeles, CA 90015.	*http://www.msc.fema.gov/lomc*	Feb. 9, 2015	060137
Mendocino	Unincorporated areas of Mendocino County (14–09–3500P)..	The Honorable John Pinches, Chairman, Mendocino County Board of Supervisors, 501 Low Gap Road, Ukiah, CA 95482.	Mendocino County Planning and Building Services Department, 860 North Bush Street, Ukiah, CA 95482.	*http://www.msc.fema.gov/lomc*	Jan. 29, 2015	060183
Riverside	City of Jurupa Valley (14–09–3381P).	The Honorable Frank Johnston, Mayor, City of Jurupa Valley, 8304 Limonite Avenue, Suite M, Jurupa Valley, CA 92509.	City Hall, 8304 Limonite Avenue, Suite M, Jurupa Valley, CA 92509.	*http://www.msc.fema.gov/lomc*	Feb. 9, 2015	060286
San Diego	Unincorporated areas of San Diego County (14–09–3872P).	The Honorable Dianne Jacob, Chair, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, CA 92101.	San Diego County Department of Public Works, Flood Control Division, 5510 Overland Avenue, Suite 410, San Diego, CA 92123.	*http://www.msc.fema.gov/lomc*	Feb. 19, 2015	060284
Santa Clara	Town of Los Altos Hills (14–09–3550P).	The Honorable John Radford, Mayor, Town of Los Altos Hills, 26379 Fremont Road, Los Altos Hills, CA 94022.	Public Works Department, 26379 Fremont Road, Los Altos Hills, CA 94022.	*http://www.msc.fema.gov/lomc*	Jan. 8, 2015	060342
Colorado:						
Boulder	City of Longmont (14–08–0705P).	The Honorable Dennis Coombs, Mayor, City of Longmont, 350 Kimbark Street Longmont, CO 80501.	Service Center, 1100 South Sherman Street, Longmont, CO 80501.	*http://www.msc.fema.gov/lomc*	Jan. 26, 2015	080027

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Douglas	Town of Castle Rock (14–08–1036P).	The Honorable Paul Donahue, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Utilities Department, 175 Kellogg Court, Castle Rock, CO 80109.	*http://www.msc.fema.gov/lomc*	Jan. 30, 2015	080050
Douglas	Unincorporated areas of Douglas County (14–08–1036P).	The Honorable Roger Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Public Works Department, Engineering Division, 100 3rd Street, Castle Rock, CO 80104.	*http://www.msc.fema.gov/lomc*	Jan. 30, 2015	080049
El Paso	City of Colorado Springs (14–08–0534P).	The Honorable Steve Bach, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	City Administration, 30 South Nevada Avenue, Colorado Springs, CO 80903.	*http://www.msc.fema.gov/lomc*	Jan. 29, 2015	080060
El Paso	Town of Monument (14–08–0567P).	The Honorable Rafael Dominguez, Mayor, Town of Monument, 645 Beacon Lite Road, Monument, CO 80132.	Town Hall, 645 Beacon Lite Road, Monument, CO 80132.	*http://www.msc.fema.gov/lomc*	Feb. 19, 2015	080064
El Paso	Unincorporated areas of El Paso County (14–08–0534P).	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Administrator, 2880 International Circle, Colorado Springs, CO 80910.	*http://www.msc.fema.gov/lomc*	Jan. 29, 2015	080059
El Paso	Unincorporated areas of El Paso County (14–08–0567P).	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Administrator, 2880 Interntional Circle, Colorado Springs, CO 80910.	*http://www.msc.fema.gov/lomc*	Feb. 19, 2015	080059
Florida:						
Charlotte	Unincorporated areas of Charlotte County (14–04–7742P).	The Honorable Ken Doherty, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Jan. 29, 2015	120061
Duval	City of Jacksonville (14–04–5730P).	The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc*	Dec. 26, 2014	120077
Duval	City of Jacksonville (14–04–6014P).	The Honorable Alvin Brown, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	*http://www.msc.fema.gov/lomc*	Jan. 12, 2015	120077
Hillsborough	Unincorporated areas of Hillsborough County (13–04–1630P).	The Honorable Mark Sharpe, Chairman, Hillsborough County Board of Commissioners, 601 East Kennedy Boulevard, Tampa, FL 33602.	Hillsborough County Public Works Department, 601 East Kennedy Boulevard, Tampa, FL 33602.	*http://www.msc.fema.gov/lomc*	Feb. 23, 2015	120112
Orange	City of Orlando (14–04–7362P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32802.	Permitting Services Department, 400 South Orange Avenue, Orlando, FL 32802.	*http://www.msc.fema.gov/lomc*	Jan. 23, 2015	120186
Georgia:						
Lee	Unincorporated areas of Lee County (14–04–0919P).	The Honorable Rick Muggridge, Chairman, Lee County Board of Commissioners, 110 Starkville Avenue North, Leesburg, GA 31763.	Lee County Courthouse, 104 Leslie Highway, Leesburg, GA 31763.	*http://www.msc.fema.gov/lomc*	Feb. 19, 2015	130122
Worth	Unincorporated areas of Worth County (14–04–0919P).	The Honorable Mike Cosby, Chairman, Worth County Board of Commissioners, 201 North Main Street, Sylvester, GA 31791.	Worth County Courthouse, 201 North Main Street, Sylvester, GA 31791.	*http://www.msc.fema.gov/lomc*	Feb. 19, 2015	130196

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Hawaii: Hawaii	Hawaii County (14–09–2534P).	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	Department of Public Works, 101 Pauahi Street, Suite 7, Hilo, HI 96720..	*http://www.msc.fema.gov/lomc*	Feb. 9, 2015	155166
Nevada:						
Clark	City of Henderson (14–09–2535P).	The Honorable Andy A. Hafen, Mayor, City of Henderson, P.O. Box 95050, Henderson, NV 89009.	Public Works Department, 240 Water Street, Henderson, NV 89015.	*http://www.msc.fema.gov/lomc*	Feb. 2, 2015	320005
Douglas	Unincorporated areas of Douglas County (14–09–1494P).	The Honorable Doug N. Johnson, Chairman, Douglas County Board of Commissioners, P.O. Box 218, Minden, NV 89423.	Douglas County Public Works Department, 1615 8th Street, Minden, NV 89423.	*http://www.msc.fema.gov/lomc*	Jan. 22, 2015	320008
Elko	City of Elko (14–09–3720P).	The Honorable Chris J. Johnson, Mayor, City of Elko, 1751 College Avenue, Elko, NV 89801.	Engineering Department, 1751 College Avenue, Elko, NV 89801.	*http://www.msc.fema.gov/lomc*	Feb. 5, 2015	320010
North Carolina: Graham.	Unincorporated areas of Graham County (14–04–1210P).	Mr. Greg Cable, Manager, Graham County, 12 North Main Street, Robbinsville, NC 28771.	Graham County Emergency Management Services Department, 70 West Fort Hill Road, Robbinsville, NC 28771.	*http://www.msc.fema.gov/lomc*	Jan. 30, 2015	370105
South Carolina:						
Charleston	Town of Hollywood (14–04–2513P).	The Honorable Jacquelyn S. Heyward, Mayor, Town of Hollywood, P.O. Box 519, Hollywood, SC 29449.	Town Hall, 6316 Highway 162, Hollywood, SC 29449.	*http://www.msc.fema.gov/lomc*	Feb. 2, 2015	450037
Charleston	Town of Ravenel (14–04–2514P).	The Honorable Opal N. Baldwin, Mayor, Town of Ravenel, 5962 Highway 165, Suite 100, Ravenel, SC 29470.	Town Hall, 5962 Highway 165, Suite 100, Ravenel, SC 29470.	*http://www.msc.fema.gov/lomc*	Feb. 2, 2015	450043
Charleston	Unincorporated areas of Charleston County (14–04–2513P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Inspection Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	*http://www.msc.fema.gov/lomc*	Feb. 2, 2015	455413
Charleston	Unincorporated areas of Charleston County (14–04–2514P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Inspection Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	*http://www.msc.fema.gov/lomc*	Feb. 2, 2015	455413
Charleston	Unincorporated areas of Charleston County (14–04–3481P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Inspection Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	*http://www.msc.fema.gov/lomc*	Feb. 2, 2015	455413
Horry	City of North Myrtle Beach, (14–04–7517P).	The Honorable Marilyn Hatley, Mayor, City of North Myrtle Beach, 1018 2nd Avenue South, North Myrtle Beach, SC 29582.	Planning and Development Department, 1015 2nd Avenue South, North Myrtle Beach, SC 29582.	*http://www.msc.fema.gov/lomc*	Jan. 15, 2015	450110
Utah: Davis	City of Kaysville (14–08–0888P).	The Honorable Steve A. Hiatt, Mayor, City of Kaysville, 23 East Center Street, Kaysville, UT 84037.	City Hall, 23 East Center Street, Kaysville, UT 84037.	*http://www.msc.fema.gov/lomc*	Feb. 13, 2015	490046

[FR Doc. 2014–29433 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports

have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of January 16, 2014 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 24, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Carroll County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1276	
City of Delphi	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Town of Burlington	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Town of Camden	Town Office, 153 West Main Street, Camden, IN 46917.
Town of Flora	Town Hall, 4 East Main Street, Flora, IN 46929.
Unincorporated Areas of Carroll County	Carroll County Area Plan Commission, Carroll County Courthouse, 101 West Main Street, Delphi, IN 46923.
Caroline County, Maryland, and Incorporated Areas Docket No.: FEMA–B–1352	
Town of Denton	Municipal Offices Building, 13 North 3rd Street, Denton, MD 21629.
Town of Federalsburg	Town Hall, 118 North Main Street, Federalsburg, MD 21632.
Town of Goldsboro	Town Hall, 505 Old Town Road, Goldsboro, MD 21636.
Town of Greensboro	Town Hall, 111 South Main Street, Greensboro, MD 21639.
Town of Henderson	Town Hall, 318 Henderson Road, Henderson, MD 21640.
Town of Hillsboro	Town of Hillsboro, 22043 Church Street, Hillsboro, MD 21641.
Town of Preston	Town Hall, 105 Backlanding Road, Preston, MD 21655.
Unincorporated Areas of Caroline County	Caroline County Department of Planning and Codes, Health and Public Services Building, 403 South 7th Street, Suite 210, Denton, MD 21629.
Ionia County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1348	
City of Belding	City Hall, 120 South Pleasant Street, Belding, MI 48809.
City of Ionia	City Hall, 114 North Kidd Street, Ionia, MI 48846.
City of Portland	City Hall, 259 Kent Street, Portland, MI 48875.
Township of Berlin	Township of Berlin, 4947 Harwood Road, Ionia, MI 48846.
Township of Boston	Township Hall, 30 North Center Street, Saranac, MI 48881.
Township of Campbell	Township Hall, 331 South Main Street, Clarksville, MI 48815.
Township of Danby	Township Hall, 13122 Charlotte Highway, Sunfield, MI 48890.
Township of Easton	Township of Easton, 3960 Potters Road, Ionia, MI 48846.
Township of Ionia	Township Hall, 1042 East Washington Street, Ionia, MI 48846.
Township of Keene	Township Hall, 8505 Potters Road, Saranac, MI 48881.
Township of Lyons	Township Hall, 108 Prairie Street, Lyons, MI 48851.
Township of North Plains	Hubbardston Fire Station, 126 North Washington Street, Hubbardston, MI 48845.

Community	Community map repository address
Township of Odessa	Township Hall, 3862 Laurel Drive, Lake Odessa, MI 48849.
Township of Otisco	Township Hall, 9663 West Button Road, Belding, MI 48809.
Township of Portland	Township Hall, 773 East Grand River Avenue, Portland, MI 48875.
Village of Hubbardston	Village Hall, 306 Russell Street, Hubbardston, MI 48845.
Village of Lake Odessa	Page Memorial Building, 839 Fourth Avenue, Lake Odessa, MI 48849.
Village of Lyons	Village of Lyons Office, 212 Water Street, Lyons, MI 48851.
Village of Muir	Village Hall, 122 Superior Street, Muir, MI 48860.
Village of Saranac	Village Hall, 27 North Bridge Street, Saranac, MI 48881.
Ravalli County, Montana, and Incorporated Areas Docket No.: FEMA–B–1261	
City of Hamilton	202 South 3rd Street, Hamilton, MT 59840.
City of Stevensville	206 Buck Street, Stevensville, MT 59870.
Town of Darby	101 East Tanner Avenue, Darby, MT 59829.
Unincorporated Areas of Ravalli County	215 South 4th Avenue, Suite F, Hamilton, MT 59840.
Cass County, North Dakota, and Incorporated Areas Docket No.: FEMA–B–1275	
City of Argusville	City Hall, 201 North Highway 81, Argusville, ND 58005.
City of Briarwood	City Hall, 8 Briarwood Place, Briarwood, ND 58104.
City of Fargo	City Hall, 200 3rd Street North, Fargo, ND 58102.
City of Frontier	Frontier City Hall, 5202 32nd Street South, Fargo, ND 58104.
City of Harwood	City Hall, 114 Lind Boulevard, Harwood, ND 58042.
City of Horace	City Hall, 600 Nelson Drive, Horace, ND 58047.
City of North River	City Hall, 1409 Reed Drive, North River, ND 58102.
City of Oxbow	City Hall, 610 Evergreen Circle, Oxbow, ND 58047.
City of Prairie Rose	Prairie Rose City Hall, 3514 41st Avenue South, Fargo, ND 58104.
City of Reiles Acres	City Hall, 4635 35th Avenue North, Reiles Acres, ND 58102.
City of West Fargo	City Hall, 800 4th Avenue East, West Fargo, ND 58078.
Township of Barnes	Barnes Township Hall, 2715 Sheyenne Street, West Fargo, ND 58078.
Township of Harwood	Township Hall, 2935 170th Avenue Southeast, Harwood, ND 58042.
Township of Mapleton	Township Hall, 16522 41st Street Southeast, Mapleton, ND 58059.
Township of Pleasant	Pleasant Township Hall, 5060 173rd Avenue Southeast, Horace, ND 58047.
Township of Raymond	Raymond Township Hall, 16354 30th Street Southeast, Harwood, ND 58042.
Township of Reed	Reed Township Hall, 617 19th Avenue Northwest, West Fargo, ND 58078.
Township of Stanley	Stanley Township Hall, 7105 12th Street South, Fargo, ND 58104.
Township of Warren	Warren Township Hall, 4308 165th Avenue Southeast, Davenport, ND 58021.
Centre County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1352	
Township of Benner	Benner Township Office, 1224 Buffalo Run Road, Bellefonte, PA 16823.
City of Virginia Beach, Virginia (Independent City) Docket No.: FEMA–B–1352	
City of Virginia Beach	Department of Public Works, 2405 Courthouse Drive, Municipal Center Building #2, Virginia Beach, VA 23456.
York County, Virginia and Incorporated Areas Docket No.: FEMA–B–1352	
Unincorporated Areas of York County	York County Computer Support Services, 120 Alexander Hamilton Boulevard, Yorktown, VA 23690.

[FR Doc. 2014–29430 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4201–DR; Docket ID FEMA–2014–0003]

Hawaii; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA–4201–DR), dated November 3, 2014, and related determinations.

DATES: *Effective Date:* November 3, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 3, 2014, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the emergency conditions in certain areas of the State of Hawaii resulting from the Pu'u 'Ō'ō volcanic eruption and lava flow beginning on September 4, 2014, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Hawaii.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B) under the Public Assistance program and Hazard Mitigation in the designated area. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kenneth K. Suiso, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the State of Hawaii has been designated as adversely affected by this major disaster:

Hawaii County for emergency protective measures (Category B) under the Public Assistance program.

Hawaii County is eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–29435 Filed 12–15–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1452]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 16, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1452, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances

that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 24, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Winnebago County, Illinois, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Loves Park	Public Works Department, 100 Heart Boulevard, Loves Park, IL 61111.
City of Rockford	City Hall, 425 East State Street, Rockford, IL 61104.
City of South Beloit	City Hall, 519 Blackhawk Boulevard, South Beloit, IL 61080.
Unincorporated Areas of Winnebago County	County Courthouse, 404 Elm Street, Rockford, IL 61101.
Village of Machesney Park	Planning & Zoning Department, 300 Roosevelt Road, Machesney Park, IL 61115.
Village of Pecatonica	Village Hall, 405 Main Street, Pecatonica, IL 61063.
Village of Rockton	Village Hall, 110 East Main Street, Rockton, IL 61072.
Village of Roscoe	Village Hall, 10631 Main Street, Roscoe, IL 61073.
Polk County, Minnesota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Beltrami	514 Polk Avenue, Beltrami, MN 56517.
City of Climax	Climax City Hall, 102 West Broadway Street, Climax, MN 56523.
City of Crookston	Crookston City Hall, 124 North Broadway, Crookston, MN 56716.
City of East Grand Forks	East Grand Forks City Hall, 600 DeMers Avenue, East Grand Forks, MN 56721.
City of Fertile	Fertile City Hall, 101 South Mill Street, Fertile, MN 56540.
City of Fisher	Fisher City Office, 313 Park Avenue, Suite 111, Fisher, MN 56723.
City of Fosston	Fosston City Hall, 220 East First Street, Fosston, MN 56542.
City of Mcintosh	McIntosh City Hall, 115 Broadway, Northwest, McIntosh, MN 56556.
City of Mentor	Mentor City Hall, 202 Garfield Avenue, North Mentor, MN 56736.
City of Nielsville	Nielsville City Hall, 36943 440th Street, Southwest, Nielsville, MN 56568.
City of Winger	Winger City Hall, 10 East Minnesota Avenue, Winger, MN 56592.
Unincorporated Areas of Polk County	Polk County Government Center, 612 North Broadway, Room 225, Crookston, MN 56716.
Summit County, Ohio, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Munroe Falls	City Hall, 43 Munroe Falls Avenue, Munroe Falls, OH 44262.
City of Stow	Engineering Department, 3760 Darrow Road, Stow, OH 44224.
Warren County, Ohio, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Carlisle	City Hall, 760 West Central Avenue, Carlisle, OH 45005.
City of Franklin	City Building, 1 Benjamin Franklin Way, Franklin, OH 45005.
Unincorporated Areas of Warren County	Administration Building, 406 Justice Drive, Room 167, Lebanon, OH 45036.

[FR Doc. 2014–29431 Filed 12–15–14; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1457]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before March 16, 2015.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1457, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 24, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

HARPETH WATERSHED

Community	Community map repository address
Cheatham County, Tennessee, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Kingston Springs	Town Hall, 396 Spring Street, Kingston Springs, TN 37082.
Town of Pegram	Town Hall, 308 Highway 70, Pegram, TN 37143.
Unincorporated Areas of Cheatham County	Cheatham County Floodplain Administrator's Office, 264 South Main Street, Ashland City, TN 37015.

HARPETH WATERSHED—Continued

Community	Community map repository address
Dickson County, Tennessee, and Incorporated Areas	
Unincorporated Areas of Dickson County	Dickson County Director of Planning and Zoning, 4 Court Square, Charlotte, TN 37036.
Williamson County, Tennessee, and Incorporated Areas	
City of Brentwood	City Hall, 5211 Maryland Way, Brentwood, TN 37027.
City of Fairview	City Hall, 7100 City Center Circle, Fairview, TN 37062.
City of Franklin	City Hall, Code Department, 109 3rd Avenue South, Franklin, TN 37064.
Unincorporated Areas of Williamson County	Williamson County Complex, Planning Department, 1320 West Main Street, Suite 125, Franklin, TN 37064.

II. Non-watershed-based studies:

Community	Community map repository address
Logan County, Colorado, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Sterling	Planning and Zoning Division, 421 North 5th Street, Sterling, CO 80751.
Town of Crook	Planning and Zoning Department, 315 Main Street, Suite 2, Sterling, CO 80751.
Town of Fleming	Planning and Zoning Department, 315 Main Street, Suite 2, Sterling, CO 80751.
Town of Iliff	Planning and Zoning Department, 315 Main Street, Suite 2, Sterling, CO 80751.
Town of Merino	Planning and Zoning Department, 315 Main Street, Suite 2, Sterling, CO 80751.
Town of Peetz	Planning and Zoning Department, 315 Main Street, Suite 2, Sterling, CO 80751.
Unincorporated Areas of Logan County	Planning and Zoning Department, 315 Main Street, Suite 2, Sterling, CO 80751.
Granite County, Montana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Town of Drummond	Town Hall, 114 A Street, Drummond, MT 59832.
Town of Philipsburg	Town Hall, 104 South Sansome, Philipsburg, MT 59858.
Unincorporated Areas of Granite County	Granite County Courthouse, 220 North Sansome, Philipsburg, MT 59858.

[FR Doc. 2014–29437 Filed 12–15–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0101]

Agency Information Collection Activities: Document Verification Request and Supplement, Form G–845; Revision of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on September 26, 2014, at 79 FR 57948, allowing for a 60-day public comment period. USCIS received three comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 15, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0101.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Verification Information System, Document Verification Request, and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Verification Information System, G–845, and G–845 Supplement; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federal Government or State, Local Government. The information collections allow for agencies to verify the immigration status of certain persons applying for benefits under certain entitlement programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the Verification Information System is 12,711,033 and the estimated hour burden per response is 0.83 hours (5 minutes); G–845 Document Verification Request 260,406 at 0.83 hours (5 minutes); and G–845 Document Verification Request Supplement 5,141 at 0.83 hours (5 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,275,420 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.00.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: December 10, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–29374 Filed 12–15–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0033]

Agency Information Collection Activities: Report of Medical Examination and Vaccination Record, Form I–693; Revision of a Currently Approved Collection; Extension, Without Change

ACTION: 30-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on September 22, 2014, at 79 FR 56595, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 15, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0033.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Report of Medical Examination and Vaccination Record.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–693; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used by USCIS in considering the eligibility for adjustment of status under 8 CFR 209.1(c), 209.2(d), 210.2(d), 245.5 and 245a.3(d)(4); and V nonimmigrant status under 8 CFR 214.15(f).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 620,244 and the estimated hour burden per response is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden associated with this collection is 1,550,610 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $303,920.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: December 10, 2014.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2014–29375 Filed 12–15–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–43]

60-Day Notice of Proposed Information Collection: Home Mortgage Disclosure Act (HMDA) Loan/Application Register

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:* February 17, 2015.

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: Shawn R. Jones, Director, Office of Evaluation, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Shawn R. Jones, at *Shawn.R.Jones@hud.gov* or telephone (202) 402–6914. 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 Mr. Jones.

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: Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

OMB Approval Number: 2502–0539.

Type of Request: Reinstatement without change.

Form Number: FR HUMDA–LAR.

Description of the Need for the Information and Proposed Use: The HMDA Loan/Application Register collects information from mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the information generated as a running log throughout the calendar year, and send the information to HUD by March 1 of the following calendar year.

Respondents: Business and Other for profit.

Estimated Number of Respondents: 1100.

Estimated Number of Responses: 1100.

Frequency of Response: On Occasion/Annually.

Average Hours per Response: 120.

Total Estimated Burdens: 132,000.

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: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35.

Dated: December 10, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–29462 Filed 12–15–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX15EB00A181100]

Agency Information Collection Activities: Request for Comments; The William T. Pecora Award Application and Nomination Process

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of revision of a currently approved information collection, (1028–0101).

SUMMARY: We (the U.S. Geological Survey) will ask Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on January 31, 2015.

DATES: To ensure that your comments on this ICR are considered, we must receive them on or before January 15, 2015.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–0101 William T. Pecora Award'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–0101: William T. Pecora Award' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Thomas Holm, EROS Center, U.S. Geological Survey, 47914 252nd Street, Sioux Falls, SD 57198 (mail); 605–594–6127 (phone); or *holm@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The William T. Pecora Award is presented annually to individuals or groups that make outstanding contributions toward understanding the Earth by means of remote sensing. The award is sponsored jointly by the Department of the Interior (DOI) and the National Aeronautics and Space Administration (NASA).

In 1974 the Pecora Award was established in honor of Dr. William T. Pecora, former Director of the U.S. Geological Survey, Under Secretary, Department of the Interior and a motivating force behind the establishment of a program for civil remote sensing of the earth from space. The purpose of the award is to recognize individuals or groups working in the field of remote sensing of the earth. National and international nominations are accepted from the public and private sector individuals, teams, organizations, and professional societies.

Nomination packages include three sections: (A) Cover Sheet, (B) Summary Statement, and (C) Supplemental Materials. The cover sheet includes professional contact information. The Summary Statement is limited to two pages and describes the nominee's achievements in the scientific and technical remote sensing community, contributions leading to successful practical applications of remote sensing, and/or major breakthroughs in remote sensing science or technology. Nominations may include up to 10 pages of supplemental information such as resume, publications list, and/or letters of endorsement.

II. Data

OMB Control Number: 1028–0101.

Form Number: None.

Title: The William T. Pecora Award Application and Nomination Process.

Type of Request: Revision of a currently approved information collection.

Respondent Obligation: None. Participation is voluntary.

Frequency of Collection: Annually.

Description of Respondents: Individuals or households; Businesses and other academic and non-profit institutions; state and local government agencies.

Estimated Total Number of Annual Responses: 20.

Estimated Time per Response: 10 hours.

Estimated Annual Burden Hours: 200.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On 8–13–2014, we published a **Federal Register** notice (79 FR 47666) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on 10–13–2014. We received no comments.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Frank Kelly,

Director, Earth Resources Observation and Science Center, U.S. Geological Survey.

[FR Doc. 2014–29356 Filed 12–15–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTM00000.L111100000.XP0000 15XL1109AF MO#4500075024]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

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) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Central Montana Resource Advisory Council Meeting will be held January 21–22, 2015 in Lewistown, Montana. The January 21 meeting will begin at 10:00 a.m. with a 30-minute public comment period and will adjourn at 5:00 p.m. The January 22 meeting will begin at 8:00 a.m. with a 30-minute public comment period beginning at 10:00 a.m. and will adjourn at 12:00 p.m.

ADDRESSES: The meetings will be in the Bureau of Land Management, Central Montana District Office, Lewistown Field Office Conference Room at 920 NE Main, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Mark Albers, HiLine District Manager, Great Falls Field Office, 1101 15th Street North, Great Falls, MT 59401, (406) 791–7789, *malbers@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 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 these meetings the council is scheduled to participate in/discuss/act upon these topics/activities: A roundtable discussion among council members and the BLM; election of officers; update on BLM efforts to restore access to the Bullwhacker area and District Managers' updates. All RAC meetings are open to the public.

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.

Mark K. Albers,

HiLine District Manager.

[FR Doc. 2014–29419 Filed 12–15–14; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–15–L13100000–PP0000]

Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These supplementals and surveys were executed at the request of the U.S. Forest Service and the Bureau of Land Management and are necessary for the management of resources. The lands surveyed are:

The supplemental plat showing the survey of Tract 37 is based on a survey executed under state authority by Paul A. Blough, Wyoming Professional Land Surveyor No. 2332. A plat of his survey, titled ''PARCELS FOR LAND EXCHANGE,'' was recorded in the Park County Clerk's Office, on June 9, 2014, Document No. 2014–2758, Plat Cabinet M, Page 46, Township 49 North, Range 105 West, Sixth Principal Meridian, Wyoming, Group No. 909, was accepted June 17, 2014.

The supplemental plat showing the subdivision of the SE1/4SE1/4, Section 24, into Lots 9 and 10, Sec. 24, is based on the BLM plat accepted August 14, 1991, and on a survey executed under state authority by Paul A. Blough, Wyoming Professional Land Surveyor No. 2332. A plat of his survey, titled ''PARCELS FOR LAND EXCHANGE,'' was recorded in the Park County Clerk's Office, on June 9, 2014, Document No. 2014–2758, Plat Cabinet M, Page 46, Township 49 North, Range 106 West, Sixth Principal Meridian, Wyoming, Group No. 909, was accepted June 17, 2014.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, the survey of the subdivision of section 11 and the metes-and-bounds survey of Lot 2, section 11, Township 26 North, Range 90 West, Sixth Principal Meridian, Wyoming, Group No. 903, was accepted August 28, 2014.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 34, Township 22 North, Range 87 West, Sixth Principal Meridian, Wyoming, Group No. 904, was accepted August 28, 2014.

The plat and field notes representing the dependent resurvey of a portion of the west boundary, portions of Tracts 59, 73 and 133, and a portion of the subdivisional lines, and the survey of the subdivision of section 30, Township 55 North, Range 66 West, Sixth Principal Meridian, Wyoming, Group No. 880, was accepted September 19, 2014.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 24, Township 55 North, Range 67 West, Sixth Principal Meridian, Wyoming, Group No. 880, was accepted September 19, 2014.

The plat and field notes representing the retracement of the Wyoming-South Dakota State Boundary between Mile Posts 58 and 60, the dependent resurvey of portions of the subdivisional lines, and the survey of the subdivision of sections 27 and 28, Township 45 North, Range 60 West, Sixth Principal Meridian, Wyoming, Group No. 881, was accepted September 19, 2014.

The plat and field notes representing the corrective dependent resurvey of a portion of the subdivisional lines, the dependent resurvey of portions of the subdivisional lines, the survey of the subdivision of certain sections, and the metes and bounds survey of Lot 1, section 33, Township 57 North, Range 95 West, Sixth Principal Meridian, Wyoming, Group No. 884, was accepted September 19, 2014.

The plat and field notes representing the dependent resurvey of portions of Lot No. 59 and Lot No. 60 and the metes and bounds survey of Lot 60–B, Lot No. 60, Township 51 North, Range 103 West, Sixth Principal Meridian, Wyoming, Group No. 886, was accepted September 19, 2014.

The plat and field notes representing the dependent resurvey of a portion of Lot No. 89, portions of the subdivisional lines and subdivision of section 10, the survey of the subdivision of Lot No. 89 and section 10, and the metes and bounds survey of certain lots, Township 55 North, Range 100 West, Sixth Principal Meridian, Wyoming, Group No. 900, was accepted September 19, 2014.

The plat and field notes representing the dependent resurvey of portions of the subdivisional lines and portions of Tract 38, and the survey of the subdivision of sections 8 and 9, Township 24 North, Range 99 West,

Sixth Principal Meridian, Wyoming, Group No. 882, was accepted October 24, 2014.

The plat and field notes representing the dependent resurvey of a portion of the east boundary and subdivisional lines, and the survey of the subdivision of section 24, Township 34 North, Range 110 West, Sixth Principal Meridian, Wyoming, Group No. 899, was accepted October 24, 2014.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: December 10, 2014.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2014–29405 Filed 12–15–14; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–15XL1116AF: HAG15–0042]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 7 S., R. 2 E., accepted November 7, 2014
T. 17 S., R. 7 W., accepted November 7, 2014
T. 32 S., R. 5 W., accepted November 7, 2014
T. 4 N., R. 3 W., accepted November 7, 2014
T. 5 N., R. 3 W., accepted November 7, 2014
T. 21 S., R. 8 W., accepted November 7, 2014

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW. 3rd Avenue, Portland, Oregon 97204. 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: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2014–29420 Filed 12–15–14; 8:45 am]

BILLING CODE 4310–33–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 8–9, 2015.

TIME: 8:30 a.m. to 5:00 p.m.

ADDRESSES: For specific meeting location in Phoenix, Arizona, please contact the Rules Committee Support Office at (202) 502–1820.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Rules Committee Secretary, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 10, 2014.

Jonathan C. Rose,

Rules Committee Secretary.

[FR Doc. 2014–29340 Filed 12–15–14; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Rules of Civil Procedure

Federal Register Citation of Previous Announcements: 79 FR 48250 and 79 FR 72702.

AGENCY: Advisory Committee on Rules of Civil Procedure, Judicial Conference of the United States.

ACTION: Notice of Cancellation of Public Hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Civil Procedure has been canceled: Civil Rules Hearing, January 9, 2015, in Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 10, 2014.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2014–29279 Filed 12–15–14; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of the Proposed Consent Decree Under the Oil Pollution Act

On December 9, 2014, the United States Department of Justice and the State of Iowa lodged a Proposed Consent Decree with the United States District Court for the Northern District of Iowa in *United States* v. *Dakota, Minnesota, and Eastern Railroad Corporation, d/b/a Canadian Pacific,* Civil Action No. 2:14–cv–01025–EJM.

This civil action asserts claims against Dakota, Minnesota, and Eastern Railroad Corporation, d/b/a Canadian Pacific (''Defendant'') pursuant to the Oil Pollution Act (''OPA''), 33 U.S.C. 2701, *et seq.,* for damages for injury to natural resources, and the costs of assessment thereof, from the derailment of a Canadian Pacific train near Guttenberg, Iowa in 2008 and the resulting discharge of oil into the Mississippi River. To resolve the United States' and States' claims the Defendant will pay $625,000

and in return it will receive a covenant not to sue for natural resource damages.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Dakota, Minnesota, and Eastern Railroad Corporation, d/b/a Canadian Pacific,* Civil Action No. 2:14–cv–01025–EJM, DOJ Reference Number 90–11–3–10260.

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 email	*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 $6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–29399 Filed 12–15–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act, the Oil Pollution Act, and the Clean Water Act

Notice is hereby given that the United States Department of Justice, on behalf of the U.S. Department of the Interior, Fish and Wildlife Service (''DOI''), together with the State of New York Department of Environmental Conservation (''DEC''), reached agreement on a proposed settlement with Honeywell International, Inc. and Amphenol Corporation regarding natural resource damages arising from environmental contamination at the Richardson Hill Site in Sidney and Masonville, New York. The settlement will resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act, the Oil Pollution Act, the Clean Water Act, and applicable state law.

The settlement will require Honeywell and Amphenol to pay a total of $400,000. DOI and DEC will receive $81,210 and $20,000 respectively to reimburse assessment costs. The rest of the money, $298,790, will fund projects to restore, rehabilitate, replace, and/or acquire the equivalent of the natural resources injured at the site, including the costs of restoration planning and oversight activities.

The publication of this notice opens a period for public comment on the settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to Richardson Hill Settlement Agreement, D.J. Ref. No. 90–11–3–11059. 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 email	*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 settlement agreement 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 settlement agreement 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 $2.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–29444 Filed 12–15–14; 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—High Density Packaging User Group International, Inc.

Notice is hereby given that, on October 31, 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''), High Density Packaging User Group International, Inc. (''HDPUG'') 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, Compeq Manufacturing, Taoyuan, TAIWAN; Introbotix, Albuquerque, NM; Freescale, Austin, TX; and Ventec International Group, Ward Hill, MA, have been added as parties to this venture.

Also, Enthone, West Haven, CT; IST, Hsinchu, Taiwan; and Park and Electrochemical, Melville, NY, 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 HDPUG intends to file additional written notifications disclosing all changes in membership.

On September 14, 1994, HDPUG 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 23, 1995 (60 FR 15306).

The last notification was filed with the Department on July 11, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 8, 2014 (79 FR 46451).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–29392 Filed 12–15–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on November 6, 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''), the American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. 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, since April 30, 2014, ASME has established one new consensus committee, initiated two new standards activities and withdrawn three published standards within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME 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 October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on May 2, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32998).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–29409 Filed 12–15–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on November 19, 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''), The Open Group, L.L.C. (''TOG'') 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, Aviation Industry Corporation of China Information Technology—AVICIT, Beijing, PEOPLE'S REPUBLIC OF CHINA; Camber Corporation, Huntsville, AL; Creative Electronic Systems—CAL, Inc., Albuquerque, NM; Edifit Limited, Coventry, UNITED KINGDOM; Esri South Africa (Pty) Ltd., Johannesburg, SOUTH AFRICA; Eturnti Enterprise Consulting Pvt Ltd., Bangalore, INDIA; Gramma Tech, Inc., Ithaca, NY; Inteca sp. z.o.o., Wroclaw, POLAND; Jiangxi University of Finance and Economics, Nanchang, PEOPLE'S REPUBLIC OF CHINA; Learning Tree International, Inc., Reston, VA; Logicalis SMC, Rijswijk, THE NETHERLANDS; Management Edge Limited, Abuja, NIGERIA; Munich RE, Munich, GERMANY; Pan Asia Training PTE Ltd., Singapore, SINGAPORE; Quinsigamond Community College, Worcester, MA; Simplilearn Solutions Private Limited, Bangalore, INDIA; UMBRiO B.V., Rijswijk, THE NETHERLANDS; and University of South Florida, St. Petersburg, FL, have been added as parties to this venture.

Also, Aoyama Gakuin University, Tokyo, JAPAN; ATK Defense Electronics Systems, Woodland Hills, CA; Nedbank, Johannesburg, SOUTH AFRICA; Sopra Group, Edinburgh, UNITED KINGDOM; Support Systems Associates, Inc., Melbourne, FL; Sytecso S.A. de C.V., Monterrey, MEXICO; Telekom SA Ltd., Pretoria, SOUTH AFRICA; and Tresys Technology LLC, Columbia, MD, have withdrawn as parties to this venture.

In addition, Lynuxworks, Inc. has changed its name to Lynx Software Techonologies, Inc., San Jose, CA.

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 TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG 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 June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on September 8, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 2014 (79 FR 58383).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–29412 Filed 12–15–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Shipbuilding Research Program

Notice is hereby given that, on November 5, 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''), National Shipbuilding Research Program (''NSRP'') 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, Huntington Ingalls Incorporated's, Avondale, LA, shipyard has withdrawn as a party to this venture.

In addition, the nature and objective of the venture has been revised to establish collaborative research efforts of limited duration to manage and focus national shipbuilding and ship repair research and development funding on technologies and processes that will reduce the total ownership cost of ships for the U.S. Navy, other national security customers and the commercial sectors and develop and leverage best commercial and naval practices to improve efficiency of the U.S. shipbuilding and ship repair industry. The venture also provides a collaborative framework to improve shipbuilding-related technical and business processes.

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 NSRP intends to file additional written notifications disclosing all changes in membership.

On March 13, 1998, NSRP 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 January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on December 20, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 20, 2012 (77 FR 3007).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–29410 Filed 12–15–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Forging Machines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Forging Machines,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq*. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 15, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201409-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Forging Machines information collection. Under regulations 29 CFR 1910.218, it is mandatory for covered employers to conduct and to document periodic inspections of forging machines, guards, and point-of-operation protection devices and to mark manually controlled valves and switches. These requirements reduce workers' risks of death or serious injury by ensuring that forging machines used by them are in safe operating condition and that the workers are able to identify manually operated valves and switches. Occupational Safety and Health Act sections 2, 6, and 8 authorize this information collection. *See* 29 U.S.C. 651, 655, and 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0228.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 30, 2014 (79 FR 36832).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0228. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Forging Machines.

OMB Control Number: 1218–0228.

Affected Public: Private sector—businesses or other for-profits and not for profit institutions.

Total Estimated Number of Respondents: 27,700.

Total Estimated Number of Responses: 1,440,788.

Total Estimated Annual Time Burden: 187,264 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: December 10, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–29389 Filed 12–15–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,371]

Contacts Metals and Welding, Inc., Indianapolis, Indiana; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 10, 2014, the IUE–CWA, Local 84001,

requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Contacts Metals and Welding, Inc., Indianapolis, Indiana (subject firm). The determination was issued on August 28, 2014. The Department's Notice of determination was published in the **Federal Register** on September 11, 2014 (79 FR 54298). Workers at the subject firm were engaged in activities related to the production of resistance welding consumables and accessories, such as welding tips and holders.

The negative determination was based on the Department's findings that during the course of the investigation, the Department received information which establishes that BGA Management, LCC (doing business as Alliance Management) is the Court-appointed receiver for CMW International, LLC; that CMW International, LLC is the successor-in-interest to CMW International, Inc.; that the afore-mentioned entities have the same address as Contacts Metals and Welding, Inc.; that the Court-appointed receiver was authorized to sell assets, including the right to sell products under the Contacts Metals and Welding, Inc./CMW brand; and that the entity(s) selling products under the CMW brand are not successor-in-interest to either CMW International, LLC, CMW International, Inc., or Contacts Metals and Welding, Inc.

With respect to Section 222(a)(2)(B) of the Act, the Department did not receive information that Contacts Metals and Welding, Inc. shifted production of resistance welding consumables and accessories, or like or directly competitive articles, to a foreign country.

With respect to Section 222(a)(2)(A)(ii), the Department did not receive information that imports of articles like or directly competitive with the resistance welding consumables and accessories produced by Contacts Metals and Welding, Inc. increased during the relevant period.

With respect to Section 222(b)(2) of the Act, the Department did not receive information that Contacts Metals and Welding, Inc. was a Supplier to, or act as a Downstream Producer for, a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a), based on an increase in imports from, or a shift in production to, Canada or Mexico.

The request for reconsideration states ''The Union has, since the negative determination, been reaching out to secure better contact information . . . We are submitting that information so that a more comprehensive re-investigation can be conducted.'' The request for reconsideration also alleged that production shifted to various foreign countries including Mexico, Canada, Germany, and China. In addition, the request for reconsideration included contact information for a union representative and several former company officials to assist with the reconsideration.

The Department has carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 9th day of December 2014.

Michael W. Jaffe

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–29317 Filed 12–15–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,505]

Red Shield Acquisition, D/B/A Old Town Fuel and Fiber, Old Town, Maine; Notice of Negative Determination Regarding Application for Reconsideration

By application dated October 3, 2014, United Steelworkers, Local 4–0080 (USW) requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Red Shield Acquisition, d/b/a Old Town Fuel and Fiber, Old Town, Maine (subject firm). The determination was signed on September 23, 2014, and the Department's Notice of Determination was published in the **Federal Register** on October 21, 2014 (79 FR 62971). The subject firm is engaged in the production of bleached hardwood kraft pulp.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination was based on the Department's findings that the subject firm did not shift the production of articles like or directly competitive with bleached hardwood kraft pulp to a foreign country; that imports of articles like or directly competitive with the bleached hardwood kraft pulp did not contribute importantly to the workers' separation or threat of separation and to the decline in sales or production of the firm; and that the subject firm is not a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a). During the investigation, the Department reviewed import data from the subject firm and its major declining customers, and within the industry.

In the request for reconsideration, USW asserts that the majority of the kraft pulp market is produced in foreign countries and that two of the subject firm's major customers use foreign-made pulp in their paper and tissue production process.

The request for reconsideration did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination. Based on these findings, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 9th day of December, 2014.

Michael W. Jaffe

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–29313 Filed 12–15–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,475, TA–W–85,475A, TA–W–85,475B, et al.]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

TA–W–85,475
Carl Zeiss Vision, Inc., Forest Park, Georgia.
TA–W–85,475A
Carl Zeiss Vision, Inc., including on-site leased workers from Adecco, Belflex, and Job Store, Hebron, Kentucky.
TA–W–85,475B
Carl Zeiss Vision, Inc., Nashville, Tennessee.
TA–W–85,475C
Carl Zeiss Vision, Inc., Roanoke, Virginia.
TA–W–85,475D
Carl Zeiss Vision, Inc., including on-site leased workers from Advantage Staffing, Sheldon, Iowa.
TA–W–85,475E
Carl Zeiss Vision, Inc., including on-site leased workers from Adams & Garth, Chester, Virginia.
TA–W–85,475F
Carl Zeiss Vision, Inc., Baltimore, Maryland.
TA–W–85,475G
Carl Zeiss Vision, Inc., including on-site leased workers from Aerotek, Tempe, Arizona.
TA–W–85,475H
Carl Zeiss Vision, Inc., Independence, Missouri.

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. § 2273, and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 26, 2014, applicable to workers of Carl Zeiss Vision, Inc., Forest Park, Georgia (TA–W–85,475), Carl Zeiss Vision, Inc., including on-site leased workers from Adecco, Belflex, and Job Store, Hebron, Kentucky (TA–W–85,475A), Carl Zeiss Vision, Inc., Nashville, Tennessee (TA–W–85,475B), Carl Zeiss Vision, Inc., Roanoke, Virginia (TA–W–85,475C), Carl Zeiss Vision, Inc., including on-site leased workers from Advantage Staffing, Sheldon, Iowa (TA–W–85,475D), and Carl Zeiss Vision, Inc., including on-site leased workers from Adams & Garth, Chester, Virginia (TA–W–85,475E). The Department's notice of determination was published in the **Federal Register** on September 11, 2014 (79 FR 54298—54299).

At the request of a State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of prescription eyeglass lenses and coatings.

The subject firm confirmed that worker separations from Carl Zeiss Vision, Inc., Baltimore, Maryland (TA–W–85,475F), Carl Zeiss Vision, Inc., Tempe, Arizona (TA–W–85,475G) and Carl Zeiss Vision, Inc., Independence, Missouri (TA–W–85,475H) were attributable to the same shift in production to a foreign country that was the basis for the certification. The worker group in Tempe, Arizona (TA–W–85,475G) includes on-site leased workers from Aerotek.

The amended notice applicable to TA–W–85,475 is hereby issued as follows:

All workers of Carl Zeiss Vision, Inc., Forest Park, Georgia (TA–W–85,475), Carl Zeiss Vision, Inc., including on-site leased workers from Adecco, Belflex, and Job Store, Hebron, Kentucky (TA–W–85,475A), Carl Zeiss Vision, Inc., Nashville, Tennessee (TA–W–85,475B), Carl Zeiss Vision, Inc., Roanoke, Virginia (TA–W–85,475C), Carl Zeiss Vision, Inc., including on-site leased workers from Advantage Staffing, Sheldon, Iowa (TA–W–85,475D), Carl Zeiss Vision, Inc., including on-site leased workers from Adams & Garth, Chester, Virginia (TA–W–85,475E), Carl Zeiss Vision, Inc., Baltimore, Maryland (TA–W–85,475F), Carl Zeiss Vision, Inc., including on-site leased workers from Aerotek, Tempe, Arizona (TA–W–85,475G) and Carl Zeiss Vision, Inc., Independence, Missouri (TA–W–85,475H), who became totally or partially separated from employment on or after August 8, 2013 through August 26, 2016, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 23rd day of October 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–29315 Filed 12–15–14; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year 2012 and 2013 Agency Inventories Under the Federal Activities Inventory Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Agency Inventory of Activities that are not Inherently Governmental and of Activities that are Inherently Governmental.

SUMMARY: The Federal Activities Inventory Reform (FAIR) Act, Public Law 105–270, requires agencies to develop inventories each year of activities performed by their employees that are not inherently governmental functions. The FAIR Act further requires OMB to review the inventories in consultation with the agencies. Once that review is complete, agencies are required to make the list available to the public and OMB must publish a notice of public availability in the **Federal Register**. In accordance with the FAIR Act, OMB is publishing this notice to announce the availability of inventories for Fiscal Years (FY) 2012 and 2013 from the agencies listed below. These inventories identify activities that are not inherently governmental and those activities that are inherently governmental. If an agency has not yet posted its inventory on its Web site, the agency's point of contact should be able to assist.

As provided in the FAIR Act, interested parties who disagree with the agency's initial judgment may challenge the inclusion, or the omission, of an activity on the list of activities that are not inherently governmental within 30 working days of this Notice and, if not satisfied with this review, may appeal to a higher level within the agency.

Shaun Donovan,

Director.

ATTACHMENT—FAIR ACT RELEASE FY 2012 AND FY 2013

Agency	Point of contact	Email	Telephone	Website
Chief Financial Officer (CFO) Act Agencies				
1. Department of Commerce	Stephanie Green	sgreen@doc.gov	202–482–7413	www.commerce.gov
2. Department of Defense	Joe Sikes	Joseph.Sikes@osd.mil	571–372–6830	www.acq.osd.mil
	Warren Champ	Warren.Champ@DODIG.MIL.	703–699–5418	http://www.dodig.mil
3. Department of Education	James Ropelewski	Jim.Ropelewski@ed.gov.	202–245–6289	http://www.ed.gov.
4. Department of Energy	Jeff Davis	jeff.davis@hq.doe.gov	202–287–1877	http://energy.gov
5. Department of Health and Human Services.	Cassandra Duarte	Cassandra.Duarte@hhs.gov.	202–690–6075	http://www.hhs.gov/
6. Department of Homeland Security	Gail Carter	gail.carter@hq.dhs.gov	202–447–5302	www.dhs.gov
7. Department of Housing and Urban Development.	Wynee Watts-Mitchell	Wynee.WattsMitchell@hud.gov.	202–402–3893	http://portal.hud.gov
8. Department of the Interior	Brigitte Meffert	Brigitte_Meffert@ios.doi.gov.	202–513–0699	www.doi.gov
9. Department of Justice	Dennis McCraw	dennis.mccraw@usdoj.gov.	202–616–3754	http://www.justice.gov/
10. Department of Labor	Tanisha Bynum-Frazier	bynum.frazier.t@dol.gov	202–693–4546	www.dol.gov
11. Department of State	Tonia Chapman	ChapmanTF@State.gov	703–875–4874	http://www.state.gov
12. Department of Transportation	Diane Morrison	diane.morrison@dot.gov	202–366–4960	www.dot.gov
13. Department of the Treasury	Jim Sullivan	James.Sullivan@treasury.gov.	202–622–9395	http://www.treasury.gov/
14. Department of Veterans Affairs	Diane Burton	diane.burton@va.gov	202–632–7291	http://www.va.gov
15. Environmental Protection Agency	Jennifer Cranford	Cranford.Jennifer@epa.gov.	202–564–0798	www.epa.gov
16. General Services Administration	Paul Boyle	paul.boyle@gsa.gov	202–501–0324	www.gsa.gov
17. National Aeronautics and Space Administration.	Craig Bowers	craig.w.bowers@nasa.gov.	202–358–2235	http://www.nasa.gov/
18. National Science Foundation	Kurtis Shank	kshank@nsf.gov	703–292–2261	www.nsf.gov
19. Nuclear Regulatory Commission	Carolyn Cooper	carolyn.cooper@nrc.gov	301–287–3721	www.nrc.gov
20. Office of Personnel Management	William Curto	William.Curto@opm.gov	202–606–1584	http://www.opm.gov/
21. Small Business Administration	Paul Marshall	Paul.Marshall@sba.gov	202–205–6240	www.sba.gov
22. Social Security Administration	Peggy Mitchell	Peggy.S.Mitchell@ssa.gov.	410–965–9970	www.socialsecurity.gov
23. United States Agency for International Development.	Dawn Delmedico	Ddelmedico@usaid.gov	202–712–5424	www.usaid.gov
24. United States Department of Agriculture.	Louise Fox	louise.fox@cfo.usda.gov	202–720–3627	http://www.usda.gov
Non-CFO Act Agencies				
1. Broadcasting Board of Governors	Chris Luer	cluer@bbg.gov	202–203–4608	www.bbg.gov
2. Commodity Futures Trading Commission.	Sonda Owens	sowens@cftc.gov	202–418–5182	www.cftc.gov
3. Consumer Product Safety Commission.	Barbara Denny	bdenny@cpsc.gov	301–504–7246	http://www.cpsc.gov
4. Court Services and Offender Supervision Agency for the District of Columbia.	Paul Girardo	Paul.Girardo@csosa.gov.	202–220–5718	www.csosa.gov
5. Defense Nuclear Facilities Safety Board.	Mark Welch	markw@dnfsb.gov	202–694–7043	http://www.dnfsb.gov
6. Equal Employment Opportunity Commission.	Immanuel West	immanuel.west@eeoc.gov.	202–663–4310	http://www.eeoc.gov
7. Executive Office of the President	Amanda Kepko	akepko@omb.eop.gov	202–395–4844	www.whitehouse.gov
8. Farm Credit Administration	Stephen Smith	smiths@fca.gov	703–883–4275	www.fca.gov
9. Federal Communications Commission.	Tom Green	Tom.Green@fcc.gov	202–418–0116	www.fcc.gov
10. Federal Election Commission	Gilbert Ford	gford@fec.gov	202–694–1216	www.fec.gov
11. Federal Energy Regulatory Commission.	Liana Coolman	Liana.coolman@ferc.gov.	202–502–6729	www.ferc.gov
12. Federal Housing Financing Agency	Natalie Jolly	Natalie.Jolly@fhfa.gov	202–649–3781	www.fhfa.gov
13. Federal Labor Relations Authority	Sarah Whittle Spooner	SSpoon@flra.gov	202–218–7791	http://www.flra.gov
14. Federal Maritime Commission	Kathleen Keys	kkeys@fmc.gov	202–523–5788	www.fmc.gov
15. Federal Mediation & Conciliation Service.	Glorious Broughton	gbroughton@fmcs.gov	202–606–5460	www.fmcs.gov
16. Federal Trade Commission	Michelle Thornton	Mthornton@ftc.gov	202–393–0301	http://www.ftc.gov
17. Holocaust Memorial Museum	Helen Shepherd	hshepherd@ushmm.org	202–488–0400 x396	http://www.ushmm.org
18. International Trade Commission	Karen Attardo	karen.attardo@usitc.gov	202–205–2380	www.usitc.gov
19. Merit Systems Protection Board	Kevin Nash	Kevin.Nash@mspb.gov	202–653–6772 x4407	www.mspb.gov
20. National Archives and Records Administration.	Susan Ashtianie	susan.ashtianie@nara.gov.	301–837–1490	www.archives.gov

ATTACHMENT—FAIR ACT RELEASE FY 2012 AND FY 2013—Continued

Agency	Point of contact	Email	Telephone	Website
21. National Endowment for the Arts	Ned Read	*readn@arts.gov*	202–682–5782	*www.arts.gov*
22. National Endowment for the Humanities.	Barry Maynes	*BMaynes@neh.gov*	202–606–8233	*www.neh.gov*
23. National Labor Relations Board	Miles Robinson	*Miles.Robinson@nlrb.gov.*	202–273–3886	*http://www.nlrb.gov*
24. National Transportation Safety Board.	Lisa Kleiner	*Lisa.Kleiner@ntsb.gov*	202–314–6462	*www.ntsb.gov*
25. Office of Special Counsel	Edward Snyder	*esnyder@osc.gov*	202–254–3648	*http://www.osc.gov/*
26. Peace Corps	Sandra Harrell	*sharrell@peacecorps.gov.*	202–692–1107	*www.peacecorps.gov*
27. Railroad Retirement Board	Keith Earley	*Keith.Earley@rrb.gov*	312–751–4990	*www.rrb.gov*
28. Securities and Exchange Commission.	Lacey Dingman	*dingmanl@sec.gov*	202–551–7500	*www.sec.gov*
29. Selective Service System	Calvin Montgomery	*Calvin.Montgomery@sss.gov.*	703–605–4038	*www.sss.gov*

[FR Doc. 2014–29387 Filed 12–15–14; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–128)]

Notice of Intent To Grant Exclusive Pre-Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive pre-patent license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive pre-patent license in the United States to practice the invention described and claimed in U.S. Patent Application Serial No. U.S. 13/723,598, Bearingless Flywheel Systems, Winding and Control Schemes, and Sensorless Control, LEW 18891–1, to Power Tree Corporation, having its principal place of business in Miami, Florida. The field of use will be limited. The patent rights in this invention as applicable have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Intellectual Property Counsel, Office of Chief Counsel, MS 21–14, NASA Glenn Research Center, 21000 Brookpark Rd, Cleveland, OH 44135. Phone (216) 433–5754. Facsimile (216) 433–6790.

FOR FURTHER INFORMATION CONTACT: Kaprice Harris, Attorney, Office of Chief Counsel, MS 21–14, NASA Glenn Research Center, 21000 Brookpark Rd, Cleveland, OH 44135. Phone (216) 433–5754. Facsimile (216) 433–6790. Information about other NASA inventions available for licensing can be found online at *https://technology.grc.nasa.gov.*

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–29329 Filed 12–15–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (14–127)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in USPN 7,179,217, Apparatus For Enhancing Tissue Repair In Mammals, NASA Case No. MSC–23981–1 and USPN 7,601,114, Apparatus For Enhancing Tissue Repair In Mammals, NASA Case No. MSC–23981–2 to GRoK Technologies, LLC, having its principal place of business in Houston, Texas. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle P. Lewis, Technology Transfer and Commercialization Office/AO52, Johnson Space Center, Houston, TX 77058, (281) 483–8051. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Sumara M. Thompson-King,

General Counsel.

[FR Doc. 2014–29326 Filed 12–15–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–131)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Wednesday, January 14, 2015, 1:00 p.m.–5:00 p.m.; Thursday, January 15, 2015, 9:00 a.m.–5:00 p.m., Local Time.

ADDRESSES: NASA Stennis Space Center, Roy S. Estess Building, Building 1100, Room 321, Stennis Space Center, MS 39529–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, 202–358–1148.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following:

—Aeronautics Committee Report
—Human Exploration and Operations Committee Report
—Institutional Committee Report
—Science Committee Report
—Technology, Innovation and Engineering Committee Report

The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 1–844–467–6272 or toll access number 1–720–259–6462, and then the numeric participant passcode: 171653 followed by the # sign. To join via WebEx, the link is *https://nasa.webex.com/.* The meeting number is 998 183 116, and the password is 01142015j! . The meeting number and password are the same for both days. (Passwords are case-sensitive.) NOTE: If dialing in, please ''mute'' your telephone. Attendees will be required to sign a register and comply with NASA Stennis Space Center security requirements, including the presentation of a valid picture ID before receiving access to NASA Stennis Space Center. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states must present a second form of ID. Non-compliant states/territories are: American Samoa, Arizona, Louisiana, Maine, Minnesota, New York, Oklahoma and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 20 days prior to the meeting: full name; home address; gender; citizenship; date/city/country of birth; title, position or duties; visa type, number and expiration date; passport number, expiration date and country of issue; and employer/affiliation information (name of institution, address, country, telephone, email, phone). Contact the International Visitor Coordinator, Mary Treat, at (228) 688–3916 for the specifics on any foreign national visitors. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide identifying information 3 working days in advance by emailing the NASA Office of Communications at *SSC–PAO@mail.nasa.gov.*

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–29328 Filed 12–15–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (14–130)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee (HPS) of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Friday, January 9, 2015, 2:00 p.m.–4:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 6H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically. Any interested person may call the USA toll free conference call number 800–857–4254, pass code SCIENCE, to participate in this meeting by telephone. The agenda for the meeting includes the following topic:

—ROSES 2015 Guest Investigator and Supporting Research Programs

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID before receiving access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide full name and citizenship status 3 working days in advance by contacting Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–29327 Filed 12–15–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference (unless otherwise specified) from the National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC, 20506 as follows (all meetings are Eastern time and ending times are approximate):

State & Regional (review of Partnership Agreements): This meeting will be by videoconference and will be open. Information for connecting to the meeting will be available under the ''Webinar'' tab on the Arts Endowment's Web site: *http://arts.gov.*

Dates: January 13, 2015—3:00 p.m. to 5:00 p.m.; January 14, 2015—3:00 p.m. to 5:00 p.m.; and January 15, 2015—3:00 p.m. to 5:00 p.m.

Partnerships/Folk & Traditional Arts (application review): This meeting will be closed.

Dates: January 16, 2014. 2:00 p.m. to 4:00 p.m.

Literature (application review): This meeting will be closed.

Dates: January 23, 2015. 2:00 p.m. to 2:30 p.m..

Research (application review): This meeting will be closed.

Dates: January 27, 2015. 2:00 p.m. to 4:30 p.m..

Research (application review): This meeting will be closed.

Dates: January 28, 2015. 2:00 p.m. to 4:30 p.m.

Music (application review): This meeting will be closed.

Dates: January 29, 2015. 1:00 p.m. to 2:00 p.m..

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: December 10, 2014.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2014–29352 Filed 12–15–14; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0196]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on September 17, 2014.

1. *Type of submission, new, revision, or extension: New.*

2. *The title of the information collection:* Voluntary Reporting of Planned New Reactor Applications.

3. *Current OMB approval number:* 3150–XXXX.

4. *The form number if applicable:* N/A.

5. *How often the collection is required: Annually.*

6. *Who will be required or asked to report:* Applicants, licensees, and potential applicants report this information on a strictly voluntary basis.

7. *An estimate of the number of annual responses:* 5.

8. *The estimated number of annual respondents:* 5.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 300.

10. *Abstract:* This voluntary information collection assists the NRC in determining resource and budget needs as well as aligning the proper allocation and utilization of resources to support applicant submittals, future construction-related activities, and other anticipated Part 50 and/or Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) licensing and design certification rulemaking actions. In addition, information provided to the NRC staff is intended to promote early communications between the NRC and the respective addressees about potential 10 CFR Part 50 and/or Part 52 licensing actions and related activities, submission dates, and plans for construction and inspection activities. The overarching goal of this information collection is to assist the NRC staff more effectively and efficiently plan, schedule, and implement activities and reviews in a timely manner.

The public may examine and have copied, for a fee, publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC home page site for 30 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 15, 2015. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–XXXX), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Valdik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The NRC Clearance Officer is Tremaine Donnell, telephone: 301–415–6258.

Dated at Rockville, Maryland, this 10th day of December 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Office, Office of Information Services.

[FR Doc. 2014–29372 Filed 12–15–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–036; NRC–2008–0616]

Entergy Operations, Inc.; Combined License Application for River Bend Station Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a July 18, 2014, request from Entergy Operations, Inc. (EOI) which requested an exemption from addressing enhancements to the Emergency Preparedness (EP) rules in their Combined License (COL) application. The NRC staff reviewed this request and determined that it is appropriate to grant the exemption but stipulated that the revised application must be submitted the earlier of either the NRC's resumption of EOI's application review or by December 31, 2015.

DATES: December 16, 2014.

ADDRESSES: Please refer to Docket ID NRC–2008–0616 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0616. 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.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library 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 the 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: Lynnea Wilkins, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1377; email: *Lynnea.Wilkins@nrc.gov.*

SUPPLEMENTARY INFORMATION: The following sections include the text of the exemption in its entirety as issued to EOI.

I. Background

The NRC accepted for docketing the River Bend Station Unit 3 (RBS3) COL application on December 4, 2008 (ADAMS Accession No. ML083370275, Docket No. 52–036). On January 9, 2009, EOI requested that the NRC temporarily suspend review of the application and the NRC granted EOI's request (ADAMS Accession No. ML090080277) while the application remained docketed. On September 30, 2013, EOI requested an exemption from the requirements of Part 50, Appendix E, Section I.5 of Title 10 of the *Code of Federal Regulations* (10 CFR), as referenced by 10 CFR 52.79(a)(21), to submit an update by December 31, 2014. The exemption was granted by the NRC on December 4, 2013 (ADAMS Accession Nos. ML13297A247 and ML13297A248). On July 18, 2014 (ADAMS Accession No. ML14202A337), EOI requested another exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5.

II. Request/Action

Section I.5 of 10 CFR part 50, Appendix E, requires that an applicant for a COL under Subpart C of 10 CFR part 52 whose application was docketed prior to December 23, 2011, must revise their COL application to comply with the EP rules published in the **Federal Register** on November 23, 2011 (76 FR 72560). Section I.5 of 10 CFR part 50, Appendix E, gives those COL applicants close to receiving their COL the option to defer addressing the changes to the EP rules; however, a license amendment request must be submitted no later than December 31, 2013. An applicant that does not receive a COL before December 31, 2013, shall revise its COL application to comply with these changes no later than December 31, 2013.

Because EOI will not hold a COL prior to December 31, 2013, it is therefore, required to revise its application to be compliant with the new EP rules by December 31, 2013. By letter dated January 9, 2009, EOI requested that the NRC suspend review of the RBS3 COL application. The NRC granted EOI's request for suspension of all review activities while the application remained docketed (ADAMS Accession No. ML090080277). On September 30, 2013, EOI requested an exemption from the requirements of Section I.5 of 10 CFR part 50, Appendix E, to submit an update by December 31, 2014. The exemption was granted by the NRC on December 4, 2013 (ADAMS Accession Nos. ML13297A247 and ML13297A248). The exemption is set to expire December 31, 2014. In a letter dated, July 18, 2014 (ADAMS Accession No. ML14202A337), EOI requested an exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5 the earlier of either the time that EOI requests reactivation of the RBS3 COL application review or on December 31, 2015. With either the reactivation or on December 31, 2015, EOI commits to submit an upgrade of the RBS3 COL application addressing the enhancements to Emergency Preparedness Regulations.

EOI requested an exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5 to December 31, 2015 or coincident with resuming the review of the RBS3 COL application, whichever occurs first. The exemption would allow EOI to comply with the new EP rule at a later date, but still in advance of NRC's reinstating its review of the application and in any event, by December 31, 2015. The current schedule to comply with the new EP rule by December 31, 2013, could not be changed, absent the exemption.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, including 10 CFR part 50, Appendix E, Section I.5, when: (1) The exemption(s) are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)).

The purpose of 10 CFR part 50 Appendix E, Section I.5 was to ensure that applicants and new COL holders updated their COL application or Combined License to allow the NRC to review them efficiently and effectively, and to bring the applicants or licensees into compliance prior to COL approval and receipt of license, or operate the

facility. The target of Section I.5 of the EP rule were those applications that were in the process of being actively reviewed by the NRC staff when the rule came into effect on November 23, 2011. Because EOI requested the NRC to suspend its review of the RBS3 COL application, compelling EOI to revise its COL application in order to meet the December 31, 2013 compliance deadline would only bring on unnecessary burden and hardship for the applicant to meet the compliance date. So long as it is recognized that the COL application must be updated to comply with the enhancements to the EP rules, prior to the NRC approving EOI's COL application, it makes no difference if they revise the COL application now, the earlier of EOI's request to restart the review or December 31, 2015. For this reason the application of Appendix E, Section I.5 can be deemed unnecessary, and therefore special circumstances are present.

Authorized by Law

The exemption is a schedule exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5. The exemption would allow EOI to revise its COL application and comply with the new EP rules on December 31, 2015, in lieu of December 31, 2013, the date required by 10 CFR part 50, Appendix E, Section I.5. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting EOI the requested exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5 will be only temporary, and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of the enhancements to Emergency Preparedness found in 10 CFR part 50, Appendix E are to amend certain EP requirements that are aimed at enhancing protective measures in the event of a radiological emergency; address, in part, enhancements identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent Emergency Plan implementation among licensees; and modify certain requirements to be more effective and efficient. Since plant construction cannot proceed until the NRC review of the application is completed, a mandatory hearing is completed, and a license is issued, the exemption does not increase the probability of postulated accidents. Additionally, based on the nature of the requested exemption as described above, no new accident precursors are created by the exemption; thus neither the probability, nor the consequences of postulated accidents are increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow EOI to submit the revised COL application the earlier of a requested restart of the NRC COL application review or on December 31, 2015. This schedule change has no relation to security issues. Therefore, the common defense and security is not impacted.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)). The underlying purpose of 10 CFR part 50, Appendix E, Section I.5 is to ensure that applicants are in compliance with the new EP rules in a time that allows the NRC to effectively review their COL application prior to issuance of the license. Because the requirement to comply with the new EP rules was intended for active reviews and the RBS3 COL application review is now suspended, the application of this regulation in this particular circumstance is unnecessary in order to achieve its underlying purpose. If the NRC were to grant this exemption EOI would then be required to comply by the earlier of a restart or the review or December 31, 2015 and the purpose of the rule would still be achieved. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR part 50, Appendix E, Section I.5 exist.

Eligibility for Categorical Exclusion From Environmental Review

With respect to the exemption's impact on the quality of the human environment, the NRC has determined that this specific exemption request is eligible for categorical exclusion as identified in 10 CFR 51.22(c)(25) and justified by the NRC staff as discussed below.

10 CFR 51.22(c)(25)(i): The criteria for determining whether there is no significant hazards consideration are found in 10 CFR 50.92(c)(1)–(3). The proposed action involves only a schedule change regarding the submission of an update to the application for which the licensing review has been suspended. There are no significant hazards considerations because granting the proposed exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

10 CFR 51.22(c)(25)(ii): The proposed action involves only a schedule change which is administrative in nature, and does not involve any changes to be made in the types or significant increase in the amounts of effluents that may be released offsite.

10 CFR 51.22(c)(25)(iii): Since the proposed action involves only a schedule change which is administrative in nature, it does not contribute to any significant increase in occupational or public radiation exposure.

10 CFR 51.22(c)(25)(iv): The proposed action involves only a schedule change which is administrative in nature; the COL application review is suspended until further notice, and there is no consideration of any construction at this time, and hence the proposed action does not involve any construction impact.

10 CFR 51.22(c)(25)(v): The proposed action involves only a schedule change which is administrative in nature, and does not impact the probability or consequences of radiological accidents.

10 CFR 51.22(c)(25)(vi)(B) and (G): The exemption request involves submitting an updated COL application by EOI and relates to the schedule for submitting a COL application update to the NRC.

IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) and (2), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also special circumstances are present. Therefore, the Commission hereby grants EOI the exemption from the requirements of 10 CFR part 50, Appendix E, Section I.5 pertaining to the River Bend Station Unit 3 COL application to allow submittal of the revised COL application that complies with the new EP rules the earlier of any request to the NRC to resume the review or by December 31, 2015.

Pursuant to 10 CFR 51.22, the Commission has determined that the exemption request meets the applicable categorical exclusion criteria set forth in 10 CFR 51.22(c)(25), and the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of December 2014.

For The Nuclear Regulatory Commission.

Ronaldo Jenkins,

Branch Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2014–29124 Filed 12–15–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meetings

DATE: December 15, 22, 29, 2014; January 5, 12, 19, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public

Week of December 15, 2014

Tuesday, December 16, 2014

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)
SECY–14–0109—Fermi Combined License Application: Intervenors' Petition for Review of LBP–14–07 (Ruling for Applicant on Quality Assurance) (June 17, 2014).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Tuesday, December 16, 2014

9:00 a.m. Update on Research and Test Reactor Initiatives (Public Meeting) (Contact: Alexander Adams, 301–415–1127)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, December 18, 2014

9:30 a.m. Briefing on Equal Employment Opportunity, Diversity, and Small Business Programs (Public Meeting) (Contact: Larniece McKoy Moore, 301–415–1942)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of December 22, 2014—Tentative

There are no meetings scheduled for the week of December 22, 2014.

Week of December 29, 2014—Tentative

There are no meetings scheduled for the week of December 29, 2014.

Week of January 5, 2015—Tentative

There are no meetings scheduled for the week of January 5, 2015.

Week of January 12, 2015—Tentative

There are no meetings scheduled for the week of January 12, 2015.

Week of January 19, 2015—Tentative

There are no meetings scheduled for the week of January 19, 2015

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at (301) 415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Patricia.Jimenez@nrc.gov* or *Brenda.Akstulewicz@nrc.gov.*

Dated: December 11, 2014.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–29481 Filed 12–12–14; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Certificate of Medical Examination, 3206–0250

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice and Request for Comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension without change of a currently approved collection, information collection request (ICR) 3206–0250, Certificate of Medical Examination. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until February 17, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Employee Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Phil Spottswood or via electronic mail to *employ@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Hiring Policy, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Phil Spottswood or via electronic mail to *employ@opm.gov.*

SUPPLEMENTARY INFORMATION: The Optional Form (OF) 178, Certificate of Medical Examination, is used to collect medical information about individuals who are incumbents of positions which require physical fitness/agility testing and/or medical examinations, or who have been selected for such a position contingent upon meeting physical fitness/agility testing and medical examinations as a condition of employment. This information is needed to ensure fair and consistent treatment of employees and job applicants, to adjudicate the medically-based passover of a preference eligible, and to adjudicate claims of discrimination under the Americans with Disabilities Act (ADA).

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Analysis

Agency: Employee Services, U.S. Office of Personnel Management.

Title: Certificate of Medical Examination.

OMB Number: 3206–0250.

Affected Public: Federal Government.

Number of Respondents: 45,000.

Estimated Time per Respondent: 3 hours.

Total Burden Hours: 135,000 hours.

Katherine Archuleta,

Director, U.S. Office of Personnel Management.

[FR Doc. 2014–29448 Filed 12–15–14; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–17 and CP2015–21; Order No. 2282]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 103 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 18, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 103 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–17 and CP2015–21 to consider the Request pertaining to the proposed Priority Mail Contract 103 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 18, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth E. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–17 and CP2015–21 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth E. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 18, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–29396 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 103 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 9, 2014 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. MC2015–18; Order No. 2278]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a minor classification change regarding Global Reseller Expedited Package Contracts. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 17, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
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I. Introduction

On December 9, 2014, the Postal Service filed a notice of minor classification changes regarding the competitive mail product Global Reseller Expedited Package Contracts under Commission rules 39 CFR 3020.90 and 3020.91.[1] The Postal Service also presents, as Attachment 1, proposed changes to the Mail Classification Schedule (MCS) regarding the description of preparation requirements for Global Reseller Expedited Package Contracts. *Id.* at 2; Attachment 1.

[1] Notice of Minor Classification Change, December 9, 2014 (Notice).

The Postal Service states that the proposed changes are minor in nature and are consistent with 39 U.S.C. 3642.

MCS change. The Postal Service seeks to revise the postage payment requirements for the reseller's customers. Notice at 1. The revisions would allow the Postal Service to offer Global Reseller Expedited Package Contracts to resellers whose customers use various postage payment methods authorized by the Postal Service and would enable the Postal Service to offer its own permit shipping software to resellers. Notice at 2.

II. Notice of Commission Action

Pursuant to 39 CFR 3020.92, the Commission has posted the Notice on its Web site and invites comments on whether the Postal Service's filings in Docket No. MC2015–18 are consistent with the policies of 39 U.S.C. 3642 and 39 CFR 3020 subpart E. Comments are due no later than December 17, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Mallory L. Smith to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2015–18 to consider matters raised by the Notice.

2. Pursuant to 39 U.S.C. 505, Mallory L. Smith is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by December 17, 2014.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–29333 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–22; Order No. 2281]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Reseller Expedited Package Contracts 1 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 18, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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III. Ordering Paragraphs

I. Introduction

On December 9, 2014, the Postal Service filed notice that it has entered into an additional Global Reseller Expedited Package Contracts 1 (GREP 1) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–22 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 18, 2014. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–22 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than December 18, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–29395 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–16 and CP2015–20; Order No. 2279]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express Contract 23 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 17, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 23 to the competitive product list.[1]

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 1 Negotiated Service Agreement, December 9, 2014 (Notice).

[1] Request of the United States Postal Service to Add Priority Mail Express Contract 23 to Competitive Product List and Notice of Filing

Continued

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3). *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–16 and CP2015–20 to consider the Request pertaining to the proposed Priority Mail Express Contract 23 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than December 17, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–16 and CP2015–20 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 17, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–29338 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–FW–P

(Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 9, 2014 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–41; Order No. 2280]

Amendment to Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to a Parcel Select Contract 4 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 18, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On December 9, 2014, the Postal Service filed notice that it has agreed to an Amendment to the existing Parcel Select Contract 4 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Amendment concerns price changes, related terms, responsibility for certain additional fees or surcharges, and mail preparation and service. See generally *id.* Attachment A.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *Id.* Attachment B at 1.

II. Notice of Filing

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 18, 2014. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2012–41 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than December 18, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–29393 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Amendment to Parcel Select Contract 4, with Portions Filed Under Seal, December 9, 2014 (Notice).

POSTAL SERVICE

Exercise of Powers Reserved to the Governors and the Board of Governors

AGENCY: Postal Service.

ACTION: Notice of resolutions regarding the absence of a quorum.

SUMMARY: The Board of Governors of the Postal Service has adopted a resolution regarding the exercise of those powers reserved to the Board upon the loss of a quorum of the Board. During the time in which the Board is unable to form a quorum, those powers needed to provide for continuity of operations would be delegated to a Temporary Emergency Committee composed of the remaining members of the Board. The Governors of the Postal Service have also issued a resolution regarding the exercise of the powers vested solely in

the Governors, as distinguished from the Board of Governors. The resolution clarifies that the inability of the Board to constitute a quorum does not inhibit or affect the authority of the Governors then in office to exercise those powers vested solely in the Governors, upon the concurrence of an absolute majority of the Governors then in office.

DATES: *Effective Date:* November 14, 2014.

FOR FURTHER INFORMATION CONTACT: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone: (202) 268–4800.

SUPPLEMENTARY INFORMATION:

Overview

The Board of Governors of the Postal Service has promulgated a resolution regarding the exercise of those powers reserved to the Board upon the loss of a quorum of the Board. The resolution delegates to a Temporary Emergency Committee, consisting of the remaining members of the Board, those powers reserved to the Board that are needed to provide for continuity of operations during the period of time in which the Board is unable to form a quorum. In addition, the Governors of the Postal Service have issued a separate resolution regarding the exercise of the powers vested solely in the Governors, as distinguished from the Board of Governors. The resolution clarifies that the inability of the Board to constitute a quorum does not inhibit or affect the authority of the Governors then in office to exercise those powers vested solely in the Governors. The resolution states that except as otherwise provided by statute, the Governors shall exercise those powers vested in the Governors upon the concurrence of an absolute majority of Governors then in office.

Background

While the powers of the Postal Service are generally directed by the Board of Governors, 39 U.S.C. 202(a)(1), the statute broadly authorizes the powers conferred on the Board to be delegated to a committee of the Board, or to the Postmaster General, 39 U.S.C. 402. Thus, the determination whether authority conferred on the Board by statute should be delegated, or should be exercised through the mechanism of the full Board, is ultimately made by the Governors. In addition, certain other actions are reserved by statute solely to the Governors, including the appointment and removal of the Postmaster General and the establishment of prices and classifications for postal products, 39 U.S.C. 202(c), 404(b), 3632. These authorities demonstrate that the Governors, who are principal officers under the Constitution, have ''ultimate control and authority'' over the Postal Service. *Silver* v. *United States Postal Serv.,* 951 F.2d 1033 (9th Cir. 1991).

The statute requires the Board to have a quorum of 6 members in order to exercise those powers which have been reserved to the Board rather than delegated, 39 U.S.C. 206(c). In anticipation of the situation in which the Board is unable to constitute a quorum due to the fact that an insufficient number of Governors are in office, the Board issued a resolution regarding the continued exercise of those powers that are reserved to the Board by its by-laws during a period in which it is disabled from assembling a quorum. This resolution was approved in a meeting in which a quorum of the Board was present.

Furthermore, the Governors determined that it was appropriate to issue a resolution articulating their position concerning the exercise of those powers vested solely in the Governors, as distinguished from the Board. The Governors anticipated that questions may be raised as to whether the inability of the Board to assemble a quorum affects the Governors' ability to exercise those powers.

Powers Reserved to the Board of Governors

After considering the legal issues involved, including the specific statutory structure under which the Postal Service operates, the Board has promulgated a resolution that delegates to a Temporary Emergency Committee certain powers reserved to the Board by its by-laws during any period of time in which vacancies on the Board prevent it from assembling a quorum. This delegation would also apply in emergency circumstances in which death, incapacity, or disruption of transportation or communications reasonably prevent a Board quorum from being assembled.

The Temporary Emergency Committee consists of the remaining members of the Board who are able to assemble, and exercises those powers reserved to the Board by its by-laws that are necessary to provide for continuity of operations. The Temporary Emergency Committee will exercise those reserved Board powers necessary for operational continuity until such time as sufficient members are available to enable a quorum of the Board to convene.

Powers Reserved to the Governors

After considering the legal issues involved, the Governors have issued a resolution that makes two determinations. First, the resolution states that the inability of the Board to constitute a quorum does not prevent the Governors then in office from exercising those powers vested solely in the Governors, as distinguished from the Board. Second, the resolution states that, except as otherwise provided by statute, the Governors will exercise those powers upon the concurrence of an absolute majority of Governors then in office.

The Governors issued this resolution after considering the plain language of the statute. The Governors determined that, with one express exception (concerning the removal of the Inspector General), there is no requirement that a specific number of Governors be in office in order to exercise those powers vested solely in them. Rather, the statute generally specifies that there must be the concurrence of an absolute majority of the Governors then ''in office'' or ''holding office'' in order for the Governors to exercise those powers. *See* 39 U.S.C. 205(c)(1) (appointment and removal of Postmaster General); 3632(a) (establishment of rates and classifications for competitive products).

The Governors also determined that it would raise serious constitutional concerns to interpret the statute as preventing the exercise of their powers if the Board cannot form a quorum. The powers to appoint and remove the Postmaster General, revoke delegated Board authority, and make pricing and classification decisions ensure that, as principal officers under the Constitution, the Governors have ''ultimate control and authority'' over the Postal Service, and therefore that the Postal Service's governance structure is constitutionally sound. *Silver,* 951 F.2d at 1036–1041. Interpreting the statute as imposing implicit limits on the ability of the Governors to exercise those powers would be inconsistent with the court's holding. Furthermore, such an interpretation would violate separation of powers principles. In particular, it would violate Article II of the Constitution for the Governors, who are directly accountable to the President, to be completely prevented from removing the Postmaster General, an inferior officer under the Constitution who exercises significant executive authority.

The statute does not specify a particular requirement regarding the exercise of the Governors' authority in

certain circumstances, including in the establishment of prices and classifications for market-dominant products and the revocation of a delegation of Board authority. In such circumstances, the Governors determined that it was reasonable and appropriate to apply the same rule as generally specified by the statute for the exercise of its powers: action can be taken with the consent of an absolute majority of the Governors then in office.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–29344 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 16, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 9, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 22 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–15, CP2015–19.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–29378 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 16, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 9, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 23 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–16, CP2015–20.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–29376 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 16, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 9, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 103 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–17, CP2015–21.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–29377 Filed 12–15–14; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 12d2–2 and Form 25, SEC File No. 270–86, OMB Control No. 3235–0080.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for the following rule: Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25).

On February 12, 1935, the Commission adopted Rule 12d2–2,[1] and Form 25 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Act''), which sets forth the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.[2] The Commission adopted amendments to Rule 12d2–2 and Form 25 in 2005.[3] Under the adopted Rule 12d2–2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d-1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt standardized options and security futures products from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting and/or deregistration has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting and/or deregistration. Without Rule

[1] *See* Securities Exchange Act Release No. 98 (February 12, 1935).

[2] *See* Securities Exchange Act Release No. 7011 (February 5, 1963), 28 FR 1506 (February 16, 1963).

[3] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

12d2–2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are 18 national securities exchanges that could possibly be respondents complying with the requirements of the Rule and Form 25.[4] The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and NYSEMKT than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 690 responses under Rule 12d2–2 and Form 25 for the purpose of delisting and/or deregistration of equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 690 annual burden hours for all exchanges (18 exchanges × an average of 38.3 responses per exchange × 1 hour per response). In addition, since approximately 100 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 100 annual burden hours for all issuers (100 issuers × 1 response per issuer × 1 hour per response). Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 790 hours (690 hours for exchanges + 100 hours for issuers). The related internal labor costs associated with these burden hours are $42,797.50 total ($36,397.50 for exchanges ($52.75 per response × 690 responses) and $6,400 for issuers ($64 per response × 100 responses)).

[4] The staff notes that a few of these 18 registered national securities exchanges only have rules to permit the listing of standardized options, which are exempt from Rule 12d2–2 under the Act. Nevertheless, we have counted national securities exchanges that can only list options as potential respondents because these exchanges could potentially adopt new rules, subject to Commission approval under Section 19(b) of the Act, to list and trade equity and other securities that have to comply with Rule 12d2–2 under the Act. Notice registrants that are registered as national securities exchanges solely for the purposes of trading securities futures products have not been counted since, as noted above, securities futures products are exempt from complying with Rule 12d-2–2 under the Act and therefore do not have to file Form 25.

The collection of information obligations imposed by Rule 12d2–2 and Form 25 are mandatory. The response will be available to the public and will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 10, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29366 Filed 12–15–14; 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, December 18, 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:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 11, 2014.

Brent J. Fields,

Secretary.

[FR Doc. 2014–29502 Filed 12–12–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73810; File No. SR–NYSEArca–2014–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Reflect Changes to the Means of Achieving the Investment Objective Applicable to the Guggenheim Enhanced Short Duration ETF

December 10, 2014.

On October 21, 2014, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to reflect changes to the description of the measures the Adviser of the Guggenheim Enhanced Short Duration ETF will utilize to implement the fund's investment objectives. On October 29, 2014, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on November 7, 2014.[3] The Commission received one comment on the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73512 (Nov. 3, 2014), 79 FR 66442.

[4] All comments on the proposed rule change, including Amendment No. 1, are available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2014-107/nysearca2014107.shtml.*

[5] 15 U.S.C. 78s(b)(2).

to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 22, 2014. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates February 5, 2015, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2014–107)

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29365 Filed 12–15–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73807; File No. SR–NASDAQ–2014–117]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify an Optional Subscriber Fee and Tiered Distribution Fee for ''Enhanced'' Data Displays (the ''Enhanced Display Solution Fee'')

December 10, 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 November 25, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify an optional Subscriber fee and tiered Distribution fee for ''Enhanced'' data displays (the ''Enhanced Display Solution Fee'').

The text of the proposed rule change is below; proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7026. Distribution Models

(a) Display Solutions

(1) Enhanced Display[s] *Solution (''EDS'')* (optional delivery method)

(A) The charges to be paid by Distributors for offering *EDS S*[s]ubscribers of NASDAQ Depth [data] *Information* [controlled display products along] with access to an API or similar solution shall be:

	Number of downstream *EDS* subscribers
Monthly Enhanced Display Solution Fee per Distributor for *the* right to *offer an* [display products containing] API or similar solution*.	[1–299 users = $2,000/month. 300–399 users = $3,000/month]. *1–399* [400–499] users = $4,000/month. [500–599 users = $5,000/month. 600–699 users = $6,000/month. 700–799 users = $7,000/month. 800–899 users = $8,000/month. 900–999 users = $9,000/month]. *400–999 users = $7,500/month.* 1,000 users or more = $15[0],000/month.

*[Customers] *Distributors* that are subscribing to certain enterprise depth capped fees as described in NASDAQ Rule 7023(a)(1)(c) are exempt from this fee.

(B) The monthly fee per Professional [or Non-Professional] *EDS S*[s]ubscriber for utilizing *NASDAQ Level 2,* NASDAQ TotalView or NASDAQ OpenView data on a [controlled display] product with access to an API or similar solution [through that display] is *$74 per month for TotalView and Level 2 and $6 per month for OpenView.* [the applicable NASDAQ TotalView or NASDAQ OpenView rates.]

The monthly fee per Non-Professional EDS Subscriber for utilizing NASDAQ Level 2, NASDAQ TotalView or NASDAQ OpenView data on a product with access to an API or similar solution is the applicable NASDAQ Level 2, NASDAQ TotalView or NASDAQ OpenView rates.

[The monthly fee per Professional or Non-Professional subscriber for utilizing the Level 2 data for NASDAQ-listed securities on a controlled display product with access to an API or similar solution through that display is the applicable NASDAQ TotalView rates.]

[The monthly fee per Professional or Non-Professional subscriber for utilizing NASDAQ Level 2 data for NYSE, AMEX or regional listed securities on a controlled display product with access to an API or similar solution through that display is the applicable NASDAQ OpenView rates.]

(C) EDS Enterprise License: EDS Distributors may elect to purchase an Enterprise License for $30,000 per month. Such Enterprise License shall entitle the EDS Distributor to distribute to an unlimited number of Professional EDS Subscribers for a monthly fee of $70 for TotalView and/or Level 2 and $6 for OpenView, notwithstanding the fees set forth in subsection (B) above.

(2) The term ''[n]*N*on-[p]*P*rofessional'' shall have the same meaning as set forth in NASDAQ Rule 7011(b).

(3) The term ''Distributor'' shall have the same meaning as set forth in NASDAQ Rule 7019(c).

(b)–(c) No change.

* * * * *

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend NASDAQ Rule 7026 (Distribution Models) to modify the optional Enhanced Display Solution (''EDS'') Fee governing the distribution of NASDAQ TotalView, NASDAQ OpenView and NASDAQ Level 2 Information (collectively, ''NASDAQ Depth Information''). The modified optional EDS Fee will offer increased flexibility and simplified market data administration for members and to Distributors with external subscribers that use the NASDAQ Depth Information internally.

Existing EDS Fee. Currently, the optional EDS Fee provides a pricing option for Distributors who provide a ''controlled device'' product [3] along with an Application Programming Interface (''API'') or similar solution to Subscribers. Non-display use is not permitted under the Enhanced Display Solution fee structure. To ensure proper application of the EDS Fee, NASDAQ requires Distributors to monitor for any non-display or excessive use suggesting that the EDS Subscriber is not in compliance. The Distributor is liable for any unauthorized use by the EDS Subscribers under the EDS Fee. The optional fee is available only to NASDAQ members and external Distributors offering NASDAQ Depth Information and who apply and are approved for an Enhanced Display Solution.

The EDS option also has administrative requirements for data usage. As administered today, the Distributor must agree to reformat, redisplay and/or alter the NASDAQ Depth Information prior to retransmission, but not to affect the integrity of the NASDAQ Depth Information and not to render it inaccurate, unfair, uninformative, fictitious, misleading or discriminatory. An Enhanced Display Solution is any controlled display product containing NASDAQ Depth Information where the Distributor controls a display of NASDAQ Depth Information, but also allows the EDS Subscriber to access an API or similar solution from that display product. The EDS Subscriber may use the NASDAQ Depth Information for the EDS Subscriber's own purposes and may not redistribute the information outside of their organization. The EDS Subscriber may not redistribute the data internally to other users in the same organization.

Proposed Modification. The new Enhanced Display Solution will offer even greater flexibility. Where previously, EDS required the Distributor to both ''control'' the display and the entitlement to the display, effective January 1, 2015, Distributors will have the option to disseminate NASDAQ Depth Information to EDS Subscribers without the requirement of controlling the display. This does not replace the existing EDS program, but rather provides additional flexibility by offering two options under the EDS program. In response to industry demand and ongoing changes in the technical distribution of market data, NASDAQ will now permit Distributors to offer APIs that power third party software display applications where the Distributor controls the entitlement but not the display of data. Previously, downstream firms receiving this type of NASDAQ Depth Information would have been classified as a data feed recipient and pay a much higher internal distributor fee. These downstream data feed recipients are now able to reduce their cost and the cost to the industry by paying a modest fee increase for each EDS Subscriber, while also removing reporting and administration requirements by allowing the Distributor to manage this on behalf of the EDS Subscriber firm. The EDS program will continue to cover the same NASDAQ Depth Information, namely NASDAQ TotalView, NASDAQ OpenView, and NASDAQ Level 2.

The EDS Subscriber, or end user, to an Enhanced Display Solution may use the NASDAQ Depth Information for its own purposes but may not redistribute the NASDAQ Depth Information outside of their organization or even internally to other subscribers in the same organization. Any EDS Subscriber distributing the NASDAQ Depth Information further downstream from NASDAQ—such as posting the NASDAQ Depth Information on a shared drive or delivering the NASDAQ Depth Information into another system—would forfeit eligibility for the EDS Fee.[4] Additionally, EDS Distributors must offer an integrated data solution with secured data transmissions, a robust entitlement system and monitor EDS Subscribers for any non-display or excessive usage to ensure compliance. EDS Distributors must also offer NASDAQ Depth Information in Distributor's own messaging formats (rather than its raw NASDAQ message formats) by reformatting, redisplaying and/or altering the NASDAQ Depth Information prior to retransmission, but not to affect the integrity of the NASDAQ Depth Information and not to render it inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

Non-display use is not included or permitted under the EDS Fee. While Distributors are not required to technically control against non-display usage (due to the difficulty of achieving such control), the Distributor is required to restrict non-display usage contractually by including such restrictions in any agreements with recipients of the Information. The non-display definition in the policy document is not changing. Today, data use that powers the display is allowed. For example, if an application is updating a portfolio and exposes such information on the display, this use is included under EDS. Also, calculating VWAPs or other derived information for use on the display/device is permitted under EDS. Examples of prohibited non-display use include but are not limited to, auto-quoting, algorithmic trading, and risk management, even if that information is used to power the display.

[3] The term ''controlled device'' is defined as follows in Rule 7023(a)(6): A Controlled Device is any device that a Distributor of NASDAQ Depth-of-Book data permits to: (1) Access the Depth-of-Book information or (2) communicate with the Distributor so as to cause the Distributor to access the Depth-of-Book data. Where a Controlled Device is part of an electronic network between computers used for investment, trading or order routing activities, the Distributor must demonstrate that the particular Controlled Device should not have to pay for an entitlement. For example, in some Display systems the Distributor gives the Subscribers the choice to view the data or not; a Subscriber that chooses not to view it would not be charged. Similarly, in a Non-Display system, users of Controlled Devices may have a choice of basic or advanced computerized trading or order routing services, where only the advanced version uses the information. Customers of the basic service would not be charged.

[4] Such use would be considered a Re-transmission and would be governed by NASDAQ Rule 7019 governing market data distribution.

Finally, Distributors offering an Enhanced Display Solution have several administrative requirements. They must report the number of EDS Subscribers under new report titles and separately from controlled non-EDS products. Distributors must include EDS Subscribers under new products codes in the Detailed Usage Reporting. Distributors also assume the liability for any unauthorized use of NASDAQ Depth Information by EDS Subscribers. While there are more administrative requirements for this program for the Distributor, the industry administration burden is lessened, as downstream data feed recipient firms no longer need to go through the process of having data feeds approved or tracking and reporting usage.

Effective January 1, 2015, NASDAQ will offer new pricing for the optional EDS program. If the Distributor offers multiple Enhanced Display Solutions, it would only be fee liable for one EDS Distribution fee. The simplified fees to be paid by Distributors offering EDS are as follows:

Old fee for number of downstream subscribers	New fee for number of downstream subscribers
1–299 Subscribers = $2,000/month	1–399 Subscribers= $4,000/month.
300–399 Subscribers = $3,000/month.	
400–499 Subscribers = $4,000/month	400–999 Subscribers = $7,500/month.
500–599 Subscribers = $5,000/month.	
600–699 Subscribers = $6,000/month.	
700–799 Subscribers = $7,000/month.	
800–899 Subscribers = $8,000/month.	
900–999 Subscribers = $9,000/month.	
1,000 or more Subscribers = $10,000/month	1,000 or more Subscribers = $15,000/month.

With one exception, distributors opting for an Enhanced Display Solution are, in addition, liable for the applicable Professional or Non-Professional Subscriber fees for the underlying NASDAQ Depth Information products. Distributors opting for an Enhanced Display Solution that provides access to NASDAQ TotalView, NASDAQ Level 2 or OpenView will be charged a monthly fee of $74 per Professional EDS Subscriber of TotalView or Level 2 and $6 per Professional EDS Subscriber of OpenView. The fees otherwise applicable to such Subscribers would be $70 and $6 for TotalView and OpenView.[5]

NASDAQ is also creating a new Enterprise License option for EDS Distributors. Specifically, as set forth in new Rule 7026(a)(1)(C), an EDS Distributor may elect to purchase an Enterprise License for $30,000 per month. This Enterprise Licensee will permit the EDS Distributor to distribute to an unlimited number of Professional EDS Subscribers for $70 per month each for TotalView and Level 2 and $6 per month each for OpenView. The EDS Enterprise License does not modify the fees assessed for distribution to Non-Professional Subscribers. Distributors that subscribe to existing NASDAQ enterprise licenses set forth in Rule 7023(c)(1–3) are not impacted by the new EDS Enterprise License and they remain exempt from the EDS Distributor fee as they are today.

This new pricing and administrative option respond to industry demand, as well as to changes in the technology to distribute market data. By providing this new fee option, Distributors will have more administrative flexibility in their receipt and distribution of NASDAQ Depth Information.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ Depth Information.

NASDAQ believes that this proposal represents an equitable allocation of reasonable dues and fees, consistent with the requirements of the Act. The EDS Fee, which has been available as an option for two years, has reduced costs for Distributors and Subscriber firms that voluntarily opt for this service. The fee is tiered by number of subscribers, which has been found to be consistent with the Act in multiple contexts due to the economic efficiencies attributable to providing the same data elements to an increasing population of subscribers. NASDAQ's proposal to reduce the number of price tiers is also consistent with the Act in that it merely simplifies the existing tiers and only modestly adjusts the fees—some higher, some lower—of Distributors that opt for the program and that fall within the old and new tiers.

NASDAQ's proposal to increase by $4 the monthly fee for EDS Subscribers with access to NASDAQ TotalView and Level 2 is also consistent with the Act in that it reflects an equitable allocation of reasonable fees. The Commission has long recognized the equitable nature of assessing different fees for Professional and Non-Professional users of the same data. NASDAQ also believes it is equitable to assess a higher fee per EDS Professional TotalView Subscriber than to an ordinary Professional TotalView Subscriber due to the enhanced flexibility and lower overall costs that the EDS program offers Distributors, as well as to the voluntary nature of the EDS program itself.

Finally, NASDAQ believes that the new EDS Enterprise License is fair and equitable and not unreasonably discriminatory. Enterprise Licenses have long been accepted as an economically efficient form of volume discount for the heaviest users of market data (see Rule 7023 enterprise licenses). NASDAQ notes that the EDS Enterprise License Fee—and the entire EDS program—is entirely optional in that NASDAQ is not required to offer it and Distributors are not required to pay it. Accordingly, Distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. NASDAQ continues to create new pricing policies aimed at increasing transparency in the market and believes this is another step in that direction.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of

[5] Effective January 1, 2015, the fees for non-EDS Level 2 subscribers will be increasing from $45 to $50 per month. *See* SR–NASDAQ–2014–111, filed November 17, 2014.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[8]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

NASDAQ believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. NASDAQ believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoaltion* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. For the reasons discussed above, NASDAQ believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products.

[8] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale

of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. NASDAQ believes, however, that evidence not before the court clearly demonstrates that availability of data attracts order flow. For example, as of July 2010, 92 of the top 100 broker-dealers by shares executed on NASDAQ consumed Level 2/NQDS and 80 of the top 100 broker-dealers consumed TotalView. During that month, the Level 2/NQDS-users were responsible for 94.44% of the orders entered into NASDAQ and TotalView users were responsible for 92.98%.

Competition among platforms has driven NASDAQ continually to improve its platform data offerings and to cater to customers' data needs. For example, NASDAQ has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. NASDAQ offers front end applications such as its ''Bookviewer'' to help customers utilize data. NASDAQ has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2/NQDS, because offering data in multiple formatting allows NASDAQ to better fit customer needs. NASDAQ offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. NASDAQ has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. NASDAQ has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, NASDAQ's fees for market data have remained flat. In fact, as a percent of total customer costs, NASDAQ data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to NASDAQ's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for depth information is significant and the Exchange believes that this proposal clearly evidences such competition. NASDAQ is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this depth information is highly competitive and continually evolves as products develop and change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and paragraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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,

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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–NASDAQ–2014–117 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–NASDAQ–2014–117. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–117 and should be submitted on or before January 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29362 Filed 12–15–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73805; File No. SR–FICC–2014–11]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Government Securities Division Rulebook and the Mortgage Backed Securities Clearing Rules In Order To Move the Time of Novation With Respect to Certain Trades, Include Rules To Reflect Existing Processes, and Clarify Certain Rules To Reflect Current Practices

December 10, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4,[2] notice is hereby given that on December 2, 2014, Fixed Income Clearing Corporation (''FICC'') 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 FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

FICC is proposing to (1) move the time of novation for netting eligible transactions submitted to the Government Securities Division (''GSD'') in accordance with the GSD Rulebook (''GSD Rules'') and for SBO-Destined Trades [3] submitted to the Mortgage-Backed Securities Division (''MBSD'') in accordance with the MBSD Clearing Rules (''MBSD Rules'') in order to provide members with additional legal certainty that FICC will be the legal counterparty with respect to their guaranteed trades for purposes of regulatory capital requirements, (2) include rules to reflect existing processes, and (3) clarify certain rules to reflect current practices.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

FICC is proposing to move the time of novation applicable to certain transactions submitted to the GSD and MBSD to earlier in the clearing process in order to provide members with additional legal certainty that FICC will be their legal counterparty with respect to their guaranteed trades for purposes of members' regulatory capital requirements.

Currently, GSD and MBSD guarantee the settlement of a trade upon comparison, which generally occurs when FICC issues initial ''output'' to GSD netting members or MBSD clearing members, as applicable, indicating that their trades have compared,[4] provided that the trade meets the requirements of the GSD Rules or the MBSD Rules, as applicable.[5] This means that FICC is responsible for settling the guaranteed trades, even if one of the members who submitted the trade becomes insolvent.

Novation, which refers to the termination of delivery, receive and related payment obligations between the original parties to the contract and the replacement of such obligations with identical obligations between each party and FICC, currently does not occur until later in the clearing and settlement process than comparison. In GSD, novation currently occurs when subsequent ''netting output'' is issued to netting members (usually the day before settlement); in MBSD, novation currently occurs when subsequent ''pool netting output'' is issued to clearing members (usually the day before settlement).

Because there is a legal distinction between the concept of ''guarantee'' and ''novation'', and this legal distinction may have a bearing on how members calculate their capital requirement, FICC proposes to move the time of novation (*i.e.* the point that FICC becomes the legal counterparty) so that it occurs at the time of the trade guarantee.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The MBSD Rules define a ''SBO-Destined Trade'' as a to-be-announced (''TBA'') transaction in the clearing system intended for TBA Netting in accordance with the provisions of the Rules. MBSD Rule 1, Definitions. In a TBA transaction, members agree on a sale price, quantity, and the characteristics of the securities being sold, but they do not specify which particular securities will be delivered on the settlement date.

[4] In the case of GSD locked-in trades, comparison occurs upon receipt of the trade data submitted to FICC from the locked-in trade source. GSD Rule 6C.

[5] *See* GSD Rule 11B and MBSD Rule 5.

Time of Novation—Proposed Changes

FICC is proposing to revise the GSD Rules and MBSD Rules so that novation will occur at comparison for netting eligible transactions (for GSD) and SBO-Destined Trades (for MBSD). This means that, at the point of trade comparison, FICC will guarantee the settlement of the transactions (as it does today) and novate such transactions, becoming the legal counterparty to each submitting member with respect to such transactions.

Under the proposal, in the GSD, all netting eligible transactions that compare in accordance with the GSD Rules will novate at the point of comparison.

In the MBSD, only SBO-Destined Trades, all of which are included in the TBA Netting process and (pursuant to proposed Section 7 of Rule 8 which is being added to reflect a current requirement and current practice) must be submitted to the Pool Netting process,[6] will novate at the point of comparison. Other types of transactions, including Trade-for-Trade Transactions[7] and Specified Pool Trades,[8] will continue to be guaranteed at comparison, as they are today, but FICC will not novate such transactions at comparison. Instead, such transactions will be treated as they are today: (1) To the extent Trade-for-Trade Transactions are included in the Pool Netting process,[9] FICC will novate such Transactions once the Pool Netting[10] process is completed and (2) Specified Pool Trades, which are not included in the TBA Netting process nor the Pool Netting process, are not novated today (they settle outside of FICC between the submitting counterparties) and will continue to not be novated under the proposal.[11]

In order to effectuate this change in the time of novation as described above, the proposed rule change adds language to the GSD Rules (new Section 8 of Rule 5) and MBSD Rules (new Section 13 of Rule 5) that states that FICC will guarantee and now novate applicable transactions upon comparison, subject to the parameters set forth in the proposed rule change. Conforming changes are proposed to be made to GSD Rule 3A, GSD Rule 6B, GSD Rule 6C, GSD Rule 11, GSD Rule 14, GSD Rule 20, GSD Rule 21A, Rule 22B, MBSD Rule 6, MBSD Rule 8, MBSD Rule 10, MBSD Rule 11 and MBSD Rule 17A. In addition, the definition of ''novation'' in both Divisions' Rule 1 is clarified to reflect that delivery, receive and related payment obligations between members will be terminated and replaced with identical obligations to and from FICC at the point in time that the trade is compared in accordance with the applicable Rules.

The proposed rule change also addresses the fact that in the MBSD today certain settlement obligations continue to be settled between the settlement counterparties and not vis-à-vis FICC; these are the obligations that were not included in the Pool Netting process pursuant to MBSD Rule 8 (Pool Netting). The present proposal does not change this existing process. However, because the present proposal introduces legal novation at comparison for certain MBSD transactions, the proposed rule changes (in Rule 5, Section 2) make clear that the settlement counterparties continue to settle with each other but do so on behalf of FICC for those transactions that are novated to FICC.

The proposal to move the time of novation as noted above does not change FICC's risk. Because FICC currently guarantees eligible trades upon comparison, FICC already assumes responsibility for settling such trades at the point of comparison. Adding legal novation at the point of comparison does not increase FICC's obligations and therefore, does not require any changes to FICC's risk management processes. In addition, FICC is not proposing to change its operational processes.

Proposed Formalization of Existing Processes

In addition, the proposed rule changes formalize the following existing processes:

- As noted above, Section 7 of MBSD Rule 8 is added to state that all SBOO Trades and SBON Trades (*i.e.,* SBO-Destined Trades after such trades have gone through TBA Netting) must be submitted to Pool Netting.
- MBSD Rules 15 and 16 are revised to clarify that, upon the insolvency of a member's original counterparty to a compared trade, such member cannot unilaterally modify its obligations with respect to transactions originally entered with such counterparty. In the MBSD Rules, because certain trades are not novated and will continue to not be novated under this proposal, FICC proposes to make clear that upon a cease to act with respect to a member by FICC, the solvent member to a compared trade with the defaulting member may not unilaterally act with respect to such trade.

These changes are not intended to change FICC's current operations or processes.

Proposed Clarification To Reflect Current Processes

In addition, the proposed rule changes clarify certain Rules to reflect actual practices and requirements as follows:

- MBSD Rule 17 is revised to clarify that when FICC ceases to act for a member, FICC may dispose of such member's Trade-for-Trade Transactions based upon their generic terms. These changes are not intended to change FICC's current operations or processes.

Specific Proposed Changes

With respect to the GSD Rules, the proposed changes are as follows:

- The term ''Interactive Submission Method'' is revised to correct a typographical error.
- For clean-up and clarification purposes, the term ''Novation'' is revised to reflect that delivery, receive and related payment obligations between GSD netting members will be terminated and replaced with identical obligations to and from FICC at the point in time that the trade is compared in accordance to the GSD Rules.
- Rule 3A, Sections 2(i), 7(a), 7(d), 14(c), and 16(a) are revised to reflect

[6] The MBSD conducts two separate netting processes to consolidate settlement obligations and reduce the number of securities and the amount of cash that must be exchanged to settle transactions. TBA Netting is the process used to net SBO-Destined Trades that have compared in accordance to the MBSD Rules. TBA Netting is conducted before particular securities (''pools'') are identified to the SBO-Destined Trades. Pool Netting, which occurs after MBSD clearing members allocate pools to transactions, is the process used to aggregate and match offsetting pool delivery obligations submitted by MBSD clearing members to satisfy their settlement obligations. MBSD Rules 6 and 7. An MBSD clearing member may submit a transaction to Pool Netting even if such transaction was not submitted for TBA Netting.

[7] The MBSD Rules define ''Trade-for-Trade Transaction'' as a TBA transaction submitted to FICC not intended for TBA Netting in accordance with the provisions of the Rules. MBSD Rule 1, Definitions.

[8] The MBSD Rules define ''Specified Pool Trades'' as a trade in which all required pool data, including the pool number to be delivered on the contractual settlement date, are agreed upon by the clearing member at the time of execution. MBSD Rule 1, Definitions.

[9] Trade-for-Trade Transactions that are not submitted to the Pool Netting process must be settled outside of FICC between the submitting counterparties.

[10] As noted in SR–FICC–2008–01, a clearing member that has a trade that was matched with a stipulation (''Stip Trade'') would not submit such trade for Pool Netting. Pool Netting creates delivery obligations based off the net position of clearing members without regard to the original counterparty relationship. With a Stip Trade, the buyer and seller will want to ensure the receipt or delivery, as applicable, is maintained between themselves to ensure that the other party adheres to the stipulated terms. Securities Exchange Act Release No. 34–66550 (March 9, 2012), 77 FR 15155 (March 14, 2014) (SR–FICC–2008–01). Therefore, as with the current process, FICC does not expect to novate Stip Trades.

[11] MBSD Rule 10.

that trades submitted by Sponsored Members [12] will novate to FICC at the time that such trades receive FICC's guaranty of settlement.

• Rule 5 is revised to include a new Section 8 entitled ''Novation and Guaranty of Compared Trades'' which provides for the following: (1) Compared trades that meet the requirements of the GSD Rules and were entered into in good faith will novate to FICC and FICC will guarantee the settlement for each such compared trade; (2) if a compared trade becomes uncompared or cancelled, FICC's guaranty and novation of such trade will be reversed and cancelled; (3) if a compared trade is modified after novation and such modification does not cause the trade to become uncompared, then the modification will cause a corresponding modification to the deliver, receive and related payment obligations between the GSD netting members and FICC; (4) at the time that a compared trade becomes novated, such trade ceases to be bound by any bilateral agreement between the parties with respect to the deliver, receive and related payment obligations, however, if the trade becomes uncompared or is cancelled, such trade shall be governed by the bilateral agreement that governed the trade prior to the novation; and (5) if a right of substitution was established by the parties to a repurchase transaction, such right will continue and be recognized by FICC after novation.

• Rule 6B, Section 4 deletes the provision which states that an uncompared trade will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.

• Rule 6C, Section 10 deletes the provision which states that a locked-in trade that becomes uncompared will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.

• Rule 6C, Section 11 deletes the provision which states that a netting eligible auction purchase that becomes uncompared will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.

• Rule 6C, Section 12 deletes the provision which states that a GCF Repo Transaction [13] that becomes uncompared will cease to be guaranteed by FICC because this concept is now covered in Rule 5, Section 8.

• Rule 11, Section 6 is revised to reflect that (1) novation occurs at comparison; and (2) at netting, the previously novated deliver, receive and related payment obligations between the netting members and FICC will be terminated and replaced by net deliver, receive and related payment obligations as listed in the report made available by FICC to the netting members.

• Rule 11B is revised to correct typographical errors.

• Rule 14, Section 3 is revised to reflect that (1) novation occurs at comparison; and (2) at netting, the previously novated deliver, receive and related payment obligations between the netting members and FICC created by Forward Trades will be terminated and replaced by net deliver, receive and related payment obligations as listed in the report made available by FICC to the netting members.

• Rule 20, Section 5 is revised to reflect that with respect to GCF Repo® transactions, novation will occur at comparison in accordance with Rule 5, Section 8.

• Rule 21A is revised to incorporate the concept of novation.

• Rule 22B included a sentence providing that upon FICC's default, trades that had compared would be deemed novated. Because the GSD Rules are being revised to reflect that novation occurs at comparison, this sentence is no longer necessary. As a result, it is being deleted in connection with this proposal.

With respect to the MBSD Rules, the proposed changes are as follows:

• For clean-up and clarification purposes, the term ''Novation'' is revised to reflect that delivery, receive and related payment obligations between MBSD clearing members will be terminated and replaced with identical obligations to and from FICC in accordance with the MBSD Rules.

• The term ''SBO Contra-Side Member'' is revised to correct a typographical error.

• The term ''SBO Net-Out Position'' is revised to clarify that the term is used in connection with offsetting purchase and sale SBO-Destined Trades that were originally between different clearing members (but, once novated at comparison, are between such members and FICC).

• The term ''SBO Net-Out Unit'' is being deleted because this term is not used in the MBSD Rules.

• The term ''SBO Netted Position'' is revised to clarify that the term is used in connection with offsetting purchase and sale SBO-Destined Trades that were originally between the same clearing members (but, once novated at comparison, are between such members and FICC).

• The term ''SBON Trade'' is revised to correct a typographical error.

• The term ''SBOO Trade'' is revised to correct a typographical error.

• Rule 5, Section 1 is revised to correct a typographical error.

• Rule 5, Section 2 is revised to reflect that (1) transactions that are not novated pursuant to this proposal (pursuant to new Section 13 of Rule 5 discussed below) and not netted and novated through the Pool Netting system will be settled directly between the Members; and (2) transactions novated pursuant to new Section 13 of Rule 5 and not thereafter netted through the Pool Netting system pursuant to Rule 8 will settle between Members on behalf of FICC.

• Rule 5, Section 12 is revised to correct a typographical error.

• Rule 5 includes a new Section 13 entitled ''Novation'' which states the following: (1) FICC will guarantee and novate SBO-Destined Trades that meet the requirement of the MBSD Rules and have been entered into in good faith; (2) FICC will not novate SBO-Destined Trades that are partially compared; (3) to the extent a partially compared SBO-Destined Trade becomes fully compared, FICC will novate such trade; (4) if a trade becomes uncompared or cancelled, the guaranty and novation of such transaction shall be reversed; (5) at the time that an SBO-Destined Trade is novated to FICC, such trade shall cease to be bound by any bilateral agreement between the parties to the trade with respect to the deliver, receive and related payment obligations, however, if the trade becomes uncompared or is cancelled, such trade shall be governed by the bilateral agreement that governs such trade prior to the novation.

• Rule 6, Sections 1(a), (b) and (c) are revised to take into account the fact that SBO-Destined Trades are novated upon comparison and are, therefore, legally between MBSD Clearing Members and FICC after comparison.

• Rule 8, Section 6 is revised to take into account the fact that SBO-Destined Trades are novated upon comparison and are, therefore, legally between MBSD Clearing Members and FICC after comparison.

• Rule 8 includes a new Section 7 which is entitled ''Obligations to Submit SBOO and SBON Trades to Pool Netting''. This Section reflects a current

[12] The term ''Sponsored Member'' means any Person that has been approved by the Corporation to be sponsored into membership by a Sponsoring member pursuant to Rule 3A. GSD Rule 1, Definitions.

[13] Pursuant to the GSD Rules, the term ''GCF Repo Transaction'' means a Repo Transaction involving generic CUSIP numbers the data on which are submitted to FICC on a locked-in-trade basis pursuant to the provisions of Rule 6C, for netting and settlement by FICC pursuant to the provisions of Rule 20. GSD Rule 1, Definitions.

requirement and current practice that clearing members are required to submit all SBOO trades and SBON trades (*i.e.,* SBO-Destined Trades after such trades have gone through TBA Netting) for inclusion in the Pool Netting system.

- Rule 10, Section 2 is revised to clarify that clearing members are required to submit a notification of settlement for SBO Trades that are novated at comparison and processed through the TBA Netting system but that are not thereafter submitted to the Pool Netting system.
- Rule 11, Section 1 is revised to take into account the fact that SBO Trades are novated upon comparison and are, therefore, legally between MBSD Clearing Members and FICC after comparison.
- Rule 15 is revised to clarify the current process with respect to transactions submitted to and compared by FICC, whereby in the event a member's original counterparty goes insolvent, such member cannot unilaterally modify its obligations with respect to transactions originally entered with such counterparty.
- Rule 16 is revised to clarify the current process with respect to transactions submitted to and compared by FICC, whereby in the event a member's original counterparty goes insolvent, such member cannot unilaterally modify its obligations with respect to transactions originally entered with such counterparty.
- Rule 17, Section 2 is revised to clarify the current process, whereby when FICC ceases to act for a clearing member, such member's Trade-for-Trade Transactions [14] may be disposed of based upon their generic terms such as agency, product, coupon rate and maturity. The other changes are typographical corrections.
- Rule 17A is revised to clarify that in the event of FICC's default, novation is deemed to have occurred with respect to all transactions at the time such transactions are compared, whether or not such transactions are SBO-Destined Trades that would otherwise have been novated at comparison. The other changes to this provision are grammatical corrections.

2. Statutory Basis

The proposed rule changes are consistent with the requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (the ''Act''), and the rules and regulations thereunder, because by moving novation for trades that enter GSD's Netting system and MBSD's TBA Netting system, they clarify FICC's responsibilities to its members and remove potential uncertainty that previously existed due to a mismatch between the time of guaranty and the time of novation. Such clarity facilitates the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody or control of FICC or for which it is responsible.

As noted above, FICC guarantees (and is therefore responsible for) the settlement of trades upon comparison. Nonetheless, currently FICC does not become the members' legal counterparty with respect to compared trades until the relevant netting output is issued to such members (usually the day before settlement). FICC understands that as members (or their advisors) analyze member netting rights with respect to transactions cleared through FICC for purposes of regulatory capital requirements, it is beneficial for members that FICC become the legal counterparty at the point its guarantee attaches.

B. Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition that is not necessary or appropriate. The proposed changes will apply to eligible transactions that are submitted to GSD's Netting system and MBSD's TBA Netting system.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule changes have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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 (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 such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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-comment@sec.gov.* Please include File Number SR–FICC–2014–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2014–11. 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 copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on its Web site at *http://www.dtcc.com/~/media/Files/Downloads/legal/rule-filings/2014/ficc/SR-FICC-2014-11.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2014–11 and should be submitted on or before January 6, 2015.

[14] Including ''stip'' trades and any other TBA transactions not intended for TBA Netting.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29361 Filed 12–15–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73809; File No. SR–BATS–2014–064]

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.

December 10, 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 December 1, 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 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 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 proposes to modify the ''Options Pricing'' section of its fee schedule effective immediately, in order to modify pricing charged by the Exchange's options platform (''BATS Options'') including a new September Options Step-Up Add TCV tier that will apply to certain orders executed on the Exchange, as further described below.

Currently, the Exchange charges $0.48 per contract for a Professional,[6] Firm,[7] or Market Maker[8] order in a Penny Pilot Security[9] that removes liquidity from BATS Options generally, or, where the Member has an ADV[10] equal to or greater than 1.00% of average TCV,[11] $0.47 per contract for a Professional, Firm, or Market Maker order in a Penny Pilot Security that removes liquidity from BATS Options. The Exchange offers rebates of $0.40 per share for Market Maker orders in Penny Pilot Securities that add liquidity to BATS Options and, as further discussed below, such orders are also eligible for additional rebates via the Quoting Incentive Program (''QIP''). The Exchange offers rebates of $0.40 to Professional and Firm orders in Penny Pilot Securities that add liquidity to BATS Options and offers an enhanced $0.44 rebate for Professional and Firm orders that add liquidity to BATS Options in Penny Pilot Securities where the Member has an Options Step-Up Add TCV[12] of equal to or greater than 0.50%.[13] The Exchange also offers NBBO setter liquidity rebates in all securities such that: (i) A Member will receive an additional $0.02 per contract for a Professional, Firm, or Market Maker order that adds liquidity to the BATS Options order book that sets a new national best bid or offer where the Member has an ADV equal to or greater than 0.30% of average TCV but less than 1.00% of average TCV; and (ii) a Member will receive an additional $0.04 per contract for a Professional, Firm, or Market Maker order that adds liquidity to the BATS Options order book that sets a new national best bid or offer where the Member has an ADV equal to or greater than 1.00% of average TCV.

The Exchange is proposing to add the definition of ''September Options Step-Up Add TCV'' to its fee schedule along with three new fees and rebates associated with this new defined term. Specifically, the Exchange is proposing to define September Options Step-Up Add TCV as a Member's ADAV[14] as a percentage of TCV in September 2014 subtracted from current ADAV as a percentage of TCV. Based on this definition, the Exchange is proposing to add an additional tier to fees charged to Professional, Firm, and Market Maker orders in Penny Pilot Securities such that the Exchange will charge $0.47 per contract for a Professional, Firm, or Market Maker order that removes liquidity from the BATS Options order book where the Member has a September Options Step-Up Add TCV equal to or greater than 0.30% and an ADV equal to or greater than 0.40% of average TCV. Similarly, the Exchange is proposing to add an additional tier to liquidity rebates for Professional and Firm orders in Penny Pilot Securities such that the Exchange will provide a $0.44 rebate per contract for a Professional or Firm order that adds liquidity to the BATS Options order book where the Member has a September Options Step-Up Add TCV equal to or greater than 0.30% and an

[15] 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] ''Professional'' applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

[7] ''Firm'' applies to any transaction identified by a Member for clearing in the Firm range at the OCC.

[8] ''Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC.

[9] ''Penny Pilot Securities'' are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[10] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[11] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[12] ''Options Step-Up Add TCV'' means ADAV as a percentage of TCV in June 2014 subtracted from current ADAV as a percentage of TCV.

[13] *See* Exchange Act Release No. 72128 (May 8, 2014), 79 FR 27666 (May 14, 2014) (SR–BATS–2014–017).

[14] ''ADAV'' means average daily added volume calculated as the number of contracts added.

ADV equal to or greater than 0.40% of average TCV. Finally, the Exchange is proposing to add an additional tier to the NBBO Setter Liquidity Rebates, which apply to all securities, such that a Professional, Firm, or Market Maker order that adds liquidity to BATS Options that sets a new NBBO where the Member has a September Options Step-Up Add TCV equal to or greater than 0.30% and an ADV equal to or greater than 0.40% of average TCV will receive an additional $0.04 per contract added.

The Exchange proposes to implement the amendments to its fee schedule effective immediately.

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.[15] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] 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 or providers of routing services if they deem fee levels to be excessive.

Volume-based rebates and fees such as the ones maintained on BATS Options and the new September Options Step-Up Add TCV tiers proposed herein, have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Further, the Exchange believes the proposed amendments are reasonable and equitable allocations of fees and rebates because the September Options Step-Up Add TCV tiers, combined with the requirement that a Member achieve an ADV of equal to or greater than 0.40% of average TCV, will provide such enhancements in market quality on BATS Options by incentivizing increased participation on BATS Options as compared to September 2014, especially as it relates to incentivizing Members to add orders that will set the NBBO on BATS Options. The Exchange notes that it is not proposing to modify any existing tiers, but rather to add new tiers that will provide Members with additional ways to receive higher rebates or pay lower fees. As such, under the proposal a Member will receive either the same or a higher rebate or be charged either the same or a lower fee than they would today. Accordingly, the Exchange believes that the proposed additions to the Exchange's tiered pricing structure and incentives are not unfairly discriminatory because they will, except as noted below, apply uniformly to all Members and are consistent with the overall goals of enhancing market quality on BATS Options. The Exchange notes that it believes that restricting the availability of the proposed rebates in Penny Pilot Securities associated with the September Options Step-Up tier to Professional and Firm orders is reasonable and equitably allocated as well as not unreasonably discriminatory because Market Maker orders are already afforded an opportunity to receive QIP rebates of up to an additional $0.04 per contract, a rebate which is not available to Professional and Firm orders. Professional and Firm orders can receive the same maximum rebate that Market Maker orders can receive via QIP under the existing Options Step-Up Add TCV but, pursuant to the proposal, the Exchange is proposing to add an additional way for Professional and Firm orders to achieve such rebate via the proposed new tier. The Exchange notes that Market Maker orders will be eligible for both the reduced fees and NBBO Setter tiers proposed as part of the September Options Step-Up Add TCV tiers.

The Exchange reiterates 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 to be excessive or providers of routing services if they deem fee levels to be excessive.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to the proposed new tiered rebates, the Exchange does not believe that any such changes burden competition, but instead, enhance competition, as they are intended to increase the competitiveness of and draw additional volume to BATS Options. The Exchange also believes the proposed step-up tiers would enhance competition because they are similar to pricing tiers currently available on both the Exchange and other exchanges. 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 [17] and paragraph (f) of Rule 19b–4 thereunder.[18] 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 proposal 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 No. SR–BATS–2014–064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

All submissions should refer to File No. SR–BATS–2014–064. 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 will also 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 No. SR–BATS–2014–064 and should be submitted on or before January 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29364 Filed 12–15–14; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73804; File No. SR–DTC–2014–10)]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change in Connection With the Modifications To Require Receiver Authorized Delivery Approval for DTC Processing of Institutional Delivery Transactions

December 10, 2014.

I. Introduction

On October 16, 2014, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2014–10 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on November 3, 2014.[3] The Commission did not receive any comments on the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Description

DTC filed the Proposed Rule Change to modify the DTC Settlement Service Guide (''Guide'') to require DTC Participants [4] to use the Receiver Authorized Delivery (''RAD'') function to accept any affirmed institutional delivery transaction (''ID Transaction'') prior to DTC processing of the delivery. With the Proposed Rule Change, DTC seeks to reduce uncertainty in the settlement of ID Transactions.

Pursuant to a recent rule change,[5] DTC requires all non-institutional Deliver Orders and Payment Orders [6] to be approved through RAD. RAD enables a receiver of valued deliveries of securities (''Receiver'') to manage which deliveries to accept, or to reject, prior to further processing by DTC. With this process, DTC seeks to establish a consistent internal ''matching'' system for book-entry deliveries at DTC.

ID Transactions generally have not required RAD approval because the transactions are externally pre-matched through Omgeo, LLC,[7] although Participants were permitted to apply RAD voluntarily.[8] Because RAD was not required, a Receiver could use the same-day reclaim process to return securities to the original Participant delivering securities (''Deliverer'') without the acceptance of the Deliverer. DTC states that this process creates uncertainty for Participants and DTC as to whether securities will be delivered or reclaimed on the same day without the prior acceptance of the Receiver or original Deliverer.

Pursuant to the Proposed Rule Change, DTC will amend the Guide to eliminate this uncertainty by requiring the intended Receiver to approve the ID Transaction in RAD before DTC processes the transaction.[9] Same-day reclaims will also be subject to RAD approval by the original Deliverer, as though the reclaim was its own, separate transaction. As with any securities delivery, these transactions will be subject to DTC's risk management controls.[10]

Additionally, with the Proposed Rule Change DTC will make technical updates to the Guide: (i) update the text for consistency to reflect that all valued Deliver Orders, Payment Orders, ID Transactions, MMI transactions, reclaims, pledges, and releases of pledged securities will be subject to RAD; (ii) update the text for consistency to reflect that all reclaims will be subject to risk management controls and remove references to system functions related to reclaims that have become obsolete; (iii) add an email address to which Settling Banks seeking to adjust Net Debit Caps may send their requests, in addition to via mail or overnight delivery to the existing mailing address; (iv) indicate where Participants may access certain system functions via Settlement Web either in addition to, or in lieu of, PBS/PTS; (v) eliminate references to fees relating to the ID Net service, which are redundant since those fees are also listed in DTC's fee schedule; and (vi) delete reference to the population of a ''third party'' field on DTC's system screens for the ID Net service, which is no longer applicable.

The effective date of the Proposed Rule Change, including the dates of the implementation phases described above,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 73443 (Oct. 28, 2014), 79 FR 65268 (Nov. 3, 2014).

[4] Terms not defined herein have the meaning set forth in DTC's Rules, By-Laws, and Organization Certificate (''Rules''), *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.ashx.*

[5] Securities Exchange Act Release No. 72576 (Jul. 9, 2014); 79 FR 41335 (Jul. 15, 2014) (SR–DTC–2014–06).

[6] A Deliver Order is a book-entry movement of a particular security between two Participants. A Payment Order is a method for settling funds related to transactions and payments not associated with a Deliver Order.

[7] Omgeo is a leading provider of post-trade, pre-settlement institutional trade management solutions, processing over one million trades per day, and servicing approximately 6,500 investment managers, broker/dealers, and custodians in over 50 countries. *See* About DTCC: Omgeo LLC, *http://dtcc.com/about/businesses-and-subsidiaries/omgeo.aspx.*

[8] Receivers may optionally set their DTC profile to route ID Transactions to RAD.

[9] For processing efficiency, the proposed change to the Guide will offer Participants the option to set their system profile to allow affirmed ID Transactions to be automatically accepted in RAD. However, Participants will no longer have an option to allow ID Transactions to bypass RAD.

[10] DTC risk management controls, including Collateral Monitor and Net Debit Cap (as defined in DTC Rule 1), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest Participant or affiliated family of Participants. The Collateral Monitor tests that a Receiver has adequate collateral to secure the amount of its net debit balance and the Net Debit Cap limits the net debit balance of a Participant so that it cannot exceed DTC liquidity resources for settlement. *See* DTC Rules, *http://dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.ashx.*

will be announced via a DTC Important Notice.

III. Discussion

Section 19(b)(2)(C) of the Act [11] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[12] In addition, Rule 17Ad–22(d)(12) of the Act requires that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and require that intraday or real-time finality be provided where necessary to reduce risks.[13]

The Commission finds the Proposed Rule Change consistent with the Act. More specifically, as the Proposed Rule Change pertains to requiring acceptance through RAD of any affirmed ID Transaction, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act [14] because the change will increase the number of deliveries that will require Receiver approval prior to DTC processing. This requirement will reduce the intraday uncertainty and associated risks that may currently arise from same-day reclaims, thus facilitating the prompt and accurate clearance and settlement of securities transactions. The Commission also finds these aspects of the Proposed Rule Change consistent with Rule 17Ad–22(d)(12) under the Act [15] because more transactions will be subject to DTC's risk management controls, which helps ensure that final settlement occurs no later than the end of the settlement day.

As the Proposed Rule Change pertains to the proposed technical changes, the Commission finds that the Proposed Rule Change is also consistent with Section 17A(b)(3)(F) of the Act [16] because updates to the Guide to make it more clear, consistent, and current supports the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [17] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2014–10 be, and hereby is, *approved.*[18]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29360 Filed 12–15–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2)(C).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(d)(12).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(d)(12).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 15 U.S.C. 78q–1.

[18] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73808; File No. SR–ISE–2014–54]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical Corrections to ISE Rules

December 10, 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 December 3, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE proposes to make certain technical corrections to ISE rules as described in more detail below. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate investor confusion by making certain technical corrections to ISE rules that are either obsolete or outdated, as described in more detail below.

1. Order Type Cleanup

The Exchange adopted Customer Participation Orders in August 2005 in order to facilitate members providing access to the Price Improvement Mechanism (''PIM'') [3] to Public Customers.[4] Upon the entry of a Crossing Transaction into the PIM,[5] a broadcast message is sent to all members, who then have 500 milliseconds to enter orders that indicate the size and price at which they want to participate in the execution (''Improvement Orders'').[6] The Customer Participation Order is an instruction to the member to enter an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PIM is a process by which an Electronic Access Member can provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent (a ''Crossing Transaction''). *See* Rule 723(a).

[4] *See* Securities Exchange Act Release No. 52364 (August 31, 2005), 70 FR 53403 (September 8, 2005) (SR–ISE–2005–41). The term ''Public Customer'' means a person or entity that is not a broker or dealer in securities. *See* ISE Rule 100(a)(38).

[5] A Crossing Transaction is comprised of the order the Electronic Access Member represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. *See* Rule 723(b).

[6] *See* ISE Rule 723(c)(1).

Improvement Order on behalf of a Public Customer. Specifically, a Customer Participation Order is a limit order on behalf of a Public Customer that, in addition to the limit order price in standard increments, includes a price stated in one cent increments at which the Public Customer wishes to participate in trades executed in the same options series in penny increments through the PIM.[7] The Exchange no longer offers Customer Participation Orders and therefore proposes to remove this order type from its rules. Furthermore, the Exchange proposes to remove two obsolete references to Customer Participation Orders in other rules. Specifically, the Exchange proposes to remove references to Customer Participation Orders in Supplementary Material .06 to Rule 723, which explains when Improvement Orders can be entered with respect to a Customer Participation Order,[8] and in Rule 723(d), which notes that the agency side of an order entered into the PIM may execute against Customer Participation Orders at the end of the exposure period.

In September 2008, the ISE adopted rules to allow members to enter non-displayed orders and quotes in penny increments in designated options with a minimum trading increment greater than one cent (''non-displayed penny orders and quotes'').[9] As proposed in that filing, a non-displayed penny order or quote is available for execution at its penny price but is displayed at the closest minimum trading increment that does not violate the limit price. The Exchange does not offer non-displayed penny orders or quotes and therefore proposes to delete references to this order type from its rules as described below. First, the Exchange proposes to delete Rule 715(b)(4), which defines non-displayed penny order. Second, the Exchange proposes to delete language in Rule 804(b)(1) and Rule 805(a) that permits market makers to enter non-displayed penny quotes and orders, respectively. Third, the Exchange proposes to delete language in Supplementary Material .06 to Rule 716 concerning split prices for non-displayed penny orders and quotes entered into the Facilitation and Solicitation Mechanisms. Finally, the Exchange proposes to delete language in Supplementary Material .03 to Rule 717 concerning the execution of non-displayed penny orders that an Electronic Access Member represents as agent against principal orders and orders solicited from other broker dealers.

2. No Bid Options/Limit Price

Rule 713(b), which deals with priority of orders, provides that if the lowest offer for any options contract is $0.05 then no member shall enter a market order to sell that series, and any such market order shall be considered a limit order to sell at a price of $0.05. This provision is intended to prevent members from submitting market orders to sell in no bid series, which would execute at a price of $0.00, and to instead convert those orders to limit orders with a limit price equal to the minimum trading increment, *i.e.,* $0.05 for most option classes.[10] A ''no bid'' or ''zero bid'' series refers to an option where the bid price is $0.00. Series of options quoted no bid are usually deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. For options that trade in regular nickel increments, a best offer of $0.05 corresponds to a best bid of $0.00, *i.e.* one minimum trading increment below the offer. However, option series may be no bid with other offer prices as well. For example, an option class would be considered no bid if it is quoted at $0.00 (bid)–$0.15 (offer). In order to avoid having these orders execute at a price of $0.00, the Exchange proposes to clarify that Rule 713(b) applies to all option classes that are quoted no bid, rather than just those option classes that have an offer of $0.05. Furthermore, on January 26th, 2007, the options exchanges commenced a pilot (the ''Penny Pilot'') to quote and trade options in one cent increments, lowering the minimum trading increment from $0.05 in certain symbols.[11] The Exchange therefore proposes to clarify in Rule 713(b) that it will put a limit price *equal to the minimum trading increment* on market orders to sell a no bid option series. For example, if the deep out-of-the-money SPY December $230.00 call, which is traded in penny increments, is quoted at $0.00 (bid)–$0.03 (offer), a market order to sell would instead be treated as a limit order to sell at a price of $0.01.

3. Linkage Rules

On April 18, 2013 the Commission approved a proposed rule change that modified the ISE's linkage handling procedures under the Options Order Protection and Locked/Crossed Market Plan (the ''Plan'').[12] Prior to this rule change Primary Market Makers (''PMMs'') were responsible for routing orders to away markets when necessary to comply with the Plan. Under the current rules, however, the ISE has contracted with unaffiliated broker dealers to route orders to other exchanges when necessary to comply with the linkage rules (''Linkage Handlers''). Since PMMs no longer perform linkage handling, the Exchange proposes to move related language in Rule 803, which concerns the obligation of market makers, to Chapter 19. In particular, the Exchange proposes to move Supplementary Material .04 and .05 to Rule 803 to the Supplementary Material to Rule 1901, which contains provisions relevant to linkage handling. In connection with this change, the Exchange also proposes to correct incorrect internal cross references to ''paragraph (c)(2)'' in this Supplementary Material. Prior to the proposed rule change described above, paragraph (c)(2) of Rule 803 contained language concerning a PMM's linkage handling function. As away market routing is now handled by Linkage Handlers pursuant to the Supplementary Material to Rule 1901, the Exchange proposes to reference these rules instead.

4. Supplementary Material

Finally, the Exchange notes that certain supplementary material is mistakenly labelled as ''supplemental'' material in the Exchange's rulebook.[13] In order to achieve consistency with how other rules are labelled, the Exchange proposes to change these to instead refer to ''supplementary'' material.

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

[7] *See* Rule 715(f).

[8] Although Customer Participation Orders are no longer available, members will continue to be able to enter Improvement Orders for the account of Public Customers.

[9] *See* Exchange Act Release No. 58486 (September 8, 2008), 73 FR 53298 (September 15, 2008) (SR–ISE–2008–36).

[10] Symbols not included in the Penny Pilot (discussed below) generally trade in $0.05 increments if the options contract is trading at less than $3.00 per option, and $0.10 increments if the options contract is trading at $3.00 per option or higher. *See* Rule 710.

[11] *See* Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62) (Approval Order); 54603 (October 16, 2006), 71 FR 62024 (October 20, 2006) (SR–ISE–2006–62) (Notice).

[12] *See* Securities Exchange Act Release No. 69396 (April 18, 2013), 78 FR 24273 (April 24, 2013) (SR–ISE–2013–18).

[13] *See* ''Supplemental'' Material to Rules 717, 809, 810, and 1615. *See* also references in Rule 721(a)(3) to ''Supplemental'' Material .01 to Rule 717, in Rule 1903 to ''Supplemental'' Material .02 and .03 to Rule 1901, and in Rule 2011 to the ''Supplemental'' Material to Rule 2001.

exchange, and, in particular, with the requirements of Section 6(b) of the Act.[14] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[15] because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. As explained in more detail below, the Exchange believes it is appropriate to make the proposed technical corrections to its rules so that members and investors have a clear and accurate understanding of the meaning of the ISE's rules.

1. Order Type Cleanup

As explained above, the Exchange does not offer Customer Participation Orders or non-displayed penny orders or quotes, and thus proposes to remove obsolete definitions and other outdated references to these order types. The Exchange believes that these changes will eliminate investor confusion regarding order types available for trading on the ISE to the benefit of members of investors.

2. No Bid Options/Limit Price

The ISE, along with other options exchanges, currently operates a pilot program to permit designated options classes to be quoted and traded in increments as low as one cent. The Exchange is proposing to amend Rule 713(b) to account for the fact that option classes selected for inclusion in the Penny Pilot are permitted to trade in penny increments. For penny classes that are quoted no bid, the Exchange will convert a market order to sell to a limit order with a price of one cent. In addition, the proposed rule change clarifies that Rule 713(b) applies to all series with a bid of $0.00, and not just those series that also have an offer of $0.05. The proposed rule change is necessary to account for options trading in multiple trading increments, including under the Penny Pilot, and will ensure that market orders to sell are not inadvertently executed at a price of zero. The Exchange believes that these changes more accurately reflect the intent of Rule 713(b), as described above, and will eliminate investor confusion with respect to the operation of this rule by more accurately describing the functionality provided by the Exchange. Moreover, the Exchange notes that other exchanges have similar rules whereby a market order to sell a no bid series is treated as a limit order with a limit price equal to the minimum trading increment for the series.[16]

3. Linkage Rules

The proposed changes to the linkage rules are non-substantive and intended to reduce investor confusion by moving rules concerning linkage handling to the appropriate chapter of the Exchange's rulebook. As explained above, since PMMs previously conducted the linkage handling function, these rules were located in Chapter 8 of the rulebook. With the introduction of away market routing by Linkage Handlers, the Exchange believes that these rules are more appropriately located in Chapter 19. In addition, the Exchange notes that it is correcting related internal cross references.

4. Supplementary Material

The proposed change to label supplementary material correctly is non-substantive and is intended to achieve consistency in how these rules are labelled to the benefit of members and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change makes technical, non-substantive, amendments to the Exchange's rules in order to eliminate investor confusion, and is not designed to have any competitive impact.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change makes non-substantive, technical changes to the ISE's rules. The Exchange believes that these changes should take effect on filing as they increase the clarity of the ISE's rules to the benefit of members and investors that trade on the Exchange. With respect to the provisions regarding no bid options, the Exchange believes the proposed rule change will update and clarify those rules consistent with treatment on other options exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enhance the clarity of the ISE's rules and will reduce investor confusion with respect to the operation of the ISE's rules. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See e.g.* Securities Exchange Act Release No. 59475 (February 27, 2009), 74 FR 9840 (March 6, 2009) (SR–BX–2009–014) (Notice); 59742 (April 9, 2009), 74 FR 17701 (April 16, 2009).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2014–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2014–54, and should be submitted on or before January 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–29363 Filed 12–15–14; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 8974]

Request for Information for the 2015 Trafficking in Persons Report

SUMMARY: The Department of State (''the Department'') requests written information to assist in reporting on the degree to which the United States and foreign governments comply with the minimum standards for the elimination of trafficking in persons (''minimum standards'') that are prescribed by the Trafficking Victims Protection Act of 2000, (Div. A, Pub. L. 106–386) as amended (''TVPA''). This information will assist in the preparation of the *Trafficking in Persons Report* (''*TIP Report''*) that the Department submits annually to the U.S. Congress on governments' level of compliance with the minimum standards. Foreign governments that do not comply with the minimum standards and are not making significant efforts to do so may be subject to restrictions on nonhumanitarian, nontrade-related foreign assistance from the United States, as defined by the TVPA. Submissions must be made in writing to the Office to Monitor and Combat Trafficking in Persons at the Department of State by January 20, 2015. Please refer to the *Addresses, Scope of Interest,* and *Information Sought* sections of this Notice for additional instructions on submission requirements.

DATES: Submissions must be received by 5 p.m. on January 30, 2015.

ADDRESSES: Written submissions and supporting documentation may be submitted by the following methods:

Email (preferred): tipreport@state.gov for submissions related to foreign governments and *tipreportUS@state.gov* for submissions related to the United States.

- *Facsimile (fax):* 202–312–9637.
- *Mail, Express Delivery, Hand Delivery and Messenger Service:* U.S. Department of State, Office to Monitor and Combat Trafficking in Persons (J/TIP), 1800 G Street NW., Suite 2148, Washington, DC 20520. Please note that materials submitted by mail may be delayed due to security screenings and processing.

Scope of Interest: The Department requests information relevant to assessing the United States' and foreign governments' compliance with the minimum standards for the elimination of trafficking in persons in the year 2014. The minimum standards for the elimination of trafficking in persons are listed in the *Background* section. Submissions must include information relevant and probative of the minimum standards for the elimination of trafficking in persons and should include, but need not be limited to, answering the questions in the *Information Sought* section. Only those questions for which the submitter has direct professional experience should be answered and that experience should be noted. For any critique or deficiency described, please provide a recommendation to remedy it. Note the country or countries that are the focus of the submission.

Submissions may include written narratives that answer the questions presented in this Notice, research, studies, statistics, fieldwork, training materials, evaluations, assessments, and other relevant evidence of local, state, and federal government efforts. To the extent possible, precise dates should be included.

Where applicable, written narratives providing factual information should provide citations to sources and copies of the source material should be provided. If possible, send electronic copies of the entire submission, including source material. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided. The Department does not include in the *Report,* and is therefore not seeking, information on prostitution, human smuggling, visa fraud, or child abuse, unless such conduct occurs in the context of human trafficking.

Confidentiality: Please provide the name, phone number, and email address of a single point of contact for any submission. It is Department practice not to identify in the *Report* information concerning sources to safeguard those sources. Please note, however, that any information submitted to the Department may be releasable pursuant to the provisions of the Freedom of Information Act or other applicable law. When applicable, portions of submissions relevant to efforts by other U.S. government agencies may be shared with those agencies.

Response: This is a request for information only; there will be no response to submissions.

[22] 17 CFR 200.30–3(a)(12).

SUPPLEMENTARY INFORMATION:

I. Background

The TIP Report: The *TIP Report* is the most comprehensive worldwide report on governments' efforts to combat trafficking in persons. It represents an updated, global look at the nature and scope of trafficking in persons and the broad range of government actions to confront and eliminate it. The U.S. government uses the *Report* to engage in diplomacy, to encourage partnership in creating and implementing laws and policies to combat trafficking, and to target resources on prevention, protection, and prosecution programs. Worldwide, the *Report* is used by international organizations, foreign governments, and nongovernmental organizations as a tool to examine where resources are most needed. Identifying victims, preventing trafficking, and bringing traffickers to justice are the ultimate goals of the *Report* and of the U.S government's anti-trafficking policy.

The Department prepares the *TIP Report* using information from across the U.S. government, foreign government officials, nongovernmental and international organizations, published reports, and research trips to every region. The *Report* focuses on concrete actions that governments take to fight trafficking in persons, including prosecutions, convictions, and prison sentences for traffickers, as well as victim protection measures and prevention efforts. Each *Report* narrative also includes recommendations for each country. These recommendations are then used to assist in measuring governments' progress from one year to the next and determining whether governments comply with the minimum standards for the elimination of trafficking in persons or are making significant efforts to do so.

The TVPA creates a four tier ranking system. Tier placement is based more on the extent of government action to combat trafficking than on the size of the problem, although that is a consideration. The Department first evaluates whether the government fully complies with the TVPA's minimum standards for the elimination of trafficking. Governments that fully comply are placed on Tier 1. For other governments, the Department considers the extent of efforts to reach compliance. Governments that are making significant efforts to meet the minimum standards are placed on Tier 2. Governments that do not fully comply with the minimum standards and are not making significant efforts to do so are placed on Tier 3. Finally, the Department considers Special Watch List criteria and, when applicable, moves Tier 2 countries to Tier 2 Watch List. For more information, the 2014 *TIP Report* can be found at *http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm.*

Since the inception of the *TIP Report* in 2001, the number of countries included and ranked has more than doubled to include 188 countries in the 2014 *TIP Report.* Around the world, the *TIP Report* and the best practices reflected therein have inspired legislation, national action plans, policy implementation, program funding, protection mechanisms that complement prosecution efforts, and a stronger global understanding of this crime.

Since 2003, the primary reporting on the United States' anti-trafficking activities has been through the annual Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Human Trafficking (''AG Report'') mandated by section 105 of the TVPA (22 U.S.C. 7103(d)(7)). Since 2010, the United States, through a collaborative interagency process, includes in the *TIP Report* an analysis of U.S. government anti-trafficking efforts in light of the minimum standards to eliminate trafficking in persons set forth by the TVPA.

II. Minimum Standards for the Elimination of Trafficking in Persons

The TVPA sets forth the minimum standards for the elimination of trafficking in persons as follows:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

The following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country, including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered as an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons. After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons; measures to establish the identity of local populations, including birth registration, citizenship, and nationality; measures to ensure that its nationals who are deployed abroad as

part of a diplomatic, peacekeeping, or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking; a transparent system for remediating or punishing such public officials as a deterrent; measures to prevent the use of forced labor or child labor in violation of international standards; effective bilateral, multilateral, or regional information-sharing and cooperation arrangements with other countries; and effective policies or laws regulating foreign labor recruiters and holding them civilly and criminally liable for fraudulent recruiting.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons and has entered into bilateral, multilateral, or regional law enforcement cooperation and coordination arrangements with other countries.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials, including diplomats and soldiers, who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking. A government's failure to appropriately address public allegations against such public officials, especially once such officials have returned to their home countries, shall be considered inaction under these criteria. After reasonable requests from the Department of State for data regarding such investigations, prosecutions, convictions, and sentences, a government which does not provide such data consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts. The Secretary of State may disregard the presumption contained in the preceding sentence if the government has provided some data to the Department of State regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data.

(8) Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.

(9) Whether the government has entered into effective, transparent partnerships, cooperative agreements, or agreements that have resulted in concrete and measureable outcomes with—

(A) domestic civil society organizations, private sector entities, or international non-governmental organizations, or into multilateral or regional arrangements or agreements, to assist the government's efforts to prevent trafficking, protect victims, and punish traffickers or

(B) the United States toward agreed goals and objectives in the collective fight against trafficking.

(10) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.

(11) Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.

(12) Whether the government of the country has made serious and sustained efforts to reduce the demand for (A) commercial sex acts; and (B) participation in international sex tourism by nationals of the country.

III. Information Sought Relevant to the Minimum Standards

Submissions should include, but need not be limited to, answers to relevant questions below for which the submitter has direct professional experience; that experience should be noted. Citations to source material should also be provided. Note the country or countries that are the focus of the submission. Please see the *Scope of Interest* section for detailed information regarding submission requirements.

1. How have trafficking methods changed in the past 12 months? For example, are there victims from new countries of origin? Is internal trafficking or child trafficking increasing? Has sex trafficking changed from brothels to private apartments? Is labor trafficking now occurring in additional types of industries or agricultural operations? Is forced begging a problem?

2. In what ways has the government's efforts to combat trafficking in persons changed in the past year? What new laws, regulations, policies, and implementation strategies exist (*e.g.,* substantive criminal laws and procedures, mechanisms for civil remedies, and victim-witness security, generally, and in relation to court proceedings)?

3. Please provide observations regarding the implementation of existing laws and procedures.

4. Is the government equally vigorous in pursuing labor trafficking and sex trafficking?

5. Are the anti-trafficking laws and sentences strict enough to reflect the nature of the crime?

6. Do government officials understand the nature of trafficking? If not, please provide examples of misconceptions or misunderstandings.

7. Do judges appear appropriately knowledgeable and sensitized to trafficking cases? What sentences have courts imposed upon traffickers? How common are suspended sentences and prison time of less than one year for convicted traffickers?

8. Please provide observations regarding the efforts of police and prosecutors to pursue trafficking cases.

9. Are government officials (including law enforcement, diplomats, and soldiers/peacekeepers) complicit in human trafficking by, for example, profiting from, taking bribes, or receiving sexual services for allowing it to continue? Are government officials operating trafficking rings or activities? If so, have these government officials been subject to an investigation and/or prosecution? What punishments have been imposed?

10. Has the government vigorously investigated, prosecuted, convicted, and sentenced nationals of the country deployed abroad as part of a diplomatic, peacekeeping, or other similar mission who engage in or facilitate trafficking?

11. Has the government investigated, prosecuted, convicted, and sentenced organized crime groups that are involved in trafficking?

12. Is the country a source of sex tourists and, if so, what are their destination countries? Is the country a destination for sex tourists and, if so, what are their source countries?

13. Please provide observations regarding government efforts to address the issue of unlawful child soldiering.

14. Does the government make a coordinated, proactive effort to identify victims? Is there any screening conducted before deportation to determine whether individuals were trafficked?

15. What victim services are provided (legal, medical, food, shelter, interpretation, mental health care, health care, employment, training, etc.)? Who provides these services? If nongovernment organizations provide the services, does the government support their work either financially or otherwise?

16. How could victim services be improved?

17. Are services provided equally and adequately to victims of labor and sex trafficking? Men, women, and children? Citizen and noncitizen? Members of the LGBT community?

18. Do service providers and law enforcement work together cooperatively, for instance, to share information about trafficking trends or to plan for services after a raid? What is the level of cooperation, communication, and trust between service providers and law enforcement?

19. May victims file civil suits or seek legal action against their trafficker? Do victims avail themselves of those remedies?

20. Does the government repatriate victims who wish to return home? Does the government assist with third country resettlement? Does the government engage in any analysis of whether victims may face retribution or hardship upon repatriation to their country of origin? Are victims awaiting repatriation or third country resettlement offered services? Are victims indeed repatriated or are they deported?

21. Does the government inappropriately detain or imprison identified trafficking victims?

22. Does the government punish trafficking victims for forgery of documents, illegal immigration, unauthorized employment, or participation in illegal activities directed by the trafficker?

23. What efforts has the government made to prevent human trafficking?

24. Has the government entered into effective bilateral, multilateral, or regional information-sharing and cooperation arrangements that have resulted in concrete and measureable outcomes?

25. Does the country have effective policies or laws regulating foreign labor recruiters?

26. Does the government undertake activities that could prevent or reduce vulnerability to trafficking, such as registering births of indigenous populations?

27. Does the government provide financial support to NGOs working to promote public awareness or does the government implement such campaigns itself? Have public awareness campaigns proven to be effective?

28. Please provide additional recommendations to improve the government's anti-trafficking efforts.

29. Please highlight effective strategies and practices that other governments could consider adopting.

Dated: December 9, 2014.

Kari Johnstone,

Acting Director, Office to Monitor and Combat Trafficking in Persons, U.S. Department of State.

[FR Doc. 2014–29472 Filed 12–15–14; 8:45 am]

BILLING CODE 4710–17–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments on Israel's and Turkey's Participation in the Environmental Goods Agreement Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: On March 21, 2014, the United States Trade Representative notified Congress of the Administration's intention to enter into negotiations for a World Trade Organization (WTO) Environmental Goods Agreement (EGA) with an initial group of 13 trading partners. The United States Trade Representative has since notified Congress of the Administration's intent to join a consensus among EGA participants to invite the Governments of Israel and Turkey to join the EGA negotiations. The Office of the U.S. Trade Representative, on behalf of the Trade Policy Staff Committee (TPSC), is seeking public comment regarding U.S. interests and priorities with respect to this initiative to invite Israel and Turkey to join the EGA negotiations.

DATES: Written comments are due by midnight, January 12, 2015.

ADDRESSES: Comments from the public should be submitted electronically at *www.regulations.gov.* If you are unable to provide submissions at *www.regulations.gov,* please contact Yvonne Jamison, Trade Policy Coordination Assistant, at (202) 395–3475, to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Yvonne Jamison, Trade Policy Coordination Assistant, at the above number. All other questions regarding this notice should be directed to Bill McElnea, Director for Environment and Natural Resources, at (202) 395–7320.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 2014, the United States Trade Representative notified Congress of the Administration's intention to enter into the EGA negotiations. This notification states that the EGA negotiations ''are open to all WTO Members that are prepared to eliminate tariffs on a set of environmental goods, building on the list of 54 goods endorsed by APEC Leaders as the starting point.'' A copy of the notification is available at *www.ustr.gov/sites/default/files/03212014-Letter-to-Congress.pdf.* USTR solicited public comments on this initiative through a notification published in the **Federal Register** on March 28, 2014 (Document number: 2014–06831). Comments received through that process may be reviewed at *http://www.regulations.gov* under docket number USTR–2014–0004.

On July 8, 2014, the United States and 13 other WTO members, accounting for 86 percent of global trade in environmental goods, launched the EGA negotiations in Geneva, Switzerland. In addition to the United States, Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, Switzerland and Chinese Taipei are participating in the negotiations. The EGA aims to eliminate tariffs on a set of environmental technologies such as wind turbines, water treatment filters, and solar water heaters. WTO members apply tariffs as high as 35 percent on environmental goods.

The Governments of Israel and Turkey notified EGA participants of their interests in joining these negotiations earlier this year. Following these notifications of interest, EGA participants agreed to begin any relevant

domestic procedures so as to allow Israel and Turkey to join the EGA negotiations. On October 20, 2014, the United States Trade Representative notified Congress of the Administration's intent to join a consensus among EGA participants to invite the Government of Israel to join the EGA negotiations. With respect to the Government of Turkey, the United States Trade Representative sent a similar notification to Congress on November 20, 2014.

The Chair of the TPSC invites interested persons to provide written comments that will assist USTR in assessing Israel's and Turkey's potential participation in the EGA negotiations. The TPSC Chair invites comments on all relevant matters, and, in particular, with regard to those environmental goods of which Israel and Turkey are significant producers and consumers, as well as current market conditions for environmental technologies in Israel and Turkey.

USTR is observing the relevant procedures of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3804) with respect to notifying and consulting with Congress on the invitation of new members to these negotiations.

Requirements for Submissions

Persons submitting comments must do so in English and must identify (on the first page of the submission) ''Environmental Goods Agreement—New Participants: Israel and Turkey''. In order to be assured of consideration, comments should be submitted by 11:59 p.m., January 12, 2015. In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2014–0024 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page).

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges submitters to file comments through *www.regulations.gov,* if at all possible. Any alternative arrangements must be made with Ms. Jamison in advance of transmitting a comment. Ms. Jamison should be contacted at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.* Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2014–29388 Filed 12–15–14; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0430]

Agency Information Collection Activities; Request for Comments; Revision of an Approved Information Collection: Medical Qualification Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests to revise an ICR entitled, ''*Medical Qualification Requirements,''* due to updated information for several of the Information Collections (ICs) discussed. This ICR is needed to ensure that drivers, motor carriers and the States are complying with the medical qualification requirements of commercial motor vehicle (CMV) drivers. The information collected is used to determine and certify driver medical fitness and must be collected in order for our highways to be safe.

DATES: We must receive your comments on or before February 17, 2015.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2014–0430 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Services; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to

http://www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan III, Director, Office of Carrier, Driver, and Vehicle, Safety Standards, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2362; email *charles.horan@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: CMVs (trucks and buses) are longer, heavier, and more difficult to maneuver than automobiles, making them a threat to highway safety if not operated properly by qualified individuals. The public interest in, and right to have, safe highways requires the assurance that drivers of CMVs can safely perform the increased physical and mental demands of their duties. FMCSA's medical standards provide this assurance by requiring drivers to be examined and medically certified as physically and mentally qualified to drive. Therefore, information used to determine and certify driver medical fitness must be collected in order for our highways to be safe. FMCSA is the Federal government agency authorized to require the collection of this information. FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries [49 U.S.C. 31136(a)(3) and 31502(b)]. The regulations discussing this collection are outlined in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR 390–399.

The estimate of the number of CMV drivers and motor carriers covered by the IC activities for Physical Qualification Standards and the National Registry of Certified Medical Examiners (National Registry) reflects both interstate drivers and motor carriers subject to the FMCSRs and intrastate drivers and motor carriers subject to compatible State regulations. Although Federal regulations do not require States to comply with the medical requirements in the FMCSRs, most States do mirror the Federal requirements. If intrastate CMV drivers are subject to Federal compatible State regulations, the Agency anticipates that it is likely that these drivers will use certified MEs on the National Registry for their medical qualification examinations. In addition, a small number of drivers transporting 8 or less migrant workers more than 75 miles in interstate commerce that are still subject to the medical certification requirements of 49 CFR 398 are included in this population.

Below is a brief description of the included IC activities and how the information is used.

Physical Qualification Standards

FMCSRs at 49 CFR 391.41 set forth the physical qualification standards that interstate CMV drivers who are subject to part 391 must meet, with the exception of commercial driver's license (CDL)/commercial learner's permit (CLP) drivers transporting migrant workers (who must meet the physical qualification standards set forth in 49 CFR 398.3). The FMCSRs covering driver physical qualification records are found at 49 CFR 391.43, which specify that a medical examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of the examination shall be recorded in accordance with the requirements set forth in that section. The current provisions of 49 CFR 391.51 and 398.3 require that a motor carrier retain the Medical Examiner's Certificate (MEC) in the driver's qualification (DQ) file for 3 years. The certificate affirms that the driver is physically qualified to drive a CMV in interstate commerce.

Due to potential for onset of new conditions or changes in existing conditions that may adversely affect a driver's ability to drive safely and/or cause incapacitation that could be a risk to public safety, periodic re-evaluation and recertification is required to assess driver physical qualification. MECs may be issued for up to 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every 2 years. Medical Examiners (MEs) have discretion to certify for shorter time periods on a case-by-case basis for medical conditions that require closer monitoring or that are more likely to change over time. In addition, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59), enacted in 2005 and amended by the Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) requires MEs to transmit to FMCSA's Chief Medical Officer, electronically and on a monthly basis, driver information and results of any CMV driver medical examinations conducted during the previous month. MEs are required to maintain records of the CMV driver medical examinations they conduct. FMCSA does not require MEs to maintain these records electronically. However, there is nothing to preclude a ME from maintaining electronic records of the medical examinations he/she conducts. FMCSA is continuously evaluating new information technology in an attempt to decrease the burden on motor carriers and MEs. Less frequent collection of driver data, Medical Examination Reports (MERs), and MECs would compromise FMCSA's ability to determine ME compliance with FMCSA medical standards and guidelines in performing CMV driver medical examinations, which could result in MEs listed on the National Registry who should be removed and possibly drivers that don't meet the physical qualification standards possessing a MEC. Less frequent data collection would also result in decreased validity of the data (*i.e.,* less frequent data submission may increase the error rate due to unintentional omission of examination information). Therefore, less frequent collection of driver examination results is not an option.

Resolution of Medical Conflict

The medical conflict provision provides a mechanism for drivers and motor carriers to request FMCSA to make a final decision to resolve

conflicting medical evaluations when either party does not accept the decision of a medical specialist. If two MEs disagree about the medical certification of a driver, the requirements set forth in 49 CFR 391.47 mandate that the applicant (driver or motor carrier) submit a copy of a report including results of all medical testing and the opinion of an impartial medical specialist in the field in which the medical conflict arose. The applicant may, if they choose to do so, submit the information above using fax and/or email. FMCSA uses the information collected from the applicant, including medical information, to determine if the driver should or should not be qualified. Without this provision and its incumbent driver medical information collection requirements, an unqualified person may be permitted to drive and qualified persons may be prevented from driving.

Medical Exemptions and Skills Performance Evaluation (SPE) Certificates

FMCSA may, on a case by case basis, grant a medical exemption from a physical qualification standard set forth in 49 CFR 391.41, if the Agency determines the exemption is in the interest of the public and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation. Individuals with limb impairments are permitted to operate a CMV, but only when they are otherwise qualified and are granted a Skills Performance Evaluation (SPE) certificate by FMCSA. Title 49 CFR 381.300 establishes the procedures that persons must follow to request exemptions from FMCSA safety regulations. Without an exemption, individuals who do not meet the requirements in 49 CFR 391.41 would not be qualified to operate a CMV in interstate commerce. The application process for all exemptions currently provides for electronic collection of the application information by FMCSA for those applicants that choose to do so. They are able to fax or scan and email documents to FMCSA. In addition, the Diabetes and Vision Exemption Programs and the SPE Certificate Program maintain a database of application information. FMCSA must collect medical information about the driver's medical condition in order to determine eligibility to receive an exemption or an SPE certificate. The Agency requires all exemptions be renewed every 2 years to ensure that the granting of the exemption does not diminish safety under 49 CFR 381.310. Exemption holders are required to submit annual medical information for review to ensure the driver continues to meet the physical qualification requirements. In the interest of highway safety, the medical examination, exemption, and SPE renewal should not be performed less frequently.

The National Registry of Certified Medical Examiners (National Registry)

The National Registry requires MEs that conduct medical examinations for interstate CMV drivers to complete training concerning FMCSA physical qualification standards, pass a certification test, and maintain competence through periodic training and testing, all of which require information collection. ME candidates submit demographic and eligibility data in order to register on the National Registry Web site to begin the certification process. This data is used to provide the public with contact information for those medical professionals who are certified by FMCSA to conduct interstate CMV driver medical examinations. Less frequent collection of ME candidate test results and identity and eligibility information means that there are less healthcare professionals attempting to become certified which would result in fewer certified MEs being available to the CMV driver and motor carrier population. This could place a huge burden on drivers and motor carriers to find certified MEs to perform their medical examinations. Therefore, less frequent collection of ME candidate test results and identity and eligibility information is not an option. MEs must provide specific driver medical examination information for every driver they examine on medical forms required by FMCSA and into the National Registry. Drivers must provide identification and health history information on medical forms required by FMCSA. The purpose for providing this information is to enable the ME to determine if the driver is medically qualified under 49 CFR 391.41 and to ensure that there are no disqualifying medical conditions that could adversely affect their safe driving ability or cause incapacitation constituting a risk to the public. If this information was not required, the threat to public safety would be immense and unacceptable.

The National Registry also requires motor carriers to verify the national registry number of the MEs who certify their drivers and place a note in the DQ file. Less frequent verification of the national registry numbers by motor carriers would mean drivers may not have been examined by a certified ME listed on the National Registry and they may no longer meet the physical qualifications standards of the FMCSRs even though they were previously certified as physically qualified.

Title: Medical Qualification Requirements.

OMB Control Number: 2126–0006.

Type of Request: Revision of a currently approved information collection.

Respondents: Commercial motor vehicle drivers, motor carriers, medical examiners, testing centers.

Estimated Number of Respondents: 4,623,000 CMV drivers, 540,000 motor carriers, 40,000 medical examiners, 1,000 test centers).

Expiration Date: July 31, 2015.

Estimated Total Annual Burden: 2,633,702 hours. This ICR is comprised of the following five information collection activities:

Physical Qualification Standards

2,080,350 annual burden hours

Resolution of Medical Conflict

11 annual burden hours

Medical Exemptions

4,580 annual burden hours

SPE Certificate Program

2,661 annual burden hours

National Registry of Certified Medical Examiners

546,100 annual burden hours

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 performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on December 8, 2014.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2014–29288 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0122]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 19, 2014, the City of Ironton (City), Ohio, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings. FRA assigned the petition Docket Number FRA–2014–0122.

The City is seeking a waiver from the requirements of 49 CFR 222.21(a) in order to eliminate the routine sounding of locomotive horns by trains approaching the McPherson Street highway-rail grade crossing. The crossing is closed at all times except when flood gates must be installed and the crossing becomes the only access route for the citizens in the area. The City places a policeman at the crossing on a 24-hour basis when the crossing is open to highway traffic. The City would expect that locomotive horns would be sounded as trains approach the crossing during the time that the crossing is open to highway traffic.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 30, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be viewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on December 10, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014–29398 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0052]

Notice of Public Hearing and Extension of Public Comment Period

Southeastern Pennsylvania Transportation Authority (SEPTA) has petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from the Federal hours of service requirement for train employees engaged in commuter or intercity rail passenger transportation as specified in 49 CFR 228.405(b)(4). SEPTA's current waiver allows the travel time to an ''other than regular reporting point,'' to count as time off duty, if such travel time is less than or equal to the normal travel time to the employee's ''regular reporting point.'' This waiver is identified as FRA Docket Number FRA–2012–0052. A copy of SEPTA's full petition is available for review online at *http://www.regulations.gov* under the docket number identified above.

FRA has issued a public notice seeking comments from interested parties. See 79 FR 54343, Sept. 11, 2014. After examining the carrier's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal. Accordingly, FRA invites all interested persons to participate in a public hearing on February 10, 2015. The hearing will be conducted in the first floor conference room, Baldwin Tower, 1510 Chester Pike, Crum Lynne, Pennsylvania, 19022. The hearing will begin at 10:00 a.m. Interested parties are invited to present oral statements at the hearing. For information on facilities or services for persons with disabilities or to request special assistance at the hearing, contact Ms. Carrieanne Holzworth at 610–521–8214.

The hearing will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The hearing will be a nonadversarial proceeding in which all interested parties will be given the opportunity to express their views regarding the petition without cross examination. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

In addition, FRA is hereby extending the comment period for this petition to March 12, 2015, to allow for additional comments to be submitted following the public hearing.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at: *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on December 10, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014–29397 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number USCG–2013–0363]

Deepwater Port License Application: Liberty Natural Gas LLC, Port Ambrose Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of availability; notice of public meeting; request for comments.

SUMMARY: The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce the availability of the Draft Environmental Impact Statement (DEIS) for the Liberty Natural Gas LLC, Port Ambrose Liquefied Natural Gas Deepwater Port License Application for the importation of natural gas.

Please note that this application is only for the construction and operation of a deepwater port that could only be used as a natural gas import facility. The considerable technical, operational, and environmental differences between import and export operations for natural gas deepwater ports is such that any licensed deepwater port facility that proposed to convert from import to export operations would be required to submit a new license application (including application fee) and conform to all licensing requirements and regulations in effect at such time of application. In addition to payment of the application fee, licensing requirements include, but are not limited to, completion of an extensive environmental impact assessment and financial resources review which would include public participation.

The Port Ambrose application describes an offshore natural gas deepwater port facility that would be located 16.1 nautical miles southeast of Jones Beach, New York, 24.9 nautical miles east of Long Branch, New Jersey, and 27.1 nautical miles from the entrance to New York Harbor in a water depth of approximately 103 feet. The DEIS complies with the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*) (DWPA) and the National Environmental Policy Act (NEPA) (Section 102[2][c]), as implemented by Council on Environmental Quality regulations (40 CFR 1500 to 1508).

Publication of this notice begins a 60 day comment period, requests public participation in the process, provides information on how to participate in the process, and announces informational open houses and public meetings in New York and New Jersey. Pursuant to the criteria provided in the DWPA, both New Jersey and New York are the Adjacent Coastal States for this application.

DATES: There will be two public meetings held in connection with the application DEIS. The first public meeting will be held in Jamaica, New York on Wednesday, January 7, 2015 from 6 p.m. to 8 p.m. The second public meeting will be held in Eatontown, New Jersey on Thursday, January 8, 2015 from 6 p.m. to 8 p.m. Both public meetings will be preceded by an open house from 4:30 p.m. to 5:30 p.m. The public meeting may end later than the stated time, depending on the number of persons wishing to speak. Additionally, materials submitted in response to the request for comments must reach the Docket Management Facility as detailed below, by close of business Tuesday, February 10, 2015 or 60 days after this NOA is published in the **Federal Register** whichever is later.

ADDRESSES: The open house and public meeting in Jamaica, New York will be held at the Hilton New York JFK Airport, 144–02 135th Avenue, Jamaica, New York 11436; phone 718–659–0200 or *www3.hilton.com/en/hotels/new-york/hilton-new-york-jfk-airport-NYCJFHF/index.html.* Parking is available at the hotel. Attendees may submit their parking stubs at the meeting registration desk for validation. The open house and public meeting in Eatontown, New Jersey will be held at the Sheraton Eatontown Hotel, 6 Industrial Way East, Eatontown, NJ 07724, phone 732–542–6500 or *www.sheratoneatontown.com* with free parking on site.

The license application, comments, supporting information, and the DEIS are available for viewing at the Federal Docket Management System (FDMS) Web site: *http://www.regulations.gov* under docket number USCG–2013–0363. The Final Environmental Impact Statement, when published, will be announced and available at this site as well.

Docket submissions for USCG–2013–0363 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, U.S. Coast Guard, telephone: 202–372–1451, email: *Roddy.C.Bachman@uscg.mil,* or Ms. Yvette M. Fields, Maritime Administration, telephone: 202–366–0926, email: *Yvette.Fields@dot.gov.* For questions regarding the Docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

You are invited to learn about the proposed Port Ambrose Deepwater Port at either of the above informational open houses, and to comment on the proposed action and the environmental impact analysis contained in the DEIS at either of the above public meetings or directly to the docket.

Speakers may register upon arrival and will be recognized in the following order: Elected officials, public agencies, individuals or groups in the order in which they registered. In order to accommodate all speakers, speaker time may be limited, meeting hours may be

extended, or both. Speakers' transcribed remarks will be included in the public docket. Written material may also be submitted for inclusion in the public docket. Written material must include the author's name and address. We ask attendees to respect the meeting procedures in order to ensure a constructive information-gathering session. Please do not bring signs or banners inside the meeting venue. The presiding officer will use his/her discretion to conduct the hearing in an orderly manner.

Public meeting locations are wheelchair-accessible. However, attendees who require special assistance such as sign language interpretation or other reasonable accommodation, please notify the USCG (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days in advance. Include contact information as well as information about specific needs.

Request for Comments

We request public comments or other relevant information on the DEIS for the proposed deepwater port. These comments will assist us in the preparation of the Final Environmental Impact Statement (FEIS). The public meeting is not the only opportunity you have to comment. In addition to, or in place of, attending a meeting, you may submit comments to the Docket Management Facility during the public comment period (see **DATES**). We will consider all reasonable comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2013–0363.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to the Federal Docket Management Facility, *http://www.regulations.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the FDMS Web site (*http://www.regulations.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS Web site, and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see PRIVACY ACT. You may view docket submissions at the Department of Transportation Docket Management Facility or electronically on the FDMS Web site (see **ADDRESSES**).

Background

Information about deepwater ports, the Deepwater Port Act, other applicable statutes, regulations governing deepwater port licensing, including the application review process, and the receipt of the current application for the proposed Port Ambrose liquefied natural gas deepwater port was published in the **Federal Register** on June 14, 2013, 78 FR 36014. The ''Summary of the Application'' from that publication is reprinted below for your convenience.

The Notice of Intent to Prepare an EIS for the proposed action was published in the **Federal Register** at 78 FR 37878, June 24, 2013. The DEIS, application materials and associated comments and supporting information are available on the docket.

Scoping meetings were conducted in Long Beach, New York and Edison, New Jersey on July 9 and 10, 2013. Transcripts were posted on the docket (document numbers 0976 and 0977) on August 28, 2013. An extended 60 day scoping comment period ended August 22, 2013.

The statutory timeline, as required by the DWPA, requires final public hearings be conducted no later than 240 days after notice of the application. This timeline was suspended by MARAD and USCG on October 21, 2013, day 129 of the 240 day timeline. This suspension was necessary to acquire and analyze additional information needed to develop an Environmental Impact Statement (EIS) that will satisfy public and agency requirements and to meet other responsibilities, including the independent risk assessment, within the statutory timeframe required by the DWPA. Effective this day, with the publishing of this notice, the suspension of the statutory timeline is removed. The period of suspension has not been counted in determining the date prescribed by the time limit set forth in the DWPA. Upon completion of the FEIS, and following completion of the final public hearings, the Governors of the adjacent coastal states of New York and New Jersey will have 45 days to approve the application; approve the application with conditions; or deny the proposed deepwater port. MARAD then has 90 days from the close of the hearings to issue a Record of Decision.

Though the scoping comment period ended on August 22, 2013, additional information has been added to the docket as it was identified, researched and analyzed.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in the ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the ''no-action'' alternative. These alternatives are more fully discussed in the DEIS. While USCG, in coordination with MARAD, is the lead Federal agency for the preparation of the EIS, MARAD is the Federal licensing agency. You can address any questions about the proposed action or the DEIS to USCG or MARAD project managers identified in **FOR FURTHER INFORMATION CONTACT.**

Summary of the Application

Liberty Natural Gas, LLC is proposing to construct, own, and operate a liquefied natural gas (LNG) deepwater port import facility, known as Port Ambrose, located in the New York Bight. The Port Ambrose facility will be located at a different proposed location and include a different design than the previous deepwater port license application submitted by Liberty Natural Gas, LLC in 2010. Port Ambrose would consist of two Submerged Turret Loading Buoys (STL Buoys) in Federal waters 16.1 nautical miles southeast of Jones Beach, New York, 24.9 nautical miles east of Long Branch, New Jersey, and 27.1 nautical miles from the entrance to New York Harbor, in a water depth of approximately 103 feet.

LNG would be delivered from purpose-built LNG regasification vessels (LNGRVs), vaporized on site and delivered through the STL Buoys, flexible riser/umbilical, subsea manifold and lateral pipelines to a buried 18.8 nautical mile subsea mainline connecting to the existing Transco Lower New York Bay Lateral in New York State waters 2.2 nautical miles south of Long Beach, New York and 13.1 nautical miles east of Sandy Hook, New Jersey. The buoys would be lowered to rest on a landing pad when not in use and would also include a suction anchor mooring array.

STL Buoy 1 is located at Latitude: 40°19′24.61″ N and Longitude: 73°25′45.33″ W. STL Buoy 2 is located at Latitude: 40°20′09.26″ N and

Longitude 73°23′51.92″ W. The Port components would fall in the following U.S. Outer Continental Shelf (OCS) lease blocks:

Buoy 1 (6708, 6709, 6758); Buoy 2 (6709); Lateral 1 (6708); Lateral 2 (6708, 6709); ''Y'' Assembly (6708); Mainline Pipeline (6708, 6658, 6657, 6607, 6606, 6556, 6555, 6554, 6504 and 6503).

The 145,000 cubic meter LNGRVs would have onboard closed-loop vaporization and metering and odorant capability. Each vessel would have three vaporization units capable of maximum send-out of 750 million standard cubic feet per day (MMscfd) (maximum pipeline system flow rate is 660 MMscfd with two buoys) with annual average expected to be 400 MMscfd. The LNGRVs have been designed to utilize a ballast water cooling system that will entirely re-circulate onboard the vessel during Port operations, eliminating vessel discharges associated with regasification while at the Port. Deliveries through Port Ambrose would be focused during peak demand winter and summer months, and it is anticipated that approximately 45 deliveries will occur each year.

As proposed, the LNGRVs would access the port inbound from the Hudson Canyon to Ambrose Traffic Lane and depart via the Ambrose to Nantucket Traffic Lane. MARAD and USCG are aware that Port Ambrose falls within the proposed area of interest for the Long Island—New York City Offshore Wind Collaborative wind energy project. This project will be acknowledged and considered in the cumulative impacts analysis section of the DEIS based on currently available information. If approved, the majority of the port and pipeline construction and installation would occur in 2017, with commissioning estimated to be in December 2017.

In addition, pipelines and structures such as the STL buoy moorings may require permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act which are administered by the U.S. Army Corps of Engineers (USACE). Port Ambrose will also require permits from the Environmental Protection Agency (EPA) pursuant to the provisions of the Clean Air Act, as amended, and the Clean Water Act, as amended.

The new pipeline is included in the NEPA review as part of the deepwater port application process. The EPA and the USACE among others, are cooperating agencies and will assist in the NEPA process as described in 40 CFR 1501.6; may participate in the public meetings; and will incorporate the EIS into their permitting processes. Comments sent to the EPA or USACE will also be incorporated into the DOT docket and EIS to ensure consistency with the NEPA Process.

There have been some proposed project changes since the original application was submitted, which are set forth in materials on the docket and in the DEIS. (1) The original Application proposed a plowed mainline pipeline burial depth of 3 feet. Now the pipeline is proposed to be plow-buried to 4 feet with the portion that is within the Ambrose Anchorage Area buried 7 feet using jetting. (2) The originally proposed impact driven mooring pile anchors are now proposed to be suction anchors. (3) The original port construction and commissioning was proposed to occur in 2015. That has been amended to occur in 2017 (assuming a license is issued).

Should a license be issued, the deepwater port would be designed, fabricated, constructed, commissioned, maintained, inspected, and operated in accordance with applicable codes and standards and with USCG oversight as regulated under Title 33, Code of Federal Regulations (CFR), subchapter NN-Deepwater Ports, parts 148, 149, and 150. This also includes applicable waterways management and regulated navigation areas, maritime safety and security requirements, risk assessment, and compliance with domestic and international laws and regulations for vessels that may call on the port.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov.*

(Authority: 49 CFR 1.93)

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Dated: December 10, 2014.

By Order of the Maritime Administrator.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2014–29369 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA—2014–0129]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This notice provides NHTSA's finding with respect to a request from the Texas Department of Transpiration, Traffic Safety Section (TxDOT) to waive the requirements of Buy America. NHTSA finds that a cost waiver of the Buy America requirements is appropriate for TxDOT to purchase Light-Up Magnifier Loupes using Federal highway safety grant funds because the cost of domestically produced products is twenty-five percent more than the cost of the foreign-made products.

DATES: The effective date of this waiver is December 26, 2014. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: December 31, 2014.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the Federal regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may also call the Docket at 202–366–9324.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief

Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is appropriate for TxDOT to purchase of light-up magnifier loupes using grant funds authorized under 23 U.S.C. 405(d) (section 405). Section 405(d) funds are available for use by State highway safety programs to support effective programs to reduce driving under the influence of alcohol, drugs, or the combination of alcohol and drugs, including enforcement efforts. 23 U.S.C. 405(d).

Buy America provides that NHTSA ''shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.'' 23 U.S.C. 313. However, NHTSA may waive those requirements if ''(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.'' 23 U.S.C. 313(b). In this instance, NHTSA has determined that a cost waiver is appropriate for the items that TxDOT seeks to purchase using Federal grant funds.

TxDOT seeks a waiver to purchase 500 light-up magnifier loupes, with 15X power lens with ultra violet and LED lights (Item SKU:220-Loupe 4) from Lightgod.com. These items are not made domestically and retail between $6.25–$7.00 each. The loupes are provided to law enforcement officers that complete training in the Focus on Reducing Impaired Driving Among Youth Program (FRIDAY) and Alcohol and Drug Abuse Prevention Training Program (ADAPT). According to TxDOT, both programs include a unit on the detection of altered and counterfeit identifications used by juveniles who commit alcohol-related crimes. The loupes are small and transportable and aid officers to detect counterfeit driver's licenses by highlighting and magnifying the micro-printing and holograms that are present on a legal state driver's license.

According to TxDOT, comparable domestic made loupes cost $31 per unit in small quantities or $20 per unit in bulk quantities, with both prices 25 percent more than the foreign made loupes than those made domestically.[1] TxDOT evaluated the place of manufacture for other loupes, but TxDOT was unable to find any domestic made products that met its requirements. NHTSA conducted its own assessment [2] and located one domestic manufacturer of loupes or pocket magnifiers. ElectroOptics Inc. offers lighted pocket magnifiers with a magnification range from 4X to 10X and unlighted jeweler loupes. However, these products do not appear as robust or have the same specifications required for use by TxDOT. Since it appears that loupes that meet the requirements identified by TxDOT for use by its police officers would cost more than 25 percent more than a domestic manufacturer, the Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(3), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to TxDOT in order to purchase 500 light-up magnifier loupes, with 15X power lens with ultra violet and LED lights (Item SKU:220-Loupe 4) from Lightgod.com. This waiver applies to Texas and all other States seeking to use section 405(d) funds to purchase light-up magnifier loupes. This waiver will continue through fiscal year 2015 and will allow the purchase of these items as required for TxDOT. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for 500 light-up magnifier loupes identified above from Lightgod.com. Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider these findings, if through comment, it learns of and can confirm the existence of a comparable domestically made product to the items granted a waiver.

These findings should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110–161.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2014–29404 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–59–P

[1] TxDOT did not identify the manufacturers of the domestic made loupes and NHTSA was unable to locate comparable domestic manufacturers offering loupes with the specifications identified by TxDOT.

[2] NHTSA conducted internet searches and reviewed several Web sites that catalog domestic made products: *www.usaonly.us; www.americansworking.com; www.madeinamericaforever.com;* and *www.madeinusa.org.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0128]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This notice provides NHTSA's finding that a waiver of the Buy America requirements is appropriate for the purchase of Nania Baby Ride infant car seats by the Maryland Highway Safety Office (MHSO), using Federal grant funds. NHTSA finds that a non-availability waiver of the Buy America requirements is appropriate for the purchase of these infant car seats using Federal highway safety grant funds because there are no suitable products produced in the United States.

DATES: The effective date of this waiver is December 26, 2014. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: December 26, 2014.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the Federal regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may also call the Docket at 202–366–9324.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is appropriate for the Maryland Highway Safety Office (MHSO) to purchase Nania Baby Ride infant car seats, Model No. 378099, using grant funds authorized under 23 U.S.C. 402 (section 402). Section 402 funds are available for use by State Highway Safety Programs that, among other things, encourage the proper use of occupant protection devices, including child restraint systems. 23 U.S.C. 402(a).

Buy America provides that NHTSA ''shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.'' 23 U.S.C. 313. However, NHTSA may waive those requirements if ''(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.'' 23 U.S.C. 313(b). In this instance, NHTSA has determined that a waiver is appropriate for the purchase of Nania Baby Ride child seats because there is no comparable product produced domestically that meets the need identified by MHSO—specifically, the transport of low birth weight infants under four pounds.

MHSO seeks a waiver for one of its grantees, the Maryland Department of Health and Mental Hygiene, who operates Maryland's Kids in Safety Seats (KISS) Car Seat Loaner Program, to purchase the Nania Baby Ride car seats. KISS operates several Car Seat Assistance Programs throughout Maryland that work with hospitals to discharge healthy infants less than four pounds. MHSO states that it is a best practice to send healthy, low birth weight infants home in car seats, instead of car beds. This is because car seats are easier to use and install in vehicles, require only one seating position in a vehicle (as opposed to two, depending on the vehicle), and the harness dimensions of car seats are not as limiting as car beds.

The Nania Baby ride model was selected by these programs because it has a birth-to-22-pound weight allowance, which allows for the transport of under-four-pound infants. The model is rear-facing, equipped with low harness slots, a 5-point front harness adjuster that allows an easy and accurate harness fit for infants less than four pounds. The institutional model, sold through Child Source, retails for approximately $39.90 per seat. It is considered a manufactured product under Buy America and is produced in France.

NHTSA conducted an assessment of available child restraints and is not aware of a comparable child seat produced in the United States. The Nania Baby Ride is unique in the child seat market because it does not specify a minimum child weight. Rather, it is designed to safely seat children from birth-weight to 22 pounds. NHTSA is aware of only one other car seat, the Combi Navette, which is designed to seat infants under four pounds; however, it appears the Navette is currently manufactured in Japan. Furthermore, all domestically-produced car seats on the market specify a minimum infant weight of at least four pounds. Since a child seat that meets the requirements identified by MHSO is unavailable from a domestic manufacturer, the Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to MHSO in order to purchase Nania Baby Ride infant car seats. This waiver applies to Maryland and all other States seeking to use section 402 funds to purchase Nania Baby Ride infant car seats for the purposes mentioned herein. These waivers will continue through fiscal year 2015 and will allow the purchase of these items as required by MHSO. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate. Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if through the comments it learns of and can confirm the existence of a comparable domestically made product to the Nania Baby Ride infant car seat.

This finding should not be construed as an endorsement or approval of the products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110–161.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2014–29403 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA—2014–0130]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This Notice provides NHTSA's finding with respect to a request from the Hawaii Department of Transportation's Motor Vehicle Safety Office, Highway Safety Section (MVSO) to waive the requirements of Buy America. NHTSA finds that a cost waiver is appropriate for MVSO to purchase eight foreign-made training motorcycles using Federal grant funds because the cost of domestically produced products is twenty-five percent more than the cost of the foreign-made products.

DATES: The effective date of this waiver is December 26, 2014. Written

comments regarding this notice may be submitted to NHTSA and must be received on or before: December 31, 2014.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the Federal regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may also call the Docket at 202–366–9324.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is appropriate for the Hawaii's MVSO to purchase eight training motorcycles using grant funds authorized under 23 U.S.C. 402 (section 402) and 23 U.S.C. 405(f) (section 405) for training motorcycles. Section 402 funds are available for use by State Highway Safety Programs to reduce traffic accidents and deaths, injuries and property damage. 23 U.S.C. 402(a). Section 405(f) funds are available for use by State Highway Safety Programs to implement effective programs to reduce the number of single and multi-vehicle crashes involving motorcyclists that, among other things, includes supporting training of motorcyclists. 23 U.S.C. 405(f).

Buy America provides that NHTSA ''shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.'' 23 U.S.C. 313. However, NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. 23 U.S.C. 313(b). In this instance, NHTSA has determined a cost waiver is appropriate for the eight motorcycles because domestically produced motorcycles would increase the cost by more than 25 percent.

MVSO seeks a waiver to purchase two 2015 Suzuki TU250X motorcycles at $4,399 per unit and six 2013 Suzuki DR200SE motorcycles at $4,299 per unit. The total purchase price for all eight motorcycles is $36,221. Hawaii's motorcyclist training program is designed to provide students the ability to learn and practice fundamentals of safe riding behavior, skills and motorcycle handling. Hawaii asserts that if students were required to provide their own motorcycles, many people would be discouraged from taking the safety courses and it would encourage some individuals to obtain a motorcycle and unsafely operate it on public roads before they are properly trained and licensed to do so. MVSO states that having a fleet of training motorcycles available for use during training ensures that the road skills portion of the curricula can be taught effectively and is more accessible to the general public. MVSO desires to use these motorcycles for its motorcyclist training program because they are designed specifically with smaller engine displacement (250 CC), which is consistent with motorcyclist training programs. Hawaii, however, is unable to identify any training motorcycles that meet the Buy America requirements. MVSO researched [1] motorcycle models made by the two American motorcycle manufacturers, Harley-Davidson, Inc. and Victory Motorcycles. Harley Davidson produces a 500 CC motorcycle called the Street 500, with a MSRP of $6799. Victory Motorcycles (including Indian Motorcycles) produces much heavier and larger engine displacement than 500 CC, with the lowest MSRP of $12,499 for the Victory Vegas 8-ball motorcycle. MVSO was unable to find a motorcycle that meets the requirements for training motorcycles that would meet the Buy America requirements. NHTSA is unaware of any other domestic motorcycle manufacturers other than Harley-Davidson and Victory. Since the Harley Davidson Street has a starting price of $6,799, it is more than 25 percent higher than the cost of a 2015 Suzuki TU250X and 2013 Suzuki DR200SE motorcycles. Accordingly, a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(3), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to MVSO in order to purchase two 2015 Suzuki TU250X and six 2013 Suzuki DR200SE motorcycles. This waiver applies to Hawaii and all other States seeking to use section 402 and 405 funds to purchase these motorcycles for the purposes mentioned herein. This waiver will continue through fiscal year 2015 and will allow the purchase of these items as required for Hawaii's MVSO and its training programs. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy America requirements is appropriate for certain Suzuki motorcycles. Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider these findings, if through comment, it learns of and can confirm the existence of a comparable domestically made product to the items granted a waiver.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110–161.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2014–29402 Filed 12–15–14; 8:45 am]

BILLING CODE 4910–59–P

[1] MVSO states that its Motorcycle Safety Program Coordinator conducted research via phone calls, emails and Internet searches to try to identify domestically produced motorcycles.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Agency Information Collection (Authorization and Certification of Entrance or Reentrance Into Rehabilitation and Certification of Status): 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 January 15, 2015.

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. 2900–0014'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

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. 2900–0014.''

SUPPLEMENTARY INFORMATION:

Title: Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Revision of a currently approved collection.

Abstract: VA case managers use VA Form 28–1905 to identify program participants and provide specific guidelines on the planned program to facilities providing education, training, or other rehabilitation services. Facility officials certify that the claimant has enrolled in the planned program and submit the form to VA. VA uses the data collected to ensure that claimants do not receive benefits for periods for which they did not participate in any rehabilitation, special restorative or specialized vocational training programs.

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 in 79 FR 59559, October 2, 2014.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 90,000.

Dated: December 11, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29443 Filed 12–15–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—NEW]

Proposed Information Collection (Veterans Transportation Service Data Collection) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the Veterans Transportation Service Data Collection program to ensure Veterans, Servicemembers, beneficiaries, caregivers and other persons receive timely and reliable transportation for the purpose of examination, treatment and care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 17, 2015.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Audrey Revere, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *audrey.revere@va.gov.* Please refer to ''OMB Control No. 2900—NEW (Veterans Transportation Service Data Collection)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5604 or FAX (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Veterans Transportation Service (VTS) Data Collection.

OMB Control Number: 2900–NEW (Veterans Transportation Service Data Collection).

Type of Review: New collection.

Abstract: The information collection is to ensure Veterans, Servicemembers, beneficiaries, caregivers and other persons receive timely and reliable transportation for the purpose of examination, treatment and care. VHA must identify the beneficiary, the dates and location required to plan a trip for scheduled or unscheduled appointments, and ensure reimbursement of beneficiary travel mileage is not paid for transportation provided through VTS. Information is

also collected to facilitate overall evaluation of the effectiveness of the allocation of resources for VTS.

Affected Public: Individuals or households.

Estimated Annual Burden: 334,895 burden hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: 3.32 (On Occasion).

Estimated Number of Respondents: 100,872.

Dated: December 11, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–29391 Filed 12–15–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members: Correction

AGENCY: Corporate Senior Executive Management Office, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a notice, ''Performance Review Board Members,'' in the **Federal Register** on December 12, 2014, that contained an error. Specifically, it incorrectly stated that Pat Vandenberg would serve on the VA Performance Review Board. This notice corrects that error and announces the appointment of Elias Hernandez to the Board.

DATES: *Effective date:* December 12, 2014.

ADDRESSES: Corporate Senior Executive Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Contact Tia N. Butler, Executive Director, Corporate Senior Executive Management Office (052), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7865. (This is not a toll free number.)

Correction

In the **Federal Register** of December 12, 2014, in FR Doc.14x–29262, on page 73952, correct the **SUPPLEMENTARY INFORMATION** by adding the name ''Elias Hernandez'' and removing the name ''Patricia C. Vandenberg''.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on December 12, 2014, for publication.

Dated: December 12, 2014.

William F. Russo,

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

[FR Doc. 2014–29545 Filed 12–15–14; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze and Interstate Transport of Pollution Affecting Visibility; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0754; FRL–9920–11–Region–6]

Approval and Promulgation of Implementation Plans; Texas and Oklahoma; Regional Haze State Implementation Plans; Interstate Transport State Implementation Plan To Address Pollution Affecting Visibility and Regional Haze; Federal Implementation Plan for Regional Haze and Interstate Transport of Pollution Affecting Visibility

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove a revision to the Texas State Implementation Plan (SIP) received from the State of Texas on March 31, 2009, that addresses regional haze for the first planning period from 2008 through 2018. This SIP revision was submitted to address the requirements of the Clean Air Act (CAA) and EPA's rules that require states to prevent any future, and remedy any existing, manmade impairment of visibility to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. The EPA is proposing to partially approve this SIP revision as meeting certain requirements of the regional haze program, including the majority of the requirement to procure and install the Best Available Retrofit Technology (BART) at certain categories of existing major stationary sources built between 1962 and 1977. The EPA is also proposing to partially disapprove the SIP revision for not adequately addressing other requirements of the regional haze program related to reasonable progress, the long-term strategy, and the calculation of natural visibility conditions. The EPA is also proposing to disapprove SIP revisions submitted by Texas for the purpose of addressing the requirements of the CAA regarding interference with other states' programs for visibility protection for the 1997 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), the 1997 ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 2008 ozone NAAQS, the 2010 Nitrogen Dioxide (NO_2) NAAQS, and the 2010 Sulfur Dioxide (SO_2) NAAQS.

Finally, the EPA is proposing to partially disapprove a revision to the Oklahoma SIP submitted in February 19, 2010, that addresses regional haze for the first planning period. Specifically, EPA is proposing to disapprove Oklahoma's Reasonable Progress Goals (RPGs) for the Wichita Mountains Class I area.

The EPA is proposing a Federal Implementation Plan (FIP) for each Texas and Oklahoma to remedy certain deficiencies in the SIP. The proposed FIP would implement SO_2 emission limits on fifteen Texas sources as part of a long-term strategy for making reasonable progress at three Class I areas in Texas and Oklahoma, sets new RPGs for the Big Bend, the Guadalupe Mountains, and Wichita Mountains Class I areas, and substitutes Texas' reliance on the Clean Air Interstate Rule (CAIR) to satisfy BART requirements at its EGUs with reliance on CAIR's successor, the Cross-State Air Pollution Rule (CSAPR). Our proposed FIP for Oklahoma does not establish any additional requirements on sources within Oklahoma. The EPA is taking this action under the CAA.

Comments must be received on or before February 17, 2015.

Public Hearings. EPA is holding open houses—for the purpose of providing additional information and informal discussion for our proposal, and public hearings—to accept oral comments into the record, as follows:

Date: Tuesday, January 13, 2015.
Time: Open House: 1:30 p.m.–3:30 p.m.
Public hearing: 4:00 p.m.–8:00 p.m. (including short break).
Location: Eastview Campus, Austin Community College, Building 8500, Room 8500, 3401 Webberville Road, Austin, Texas 78702.

Date: Thursday, January 15, 2015.
Time: Open House: 2:30 p.m.–4:30 p.m.
Public hearing: 5:00 p.m.–7:00 p.m.
Location: Metro Technology Centers, Springlake Campus, Business Conference Center Meeting, Room H, 1900 Springlake Drive, Oklahoma City, Oklahoma 73111.

The public hearings will provide interested parties the opportunity to present information and opinions to EPA concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearings. When we publish our final action, we will provide written responses to all significant oral and written comments received on our proposal. To provide opportunities for questions and discussion, we will hold an open house prior to each public hearing. During the open house, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during an open house must still be provided orally during one of the public hearings, or formally in writing within 30 days after completion of the hearings, in order to be considered in the record.

At the public hearings, the hearing officer may limit the time available for each commenter to address the proposal to three minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearings. Verbatim English language transcripts of the hearing and written statements will be included in the rulemaking docket.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2014–0754, by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Email: *R6_TXOKRegionalHaze@epa.gov*.
- Mail: Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.
- Fax: Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2014–0754. Our 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an

''anonymous access'' system, which means we 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 us 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, we recommend 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 we cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at our Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The Texas regional haze SIP is available online at: *https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html*. It is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

The Oklahoma regional haze SIP is available online at: *http://www.deq.state.ok.us/AQDnew/rulesandplanning/Regional_Haze/SIP/index.htm*. It is also available for public inspection during official business hours, by appointment, at the Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson Avenue, Oklahoma City, OK 73102.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7186; fax number 214–665–7263; email address *Kordzi.joe@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors. Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ also can cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [1] in many Class I Federal areas [2] (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution.[3] In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions.[4]

In Section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal 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.'' [5] The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the CAA to include a reduction in visual range and atmospheric discoloration.[6] Section 169A(g)(6). In 1980, we promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI).[7] These regulations represented the first phase in addressing visibility impairment. We deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment improved.

Congress added Section 169B to the CAA in 1990 to address regional haze issues, and we promulgated regulations addressing regional haze in 1999.[8] The Regional Haze Rule revised the existing visibility regulations to integrate into the regulations provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. For a detailed description of those requirements, please refer to Section IV of our previous action on the Oklahoma regional haze SIP.[9] The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. States were required to submit the first SIP addressing regional haze visibility impairment for the first ten year planning period no later than December 17, 2007.[10] States are required to submit subsequent SIPs every ten years leading up to 2064, when the national goal of a return to natural visibility at all Class I areas is scheduled to be realized.

We have acted on all of the states' regional haze SIPs for the first planning period except for the Texas regional haze SIP and certain portions of the Oklahoma regional haze SIP. Previously, we proposed a partial approval and partial disapproval of, and a FIP for portions of the Oklahoma SIP on March 22, 2011. We finalized that action on December 28, 2011.[11] However, for the reasons we explain below, we did not complete our review of Oklahoma's regional haze SIP. Due to the special interrelationship of the visibility impairing transport of pollution between Texas and Oklahoma, we are proposing action on the remaining portions of the Oklahoma regional haze SIP and all portions of the Texas regional haze SIP simultaneously.

B. Interstate Transport of Air Pollutants and Visibility Protection

Section 110(a)(2)(D)(i)(II) of the CAA requires that states have a SIP, or submit a SIP revision, containing provisions prohibiting emissions from within a state from interfering with measures required to be included in the implementation plan for any other state under the provisions of Part C of the CAA protecting visibility. Because of the impacts on visibility from the interstate transport of pollutants, we interpret this ''good neighbor'' provision in Section 110 of CAA as requiring states to include in their SIPs measures to prohibit emissions that would *interfere with the reasonable progress goals set to protect Class I areas in other states. This is* consistent with the requirements in the regional haze program which explicitly require each state to address its share of the emission reductions needed to meet the reasonable progress goals for surrounding Class I areas.[12]

SIPs addressing the good neighbor provisions of Section 110(a)(2)(D)(i)(II) of the CAA are due to us within three years after the promulgation of a new or revised NAAQS (or within such shorter period as we may prescribe).[13] In this action, we propose to take action on SIP

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas (or Class I areas for short) consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* CAA section 162(a) below. In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. CAA section 162(a). Although States and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). *See* CAA section 302(i).

We use the term, ''Class I Federal Area'' and ''Class I Area'' interchangeably throughout this document.

[3] 64 FR 35714, 35715 (July 1, 1999).

[4] *Id.*

[5] CAA section 169A(a)(1).

[6] *Id.*

[7] 45 FR 80084 (December 2, 1980).

[8] 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P.

[9] 76 FR 16168, 16172–75 (Mar. 22, 2011).

[10] 40 CFR 51.308(b).

[11] Proposal: 76 FR 16168 (March 22, 2011). Final: 76 FR 81728 (December 28, 2011).

[12] 64 FR 35714, 35735 (July 1, 1999).

[13] CAA Section 110(a)(1).

revisions addressing these good neighbor requirements that were submitted by Texas following promulgation of the following new or revised NAAQS: (1) 1997 8-hour ozone, (2) 1997 $PM_{2.5}$ (annual and 24 hour), (3) 2006 $PM_{2.5}$ (24-hour), (4) 2008 8-hour ozone, (5) 2010 NO_2 and (6) 2010 1-hour SO_2.

In 2005, we made a finding that a number of states, including Texas, did not submit SIPs to address the interstate transport of air pollution and visibility protection for the 1997 ozone and $PM_{2.5}$ NAAQS.[14] Pursuant to Section 110(c)(1) of the CAA, this finding started a 24 month time period for us to promulgate a FIP to address interstate transport of air pollution and visibility protection, unless a SIP was approved during that time period.

While Texas did not make a timely SIP submittal to address the interstate transport of air pollution and visibility protection for the 1997 ozone and $PM_{2.5}$ NAAQS, Texas later made SIP submittals for all new or revised NAAQS. Specifically, Texas made the following submittals for new or revised NAAQS that pertain to this action:

- April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual)
- May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual)
- November 23, 2009: 2006 24-hour $PM_{2.5}$
- December 7, 2012: 2010 NO_2
- December 13, 2012: 2008 8-hour Ozone
- May 6, 2013: 2010 1-hour SO_2 (Primary NAAQS)

We previously acted on portions of the April 4, 2008, and November 23, 2009, Texas SIP submittals that addressed other ''infrastructure'' elements specified in CAA Section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS.[15] Texas' submittals addressing transport for the ozone, $PM_{2.5}$, NO_2 and SO_2 NAAQS may be accessed through the *www.regulations.gov* Web site (Docket No. EPA–R06–OAR–2014–0754). Texas indicated in the submittals that its regional haze SIP fulfilled its obligation for addressing emissions that would interfere with measures required to be included in the SIP for any other state to protect visibility. Because of our 2005 finding that Texas did not make a timely SIP submission for the 1997 ozone and $PM_{2.5}$ NAAQS and the expiration of the 24-month FIP clock, we are obligated to either approve the SIP or, disapprove the SIP and promulgate a FIP to address interstate transport of air pollution and visibility protection for Texas emissions for the 1997 ozone and $PM_{2.5}$ NAAQS. We believe our proposal addresses this obligation.

C. Our Prior Limited Disapproval of Texas' Regional Haze SIP Concerning CAIR

In 2005, we promulgated CAIR, which required 28 states and the District of Columbia to reduce emissions of SO_2 and NO_X that significantly contribute to, or interfere with maintenance of, the 1997 NAAQS for ozone and $PM_{2.5}$.[16] Also in 2005, we determined that states could rely on CAIR to meet certain requirements of the Regional Haze Rule.[17] In particular, we amended our regulations to provide that states participating in the CAIR cap-and-trade programs under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or states that remain subject to a CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate and maintain BART for emissions of SO_2 and NO_X.[18] A number of states, including Texas, relied on CAIR in their regional haze SIPs as an alternative to BART for EGU emissions of SO_2 and NO_X and as an element of their long-term strategy.

Following our determination in 2005 that states could rely on CAIR in their regional haze SIPs, the D.C. Circuit Court of Appeals ruled on several petitions challenging CAIR and remanded CAIR to us.[19] We issued a new rule in 2011 to replace CAIR.[20] The Cross-State Air Pollution Rule (CSAPR), which replaced CAIR, also requires a number of states to improve air quality by reducing SO_2 and NO_X emissions that cross state lines and significantly contribute to ozone and/or fine particulate pollution in other states. We amended our regulations in 2012 to allow CSAPR to serve as an alternative to SO_2 and NO_X BART for EGUs in states in the CSAPR region.[21] In that same rulemaking, we also finalized a limited disapproval of the regional haze SIPs of 14 states, including Texas. Although at the time that we completed our limited disapproval of these SIPs, CAIR remained in place pursuant to an order of the D.C. Circuit, we explained that as CAIR had been remanded, it remained in place temporarily. We also finalized FIPs replacing reliance on CAIR with reliance on CSAPR as an alternative to BART for several states but not for Texas.[22] We more fully explained the basis for our limited disapproval in that rulemaking and are not taking comment on our limited disapproval of Texas' regional haze SIP in this action.

II. Why are we acting on the Texas and Oklahoma Regional Haze SIPs simultaneously?

As we explained in our 2011 proposed rulemaking on the Oklahoma regional haze SIP,[23] we did not take action on Oklahoma's RPGs for the Wichita Mountains at that time because we first had to evaluate and act upon the regional haze SIP submitted by Texas. To properly assess whether Oklahoma had satisfied the reasonable progress requirements of Section 51.308(d)(1), which include the requirement to set RPGs that take into account the visibility improvement that will result from reasonable controls in upwind states, we concluded that we had to review and evaluate Texas' regional haze SIP before proposing action on Oklahoma's RPGs.

In our Regional Haze Rule, we stated that ''successful implementation of the regional haze program will involve long-term regional coordination among States,'' and that ''States will need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction to air quality in another.'' [24] We also noted that RPGs and Long-Term Strategies (long-term strategies) were intricately linked. The Regional Haze Rule requires each state submitting a long-term strategy to (1) consult with other states to develop coordinated emission strategies; (2) demonstrate that the SIP includes all measures necessary for the state to obtain its share of the emission reductions needed to meet the RPGs for the Class I areas it affects; (3) document the technical basis the state used to determine its apportionment of emission reduction obligations for the Class I areas it affects; (4) consider all anthropogenic sources of emissions; and (5) consider a list of seven other enumerated factors.[25]

As detailed within this proposal and within our Technical Support Documents (TSDs), the Texas and Oklahoma regional haze SIPs reveal that sources in Texas not only significantly impact visibility in the Wichita Mountains National Wildlife Refuge in

[14] 70 FR 21147 (April 25, 2005).

[15] 76 FR 81371 (December 28, 2011).

[16] 70 FR 25162 (May 12, 2005).

[17] 70 FR 39104 (July 6, 2005).

[18] 40 CFR 51.308(e)(4) (Aug. 6, 2012).

[19] *North Carolina* v. *EPA,* 531 F3d 896; modified by 550 F.3d 1176 (D.C. Cir. 2008).

[20] 76 FR 48208 (Aug. 8, 2011).

[21] 77 FR 33642 (June 7, 2012).

[22] 77 FR 33642, 33643. (June 7, 2012)

[23] 76 FR 16168 (March 22, 2011).

[24] 64 FR 35714, 35728 (July 1, 1999).

[25] 64 FR 35735 (July 1, 1999).

Oklahoma, but that the impacts from Texas point sources are shown to be several times greater than the impact from Oklahoma's own point sources. Additionally, information in the Oklahoma Regional Haze SIP demonstrates that even if every source in Oklahoma were fully controlled, the Wichita Mountains would not meet the Uniform Rate of Progress (URP) in 2018 absent additional emission reductions from upwind sources, principally Texas. As detailed in the Texas SIP, however, Texas determined that no additional controls at its sources were warranted during the first planning period to help achieve reasonable progress at the Wichita Mountains, and Oklahoma did not request any additional reductions from Texas. As a result, Oklahoma set RPGs for the Wichita Mountains that do not reflect any reasonable emission reductions from Texas beyond those that will be achieved by compliance with other requirements of the CAA.

This situation demonstrates the difficulties states face when working to address air pollution problems that do not respect state borders. It also highlights the respective roles and responsibilities of upwind and downwind states in addressing visibility impairment in national parks and wilderness areas. In order to address these intricately intertwined issues between Oklahoma and Texas, it is appropriate to review them simultaneously.

III. Summary of Our Proposed Actions

A. Texas

We propose to partially approve and partially disapprove the regional haze SIP that Texas submitted to us on March 31, 2009, to meet the requirements of Section 308 of the Regional Haze Rule. Specifically, we propose to take action on Texas' BART determinations, RPGs for the Big Bend and Guadalupe Mountains Class I areas, and long-term strategy for making reasonable progress at all Class I areas impacted by emissions from Texas sources. We are also proposing to take action on the requirements that support these major components of the state's plan, including Texas' calculations of baseline and natural visibility conditions, calculation of the URP, identification of anthropogenic sources of visibility impairment within the state, and Texas' monitoring strategy. We take very seriously a decision to propose disapproval of provisions in Texas' plan, as we believe that it is preferable that all emission control requirements needed to protect visibility be implemented through the Texas SIP. However, in order to approve the state's plan, we must be able to find that the state's plan is consistent with the requirements of the CAA. Our proposed actions are summarized as follows:

BART: We propose to approve Texas' determination of which sources in the state are BART-eligible. We also propose to approve Texas' determination that none of the state's BART-eligible non-EGUs are subject to the BART requirements because they are not reasonably anticipated to cause or contribute to visibility impairment in any Class I areas. We propose to approve the provisions in Texas' BART rules at 30 Tex. Admin. Code (TAC) 116.1500—116.1540, with the exception of 30 TAC 116.1510(d), which relies on CAIR. With respect to EGUs, we previously issued a limited disapproval of the Texas regional haze SIP due to Texas' reliance on CAIR to satisfy the BART requirements. This action does not impact the limited disapproval.

Reasonable Progress Goals: We propose to disapprove Texas' RPGs for 2018 on the 20-percent least impaired and 20-percent most impaired days for the Big Bend and Guadalupe Mountains Class I areas. We propose to find that the state has not demonstrated that its RPGs provide for reasonable progress towards meeting the national visibility goal. Specifically, we propose to find that Texas did not satisfy several of the requirements at Section 51.308(d)(1) with regard to setting RPGs, most notably the requirement to reasonably consider the four statutory reasonable progress factors and the requirement to adequately justify RPGs that are less stringent than the URP.

Calculations of Baseline and Natural Visibility Conditions: We propose to approve Texas' calculation of baseline visibility conditions at the Big Bend and Guadalupe Mountains Class I areas. We propose to disapprove Texas' calculation of natural visibility conditions at these Class I areas. Because we propose to disapprove Texas' calculation of natural visibility conditions, we must also propose to disapprove Texas' calculation of the URP.

Long-Term Strategy: We propose to disapprove Texas' long-term strategy because it does not sufficiently address regional haze visibility impairment for all Class I areas impacted by Texas sources. Specifically, we propose to find that Texas did not satisfy several of the requirements of Section 51.308(d)(3) with regard to developing long-term strategies. We propose to find that Texas' long-term strategy does not include all measures necessary to obtain the state's share of emission reductions needed to make reasonable progress in the Wichita Mountains Class I area in Oklahoma. We also propose to find that the technical basis on which Texas relied to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in Wichita Mountains was inadequate. Finally, we propose to find that Texas did not adequately consider the emissions limitations and schedules for compliance needed to achieve reasonable progress in Big Bend, Guadalupe Mountains, or Wichita Mountains. We propose to find that Texas satisfied the remaining long-term strategy requirements, including the identification of anthropogenic sources of visibility impairment and the consideration of emission reductions due to ongoing air pollution control programs; measures to mitigate the impacts of construction activities; source retirement and replacement schedules; smoke management techniques; enforceability; and projected changes in emissions.

Monitoring Strategy: We propose to approve Texas' monitoring strategy.

To remedy the deficiencies identified above, we propose a FIP for Texas that consists of a long-term strategy with SO_2 emission limits for fifteen coal-fired EGUs that impact visibility in multiple Class I areas. We propose that these SO_2 emission limits, listed below in Table 1, be met on a 30-boiler-operating-day rolling average.

TABLE 1—PROPOSED 30-BOILER-OPERATING-DAY SO_2 EMISSION LIMITS

Unit	Proposed SO_2 emission limit (lbs/MMBtu)
Scrubber Upgrades:	
Sandow 4	0.20
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0.06
Limestone 2	0.08
Limestone 1	0.08
San Miguel*	0.60
Scrubber Retrofits:	
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Tolk 172B	0.06
Tolk 171B	0.06

* As we note elsewhere, we do not anticipate that San Miguel will have to install any additional control in order to comply with this emission limit.

We propose to find that these emission limits will result in emission reductions that will achieve reasonable progress at Big Bend, the Guadalupe

Mountains, and the Wichita Mountains. These emission limits reflect the degree of emission reduction that can be achieved by seven SO_2 scrubber retrofits and seven SO_2 scrubber upgrades,[26] but we do not prescribe how the facilities must meet these emission limits. We determined that these emission limits are necessary to achieve reasonable progress based on our four-factor analysis, which demonstrates that the underlying controls are cost-effective and result in significant visibility improvement. We propose that those sources whose proposed emission limits can be achieved by installing scrubber retrofits must comply with the emission limits within five years of the effective date of our final rule. We propose that those sources whose emission limits can be achieved by conducting scrubber upgrades must comply with the emission limits within three years of the effective date of our final rule, except for San Miguel, for which we propose compliance within one year because that unit has been recently meeting our proposed emission limit. Our proposed FIP also includes new RPGs for Big Bend and Guadalupe Mountains that we believe reflect the visibility improvement that will result from the aforementioned SO_2 emission limits, as well as new calculations of the natural visibility conditions for these Class I areas.

We propose to replace Texas' reliance on CAIR to satisfy the BART requirement for EGUs with reliance on CSAPR.

Finally, we are also proposing to disapprove the portions of the infrastructure SIP revisions submitted by Texas to address the requirements of CAA Section 110(a)(2)(D)(i)(II) with respect to visibility. This provision of the CAA requires that each state's SIP have adequate provisions to prohibit in-state emissions from interfering with measures required to protect visibility in any other state. We refer to this and similar provisions pertaining to other states' air quality as the ''good-neighbor'' requirements. We propose to disapprove portions of the Texas' infrastructure SIP revisions addressing the ''good-neighbor'' visibility protection requirements for the 1997 $PM_{2.5}$ NAAQS, the 1997 ozone NAAQS, the 2006 $PM_{2.5}$ NAAQS, the 2008 ozone NAAQS, the 2010 NO_2 NAAQS, and the 2010 SO_2 NAAQS. We propose to find that the controls in our proposed FIP address the deficiencies in Texas' regional haze SIP, in combination with the existing controls that Texas has relied upon in its regional haze SIP, will serve to prevent emissions from sources in Texas from interfering with measures required to protect visibility in other states.

B. Oklahoma

We propose to partially disapprove the regional haze SIP that Oklahoma submitted to us on February 19, 2010, to meet the requirements of Section 308 of the Regional Haze Rule. Specifically, we propose to disapprove Oklahoma's RPGs for 2018 on the 20-percent least impaired and 20-percent most impaired days for the Wichita Mountains Class I area. We propose to find that Oklahoma has not adequately demonstrated that its RPGs provide for reasonable progress towards meeting the national visibility goal. Specifically, we propose to find that Oklahoma did not satisfy several of the requirements at Section 51.308(d)(1) with regard to setting RPGs, including the requirement to adequately consult with other states that may reasonably be anticipated to cause or contribute to visibility impairment at the Wichita Mountains and the requirement to adequately justify RPGs that are less stringent than the URP.

To remedy the deficiencies identified above, we propose a FIP for Oklahoma that includes revised RPGs for the Wichita Mountains that reflect the visibility improvement that will result from the SO_2 emission limits in our long-term strategy for Texas included in our proposed FIP. Our proposed FIP for Oklahoma does not establish any additional requirements on sources within the state.

IV. Discussion of the Regional Haze Rule Requirements as They Relate to Visibility Transport

A. Introduction

The Texas and Oklahoma regional haze SIPs reveal that sources in Texas not only impact visibility in the Wichita Mountains National Wildlife Refuge in Oklahoma, but that the impact from sources in Texas is several times greater than the impact from Oklahoma's own sources. Additionally, the Oklahoma regional haze SIP demonstrates that, even if every source in Oklahoma were fully controlled, the Wichita Mountains would not meet the URP in 2018 absent additional emission reductions from upwind sources. Oklahoma and Texas discussed the significant contribution of sources in Texas to visibility impairment in Wichita Mountains during the interstate consultation process required by the Regional Haze Rule. Ultimately, however, Texas determined that no additional controls at its sources were warranted during the first planning period to help achieve reasonable progress at the Wichita Mountains, and Oklahoma did not request any additional reductions from Texas. As a result, Oklahoma set a reasonable progress goal for Wichita Mountains that does not achieve the URP and which does not reflect any emission reductions from Texas beyond those that will be achieved by compliance with other requirements of the CAA. During the notice-and-comment period on Oklahoma's proposed SIP, several commenters criticized Oklahoma for not requesting additional reductions from Texas. They argued that without such reductions, Oklahoma would not make reasonable progress toward the national goal at the Wichita Mountains. In responding to these comments, Oklahoma acknowledged that sources in Texas had significant impacts on visibility in Wichita Mountains, but maintained that it did not have the regulatory authority to require emission reductions in other states. Oklahoma asserted that only Texas and the EPA could require such reductions.

This situation demonstrates the difficulties states face when working to address air pollution problems that do not respect state borders. It also shows that some uncertainty exists as to the respective roles and responsibilities of upwind and downwind states in addressing visibility impairment in national parks and wilderness areas. Consequently, we believe that it is necessary at this time to provide clarification to the states on this issue, which hereafter will be referred to generally as the issue of ''visibility transport.'' Specifically, this section describes the regulatory requirements found at 40 CFR Sections 51.308(d)(1) and (d)(3), which pertain to RPGs, interstate consultation, and long-term strategies, and explains how these requirements apply in the visibility-transport context. This section also explains how our interpretation of these requirements is consistent with the provisions of the CAA that seek to prevent interstate transport of visibility-impairing pollutants,[27] achieve reasonable progress toward the national goal,[28] and address regional haze.[29]

B. Statutory and Regulatory Background

Congress enacted Section 169A as part of the 1977 CAA Amendments,

[26] As we explain later in our notice, San Miguel has already upgraded its scrubber and we are proposing that it maintain an emission rate consistent with recent monitoring data.

[27] 42 U.S.C. Section 7410(a)(2)(D)(i)(II).

[28] *Id.* Section 7491(b)(2).

[29] *Id.* Section 7492.

declaring as a national goal ''the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' [30] The term ''mandatory Class I Federal areas'' refers to international parks, national wilderness areas and memorial parks that exceed 5,000 acres in size, and national parks that exceed 6,000 acres in size, which were in existence on August 7, 1977.[31] Congress directed the Secretary of the Interior, in consultation with the federal land managers to review all mandatory Class I Federal areas in the country and to identify those where visibility was an important value.[32] Congress then directed us to confer with the Secretary of the Interior regarding the results of his review and to promulgate a final list of mandatory Class I Federal areas that would become subject to the protections of Section 169A.[33] On November 30, 1979, we finalized a list of 156 mandatory Class I Federal areas deserving of such protection.[34]

Congress also required us to issue regulations that would provide guidelines to the states on appropriate techniques and methods for identifying and measuring visibility impairment; modeling the extent to which manmade air pollution causes or contributes to such impairment; and preventing and remedying such pollution and impairment.[35] In addition, Congress required our regulations to direct both states that contained mandatory Class I Federal areas, and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area,'' to include three specific components in their SIPs.[36]

The first component consists of ''emission limitations, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal.'' [37] In determining what constitutes ''reasonable progress,'' Congress directed states to take into consideration four statutory factors: (1) The costs of compliance, (2) the time necessary for compliance, (3) the energy and non-air quality impacts of compliance, and (4) the remaining useful life of any existing source subject to such requirements.[38] The second component is a requirement that a specified group of older major stationary sources ''procure, install, and operate, as expeditiously as practicable . . . the best available retrofit technology,'' more commonly referred to as BART.[39] Like the emission limitations required to make reasonable progress, the emission limitations representing BART must be determined by taking into consideration a list of statutory factors.[40] Lastly, the third component consists of ''a long-term (ten to fifteen years) strategy for making reasonable progress toward the national goal.'' [41] This section focuses specifically on the first and third components: Reasonable progress and long-term strategies.

In addition to enacting Section 169A, Congress also amended Section 110 of the CAA to require that all SIPs ''contain adequate provisions prohibiting . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . interfere with measures required to be included in the applicable implementation plan for any other State . . . to protect visibility.'' [42] A Senate Committee Report described this provision and similar requirements as being ''intended to equalize the positions of the States with respect to interstate pollution by making a source at least as responsible for polluting another State as it would be for polluting its own State.'' [43]

To comply with Congress's mandate, we issued a notice of proposed rulemaking titled, ''Visibility Protection for Federal Class I Areas,'' on May 22, 1980.[44] In that notice, we proposed a phased approach to combating visibility impairment.[45] In the first phase, we intended to address visibility impairment attributable to ''a single source or small group of sources,'' such as plume blight, which could be identified using visual observation or other simple monitoring techniques.[46] We referred to this type of visibility impairment as ''reasonably attributable visibility impairment,'' or RAVI.[47] Then, once modeling and monitoring techniques had improved sufficiently, we intended to engage in a second phase of rulemaking to address the more complex problem of regional haze,[48] which we defined as ''visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area.'' [49]

We finalized our first phase of rulemaking on December 2, 1980.[50] These regulations, hereafter referred to as the ''RAVI Rule,'' applied only to the 36 states that contain mandatory Class I Federal areas.[51] Notably, the RAVI Rule did not apply to upwind states, *i.e.,* those states, ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area,'' as required by Section 169A.[52] Among other things, the RAVI Rule authorized the federal land managers to determine whether visibility impairment existed in any mandatory Class I Federal area.[53] The RAVI Rule also required states to revise their SIPs to assure reasonable progress toward the national goal, to determine whether BART should be installed at sources causing visibility impairment certified by the federal land managers, and to implement long-term strategies for making reasonable progress.[54] Ultimately, however, we concluded that ''[p]reliminary indications are that few, if any, existing stationary facilities will have to retrofit controls,'' and that ''many of the basic elements of an acceptable [long-term] strategy already exist within the framework of other air pollution programs.'' [55]

Most states did not submit the SIP revisions required by the RAVI Rule. To resolve a lawsuit brought by environmental litigants, we promulgated FIPs for these states on November 24, 1987.[56] Despite the fact that the federal land managers had certified that visibility impairment existed in nearly all mandatory Class I Federal areas, we ultimately determined

[30] *Id.* Section 7491(a)(1).

[31] *Id.* Section 7472(a). Although we often use the term, ''Class I area'' within this document, we mean, ''Mandatory Class I Federal areas.''

[32] *Id.* Section 7491(a)(2).

[33] *Id.*

[34] ''National Visibility Goal for Federal Class I Areas; Identification of Mandatory Class I Federal Areas Where Visibility Is an Important Value,'' 44 FR 69,122 (Nov. 30, 1979).

[35] 42 U.S.C. Section 7491(b)(1).

[36] *Id.* Section 7491(b)(2).

[37] *Id.*

[38] *Id.* Section 7491(g)(1).

[39] *Id.* Section 7491(b)(2)(A).

[40] *Id.* Section 7491(g)(2).

[41] *Id.* Section 7491(b)(2)(B).

[42] 42 U.S.C. Section 7410(a)(2)(D)(i)(II).

[43] S. Rep. No. 95–127, at 41 (1977).

[44] ''Visibility Protection for Class I Areas,'' 45 FR 34762 (May 22, 1980).

[45] 45 FR 34763/3.

[46] *Id.*

[47] 40 CFRCFR Section 51.301.

[48] 45 FR 34763/3.

[49] 40 CFRCFR Section 51.301.

[50] ''Visibility Protection for Federal Class I Areas,'' 45 FR 80084 (Dec. 2, 1980) (codified at 40 CFR Sections 51.300–307).

[51] *Id.* at 80086/1.

[52] *See Id.* at 80086/1 n.2 (''We did not identify, nor did any commenters identify any State that did not contain a mandatory Class I Federal area, but which could contain a source the emissions from which could reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class 1 Federal area.'').

[53] *Id.* at 80086/3.

[54] *Id.* at 80086/1.

[55] *Id.* at 80088/3.

[56] ''State Implementation Plans for Visibility Long-Term Strategies, Integral Vistas, and Control Strategies,'' 52 FR 45132 (Nov. 24, 1987).

that neither BART nor any other controls were necessary to address the impairment because it was primarily in the form of regional haze and could not be attributed to a single source or small group of sources at that time.[57]

The following year, two decisions of the U.S. Courts of Appeal placed further emphasis on the fact that visibility impairment was largely a regional problem. The first case, *Vermont* v. *Thomas,*[58] involved the State of Vermont's challenge to our decision not to take action on aspects of Vermont's SIP revision that were intended to address regional haze. In its SIP revision, Vermont had concluded that visibility impairment at the Lye Brook Wilderness Area was not caused by plume blight, but rather was comprised of regional haze caused primarily by sulfur dioxide emissions from out-of-state sources.[59] As such, only a reduction program that targeted those out-of-state sources could assure reasonable progress toward the national visibility goal. Vermont therefore proposed a long-term strategy that included a summertime ambient sulfate standard and a 48-state emission reduction plan.[60] Vermont also requested that we disapprove and revise the SIPs of the upwind states that were contributing to regional haze in Lye Brook and require SIP revisions from those upwind states not currently subject to the RAVI Rule.[61] We agreed with Vermont's assessment of the visibility impairment at Lye Brook, but took no action on those parts of Vermont's SIP revision aimed at controlling regional haze, explaining that they were outside the scope of the RAVI Rule.[62]

In its petition for review, Vermont argued that our decision not to act on the SIP revision in its entirety violated the CAA and the RAVI Rule.[63] The Second Circuit upheld our interpretation, holding that Vermont's proposed interstate measures were outside the scope of the RAVI Rule and thus were not subject to federal enforcement under the CAA. While the court sympathized with Vermont, recognizing ''that without federal enforcement of Vermont's plan, little, if any, progress will be made on regional haze at Lye Brook,'' the court determined that, ''until such time as a federal regional haze program is in place, Vermont may not impose its standards on upwind States.'' [64] The court concluded its opinion by stating that it hoped EPA would act quickly to create a national program to address regional haze.[65]

The second case, *Maine* v. *Thomas,*[66] involved a citizen suit brought by seven Northeastern states [67] and six environmental groups in which they sought to compel us to promulgate regulations addressing regional haze. The plaintiffs alleged that we had a nondiscretionary duty to issue regulations to achieve the national visibility goal by August 7, 1979,[68] and that we had violated that duty because the RAVI Rule did not address regional haze and was therefore not a full response to the CAA's directive.[69] The district court rejected that argument, explaining that we had affirmatively chosen to take a phased approach to issuing visibility regulations when we promulgated the RAVI Rule.[70] The district court therefore viewed the plaintiffs' claim as a challenge to the RAVI Rule, which was not cognizable under the CAA's citizen-suit provision. Therefore, the court dismissed the suit for lack of subject matter jurisdiction.[71] On appeal, the First Circuit affirmed the district court's judgment under largely the same reasoning.[72] Like the Second Circuit, however, the court noted that EPA had long delayed in promulgating the promised rulemaking to address regional haze.[73]

Reacting to our delay in promulgating regulations to address regional haze and the courts' decisions in *Vermont* and *Maine,*[74] Congress enacted Section 169B of the CAA as part of the 1990 CAA Amendments.[75] Congress designed Section 169B to provide regional solutions to what was, by definition, a regional problem. To address the technical limitations identified by us in the RAVI Rule, Congress required us to ''conduct research to identify and evaluate sources and source regions of both visibility impairment and regions that provide predominantly clean air in Class I areas.'' [76] This research had to include an expansion of visibility monitoring in Class I areas, an assessment of the current sources of visibility-impairing pollution, the adaptation of regional air quality models for the assessment of visibility, and studies of the atmospheric chemistry and physics of visibility.[77] Congress also provided us with the authority to establish visibility transport regions and commissions whenever we had reason to believe that ''current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in Class I areas located in the affected States.'' [78] Once established, the visibility transport commissions and their member states were required to assess the available scientific and technical data regarding visibility impairment and to report back to us with recommendations regarding how existing statutory requirements for clean air corridors, new source review, and long-term strategies could be employed to reduce such impairment.[79] Finally, Congress required us to carry out our overdue regulatory responsibilities under Section 169A, which had to include ''criteria for measuring 'reasonable progress' toward the national goal'' and a requirement that states revise their SIPs within 12 months.[80]

On July 31, 1997, we issued a notice of proposed rulemaking to revise the existing visibility regulations to address regional haze, commonly referred to as the ''Regional Haze Rule.'' [81] In that notice, we explained that ''[t]he role of regional transport of fine particles in contributing to . . . regional haze impairment has been well documented by many researchers and recognized as a significant issue by many policy makers.'' [82] Furthermore, we discussed how the studies required by the 1990 CAA Amendments had revealed that, ''to varying degrees, emissions from each of the contiguous 48 States contribute to . . . visibility impairment in at least one mandatory Class I Federal area.'' [83] Consequently, we proposed to expand the applicability of the visibility program to all states for the purpose of

[57] *Id.*

[58] *Vermont* v. *Thomas,* 850 F.2d 99 (2d Cir. 1988).

[59] *Id.* at 101.

[60] *Id.*

[61] *Id.*

[62] ''Approval and Promulgation of Implementation Plans; Vermont; Visibility in Federal Class I Areas; Lye Brook Wilderness,'' 52 FR 26973 (July 17, 1987).

[63] *Vermont,* 850 F.2d at 103–04.

[64] *Id.* at 104.

[65] *Id.*

[66] *Maine* v. *Thomas,* 690 F. Supp. 1106 (D. Maine 1988).

[67] The States were Connecticut, Maine, Massachusetts, New Jersey, New York, Rhode Island, and Vermont.

[68] *See* 42 U.S.C. Section 7491(a)(4).

[69] *Id.* at 1108.

[70] *Id.* at 1109.

[71] *Id.* at 1112.

[72] *Maine* v. *Thomas,* 874 F.2d 883 (1st Cir. 1989).

[73] *Id.* at 885–86.

[74] *See, e.g.,* 136 Cong. Rec. 2608 (1990) (statement of Sen. Tim Wirth); 136 Cong. Rec. 2771 (1990) (statement of Rep. Ron Wyden); 136 Cong. Rec. 2875 (statement of Sen. Brock Adams).

[75] 42 U.S.C. Section 7492.

[76] *Id.* Section 7492(a)(1).

[77] *Id.*

[78] *Id.* Section 7492(c)(1).

[79] *Id.* Section 7492(d).

[80] *Id.* Section 7492(e)(1) & (2).

[81] ''Regional Haze Regulations,'' 62 FR 41138 (July 31, 1997).

[82] *Id.* at 41139.

[83] *Id.* at 41144–45.

addressing regional haze.[84] We explained that this expansion of applicability was consistent with Section 169A(b)(2), which ''requires States containing mandatory Class I Federal areas or having emissions which 'may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area' to revise their visibility SIPs in order to make reasonable progress toward the national visibility goal.'' [85] We noted, however, that the expanded applicability of the visibility program should not be interpreted to mean that control strategies would be necessary in all cases. Instead, states should participate in regional air quality planning groups to establish and refine their relative contributions to regional haze, develop regional recommendations on state apportionment of emission reductions and control measure responsibilities, and identify existing SIP authorities or other proposed planning requirements necessary to address states' contributions to visibility problems in other states.[86]

To satisfy Congress's mandate that we establish criteria for measuring reasonable progress, we proposed to set presumptive ''reasonable progress targets'' for each Class I area.[87] Under this framework, the reasonable progress targets would provide for perceptible improvement of at least 1.0 deciview [88] over a 10-year or 15-year period on the 20-percent haziest days and allow no degradation from the baseline on the 20-percent clearest days.[89] States could satisfy their reasonable progress obligations under Section 169A for a given Class I area by meeting the reasonable progress target for that area.[90] States could also develop alternative targets so long as they justified those targets based on the four statutory factors.[91] Finally, states would be required to provide a demonstration of reasonable progress every three years and revise their SIPs as necessary.[92]

To satisfy the CAA's long-term strategy requirement, we proposed that states develop a procedure to determine natural and current visibility conditions for each Class I area for the 20-percent haziest and 20-percent clearest days.[93] For Class I areas with existing anthropogenic impairment greater than 1.0 deciview, states would be required to adopt measures, including BART and a combination of local and regional measures from non-BART sources, that would meet the reasonable progress targets over a three-year period.[94] We also proposed that the long-term strategies explicitly address the contribution by each state needed to meet reasonable progress targets, explaining that ''each State is ultimately responsible for determining its contribution to ensure reasonable progress in mandatory Class I areas affected by its emissions sources and implementing appropriate emissions control strategies.'' [95] We further explained that it would consider this information, as well as any relevant regional planning analyses, in evaluating a state's long-term strategy.[96] Finally, we proposed requirements that would apply if a state did not meet its reasonable progress targets within a three-year period or when a state wished to develop alternative progress targets.[97]

We finalized the Regional Haze Rule on July 1, 1999.[98] In the final rule, we reiterated that ''[s]uccessful implementation of the regional haze program will involve long-term regional coordination among States,'' and that ''States will need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction to air quality in another.'' [99] Consistent with the proposal, we concluded that all states had sources whose emissions were reasonably anticipated to cause or contribute to regional haze in at least one Class I area and therefore required all states to submit regional haze SIPs.[100]

In response to adverse comments, however, we also made significant changes to the proposal. We eliminated the requirement for presumptive reasonable progress targets of 1.0 deciview.[101] Instead, the final rule called upon states to establish ''reasonable progress goals,'' or RPGs, for each Class I area.[102] Like the reasonable progress targets, the RPGs had to be expressed in deciviews, provide for improvement on the 20-percent haziest days, and provide for no degradation on the 20-percent clearest days.[103] Unlike the reasonable progress targets, however, the RPGs were to be set on a more flexible basis after consideration of the statutory factors.[104] To provide greater equity between the RPGs set for the more impaired eastern states and the less impaired western states, we also introduced a new analytical requirement in the final rule.[105] This requirement mandated that, for each Class I area, states (1) determine the amount of progress needed to reach natural background conditions in 60 years; (2) identify the URP, over that 60-year period; (3) identify the amount of progress that would result if the URP were achieved during the planning period; and (4) identify the emissions measures that would be needed to achieve that amount of progress and analyze whether the measures were reasonable based on the statutory factors.[106] If a state found that the amount of progress necessary to achieve the URP (or some greater amount) was reasonable, then the final rule required the state to adopt that amount of progress as its RPG.[107] If a state found that the amount of progress necessary to achieve the URP was unreasonable, however, then the state could set a less ambitious goal, but only after providing an analysis and rationale supporting its determination based on the statutory factors.[108] Additionally, the final rule included a new requirement whereby states establishing RPGs had to consult with other states that were anticipated to contribute to visibility impairment in the Class I area under consideration and describe in their SIPs any actions taken to resolve disagreements over the apportionment of emission measures necessary to achieve the RPGs.[109]

In regard to the long-term strategy requirement, we explained that the RPGs and the long-term strategies were intricately linked. We interpreted the term ''long-term strategy'' as ''the control measures that are needed to ensure reasonable progress, together with a demonstration that those

[84] *Id.* at 41144.

[85] *Id.*

[86] *Id.* at 41145.

[87] *Id.* at 41145–47.

[88] As we note in the Regional Haze Rule (64 FR 35725, July 1, 1999), the ''deciview'' or ''dv'' is an atmospheric haze index that expresses changes in visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions.

[89] ''Regional Haze Regulations,'' 62 FR 41138 (July 31, 1997) at 41446.

[90] *Id.*

[91] *Id.*

[92] *Id.* at 41147.

[93] *Id.* at 41153.

[94] *Id.*

[95] *Id.*

[96] *Id.*

[97] *Id.* at 41153–54.

[98] ''Regional Haze Regulations,'' 64 FR 35714 (July 1, 1999).

[99] *Id.* at 35728.

[100] *Id.* at 35721.

[101] *Id.* at 35731.

[102] *Id.*; 40 CFR 51.308(d)(1).

[103] 64 FR 35731 (July 1, 1999).

[104] 64 FR 35731 (July 1, 1999); 40 CFR 51.308(d)(1)(i)(A).

[105] 64 FR 35731 (July 1, 1999).

[106] *Id.* at 35732; 40 CFR 51.308(d)(1)(i)(B).

[107] 64 FR 35732 (July 1, 1999).

[108] *Id.*; 40 CFR 51.308(d)(1)(ii).

[109] 64 FR 35732 (July 1, 1999); 40 CFR 51.308(d)(1)(iv).

measures will provide for reasonable progress during the 10 to 15 year period.'' [110] We abandoned our proposal to require states to update their long-term strategies every three years, providing instead for longer ten-year revisions.[111] We also modified the requirements components of the long-term strategy. In brief, the final rule required each state submitting a long-term strategy to (1) consult with other states to develop coordinated emission management strategies,[112] (2) demonstrate that the SIP includes all measures necessary for the state to obtain its share of the emission reductions needed to meet the RPGs for the Class I areas it affects,[113] (3) document the technical basis the state used to determine its apportionment of emission reduction obligations for the Class I areas it affects,[114] (4) consider all anthropogenic sources of emissions,[115] and (5) consider a list of seven other enumerated factors.[116]

Since 1999, the Regional Haze Rule has been the subject of several revisions and legal challenges. Because none of these revisions or challenges impacted the regulatory provisions that are the focus of this section, each is discussed only in brief. In *American Corn Growers* v. *EPA,* the D.C. Circuit invalidated the Regional Haze Rule's BART provisions because they required states to consider the visibility benefits of controls on a group-basis, rather than a source-basis.[117] In 2003, we revised the Regional Haze Rule to incorporate provisions that would allow certain Western states and eligible Indian Tribes to implement alternative measures in lieu of BART.[118] Shortly thereafter, in *Center for Energy and Economic Development (CEED)* v. *EPA,* the D.C. Circuit invalidated aspects of our 2003 revisions for using the same type of ''group BART'' approach that the court had forbade in *American Corn Growers.*[119] In 2005, we revised the Regional Haze Rule a second time in order to remedy the defects with the Rule's BART provisions that had been identified by the D.C. Circuit in *American Corn Growers.*[120] In that same rulemaking, we promulgated the BART Guidelines to assist states in determining which sources are subject to BART and the appropriate level of control for such sources.[121] Moreover, as noted above, we added a provision to the Regional Haze Rule that allowed certain Eastern states to rely on the CAIR in lieu of requiring BART at fossil fuel-fired EGUs.[122] Then, in 2006, we revised the Regional Haze Rule a third time in order to remedy the defects with the Rule's BART-alternative provisions that had been identified by the D.C. Circuit in *CEED.*[123] A few months later, the D.C. Circuit upheld the 2005 revisions in their entirety in *Utility Air Regulatory Group* v. *EPA.*[124] The 2006 revisions were never challenged. Finally, in 2012, we revised the Regional Haze Rule for a fourth time to replace the provision allowing Eastern states to rely on CAIR in lieu of BART with a provision allowing for reliance on CAIR's successor, CSAPR.[125] Challenges to the 2012 revisions are currently stayed and remain pending before the D.C. Circuit.[126]

During this same period, we also released several guidance documents pertaining to regional haze and visibility transport, some of which are helpful to the issues discussed in this section. In an August 3, 2006, document titled, ''Additional Regional Haze Questions,'' we responded to questions submitted by states as they were developing their initial regional haze SIP submissions.[127] Several states had questions regarding the interstate consultation process and the respective obligations of upwind and downwind states in setting RPGs and developing long-term strategies. For example, one state asked whether there was a protocol for resolving disputes between upwind and downwind states on apportionment and controls.[128] In response, we encouraged the early identification of any potential disputes to allow all parties ample opportunity to address and document any disagreements.[129] One state asked what would happen if a downwind state set a RPG that required an upwind state to make reductions that it would not make.[130] We responded by stating, ''If a State with a Class I area determines that a contributing State is not doing what is reasonable to meet the [RPG] set for the area, and has attempted to resolve this issue, the State with the Class I area should notify EPA and document this issue in its initial [regional haze] SIP.'' [131] We explained that such problems should be brought to our attention as early in the process as possible.[132] Finally, a third state asked whether a downwind state's regional haze SIP could be disapproved because an upwind state was not doing all it could to meet the RPG for a downwind Class I area.[133] We responded by reiterating the regulatory requirements and noting that, ''If there is a disagreement among States as to what constitutes reasonable progress, the question of whether [a downwind State's] or [an upwind State's regional haze] SIP could be disapproved will depend on the specific[s] of the situation.'' [134]

On June 1, 2007, we released a second document to provide guidance to states on how to set their RPGs and how to decide those measures necessary to meet the goals.[135] In the guidance, we provided a definition for the term ''reasonable progress goal,'' explaining that RPGs are ''interim goals that represent incremental visibility improvement over time toward the goal of natural background conditions and are developed in consultation with other affected States and Federal Land Managers.'' [136] The guidance also reiterates that the long-term strategy and BART emission limitations are inherently linked to the RPGs:

The long-term strategy is the compilation of ''enforceable emissions limitations,

[110] 64 FR 35734 (July 1, 1999).

[111] *Id.*; 40 CFR Section 51.308(f).

[112] 64 FR 35735 (July 1, 1999); 40 CFR 51.308(d)(3)(i).

[113] 64 FR 35735 (July 1, 1999); 40 CFR 51.308(d)(3)(ii).

[114] 64 FR 35735 (July 1, 1999); 40 CFR 51.308(d)(3)(iii).

[115] 64 FR 35735 (July 1, 1999); 40 CFR 51.308(d)(3)(iv).

[116] 64 FR 35736–37 (July 1, 1999); 40 CFR 51.308(d)(3)(v).

[117] *Am. Corn Growers* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002).

[118] ''Revisions to Regional Haze Rule to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area,'' 68 FR 33764 (June 5, 2003).

[119] *Ctr. for Energy & Econ. Dev.* v. *EPA,* 298 F.3d 653 (D.C. Cir. 2005).

[120] ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations,'' 70 FR 39104 (July 6, 2005).

[121] *See Id.* at 39156–72 (codified at 40 CFR pt. 51, app. Y).

[122] *See Id.* at 39156 (codified at 40 CFR 51.308(e)(4)).

[123] ''Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations,'' 71 FR 60612 (Oct. 13, 2006).

[124] *Util. Air Regulatory Grp.* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006).

[125] ''Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans,'' 77 FR 33641 (June 7, 2012).

[126] See, *e.g., Nat'l Parks Conservation Ass'n* v. *EPA,* No. 12–1480 (D.C. Cir. Dec. 17, 2012).

[127] U.S. Envtl. Protection Agency, Additional Regional Haze Questions (Aug. 3, 2006).

[128] *Id.* at 10.

[129] *Id.*

[130] *Id.* at 11.

[131] *Id.* at 11–12.

[132] *Id.* at 12.

[133] *Id.*

[134] *Id.*

[135] Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program (June 1, 2007).

[136] *Id.* at 1–3.

compliance schedules, and other measures as necessary to achieve the [RPGs],'' and is the means through which the State ensures that its RPG will be met. BART emissions limits . . . are one set of measures that must be included in the SIP to ensure that an area makes reasonable progress toward the national goal, and the visibility improvement resulting from BART (or a BART alternative) is included in the development of the RPG.[137]

The majority of the guidance focuses on providing an overview of the process for developing RPGs, potential methods for identifying which source categories should be evaluated for controls, and suggestions for evaluating the four statutory factors with respect to potentially affected stationary sources.[138] The guidance reiterates that the development of the RPG for each Class I area should be a collaborative process, but acknowledges that the Regional Haze Rule anticipated that states may not always agree on what measures would be reasonable or on the appropriateness of a given goal.[139]

Finally, in a series of three memoranda released in 2006, 2009, and 2013, we provided guidance to the states regarding their obligations under Section 110(a)(2)(D)(i)(II) with respect to visibility transport, hereafter referred to as ''prong 4.'' [140] In the 2006 memo, we informed states that they could satisfy prong 4 for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS by making a simple SIP submission confirming that it was not possible at the time to assess whether there was any interference with measures in the SIPs of other states designed to protect visibility until the states submitted their regional haze SIPs the following year.[141] In the 2009 memo, we more plainly stated that states could satisfy prong 4 for the 2006 24-hour $PM_{2.5}$ NAAQS so long as they had fully approved regional haze SIPs.[142] Most recently, in the 2013 memo, we clarified states' prong 4 obligations with respect to the 2008 ozone NAAQS, 2010 NO_2 NAAQS, 2010 SO_2 NAAQS, and 2012 $PM_{2.5}$ NAAQS.[143] There, we reiterated that states could satisfy prong 4 by confirming that they had fully approved regional haze SIPs.[144] We reasoned that a fully approved regional haze SIP necessarily would ensure that emissions from a state's sources were not interfering with measures required to be included in other states' SIPs to protect visibility.[145] Alternatively, we explained that a state could satisfy its prong 4 obligations by including in its infrastructure SIP a demonstration that emissions within its jurisdiction do not cause interference.[146] We clarified that such a submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions were sufficient to comply with any mutually agreed upon RPGs for downwind Class I areas.[147]

C. Our Interpretation of 40 CFR 51.308(d)(1) and (d)(3)

With this background in mind, we turn now to the provisions of the Regional Haze Rule that implement the CAA's reasonable progress and long-term strategy requirements in the visibility-transport context. Section 51.308(d)(1) of the Regional Haze Rule requires states with Class I areas, *i.e.,* downwind states, to ''establish goals (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility conditions.'' [148] In establishing a RPG, a downwind state must consider the four statutory factors outlined in Section 169A(g)(1) of the CAA—''the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources.'' [149] This requirement is commonly referred to as a four-factor analysis. States analyze the four factors to determine a reasonable set of control measures that will reduce visibility-impairing emissions. The visibility improvement that will result from these emission reductions is then factored into the state's RPGs.

In addition to conducting a four-factor analysis to determine what control measures are reasonable for a downwind state's own sources, the downwind state ''must consult with those States which may reasonably be anticipated to cause or contribute to visibility impairment in the mandatory Class I Federal area,'' [150] *i.e.,* upwind states. The purpose of the consultation requirement is to ensure that the upwind states adopt control measures sufficient to address their apportionment of emission reductions necessary to achieve reasonable progress and that the downwind state's RPGs properly account for the visibility improvement that will result from the reasonable control measures identified and included in the upwind state's long-term strategy. Where a downwind state and an upwind state cannot agree on the proper apportionment of emission reductions necessary to achieve reasonable progress, however, the downwind state ''must describe in its [SIP] submittal the actions taken to resolve the disagreement.'' [151] This documentation is necessary so that we have sufficient information to evaluate the downwind state's RPGs. Ultimately, we must decide, among other things, ''whether the State's goal provides for reasonable progress towards natural visibility conditions,'' [152] or whether the goal is inadequate due to an upwind state's failure to include reasonable control measures in its long-term strategy.

Section 51.308(d)(3) of the Regional Haze Rule requires all states (both downwind and upwind) to ''submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State which may be affected by emissions from the State.'' [153] As explained previously, a state's long-term strategy is inextricably linked to the RPGs because it ''must include enforceable emission limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by states having mandatory Class I Federal areas.'' [154]

In establishing its long-term strategy, a state must meet a number of requirements, three of which pertain to visibility transport. First, as a corollary to Section 51.308(d)(1)(iv), upwind states ''must consult with [downwind] State(s) in order to develop coordinated

[137] *Id.* at 1–4 (citing to 40 CFR 51.308(d)(3)).

[138] *See generally id.* at 3–1 to 5–3.

[139] *Id.* at 2–4.

[140] 42 U.S.C. Section 7410(a)(2)(D)(i) has four separate requirements or ''prongs,'' the last of which is that SIPs must address emissions that interfere with another State's measures to protect visibility.

[141] Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards, at 9–10 (Aug. 15, 2006).

[142] Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), at 5 (Sept. 25, 2009).

[143] Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[144] *Id.* at 33.

[145] *Id.*

[146] *Id.* at 34.

[147] *Id.*

[148] 40 CFR 51.308(d)(1).

[149] *Id.* 51.308(d)(1)(i)(A).

[150] *Id.* n 51.308(d)(1)(iv).

[151] *Id.*

[152] *Id.*

[153] *Id.* 51.308(d)(3).

[154] *Id.*

management strategies.'' [155] Second, where multiple states cause or contribute to visibility impairment in a Class I area, each state ''must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area.'' [156] This requirement directly addresses situations where an upwind state agrees to achieve certain emission reductions during the consultation process, and downwind states rely upon those reductions when setting their RPGs, but the upwind state ultimately fails to include sufficient control measures in its long-term strategy to ensure that the emission reductions will be achieved. In such a situation, we must disapprove the upwind state's long-term strategy. However, the regulations do not explicitly address situations where the control measures in an upwind state's long-term strategy are sufficient to obtain its share of reductions needed to meet a RPG included in a downwind state's SIP, but the goal itself is flawed precisely because the upwind state never proposed sufficient control measures to ensure reasonable progress in the first place. To prevent such situations, we interpret the term ''progress goal'' in Section 51.308(d)(3)(ii) as an *approved or approvable* progress goal. Consequently, where a RPG in a downwind state's SIP does not account for adequate visibility improvement from an upwind state for this reason, we must disapprove both the downwind state's goal and the upwind state's long-term strategy.

Finally, each state ''must document the technical basis, including modeling, monitoring and emissions information, on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving *reasonable progress* in each mandatory Class I Federal area it affects.'' [157] To reiterate, Section 169A(g)(1) of the CAA requires states to determine ''reasonable progress'' by considering the four statutory factors.[158] Therefore, this provision requires states to consider both their own Class I areas and downwind Class I areas when they develop the technical basis underlying their four-factor analyses. This documentation is necessary so that the interstate consultation process can proceed on an informed basis and so that downwind states can properly assess whether any additional upwind emission reductions are necessary to achieve reasonable progress at their Class I areas. The regulations further provide that, ''States may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all State participants.'' [159] Thus, states have the option of meeting this requirement by relying on four-factor analyses and associated technical documentation prepared by a regional planning organization on behalf of its member states,[160] to the extent that such analyses and documentation were conducted. In situations where a regional planning organization's analyses are limited, incomplete or do not adequately assess the four factors, however, then states must fill in any remaining gaps to meet this requirement.

Under *Auer* v. *Robbins,* 519 U.S. 452, 461 (1997), an administrative agency is entitled to interpret its own regulations, and that interpretation will be entitled to judicial deference as long as the interpretation is not ''plainly erroneous or inconsistent with the regulation.'' [161] Moreover, as the D.C. Circuit has explained, ''a regulation must be interpreted as to harmonize with and further and not to conflict with the objective of the statute it implements.'' [162] We believe that our clarification of the requirements of Sections 51.308(d)(1) and (d)(3), as provided above, is reasonable, consistent with the overall framework of the Regional Haze Rule, and in harmony with the objectives of the CAA's visibility provisions.

First, we believe that our interpretation is consistent with the Regional Haze Rule as a whole. Section 51.308(d) of the Regional Haze Rule, which subsumes all of the provisions discussed above, provides that states ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State which may be affected by emissions from within the State.'' [163] Our interpretation gives this ''core requirement'' [164] force by ensuring that downwind states account for all reasonable emission reductions when setting their RPGs and by ensuring that upwind states thoughtfully consider their impacts on neighboring Class I areas when conducting their four-factor analyses.

Similarly, our interpretation harmonizes and furthers the goals of the CAA. Congress declared as a national goal ''the prevention of any future, and the remedying of any existing, impairment of visibility'' in *all* Class I areas.[165] We believe it would be impossible to achieve this goal if upwind states did not have the same responsibility to address their visibility-impairing emissions and achieve reasonable progress in downwind Class I areas as the downwind states themselves. Indeed, Section 169A(b)(2) explicitly required our implementing regulations to ''require each applicable implementation plan . . . for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area [*i.e.,* upwind States] to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal.'' [166] As explained previously, the CAA requires states to determine what emission limits and other measures are necessary to make reasonable progress by considering the four statutory factors.[167] Therefore, our interpretation of Section 51.308(d)(3)(ii) and (iii) ensures that the Regional Haze Rule requires what the CAA requires—that upwind states consider impacts at downwind Class I areas in their four-factor analyses and, where appropriate, include emission limits and other measures to make reasonable progress at those Class I areas in their long-term strategies.

Moreover, consistent with our guidance,[168] our interpretation ensures that regional haze SIPs will be able to satisfy the CAA's requirement that SIPs ''contain adequate provisions prohibiting . . . any source or other type of emissions activity within the State from emitting any air pollutant in

[155] *Id.* 51.308(d)(3)(i).

[156] *Id.* 51.308(d)(3)(ii). Similarly, ''[i]f the State has participated in a regional planning process, the State must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.'' *Id.*

[157] *Id.* 51.308(d)(3)(iii).

[158] 42 U.S.C. Section 7491(g)(1).

[159] 40 CFR 51.308(d)(3)(iii).

[160] *See WildEarth Guardians* v. *EPA,* 2014 U.S. App. LEXIS 20145, at *55 (10th Cir. Oct. 21, 2014) (explaining that 40 CFR 51.308(d)(3)(iii) ''permits a State conducting a reasonable-progress determination'' ''to rely on [a regional planning organization's] four-factor analysis.'').

[161] *Auer* v. *Robbins,* 519 U.S. 452, 461 (1997).

[162] Sec'y of Labor, Mine Safety & Health Admin. v. W. Fuels-Utah, 900 F.2d 318, 320 (D.C. Cir. 1990).

[163] 40 CFR 51.308(d).

[164] *Id.*

[165] 42 U.S.C. Section 7491(a)(1).

[166] *Id.* Section 7491(b)(2).

[167] *Id.* Section 7491(g)(1).

[168] *See, e.g.,* Office of Air Quality Planning & Standards, U.S. Envtl. Protection Agency, Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

amounts which will interfere with measures required to be included in the applicable implementation plan for any other State . . . to protect visibility.'' [169] Congress intended this provision of the CAA to ''equalize the positions of the States with respect to interstate pollution,'' [170] and our interpretation accomplishes this goal by ensuring that downwind states can seek recourse from us if upwind states are not doing enough to address visibility transport.

Finally, we believe that our interpretation is consistent with the long-standing recognition of Congress, the states, the courts, and us that regional haze is a regional problem that requires regional solutions. In 1987, the State of Vermont first envisioned a framework similar to the one ultimately adopted in the Regional Haze Rule by setting a goal sufficient to ensure reasonable progress (in that case, a summertime ambient sulfate standard) and requesting that we require upwind states to revise their SIPs to include measures that would provide the emission reductions necessary to meet that goal.[171] The Second Circuit sympathized with Vermont's plight despite upholding our inaction on Vermont's SIP.[172] Consequently, Congress enacted Section 169B of the CAA in 1990, which required us to issue new regulations to address regional haze.[173] The Congressional record indicates that Congress was motivated in part by the dilemma of Vermont and other downwind states.[174] After we promulgated the Regional Haze Rule in 1999, states were acutely aware of the complexities of the visibility-transport problem, inquiring as to how disputes regarding the proper appropriation of emission reductions between downwind states and upwind states would be resolved.[175] While we encouraged early collaboration among states in the hopes that such disputes would be minimized, we ultimately acknowledged that we might have to step in and disapprove either a downwind state or an upwind state's SIP because it did not adequately address interstate visibility impacts.[176]

[169] 42 U.S.C. 7410(a)(2)(D)(i)(II).

[170] S. Rep. No. 95–127, at 41 (1977).

[171] *See Vermont* v. *Thomas,* 850 F.2d 99, 101 (2d Cir. 1988).

[172] *Id.* at 104.

[173] 42 U.S.C. Section 7492(e)(1).

[174] *See, e.g.,* 136 Cong. Rec. 2608 (1990) (statement of Sen. Tim Wirth); 136 Cong. Rec. 2771 (1990) (statement of Rep. Ron Wyden); 136 Cong. Rec. 2875 (statement of Sen. Brock Adams).

[175] *See* U.S. Envtl. Protection Agency, Additional Regional Haze Questions, 10–12 (Aug. 3, 2006).

[176] *Id.* at 12.

V. Our Analysis of and Proposed Action on the Texas Regional Haze SIP

On March 31, 2009, we received a regional haze SIP revision from Texas. Prior to receiving Texas' submittal, we reviewed a draft of the Texas regional haze SIP and submitted comments to the TCEQ in February 2008. Many of the issues we discuss below were originally identified in that document. This includes comments relating to ensuring that Texas include in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goals of Class I areas. Additionally, we met with the TCEQ on July 24, 2013, to further discuss Texas' regional haze program and impacts from Texas sources on Class I areas. Provided below is a summary of our analysis of the various elements of Texas' submission. For a more comprehensive analysis, please see our TX TSD, which is located in our docket to this rulemaking action.

A. Affected Class I Areas

In accordance with Section 51.308(d) of the Regional Haze Rule, the TCEQ identified two Class I areas within Texas: Big Bend National Park, in Brewster County, which borders the Rio Grande and Mexico, and the Guadalupe Mountains National Park in Culberson County, which borders New Mexico. The TCEQ is responsible for developing RPGs for these two Class I areas. The TCEQ also determined that emissions from sources in Texas impact visibility at a number of Class I areas outside of Texas. The Central Regional Air Planning Association (CENRAP) source apportionment modeling results, part of the state's SIP, indicate that Texas emissions impact the visibility at a number of Class I areas in other states, including the Breton Wilderness Area in Louisiana, the Great Sand Dunes in Colorado, Caney Creek and the Upper Buffalo in Arkansas, the Wichita Mountains in Oklahoma, and several Class I areas in New Mexico. See the TX TSD for a summary of source apportionment modeling results for Class I areas in other states impacted by emissions from sources in Texas.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by Sections 51.308(d)(2)(i) and 51.308(d)(2)(iii) of the Regional Haze Rule, and in accordance with our 2003 Natural Visibility Guidance,[177] the TCEQ calculated baseline/current [178] and natural visibility conditions for its two Class I areas, Big Bend and the Guadalupe Mountains, on the most impaired and least impaired days.

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in our 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). This equation sums the light extinction [179] resulting from individual pollutants, such as sulfates and nitrates. Our guidance provides default natural conditions for the 20% worst and 20% best days for each Class I area based on the IMPROVE equation. As documented in our guidance, we allow states to use a ''refined'' approach or alternative approaches to the guidance defaults to estimate the values that characterize the natural visibility conditions of their Class I areas. Our guidance also states that states may wish to use a more refined approach to reduce uncertainty when baseline visibility is already near natural conditions or when there is marked seasonality. These alternative approaches can be implemented via alternative estimates of natural concentrations. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another option open to states is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[180] The purpose of this

[177] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[178] Because this is the first regional haze planning period, baseline visibility conditions and current visibility conditions are the same. In future planning periods, we expect that baseline and current visibility conditions will be different due to reasonable progress being made and other changes in conditions.

[179] Light extinction, in units of inverse megameters (Mm^{-1}), is the amount of light lost as it travels over one million meters. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction, b_{ext}, as follows: $HI = 10 \ln(b_{ext}/10)$.

[180] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the federal land managers) and regional planning organizations. The IMPROVE monitoring program was established in 1985 to aid the creation

refinement to the ''old IMPROVE equation'' was to provide more accurate estimates of the various factors that affect the calculation of light extinction.

The new IMPROVE equation takes into account the most recent review of the science,[181] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate (SO_4), nitrate (NO_3), and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass, do not change between the original and new IMPROVE equations. The default natural conditions in our 2003 guidance were updated by the Natural Haze Levels II Committee utilizing the new IMPROVE equation and included some refinements to the estimates for the PM components.[182] [183] These estimates are referred to as the ''NCII'' default natural visibility conditions.

The TCEQ chose to derive a ''refined'' estimate of natural visibility conditions rather than using the default NCII values. In calculating natural visibility conditions, the TCEQ used the new IMPROVE equation and PM concentration estimates (*i.e.,* the NCII values) for most components, but assumed that 100% of the fine soil and coarse mass concentrations in the baseline period should be attributed to natural causes and that the corresponding estimates in the NCII values should be replaced. The TCEQ noted there is some uncertainty with these calculations in the amount of natural fine and coarse mass assumption. The TCEQ also stated that, to the extent its assumption that 100% of coarse mass and fine soil is natural is an overestimate, it expects that its low organic carbon estimate will more than compensate for any errors in this assumption at this time. This issue is discussed in more detail in our TX TSD.

For the 20% worst days, the TCEQ calculated natural visibility conditions for Big Bend and the Guadalupe Mountains of 10.09 dv and 12.26 dv, respectively. For the 20% best days, the TCEQ calculated that natural visibility conditions for Big Bend and the Guadalupe Mountains of 2.19 dv, and 2.10 dv, respectively.

In response to FLM comments, the TCEQ also performed an additional calculation for the 20% worst days, assuming only 80% of fine soil and course mass as natural, in order to demonstrate the sensitivity of its approach to this assumption. Under this approach, the TCEQ estimated natural conditions to be 9.2 dv for the 20% worst days at Big Bend, compared to 10.09 dv using the assumption that 100% of fine soil and course mass is natural, and 7.16 dv using the NCII method. For the Guadalupe Mountains, the TCEQ's estimate was 11.0 dv under the 80% assumption, compared with 12.26 dv under the 100% assumption and 6.65 dv using the NCII method. These values are summarized below:

TABLE 2—TCEQ NATURAL VISIBILITY CALCULATIONS

	Guadalupe Mountains		Big Bend	
	20% Worst days	20% Best days	20% Worst days	20% Best days
100% fine soil and coarse mass	12.26	2.10	10.09	2.19
80% fine soil and coarse mass	11.0	(1)	9.2	(1)
NCII default	6.65	0.99	7.16	1.62

[1] Not calculated.

Ultimately, the TCEQ stated that it was including the 80% assumption for illustration purposes only and based its calculations of natural conditions on assuming that 100% coarse mass and fine soil assumption are due to natural sources.

We agree that dust storms and other blown dust from deserts are a significant contributor to visibility impairment at the Texas Class I areas that may not be captured accurately by our default method. However, we propose to find that the TCEQ has not adequately demonstrated that all coarse mass and fine soil measured in the baseline period can be attributed to 100% natural sources. Anthropogenic sources of coarse mass and fine soil in the baseline period could have included emissions associated with paved and unpaved roads, agricultural activity, and construction activities. We also note that the impact from dust at Big Bend is less certain than at Guadalupe Mountains and a different assumption may be appropriate in estimating natural conditions there. Given the significant uncertainty in the assumptions used in the Texas methodology and the demonstrated sensitivity to the assumption of 100% natural versus 80% soil and coarse mass

of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[181] The science behind the revised IMPROVE equation is summarized in Appendix 5–1 of the Texas regional haze SIP and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report. March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado, available at: *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm* and Pitchford, Marc., 2006, Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates. Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[182] Pitchford, Marc, 2006, Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates. Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, available at: *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[183] The second version of the natural haze level II estimates based on the work of the Natural Haze Levels II Committee is available at: *http://vista.cira.colostate.edu/Docs/IMPROVE/Aerosol/NaturalConditions/NaturalConditionsII_Format2_v2.xls.*

from natural sources, we propose to disapprove Texas' calculation of the natural visibility conditions for the Big Bend and Guadalupe Class I areas.

In its regional haze SIP, the TCEQ stated that it will continue to evaluate data, modeling, and any other sources of information in order to further improve its estimates. Furthermore, the TCEQ plans to work with us and the federal land managers to improve natural conditions estimates for future regional haze SIP revisions. We encourage these efforts.

As discussed elsewhere in this notice, we propose to rely on the NCII default values that were used for every other Class I area in the country for our proposed FIP to address this deficiency in the Texas regional haze SIP, but we solicit comment on the acceptability of alternate estimates in the range between the EPA default estimates and Texas' estimates. The federal land managers commented during the development of the Texas regional haze SIP that an assumption of 80% would be more reasonable than an assumption of 100%. We note that with any of the methodologies for calculating natural conditions discussed above, Texas' Class I areas are not projected to meet the URP in 2018 according to the CENRAP modeling and are not projected to meet the goal of natural visibility conditions by 2064.

2. Estimating Baseline Visibility Conditions

As required by Section 51.308(d)(2)(i) of the Regional Haze Rule, the TCEQ calculated baseline visibility conditions for Big Bend and the Guadalupe Mountains. The baseline condition calculation begins with the calculation of light extinction for each day with monitoring data, using the IMPROVE equation. As with the natural visibility conditions calculation, the TCEQ chose to use the new IMPROVE equation, as described above.

The period for establishing baseline visibility conditions is 2000–2004, and baseline conditions must be calculated using available monitoring data, as required under Section 51.308(d)(2). The TCEQ averaged the data from 2001 through 2004 for Big Bend [184] and calculated the baseline conditions at Big Bend to be 17.30 dv on the 20% worst days, and 5.78 dv on the 20% best days. In calculating the baseline conditions at the Guadalupe Mountains, the TCEQ averaged the visibility data for 2000–2004, and calculated the baseline conditions at the Guadalupe Mountains to be 17.19 dv on the 20% worst days, and 5.95 dv on the 20% best days. We have reviewed the TCEQ's estimation of baseline visibility conditions at Big Bend and the Guadalupe Mountains and are proposing to find that the TCEQ has satisfied the requirements of Section 51.308(d)(2)(i).

3. Natural Visibility Impairment

To address Section 51.308(d)(2)(iv)(A), the TCEQ also calculated the number of dv by which baseline conditions exceed natural visibility conditions for the best and worst days at Big Bend and the Guadalupe Mountains. The natural visibility impairment is calculated by subtracting the natural visibility calculation from the baseline visibility calculation. This information is summarized below:

TABLE 3—NATURAL VISIBILITY IMPAIRMENT

	Class I area	Baseline visibility	Natural visibility	Natural visibility impairment
20% Worst Days	Big Bend	17.30	10.09	7.21
	Guadalupe Mts	17.19	12.26	4.93
20% Best Days	Big Bend	5.78	2.19	3.59
	Guadalupe Mts	5.95	2.10	3.85

We have reviewed the TCEQ's estimates of the natural visibility impairment at Big Bend and the Guadalupe Mountains and we propose to disapprove these estimates because this calculation depends on the TCEQ's calculations for natural visibility conditions, which we also propose to disapprove for the reasons discussed in the previous section.

4. Uniform Rate of Progress

Under Section 51.308(d)(1)(i)(B), as part of its RPGs determination, the TCEQ analyzed and determined the URP needed to reach natural visibility conditions by the year 2064. Also in establishing its RPGs, the TCEQ considered the uniform rate of improvement in visibility and the emission reduction measures needed to achieve this rate for the period covered by the SIP. In so doing, the TCEQ compared the baseline visibility conditions to the natural visibility conditions for Big Bend and the Guadalupe Mountains, and determined the URP needed to attain natural visibility conditions by 2064. The TCEQ constructed the URP consistent with the requirements of the Regional Haze Rule and our 2003 Tracking Progress Guidance [185] by plotting a straight graphical line from the baseline level of visibility impairment to the level of visibility conditions representing no anthropogenic impairment in 2064 for both Big Bend and the Guadalupe Mountains.

Using the baseline visibility values and natural visibility values discussed above, the TCEQ calculated the URP for Big Bend to be 0.12 dv/year, and that for the Guadalupe Mountains to be 0.08 dv/yr. This information is summarized below:

TABLE 4—SUMMARY OF UNIFORM RATE OF PROGRESS

Visibility metric	Big Bend	Guadalupe Mts.
Baseline Conditions	17.30 dv	17.19 dv.
Natural Visibility	10.09 dv	12.26 dv.
Total Improvement by 2064	7.21 dv	4.93 dv.

[184] The TCEQ determined that the fourth quarter of 2000 for Big Bend was not sufficiently complete for use in calculating a baseline average for regulatory purposes, as it had only ten complete days.

[185] Guidance for Tracking Progress Under the Regional Haze Rule, EPA–454/B–03–004, September 2003.

TABLE 4—SUMMARY OF UNIFORM RATE OF PROGRESS—Continued

Visibility metric	Big Bend	Guadalupe Mts.
Uniform Rate of Progress	0.12 dv/year	0.08 dv/year.
Improvement needed by 2018	1.7 dv.	1.2 dv

The TCEQ notes that the URP calculations above have some degree of uncertainty due to its assumptions in calculating the natural visibility.

Based on the estimated cost and visibility benefit from NO_X and SO_2 controls identified during the TCEQ's four-factor analysis described below in Section V.C.2, the TCEQ estimated the costs and emission reduction measures of SO_2 and NO_X required to enable the Guadalupe Mountains and Big Bend to achieve the URP. However, it appears that in estimating the emission reductions and costs to meet its URPs in Table 10–9 of the Texas Regional Haze SIP, the TCEQ used estimates of visibility benefits from an earlier draft of the Texas Regional Haze SIP. In that draft SIP, the TCEQ estimated the visibility benefit from a certain set of controls to be 0.05 dv at each Texas Class I area.[186] Based on TCEQ's final estimation of the visibility benefit from the TCEQ control set, we have updated the TCEQ's calculations. See our TX TSD for more information.

Errors in its calculation aside, we note that while the TCEQ has, in establishing its RPG, correctly followed the procedures for analyzing and determining the rate of progress needed to attain natural visibility conditions by the year 2064, we propose to find the TCEQ has calculated this rate of progress on the basis of, and compared baseline visibility conditions to, a flawed estimation of natural visibility conditions for the Big Bend and Guadalupe Mountains, as we describe above. Therefore, we propose to disapprove the TCEQs calculation of the URP needed to attain natural visibility conditions by 2064. In addition, as we discuss in Section V.C, we identify problems with the TCEQ's reasonable progress four factor analysis, which the TCEQ partially relied upon in consideration of the emission reduction measures needed to achieve the natural visibility conditions. For these reasons, we must also propose disapproval of the TCEQ's estimation of the emission reduction measures needed to achieve the URP for the period covered by the SIP, under Section 51.308(d)(1)(i)(B).

5. Reasonable Progress Goal Minimum

Under Section 51.308(d)(1)(vi), Texas may not adopt a RPG that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period.

The RPGs established by Texas are based on CENRAP 2018 modeling projections. The modeling projections conducted by CENRAP contain projections of the visibility conditions that are anticipated to be realized at each Class I area between the 2002 base year and the 2018 future year. These projections are based on the emission reductions resulting from federal and state control programs that are either currently in effect or with mandated future-year emission reduction schedules that predate 2018, including the long-term strategies of Texas, Oklahoma, and other states, and presumptive emission reductions expected to result from the submitted Oklahoma BART rule. Since CENRAP's 2018 modeling projections are based on local, state, and federal control programs that are either currently in effect or with mandated future-year emission reduction schedules, we believe that the TCEQ's RPGs represent at least as much visibility improvement as is expected to result from implementation of other requirements of the CAA (*i.e.,* requirements other than RH) during the applicable planning period. We therefore propose to approve Texas' submission as meeting Section 51.308(d)(1)(vi) because its RPGs for the Guadalupe Mountains and Big Bend do not represent less visibility improvement than is expected to result from the implementation of other requirements of the CAA during this planning period.

C. Evaluation of Texas' Reasonable Progress Goals

As required by Section 51.308(d)(1) of the Regional Haze Rule, the TCEQ has established RPGs for its two Class I areas, Big Bend and the Guadalupe Mountains. These RPGs must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same planning period.

1. Establishment of the Reasonable Progress Goals

The TCEQ states that its RPGs are derived from the CENRAP modeling [187] and reflect emission reductions programs already in place, including CAIR and additional refinery SO_2 reductions as a result of our refinery consent decrees. The TCEQ states that these RPGs assume that either CAIR will remain in place or will be replaced by a comparable program to reduce visibility impairing pollution from Electric Generating Units (EGUs) in Texas and in the eastern United States. The following tables [188] summarize the TCEQ RPGs:

TABLE 5—TEXAS REASONABLE PROGRESS GOALS FOR 20% WORST DAYS

Class I area	Baseline conditions (dv)	Projected 2018 visibility (RPG) (dv)	Improvement projected by 2018 using RPG (dv)	Improvement by 2018 at URP (dv)	Date natural visibility attained at RPG rate
Big Bend	17.30	16.6	0.7	1.7	2155
Guadalupe Mountains	17.19	16.3	0.9	1.2	2081

[186] ''SIP Narrative comparison of changes from proposal to adoption'' available at: *http://www.tceq.texas.gov/assets/public/implementation/air/sip/haze/4HazeSIPcompare_rev.pdf*

[187] The TSD for CENRAP Emissions and Air Quality Modeling To Support Regional Haze State Implementation is found in Appendix 8.1 of the Texas regional haze SIP.

[188] Reproduced from Tables 10–2 and 10–3 of the Texas regional haze SIP.

TABLE 6—TEXAS REASONABLE PROGRESS GOALS FOR 20% BEST DAYS

Class I area	Baseline conditions (dv)	Projected 2018 visibility (RPG) (dv)	Improvement by 2018 (dv)
Big Bend	5.8	5.6	0.2
Guadalupe Mountains	5.9	5.7	0.2

Based on the results of Texas' required reasonable progress four-factor analysis (described in the following section), and the results of the CENRAP modeling and additional information developed by CENRAP, the TCEQ adopted the CENRAP modeled 2018 visibility conditions as the RPGs for the Big Bend and Guadalupe Mountains Class I areas. The TCEQ established a RPG of 16.6 dv for Big Bend and 16.3 dv for Guadalupe Mountains for the 20% worst days for 2018. This represents a 0.7 dv and 0.9 dv improvement in visibility over the baseline conditions at Big Bend and Guadalupe Mountains, respectively. Although Texas' RPGs do provide for some improvement in visibility for the most impaired days over the period of the SIP and ensure no degradation in visibility for the least impaired days over the same period, we believe the overall RPG goals that Texas established for its own Class I areas of Big Bend and Guadalupe Mountains do not provide for reasonable progress based on the four reasonable progress factors that a state is required to consider in selecting a RPG under (d)(1)(i)(A). For the reasons discussed below, we propose to find that the RPGs identified for the Texas Class I areas are not reasonable. We address our proposed finding regarding whether the Texas regional haze SIP satisfies the requirements under Section 51.308(d)(1) to set RPGs below.

2. Texas' Reasonable Progress Four Factor Analysis

In establishing a RPG for a Class I area located within a state, Texas is required by CAA Section 169A(g)(1) and Section 51.308(d)(1)(i)(A) to ''[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.'' This requirement is often referred to as the reasonable progress ''four factor analysis.'' In addition to this explicit statutory and regulatory requirement, the Regional Haze Rule also establishes an analytical requirement to ensure that Texas carefully consider the suite of emission reduction measures necessary to attain the URP. Under Section 51.308(d)(1)(iii), the Regional Haze Rule provides that we will consider both Texas' consideration of the four factors in Section 51.308(d)(1)(i)(A) and its analysis of the URP ''[i]n determining whether the State's goal for visibility improvement provides for reasonable progress.'' As explained in the preamble to the Regional Haze Rule, the URP analysis was adopted to ensure that states use a common analytical framework and to provide an informed and equitable decision making process to ensure a transparent process that would, among other things, guarantee that the public would be provided with the information necessary to understand the emission reductions needed, the costs of such measures, and other factors associated with improvements in visibility.[189] The preamble to the Regional Haze Rule [190] also states that the URP does not establish a ''safe harbor'' for the state in setting its progress goals:

> If the State determines that the amount of progress identified through the [URP] analysis is reasonable based upon the statutory factors, the State should identify this amount of progress as its reasonable progress goal for the first long-term strategy, unless it determines that additional progress beyond this amount is also reasonable. If the State determines that additional progress is reasonable based on the statutory factors, the State should adopt that amount of progress as its goal for the first long-term strategy.

In establishing its RPGs for 2018 for the 20% worst days, the TCEQ relied on the improvements in visibility that are anticipated to result from federal, state, and local control programs. Based on the emission reductions from these measures, CENRAP modeled the projected visibility conditions anticipated at each Class I area in 2018 and the TCEQ used these results to establish its RPGs. The TCEQ states it developed its RPGs after considering the regulatory factors required under Section 51.308(d)(1)(i)(A), discussed above. The TCEQ focused its control strategy analysis on point source emissions of SO_2 and NO_X, as the sources of these pollutants are the main anthropogenic pollutants that affect visibility at Class I areas in Texas. It examined visibility impairment at the Texas Class I areas and Class I areas in nearby states. The TCEQ stated that source apportionment modeling results, summarized in Chapter 11 of the Texas regional haze SIP, demonstrate that NO_X and SO_2 are the main anthropogenic pollutants that affect visibility at the Class I areas in Texas and Class I areas in surrounding states. Source apportionment modeling also indicated that sulfur emissions that impact visibility are dominated by point sources, while impacts from NO_X emissions are more evenly distributed between area, mobile and point sources. The following table [191] summarizes the source category contributions from the 2002 base case CENRAP source apportionment modeling for the five Class I areas whose visibility is most impacted by Texas emissions. In evaluating the emission inventory projections, Texas concluded that for SO_2, point sources are responsible for over 90% of the projected 2018 statewide emissions, and for NO_X, point sources comprise over 45% of the projected statewide emissions. The TCEQ noted that NO_X emissions are more evenly distributed among point, mobile, and area sources, and that states have very limited authority to reduce mobile source emissions and are already addressing road and non-road mobile emissions. The TCEQ noted the largest category of area source NO_X is upstream oil and gas production, and it is taking all steps it has determined are reasonable at this time to control these sources as part of the Dallas-Fort Worth ozone SIP and is investing $4,000,000 in a grant program to assist with the retrofitting of gas-fired, rich burn compressor engines. The TCEQ also noted uncertainty in upstream oil and gas emission estimates. Therefore, the TCEQ reasoned that since point sources

[189] 64 FR 35733 (July 1, 1999).

[190] 64 FR 35732 (July 1, 1999).

[191] Reproduced from Table 3 in Appendix 10–1 of the Texas regional haze SIP.

are the single largest pollution category for SO_2 and NO_X, it should concentrate its RPG strategy on analyzing controls for point sources.

TABLE 7—PERCENTAGE SOURCE CATEGORY CONTRIBUTIONS TO SO_4 AND NO_3 AT THE FIVE CLASS I AREAS TEXAS MOST IMPACTS

	Big Bend			Guadalupe Mountains		
	Point	Mobile	Area	Point	Mobile	Area
SO_4	67.1	2.8	6.9	75.6	3.5	8.5
NO_3	26.6	28.6	14.3	29.2	36.5	13.9

	Wichita Mountains			Salt Creek			White Mountain		
	Point	Mobile	Area	Point	Mobile	Area	Point	Mobile	Area
SO_4	78.2	3.7	9.2	73.8	3.9	8.1	75.2	4.1	8.1
NO_3	28.1	44.7	13.4	35.8	29.9	17.1	27.9	40.3	12.0

Having narrowed the scope of the control analysis to point sources of NO_X and SO_2, the TCEQ developed a list of potential controls and costs associated with those controls to inform their four factor analysis. It used the control strategy analysis developed by CENRAP as the starting point for its analysis. CENRAP contracted with Alpine Geophysics to conduct an evaluation of possible additional point-source add-on controls for sources in CENRAP states. The Alpine Geophysics evaluation relied on AirControlNET,[192] a database tool we released in 2006 to enable cost-benefit analyses of potential emissions control measures and strategies. Alpine Geophysics prepared cost estimates for potential add-on controls for NO_X and SO_2 reductions in 2005 dollars for point sources in CENRAP states. The Iowa Department of Natural Resources and Kansas Department of Health and Environment staff developed Area-of-Influence (AOI) data for each Class I area in every CENRAP member state, as well as distance calculations for each source to each Class I area for inclusion in the Alpine Geophysics analysis. Available SO_2 and NO_X control strategies in the AirControlNET dataset were applied to EGU and non-EGU sources to develop a master list of available incremental control strategies for the CENRAP states.[193] The TCEQ reviewed this information for Texas sources and made changes based on additional information and past experience. The TCEQ also added some additional sources from source-types not included in the CENRAP AirControlNET dataset. This work resulted in a list of potential add-on controls for reducing SO_2 and NO_X at Texas point sources, an estimate of the costs associated with each control, and identification of the AOIs for each Class I area.

The TCEQ states its analysis focused on moderate cost controls for sources it believed were likely to contribute to visibility impairment at Class I areas. In an effort to further narrow the list of potential controls, the TCEQ followed the screening process summarized below and as detailed in Section 10–1.3 of Appendix 10–1 of the Texas regional haze SIP:

- Identified controls at sources with potential control strategy costs greater than $2,700 per ton SO_2 or NO_X were initially screened out.
- Remaining sources were reduced by eliminating the ones the TCEQ believed were so far away from any of the ten Class I areas, that any reduction in their emissions would likely not have a perceptible impact on visibility.
- Remaining sources were further reduced by eliminating the ones for which a ratio of the estimated projected 2018 base annual emissions (tons) of SO_2 or NO_X to distance (kilometers), to any Class I area, did not exceed five.
- Any source with predicted 2018 emissions less than 100 tons per year was excluded.

Separate from the above described screening process, the TCEQ also excluded additional NO_X controls on cement kilns from consideration, as it concluded it had already required all the measures it had determined reasonable to control NO_X emissions from these sources in the latest Dallas-Fort Worth ozone SIP revision. The TCEQ reasoned, based on a study performed for the Dallas-Fort Worth ozone SIP revision,[194] that a 35 to 50% NO_X control range was the most appropriate control level to address ozone formation. The TCEQ developed a source cap that required a reduction of approximately 9.69 tons per day (tpd) of NO_X emissions from the cement kilns in Ellis County starting March 2009.

The types of controls considered by the CENRAP study, based on industrial categories, are listed below:

SO_2 Control at 24 Facilities From 15 Sites

- Natural Gas Transmission—Flue Gas Desulfurization (FGD)
- Crude Petroleum—Sulfur recovery and/or tail gas treatment
- Inorganic chemical plants—coal washing and Spray Dryer Absorber (SDA) on boilers, increase efficiency of sulfuric acid plants
- Electric Generating Units (EGU)—coal washing and FGD wet scrubbing
- Carbon black—FGD

NO_X Control for 24 Facilities at 15 Sites

- Natural Gas Transmission—Low NO_X Burners (LNB), Selective Catalytic Reduction (SCR) + LNB
- EGU—LNB with Close Coupled Over-Fired Air (LNC1), and with both LNC1 and Separated Over-Fired Air (LNC3)
- Flat Glass—LNB, SCR
- Paper Mills SNCR and Oxygen Trim (OT) with water injection
- Chemical Plant Boiler—SCR

The total cost of controls and the resulting emission reductions were calculated by summing up the

[192] Additional information and a copy of the AirControl NET software can be found at: *http://www.epa.gov/ttn/ecas/AirControlNET.htm*

[193] Lists of NO_X and SO_2 controls meeting cost thresholds ranging from $1,500/ton to $10,000/ton developed by Alpine Geophysics are available in the docket to this action (See spreadsheets titled ''nox_cost_ton__2_'' and ''so2_cost_ton'')

[194] Assessment of NO_X Emission Reduction Strategies for Cement Kilns—Ellis County Final Report, TCEQ Contract No. 582–04–65589, Work Order No.05–06, Prepared by: ERG, Inc., 10200 Alliance Road, Suite 190, Cincinnati, Ohio 45242–4716. Available at: *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/agreements/BSA/CEMENT_FINAL_REPORT_70514_final.pdf*

individual costs of those identified controls located within the AOI of Big Bend or the Guadalupe Mountains. The TCEQ also performed this calculation for eight additional Class I areas in other states impacted by Texas' emissions: Breton Island, Caney Creek, Carlsbad Caverns, Salt Creek, Upper Buffalo, Wheeler Peak, White Mountain, and the Wichita Mountains. The annualized costs [195] that would result from the imposition of the above controls within each Class I area's AOI are shown below.

TABLE 8—ANNUALIZED COST OF CONTROLS FOR EACH CLASS I AREA

[Controls at facilities within each class I area's AOI]

Class I area	NO_X	SO_2
Big Bend	$24,100,000	$215,900,000
Breton Island	27,000,000	231,000,000
Caney Creek	28,600,000	245,900,000
Carlsbad Caverns	24,100,000	255,500,000
Guadalupe Mountains	33,800,000	254,900,000
Salt Creek	27,000,000	251,900,000
Upper Buffalo	24,100,000	233,800,000
Wheeler Peak	22,700,000	229,500,000
White Mountains	23,000,000	244,500,000
Wichita Mountains	28,100,000	269,500,000

Many of these controls are in more than one AOI. The TCEQ reviewed the total cost of all state-wide point source controls identified by the process described above, as follows for 13 facilities with SO_2 controls and 15 facilities with NO_X controls.

TABLE 9—TOTAL ESTIMATED COST OF TEXAS CONTROL SET [196]

Pollutant	Reduction (tpy)	Estimated cost
Sulfur Dioxide (SO_2)	155,873	$270,800,000
Nitrogen Oxides (NO_X)	27,132	53,500,000
Total Costs	.....	$324,300,000

The196 TCEQ used the results of the 2018 CENRAP state-wide photochemical grid modeling analyses (that includes the 2018 modeling and a CENRAP control case modeling scenario) to estimate the visibility benefit that would result in 2018 from controlling those sources in Texas identified by it following the process described above. CENRAP developed a modeling scenario to estimate the effectiveness of a specific suite of controls on facilities in the CENRAP states. CENRAP based its control sensitivity analysis on a maximum estimated cost of $5,000 per ton of emissions of NO_X or SO_2 reduced estimated in the Alpine Geophysics report and evaluated only those point sources predicted to emit 100 tons or more of SO_2 or NO_X in the year 2018.[197] Similar to the Texas analysis, CENRAP further refined the sources for analysis, considering controls only for those sources with emissions of NO_X or SO_2 greater than or equal to five tons per year per kilometer of distance to the nearest Class I area. This distance-weighing criterion limited the sensitivity evaluation to sources with the greatest likely influence on visibility. The CENRAP control sensitivity modeling run included emission reductions beyond CAIR and BART in the CENRAP states at all point sources where the cost-effectiveness and Q/D [198] criteria discussed above were met, and projected the resulting visibility conditions in 2018 at the CENRAP Class I areas. This modeling was developed as a starting point for discussion and development of refined analyses as needed.[199]

The TCEQ used the CENRAP control sensitivity analysis and the CENRAP 2018 visibility projection modeling as the starting point for estimating the visibility benefit of implementing only the controls identified by it above for Texas point sources. The TCEQ used the results of this modeling analysis and the source apportionment modeling results to determine an ''effectiveness ratio'' for NO_X and SO_2 reductions, which it states provides an estimate of improvement in visibility for every ton of NO_X and SO_2 reduced in order to produce ''an order of magnitude estimate of the likely visibility improvements resulting from the point source.'' See Appendix 10–2 and 10–4 of the Texas regional haze SIP and our TX TSD for additional information on the methodology Texas used to develop this estimate.

The TCEQ summarizes the estimated visibility improvement that would result in 2018 from the imposition of all the above controls as follows [200]:

[195] Annualized costs are the total yearly costs, typically the sum of the yearly capital cost (amortized over the life of the control) and the yearly operational cost. In this instance, the TCEQ relied upon our AirControlNET model which for these types of controls typically assumed a 30 year control life.

[196] Reproduced from Table 4 in Appendix 10–1 of the Texas regional haze SIP.

[197] *See* Section 2.14 of the Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans, September 12, 2007.

[198] Q/D is the ratio of annual emissions over distance to a Class I area.

[199] ''The results of the modeling were not intended to be prescriptive; instead, they were intended to be a starting point for control discussions that would require much greater refinement.'' CENRAP TSD, page 2–37.

[200] Table 5 in Appendix 10–1 of the Texas Regional Haze SIP.

TABLE 10—TCEQ PROJECTED VISIBILITY IMPROVEMENT TO SELECTED CLASS I AREAS FROM THE IMPOSITION OF POTENTIAL CONTROLS

Class I area	Visibility improvement (dv)
Big Bend	0.16
Breton Island	0.05
Caney Creek	0.33
Carlsbad Caverns	0.22
Guadalupe Mountains	0.22
Salt Creek	0.18
Upper Buffalo	0.16
Wheeler Peak	0.04
White Mountains	0.24
Wichita Mountains	0.36

After identification of potential controls for multiple sources, estimation of aggregate costs associated with those controls and estimation of the overall visibility improvement anticipated from implementation of those controls as described above, the TCEQ then weighed the four statutory factors in determining the reasonableness of additional controls and selecting the RPGs for Big Bend and Guadalupe Mountains. In general, the cost of compliance was the key factor considered by the TCEQ. It determined that the time necessary for compliance was not a critical factor for the determination of applicable additional controls for Texas sources. It stated that to the extent energy impacts are quantifiable for a particular control, they were included in its cost estimates. However, it stated that ''including [energy and non-air quality environmental] impacts on a source-by-source basis would have added further weight against finding that the potential additional controls were reasonable to apply.'' [201] The TCEQ also stated that for the purposes of initial analysis, no limited remaining useful life was assumed. The TCEQ describes the cost of compliance as a factor used to determine whether compliance costs for sources are reasonable compared to the emission reductions and visibility improvement they will achieve. The TCEQ weighed the four reasonable progress factors as follows:

a. Cost of Compliance

The TCEQ concluded that at a total estimated cost of over $300 million and (in its view) no perceptible visibility benefit, it was not reasonable to implement additional controls. All units in Texas that met the emissions over distance threshold were assessed. The TCEQ states it adopted its $2,700 cost threshold to limit the proposed controls group to cost-effective measures. Annualized cost values, and emission reductions based on proposed efficiencies listed in AirControlNET, were used. Modifications for Texas included the consideration of flue gas desulfurization for carbon black units.

b. Time Necessary for Compliance

The TCEQ determined that the time necessary for compliance was not a critical factor for the determination of applicable additional controls for its sources. It noted that in our CAIR regulatory impact statement, we estimated that approximately 30 months is required to design, build, and install SO_2 scrubbing technology for a single EGU boiler. The TCEQ stated that the total time for a single facility to comply with one of the NO_X caps would be about five years. It estimated that completion by 2018 would still be anticipated. For mobile sources, MOBILE and NONROAD model runs were completed for the 2018 emissions inventory. These model runs incorporated the degree of fleet and expected engine replacement prior to 2018. The completion of other proposed controls were anticipated by 2018.

c. Energy and Non-Air Quality Environmental Impacts of Compliance

The TCEQ stated that to the extent energy impacts are quantifiable for a particular control, they were included in its cost estimates. However, it stated that ''including [energy and non-air quality environmental] impacts on a source-by-source basis would have added further weight against finding that the potential additional controls were reasonable to apply. Source-by-source review of the non-air quality impacts of the potential controls would possibly have led to a different determination about the unreasonableness of the set of potential additional controls.'' [202] The TCEQ noted that scrubbers, SCR systems, and Selective Non-Catalytic Reduction (SNCR) systems installed under the EGU control strategies would require electricity to operate fans and other ancillary equipment. However, it noted that estimates were given that the electricity and steam required by controls installed to meet SO_2 and NO_X emission caps would be less than 1% of the total electricity and steam production of EGUs. TCEQ noted that Scrubbers, coal washing, and spray dryers would require additional safeguards for fuel handling and waste handling systems to avoid additional non-air environmental impacts such as increased effluents in waste water discharges and storm water runoff. The TCEQ expected that solid waste disposal and wastewater treatment costs would be less than five percent of the total operating costs of pollution control equipment. It noted that these factors would have to be considered specific to individual sources.

d. Remaining Useful life

The TCEQ noted that CENRAP considered the remaining useful life in modeling for mobile sources that assumes reduced emissions per vehicle mile traveled due to the turnover of the on-road mobile source fleet. It noted that for sources with a relatively short remaining useful life, this consideration would have weighed more heavily against a determination that controlling those sources would have been reasonable. The TCEQ believed that this factor was not critical for its sector analyses for the 2018 timeline and did not assume any limited useful equipment life. Only units that were scheduled for shutdown under enforceable decrees were eliminated from the 2018 inventory and further analysis.

e. TCEQ Noted Uncertainty in Visibility Projections Due to CAIR

The TCEQ noted that the majority of the emission reductions underlying the predicted visibility improvements in 2018 resulting from controls already in effect or scheduled to become effective will result from the CAIR program in particular. The CAIR program allows interstate trading of allowances, and does not put specific emission limits on specific sources. Further, it notes that because emission allowances can be purchased by EGUs, visibility improvement may be less or more that that predicted by the CENRAP's modeling. CENRAP used our Integrated Planning Model (IPM) to predict the emission reductions expected from CAIR in 2018. The TCEQ assumed that any replacement for CAIR will include interstate trading of emissions allowances. The TCEQ presents a comparison [203] of its baseline 2002 SO_2 emissions, the CAIR budget for EGUs in 2015 and the IPM predicted SO_2 emissions for the 2018 planning year:

[201] Page 10–8 of the Texas Regional Haze SIP.

[202] Texas Regional Haze SIP, page 10–8.

[203] Reproduced from Table 10–7 in the Texas Regional Haze SIP.

TABLE 11—COMPARISON OF TEXAS 2002 BASELINE SO_2 EMISSIONS, 2015 CAIR EGUS BUDGET AND 2018 IPM PREDICTED SO_2 EMISSIONS

SO_2 emissions	Texas SO_2 emissions (tpy)
Current (2002 base case)	550,000
EPA's CAIR budget for Texas EGUs for 2015	225,000
IPM projection CENRAP modeled for 2018	350,000

The TCEQ notes that the IPM model analysis used by CENRAP predicts that by 2018 EGUs in Texas will purchase approximately 125,000 tpy of emissions allowances from out of state. This represents more than 50% of Texas' total CAIR SO_2 budget. The TCEQ states that it requested that key EGUs in Texas review and comment on the predictions of the IPM model. However, no EGU made an enforceable commitment to any particular pollution control strategy and preferred to retain the flexibility offered by the CAIR program.

f. The TCEQ Reasonable Progress Conclusion

The TCEQ's assessment of reasonable progress rested primarily on its calculation of the total cost of the controls it analyzed versus the visibility benefits at the ten Class I areas it analyzed. It concluded, ''At a total estimated cost exceeding $300 million and no perceptible visibility benefit, Texas has determined that it is not reasonable to implement additional controls at this time.'' [204]

Section 51.308(d)(1)(iii) requires that in determining whether the state's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will evaluate the demonstrations developed by the state pursuant to Sections 51.308(d)(1)(i) and (d)(1)(ii). We perform that evaluation beginning in the next section.

3. Our Analysis of Texas' Reasonable Progress Four Factor Analysis

We agree with the TCEQ's decision to focus the analysis of the four statutory factors on point sources, as the CENRAP modeling results and the TCEQ's analysis in Chapter 11 and appendix 10–1 of the Texas regional haze SIP indicate that the predominant anthropogenic pollutants that affects the state's ability to meet the URP goals in 2018 on the worst 20% days at the Texas Class I areas are largely due to sulfate and nitrate, primarily from point sources. We agree with the TCEQ's assessment that the cost of compliance is the dominant factor, and its incorporation of the other factors into the cost, where applicable. We note, however, that because the TCEQ did not evaluate controls on a source-by-source basis, source–specific factors related to the evaluation of the reasonable progress four factor analysis could not be considered. We also agree with the TCEQ's decision to consider visibility benefits in weighing the factors and to assist in its consideration of the cost of compliance. While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, we believe it is appropriate to consider the projected visibility benefit of the controls when determining if cost-effective controls are warranted to make reasonable progress. However, the TCEQ did not discriminate between and analyze controls on those source(s) with the highest potential visibility benefit at each Class I area. We disagree with the set of potential controls identified by the TCEQ and how it analyzed and weighed the four reasonable progress factors in a number of key areas.

a. The TCEQ's Cost-Effectiveness Threshold Approach

The TCEQ eliminated controls with an estimated cost-efficiency greater than $2,700/ton from any further analysis, regardless of their potential visibility benefits. Given the large number of sources and their large geographic distribution, some consideration of location and emissions data is needed before controls should have been eliminated from further analysis. The TCEQ supports its selection of this value with reference to ''EPA estimated cost of implementing CAIR was up to $2,700/ton.'' However, although we demonstrated that CAIR was acceptable in lieu of BART, CAIR was not designed as a reasonable progress strategy. A state should look beyond BART for additional reductions when developing its long-term strategy to achieve reasonable progress at its Class I areas.[205] As a result of the application of this $2,700/ton threshold, potentially cost-effective controls were not evaluated at sources that may result in meaningful visibility benefits at Guadalupe Mountains or Big Bend. For example, potential SO_2 controls for the Tolk Station were estimated in the Alpine Geophysics analysis to cost an average of approximately $3,100/ton and result in nearly 20,000 tpy reduced across the two units. Applying the $2,700/ton threshold, the TCEQ did not consider potential controls on any EGUs in West Texas to improve visibility at the two Class I areas located in West Texas despite the potential visibility benefits from controlling these large point sources. Sensitivity analysis performed by CENRAP suggests to us that a threshold in the range of $4,000/ton to $5,000/ton would be reasonable for purposes of identifying potential cost-effective controls for further analysis.[206]

b. The TCEQ's Weighing of the Four Factors for Individual Sources

The TCEQ constructed a large potential control set consisting of a mix of large and small sources, located at various distances from Class I areas, with a large geographical distribution. Because of the variation in size, type, and location of these sources, the potential to impact visibility and potential benefit from controls at a given Class I area can vary greatly between the identified sources. This potential control set identified by the TCEQ included controls on some sources that would likely result in significant visibility benefits, but also included controls on many sources with much less anticipated visibility benefits. Because it only estimated the visibility benefit of all the controls together, the TCEQ was not able to assess the potential benefit of controlling individual sources with significant, and potentially cost-effective, visibility benefits. Also, we believe that individual benefits were masked by the inclusion of those controls with little visibility benefit that only served to increase the total cost figures. For example, the TCEQ identified SO_2 controls at Big Brown to be approximately $1,500/ton, significantly less than its $2,700/ton threshold. These controls were estimated to achieve greater than 40,000 tpy SO_2 emission reductions. Despite this evidence in the record of an identified cost-effective control that results in large emission reductions, and source apportionment modeling identifying large impacts from

[204] Texas Regional Haze SIP, page 10–7.

[205] Per Section 51.308(e)(5), ''After a State has met the requirements for BART or implemented emissions trading program or other alternative measure that achieves more reasonable progress than the installation and operation of BART, BART-eligible sources will be subject to the requirements of paragraph (d) of this section in the same manner as other sources.''

[206] See ''Sensitivity Run Specifications for CENRAP Consultation,'' available in the docket for this action.

EGU sources in northeast Texas, the TCEQ did not separately evaluate the visibility benefit from the implementation of this control, or appropriately weigh the four reasonable progress factors in determining the reasonableness of this individual control.

Because individual sources were not considered by the TCEQ, we found it is necessary to conduct an additional analysis to determine whether this approach materially affected the outcome of the TCEQ analysis. As we demonstrate in detail in our FIP TSD, by analyzing sources individually, we believe we have identified a small number of sources that are responsible for much of Texas' collective visibility impact on the Texas' Class I areas, which if controlled, would provide for visibility benefit at Texas' Class I areas. That modeling is summarized below.

Our preliminary modeling study identified those facilities with the largest impacts on the Texas Class I areas on the 20% worst days in 2018.[207] This modeling includes the same projections the TCEQ used to account for predicted reductions due to CAIR. The projected impacts[208] in 2018 from the top ten facilities in Texas that impact visibility at Big Bend and the Guadalupe Mountains are summarized in Tables 12 and 13 below (see our FIP TSD for more details). Texas point sources combined are projected in 2018 to contribute approximately 8% (3.56 Mm^{-1}) to the total visibility impairment at Big Bend, and 9% (3.84 Mm^{-1}) to the total visibility impairment at Guadalupe Mountains. These results below show that some facilities can have large impacts on certain days and significant impacts on the 20% worst days, even including facilities like Big Brown which is more than 700 km from Big Bend and more than 800 km from the Guadalupe Mountains. We note that Texas decided to invite states to consult using the CENRAP Particulate Matter Source Apportionment Technology (PSAT) results and included states with > 0.5 inverse megameter impact (from all sources in the state) on one of Texas' Class I areas.[209] These results also suggest that controlling a small number of sources will result in visibility benefits at both Class I areas, and that rather than evaluating controls at all facilities identified by Texas combined, a subset of those facilities (and some additional facilities not identified) may be reasonable.

TABLE 12—2018 PHASE 1 EPA SOURCE APPORTIONMENT MODELING RESULTS, TOP TEN FACILITIES IN TEXAS THAT IMPACT VISIBILITY AT BIG BEND

Rank	Facility name	Extinction (Mm^{-1}) 20% worst days	% Contribution to total visibility impairment 20% worst days	Max extinction during 20% worst days
1	SOMMERS DEELY S	0.276	0.57	1.193
2	COLETO CREEK PL	0.216	0.44	0.937
3	BIG BROWN	0.212	0.44	0.923
4	RELIANT ENERGY*	0.103	0.21	0.441
5	LIGNITE–FIRED P**	0.101	0.21	0.428
6	MONTICELLO STM	0.096	0.20	0.413
7	W A PARISH STAT	0.090	0.18	0.385
8	BIG SPRING CARB	0.084	0.17	0.356
9	SANDOW STEAM EL	0.080	0.16	0.342
10	MARTIN LAKE ELE	0.080	0.16	0.342

*This is the Limestone facility.
**This is the San Miguel facility.

TABLE 13—2018 PHASE 1 EPA SOURCE APPORTIONMENT MODELING RESULTS, TOP TEN FACILITIES IN TEXAS THAT IMPACT VISIBILITY AT GUADALUPE MOUNTAINS

Rank	Facility name	Extinction (Mm^{-1}) 20% worst days	% Contribution to total visibility impairment 20% worst days	Max extinction during 20% worst days
1	TOLK STATION	0.302	0.65	1.004
2	BIG BROWN	0.235	0.50	0.809
3	BIG SPRING CARB	0.226	0.48	0.775
4	SOMMERS DEELY S	0.208	0.44	0.688
5	HARRINGTON STAT	0.184	0.39	0.606
6	MONTICELLO STM	0.114	0.24	0.391
7	WAHA PLANT	0.113	0.24	0.387
8	RELIANT ENERGY*	0.111	0.24	0.372
9	MARTIN LAKE ELE	0.104	0.22	0.351
10	COLETO CREEK PL	0.066	0.14	0.227

*This is the Limestone facility.

[207] As discussed later in this TSD, this study also looked at impacts from Texas sources on Class I areas in other States.

[208] We occasionally present visibility in extinction, rather than deciviews (dv). Light extinction, in units of inverse megameters (Mm^{-1}), is the amount of light lost as it travels over one million meters. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction, bext, as follows: HI = 10 ln(bext/10). Extinction is an appropriate measure for the visibility impairment contribution from individual sources because it avoids the sensitivity of the logarithmic transformation for calculating deciviews to the overall level of visibility impairment including the impacts of other sources.

[209] See Appendix 4–1: Summary of Consultation Calls.

c. The TCEQ's Cost of Compliance Analysis Assumed Future CAIR Reductions as a Baseline

We based our determination that CAIR was better than BART in part on a finding that CAIR resulted in an overall improvement in visibility determined by comparing the average differences over all affected Class I areas. We noted at the time that BART is one component of a long-term strategy to make reasonable progress, but it is not the only component. [210] Thus, when assessing reasonable progress, a state should look beyond BART for additional reductions when determining what long-term strategy will achieve reasonable progress at its Class I areas. A critical decision point in performing cost analysis for potential controls is the determination of an emission baseline. As we state above, the TCEQ projected that Texas EGUs would purchase approximately 125,000 tpy of emissions allowances from out of state. The TCEQ relied on the IPM predictions as discussed above to estimate 2018 emission levels for EGUs. The TCEQ also notes that there is uncertainty in the size and distribution in emissions in the future projections. Nevertheless, the TCEQ utilized this future projection of 2018 emissions as the starting point for its estimation of emission reductions and the associated costs of additional controls.

For example, Big Brown Unit 1's SO_2 emissions in 2002 were 34,448 tpy. The IPM predictions that were incorporated into the 2018 emission level assume that a roughly 1/3 reduction in these emissions will occur in response to CAIR by switching to a coal with a lower sulfur content, resulting in a 2018 SO_2 emission level of 23,142 tpy. The TCEQ's cost-effectiveness calculation for post-combustion controls on Big Brown Unit 1 was based on reducing that projected 2018 SO_2 emission level of 23,142 tpy by 90%, resulting in a reduction of 20,828 tpy. This results in a cost of $32,766,310/yr, or a cost-effectiveness calculation of $1,573/ton. However, the installation of a scrubber would allow Big Brown flexibility in fuel choice thus allowing the unit to continue to burn the higher average sulfur fuel it currently burns, instead of moving to the low sulfur coal predicted by IPM.

Big Brown Unit 1 SO_2 emissions in 2012 were 32,100 tons. The issue of scrubber efficiency aside, a reduction of 90% from these actual emission levels would result in an SO_2 reduction in the range of 29,000 to 31,000 tpy. While the numerator ($) in the cost-effectiveness metric of $/ton will increase slightly beyond what was estimated by Alpine Geophysics due to an increased sulfur loading to the scrubber, the denominator (tons) would increase by roughly 50%, thus improving (lowering) the overall cost-effectiveness of controlling Big Brown Unit 1 significantly.[211] Estimates for scrubbers at Monticello are similarly impacted by the cost-methodology used by Texas in estimating cost-effectiveness on a cost-per-ton basis.

We believe that in performing its control analysis, the TCEQ should have given greater consideration to the flexibility in the CAIR trading program and the resulting uncertainty in the projected emissions. In other words, the TCEQ could have recognized that implementation of reasonable controls under the Regional Haze Rule would likely not be in addition to anticipated reductions due to CAIR predicted by IPM, but would replace or complement any controls predicted by IPM.

d. The TCEQ's Assumptions of SO_2 Control Efficiency of Scrubbers

We note that the control efficiency of scrubbers evaluated by CENRAP and Texas, based on the data from AirControlNET, was assumed to be 90%. As we discuss in detail in our FIP TSD, we establish that SO_2 scrubbers are capable of achieving emission reductions of at least 95% for dry scrubbers and 98% for wet scrubbers. These additional reductions would further reduce the price on a $/ton basis and increase the visibility benefit anticipated due to controls.

e. The TCEQ's Evaluation of Potential Visibility Improvements

In considering whether compliance costs for sources were reasonable, the TCEQ compared those costs to the emission reductions and visibility improvement those sources would achieve. While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, we consider it appropriate to consider the projected visibility benefit of the controls when determining if the controls are needed to make reasonable progress. We discuss this in more detail in our FIP TSD.

In evaluating and dismissing the estimated visibility benefit from the control set identified by the TCEQ, the TCEQ states that the estimated benefit is not perceptible (less than 1 dv) and that it is less than 0.5 dv, the threshold used under BART requirements used to determine if a facility contributes to visibility impairment. The 0.5 dv BART threshold referred to applies to the maximum anticipated visibility impact on a single day due to the short-term maximum actual baseline emissions from a single facility, compared to clean background conditions. The reasonable progress analysis presented by the TCEQ contemplates the visibility benefit anticipated for an average tpy emission reduction (as opposed to the impact from the total short-term maximum emissions from the sources) averaged across the 20% worst days, which would be anticipated to be significantly lower. See our FIP TSD for a detailed discussion of the different metrics and modeling typically used for BART and reasonable progress analyses. Furthermore, in a situation where the installation of BART may not result in a perceptible improvement in visibility, the visibility benefit may still be significant, as explained by the Regional Haze Rule: [212]

> 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. Thus, we disagree that the degree of improvement should be contingent upon perceptibility.

As we stated in our Oklahoma final decision: [213]

> Given that sources are subject to BART based on a contribution threshold of no greater than 0.5 deciviews, it would be inconsistent to automatically rule out additional controls where the improvement in visibility may be less than 1.0 deciview or even 0.5 deciviews. A perceptible visibility improvement is not a requirement of the BART determination because visibility improvements that are not perceptible may still be determined to be significant.

f. The TCEQ's ''Order of Magnitude Estimate'' for Visibility Improvement

The TCEQ produced an ''order of-magnitude estimate'' of the visibility improvements resulting from the level of aggregate emission reductions that would result from its point source control strategy using PSAT results and effectiveness ratios. This methodology assumes that all emission reductions within a PSAT region have the same

[210] 70 FR 39137 (July 6, 2005).

[211] See our cost-effectiveness calculations for retrofitting Big Brown and other Texas EGU with scrubbers in section VII.F.

[212] 70 FR 39130 (July 6, 2005)

[213] 76 FR 81739 (Dec. 28, 2011).

effectiveness in reducing visibility impairment. The estimated effectiveness factor applied equally to all emission reductions located in the East Texas source region, including Sommers Deely Spruce (440 km from Big Bend and 680 km from Guadalupe Mountains) and Monticello (850 km from Big Bend and 920 km from Guadalupe Mountains). Given the large difference in distances between these two facilities and the Class I areas, it is reasonable to expect that the effectiveness of emission reductions could vary greatly between the two. We propose to find that the TCEQ's analysis is insufficient to determine the visibility benefit of controlling the source or subset of sources with the most effective controls for improving visibility conditions at a Class I area or a number of Class I areas and that the potential visibility benefits from controlling these sources may be significant. Our own source apportionment modeling has confirmed that individual sources within the CENRAP modeling PSAT regions had significantly different impacts, leading us to believe that TCEQ's reliance on an aggregate analysis materially affected its conclusion that existing and scheduled controls would achieve reasonable progress.[214]

g. Upgrades to Existing Controls

The CENRAP analysis and the additional analysis performed by the TCEQ did not consider the reasonableness of control upgrades or increased utilization of existing controls. We note that the AirControlNET database does not include general information for the cost and effectiveness of scrubber upgrades as the cost and reductions from these potential upgrades are typically very specific to the existing equipment and site-specific conditions. Many Texas EGU's are equipped with older vintage scrubbers and/or have scrubber bypasses that divert a portion of the exhaust gas around the control equipment. In some cases, excess scrubbing capacity is simply not being utilized. Texas includes many of these sources with controls in the maps showing area of influence and ''high priority'' sources for other state's Class I areas, as well as in the table of sources within the Class I areas AOI, in their correspondence with other states (see Appendix 4.3 of the TX regional haze SIP). However, Texas did not provide any analysis of the four factors on these partially controlled sources or include these sources in a Q/D analysis to identify those sources with the largest potential to impact visibility due to emissions and distance. There are a number of EGUs with existing controls with 2018 projected emissions large enough to have a Q/D many times greater than threshold (Q/D > 5) used by Texas. Furthermore, even with these existing controls, some of these EGUs are among the largest SO_2 sources in the state. For example, the Martin Lake facility has a Q/D for Guadalupe Mountains (958 km away) greater than 37 using the projected 2018 SO_2 emissions.[215] The 2018 projected emissions includes predicted emission reductions due to CAIR at many of these controlled facilities, suggesting some increase in control efficiency and/or burning fuels with a lower average sulfur content is already included in the 2018 projections. Absent any additional analysis, however, it is not possible to determine whether additional reductions beyond those included in the 2018 emission inventory for these facilities are cost-effective, result in visibility benefits at the Class I areas and are reasonable. For example, emissions at Martin Lake unit 1 in the CENRAP emission inventory are projected to decrease from 24,832 tpy in 2002 to 11,351 tpy in 2018. As we discuss in our FIP TSD, based on coal data submitted to the U.S. Energy Information Administration, upgrading the existing scrubber to 95% control efficiency would result in an approximate emission reduction of an additional 7,000 tpy beyond those reductions projected to occur due to CAIR. Scrubber upgrades across all three Martin Lake units could result in emission reductions of approximately 21,000 tpy beyond the level of control assumed in the 2018 projections. Given the size of these sources, the size of the impact from Texas emissions, and the source apportionment data indicating the large impact from SO_2 emissions from EGUs, we believe it was unreasonable for Texas to not perform any analysis on these sources or request additional information from the facilities concerning potential upgrades. As documented in our FIP TSD, scrubber upgrades are often very cost-effective on a cost per ton basis. Our analysis in the FIP TSD demonstrates that many of these older SO_2 scrubbers can be cost-effectively upgraded. The importance of this omission becomes clear from our analysis that shows that for a cost-effectiveness of approximately $600/ton or less, over 100,000 tpy of SO_2 emission reductions can be achieved from a small number of scrubber upgrades, resulting in cost-effective visibility benefits at Texas Class I areas and Class I areas in other states. Thus, we propose to find that this omission by TCEQ materially affected the outcome of its four-factor analysis. See our FIP TSD for a detailed discussion of the visibility benefits anticipated from scrubber upgrades.

h. Our Conclusion Regarding the TCEQ's Analysis of the Four Reasonable Progress Factors

For the reasons described above, we propose to disapprove Texas' analysis of the reasonable progress factors under Section 51.308(d)(1)(i)(A).

4. Texas' Assertion That its Progress Goals Are Reasonable

Section 51.308(d)(1)(ii) provides that for the period of the SIP, if Texas establishes a RPG that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, it must demonstrate based on the factors in Section 51.308(d)(1)(i)(A) that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable; and that the progress goal it adopted is reasonable. As part of its SIP assessment, Texas must provide to the public for review the number of years it would take to attain natural conditions if visibility improvement continues at the rate of progress it selected as reasonable. In determining whether the Texas' goals for visibility improvement provide for reasonable progress towards natural visibility conditions, the Administrator will evaluate the demonstrations developed by it pursuant to Section 51.308(d)(1)(i) and (d)(1)(ii).

a. The TCEQ's Evaluation

Texas' RPGs for the 20% worst days establish a slower rate of progress than the URP for Big Bend and the Guadalupe Mountains. The TCEQ calculated that under the rate of progress selected as reasonable, natural visibility conditions (as calculated by Texas) would not be attained at Big Bend until 2155 and at the Guadalupe Mountains until 2081. In Appendix 10–3 of its regional haze SIP, the TCEQ includes calculations based on our default natural conditions, estimating attainment of natural visibility conditions at the Big Bend in 2215 and Guadalupe Mountains in 2167.

The TCEQ believes the RPGs it established for Big Bend and the Guadalupe Mountains on the 20% worst

[214] See the FIP TSD.

[215] We note that recent actual emissions at the facility are roughly twice as large as the 2018 projected value. Based on 2002 emissions, the Q/D for Guadalupe Mountains for SO_2 emissions is approximately 69.

days are reasonable, and that it is not reasonable to achieve the glide path in 2018. In support of this conclusion, it included a discussion of the pollutant contributions and the sources of visibility impairment at these Class I areas (see Section 10.6. and Chapter 11 of the Texas Regional Haze SIP and Table 14 below). In considering the four reasonable progress factors under 40 CFR 51.308(d)(i)(A), as discussed in Section V.C.2, above, the TCEQ also took other factors into consideration in determining that it is not reasonable to achieve the glide paths in 2018 and that the RPGs adopted by the state are reasonable. The TCEQ indicated that the ability to meet the URP or make additional progress towards reaching natural visibility conditions is impeded primarily by the following: the significant contribution of emissions from Mexico and other international sources; the uncertainty in the effect of CAIR; and the poor cost-effectiveness of additional reasonable point source controls.

The TCEQ noted that the CENRAP PSAT analysis indicates that 52% of the impairment at Big Bend and 25% of the impairment at Guadalupe Mountains is from Mexico and further south. Substantial reductions in emissions from outside the United States are needed to meet the goal of natural visibility at the Texas Class I areas. As discussed elsewhere in this notice, the TCEQ considered the URP and the emission reductions necessary to meet the URP in establishing the RPG.

TABLE 14—CENRAP'S PSAT CONTRIBUTION TO VISIBILITY IN THE TEXAS CLASS I AREAS ON THE WORST 20% DAYS

Contribution by area	Big Bend (%)	Guadalupe Mountains (%)
Texas	24.8	34.8
Mexico	26.7	16.5
Boundary Conditions	25.7	8.7
Other U.S.	11.9	18.9
Miscellaneous	5.8	9.6
Neighboring States	5.1	11.5

In addition, with respect to reductions at Texas sources, the TCEQ noted a wide range of measures and programs in place in Texas that result in emission reductions that often go beyond federal requirements. Chapter 11 and Appendices 11–2 (Federal and Texas Programs Related to On-Road and Non-Road Mobile Sources) and 11–3 (Major Point Source NO_X Rules and Reductions Promulgated in Texas Since 2000) detail additional rules and programs that minimize emissions that can cause or contribute to local and regional visibility impairment. In Section 10.2 of the Texas regional haze SIP, the TCEQ identifies the following programs:

- Opacity limits on grandfathered facilities;
- Best Available Control Technology (BACT) requirements that typically go beyond EPA's New Source Performance Standards (NSPS) for new and modified sources;
- Extensive NO_X emission limits on existing and new sources including major, minor and area sources including some on a statewide basis;
- Texas Emission Reduction Program (TERP), which provides financial incentives to accelerate the implementation of new, cleaner diesel engine technologies in on-road and non-road applications; and
- Air Check Texas Repair and Replacement Assistance Program, which provides financial incentives for scrapping older gasoline-powered on-road vehicles.

The TCEQ noted that the established RPGs reflect emission reduction programs already in place, including CAIR, additional refinery SO_2 reductions as a result of refinery consent decrees, Texas ozone SIP revisions, and the Texas Clean Air Act. It noted that the majority of the emission reductions underlying the predicted visibility improvements are from the CAIR program or its eventual replacement. The TCEQ assumes that any replacement for CAIR will include interstate trading of emissions allowances and therefore there is uncertainty regarding how visibility will be improved at individual Class I areas. The TCEQ states that because emission allowances can be purchased by EGUs relatively close to the Texas Class I areas from EGUs far from the Texas Class I areas, the visibility improvement, may not be as great as predicted by the CENRAP's modeling. Conversely, nearby EGUs may elect to control beyond their emission caps and sell emission allowances out of state, resulting in reduced emissions closer to the Texas Class I areas.

The TCEQ concluded that ''given the significant impact from international emissions, the uncertainty in the impact of CAIR, and the poor cost-effectiveness of additional, reasonable point source controls, the TCEQ has determined that additional controls for regional haze are not appropriate at this time.'' [216]

b. Our Evaluation

We agree that there is uncertainty regarding the size and location of reductions at Texas EGUs due to implementation of CAIR/CSAPR. While reductions at certain facilities within Texas would result in improvements in visibility conditions at the Texas Class I areas or Class I areas in other states, similar reductions at other facilities may have no impact on visibility conditions at the Class I area. Furthermore, reductions that are seasonal in nature due to decreased operation during the fall and/or winter reduce annual emissions, contribute towards CAIR/CSAPR compliance, but will not lead to improved visibility during the 20% worst days, which typically occur during the summer months. For example, in recent years the Monticello units have been shut down for several non-summer months, which has resulted in reduced annual emissions, while having no impact on summer time emissions or visibility impacts during the summer months. The CENRAP source apportionment results include the projected reductions due to CAIR compliance and show that even after these reductions, impacts from Texas points sources remain the most significant portion of the total visibility impairment with available controls at Big Bend and Guadalupe. Analysis of recent emissions from Texas EGUs shows that in many cases current emission levels are above those predicted in the 2018 CENRAP modeling. In fact, in the case of Martin Lake, current annual emissions are roughly twice those included in the 2018 modeling, and we are not aware of

[216] Section 10.7 of the Texas Regional Haze SIP.

any upcoming controls or changes in operation to suggest that future actual emissions will decrease to those predicted levels.

We also agree with the TCEQ's conclusion that it is not reasonable to meet the URP for the Texas Class I areas for this planning period. We agree with the TCEQ that emissions and transport from Mexico and other international sources will limit the rate of progress achievable on the 20% worst days and that efforts to meet the goal of natural visibility by 2064 would require further emission reductions not only within Texas, but also large emission reductions from international sources.

We also note the more recent IMPROVE monitored data at the Big Bend and Guadalupe Mountains indicate that more progress than anticipated by the CENRAP modeling has occurred.[217] The most recent five-year (2009–2013) average conditions for the 20% worst days is 16.3 dv at Big Bend and 15.3 dv at Guadalupe Mountains. This is below the level anticipated in the CENRAP projection for 2018 of 16.6 dv for Big Bend and 16.3 dv for Guadalupe Mountains. We believe that this observed improvement from the baseline conditions is the result of meteorological conditions, reduction in the impacts from SO_2 emissions, and a reduction in the impacts from coarse material. More recent emission inventory data shows reductions in emissions in most states beyond what was projected in the 2018 modeling, including large reductions in emissions from the Eastern United States. Emissions from non-EGU Texas point sources are lower than have been projected in the modeling. We note that additional reductions are still needed to meet or exceed the URP goals for 2018 as calculated by us in Section VII.M below. As discussed above, emission reductions at some of the sources that impact visibility the most are still above the emission level projected in the model and we believe that cost-effective controls are likely available at these sources.

However, for the reasons we have discussed above, although we agree with the TCEQ that a rate of improvement necessary to attain natural visibility conditions by 2064 is not reasonable, we do not believe that the rate of improvement the TECQ has selected is reasonable, because we disagree with its four factor analysis and the analysis of emission measures needed to meet the URP. Therefore we propose to disapprove the TCEQ's RPGs for Big Bend and the Guadalupe Mountains under Section 51.308(d)(1)(ii). In so doing, we rely on the specific directive in Section 51.308(d)(1)(iii): ''In determining whether the State's goal for visibility improvement provides for reasonable progress towards natural visibility conditions, the Administrator will evaluate the demonstrations developed by the State pursuant to paragraphs (d)(1)(i) and (d)(1)(ii) of this section.'' We also propose to disapprove the Texas' RPGs for the 20% best days. We propose to find that visibility on these days will be better than Texas projects, given additional controls in our proposed FIP.

5. Reasonable Progress Consultation

Pursuant to Section 51.308(d)(1)(iv), Texas consulted with other states which may reasonably be anticipated to cause or contribute to visibility impairment at its two Class I areas. In any situation in which Texas cannot agree with another such state or group of states that a goal provides for reasonable progress, Texas must describe in its submittal the actions taken to resolve the disagreement. In reviewing Texas' SIP submittal, the Administrator will take this information into account in determining whether Texas' goal for visibility improvement provides for reasonable progress towards natural visibility conditions.

The TCEQ held three conference calls in July, 2007 to which Arkansas, Kansas, Louisiana, New Mexico, and Oklahoma were invited. The TCEQ used CENRAP generated products, such as regional photochemical modeling results and visibility projections, and source apportionment modeling to assist in identifying neighboring states' contributions to the visibility impairment at its Class I areas. Specifically, the TCEQ used the results from the CENRAP particulate matter source apportionment technology (PSAT) modeling to determine that New Mexico, Oklahoma, Kansas, and Louisiana contribute to visibility impairment at the Texas Class I areas. The TCEQ invited those states with a > 0.5 inverse megameter impact on one of its Class I areas to its consultations. Other participants that attended one or more of the calls included CENRAP, us, and the federal land managers. The TCEQ invited tribes in all of the CENRAP states to the consultation calls, but no tribes participated in the consultation on Big Bend and Guadalupe Mountains. These calls are summarized in Appendix 4–1 of the Texas regional haze SIP.

The first consultation call primarily addressed technical papers that discussed the natural conditions, the impacts of dust storms in Big Bend and the Guadalupe Mountains, our IPM emission projections, and the URP and RPGs for the Texas Class I areas. The second and third consultation calls consisted of discussions between the states and federal land managers regarding the dust storm technical papers. The TCEQ presented the URPs for its Class I areas, discussed controls that are in place in Texas, and its decision that no additional controls would be included in its regional haze SIP. The federal land managers suggested that the TCEQ revise the Prevention of Significant Deterioration (PSD) permit process to include FLM notification provisions. Texas committed to further consultations with the federal land managers to address their concerns about the Texas PSD program.

The TCEQ discussed the CENRAP PSAT modeling results with the attendees. It noted that the BRAVO study indicated that for SO_4, which has the largest visibility impact of all pollutants at Big Bend, approximately ⅓ comes from Mexico, ⅓ from Texas, and ⅓ from the Midwest and South beyond Texas. It noted that these results are somewhat inconsistent with CENRAP PSAT modeling results, which indicate that slightly more than half of the visibility impairment at Big Bend comes from Mexico and other areas outside the U.S.

New Mexico and the federal land managers discussed that despite the Guadalupe Mountains in Texas and Carlsbad Caverns in New Mexico sharing the same monitor, these Class I areas appeared to have significantly different calculated natural visibility values, individually prepared by the two states.[218] The federal land managers and we both expressed a desire to review the TCEQ's natural visibility calculation.

The TCEQ concluded its consultations by noting that other states' visibility impacts on Big Bend and the Guadalupe Mountains are relatively small. Texas sources are responsible for 25% and 35% of the visibility impairment at Big Bend and the Guadalupe Mountains, respectively. Neighboring states combined contribute only 5% of the visibility impairment at Big Bend and 11.5% at the Guadalupe Mountains. As a result of these

[217] Available at: *http://vista.cira.colostate.edu/tss/*

[218] Note that we discuss the difference between the natural visibility value calculated by New Mexico for Carlsbad Caverns and that calculated by Texas for the Guadalupe Mountains elsewhere in our proposal.

consultations, the TCEQ did not request any additional reductions from other states.

Citing the source apportionment results and results of the BRAVO study, in Section 11.3 of the Texas regional haze SIP, Texas requests in its SIP that we initiate and pursue federal efforts to reduce impacts from international transport. Due to large contributions from international sources, the TCEQ concludes it will be impossible to reach natural conditions without significant reductions in Mexico and other countries, in parallel with reductions within Texas and the rest of the United States. The TCEQ notes that Class I areas in other states will also benefit from reductions in emissions from international sources. We acknowledge that emissions from Mexico significantly impact the visibility at Big Bend and the Guadalupe Mountains. As we state in the Regional Haze Rule,[219] ''the EPA does not expect States to restrict emissions from domestic sources to offset the impacts of international transport of pollution. We believe that States should evaluate the impacts of current and projected emissions from international sources in their regional haze programs, particularly in cases where it has already been well documented that such sources are important.''

We reviewed the CENRAP PSAT data for the Texas Class I areas referred to during the consultation calls, as well as the technical papers discussed during those calls and the summary of the calls in Appendix 4–1 of Texas' SIP submittal. Approximately half of the 2002 visibility impairment at Big Bend is due to Mexico and other international sources captured in the modeled boundary conditions, one quarter of the impairment is due to Texas sources and the remaining quarter is due to all the remaining sources combined, with the largest contributions in this group from the Eastern United States (2.5%) and Louisiana (2.8%). Examining only contributions due to point sources in 2002, Texas point sources contribute 10% of the total visibility impairment at Big Bend and Mexico point sources contribute 16.9%. The largest impact from a nearby state is Louisiana at a little more than 2% contribution. All other nearby states contribute less than 1% to the total visibility impairment at Big Bend. The source apportionment results for 2018 projections at Big Bend show similar levels of contribution with a slight decrease in Texas and Eastern United States contributions. Mexico and other international sources contribute approximately one quarter of the visibility impairment and Texas contributes about one third of the visibility impairment at the Guadalupe Mountains in 2002. The next largest contributing source regions are New Mexico (7.3%, 4.7% from natural sources), Kansas (3.3%), the Eastern United States (3.2%), Western United States (3.0%), and Oklahoma (2.5%). Examining only contributions due to point sources in 2002, Texas point sources contribute 8.7% of the total visibility impairment and Mexico point sources contribute 6.8%. The largest impact from a nearby state is New Mexico at a little more than 1% contribution. All other nearby states contribute less than 1% to the total visibility impairment at Guadalupe Mountains. The source apportionment results for 2018 projections at Guadalupe Mountains show similar levels of contribution with a slight decrease in eastern United States contributions. PSAT results show an overwhelming contribution from international sources and Texas sources and the technical papers shared by Texas suggest that dust storms significantly impact a number of the worst 20% days at these Class I areas.

We find that the TCEQ appropriately identified those states with the largest impacts on Texas Class I areas and invited them for consultation. We agree with Texas' determination that was not reasonable to request additional controls from other states at this time. Given the small contributions from individual nearby states, especially when only considering anthropogenic sources that can be easily controlled in comparison with the size of impacts from Texas sources and international sources, we find that it was reasonable for the TCEQ to have focused the analysis of additional controls on sources within Texas. We propose to find that Texas has satisfied the requirement under Section 51.308(d)(1)(iv) to consult with other states which may reasonably be anticipated to cause or contribute to visibility impairment at its two Class I areas.

D. Evaluation of Texas' BART Determinations

As part of its strategy to address BART, the TCEQ adopted a BART rule on January 10, 2007, as 30 TAC Chapter 116, Subchapter M.[220] This rule identifies potentially affected sources as those belonging to one of 26 BART source industry categories; having a Potential to Emit (PTE) of 250 tpy or more of any visibility impairing pollutant; and not operating prior to August 7, 1962, and being in existence on August 7, 1977. It uses a value of 0.5 dv as the visibility contribution threshold. It also incorporates the BART model plant and de minimis exemption criteria discussed below, and exempts EGUs that participate in CAIR from undergoing a BART review for NO_X and SO_2. It specifies that all non-exempt sources must undergo a BART review, according to the BART Guidelines. Lastly, it provides that BART controls must be installed and operational within 5 years following our approval of this SIP. We have reviewed the Texas BART rule and propose to approve it, with the exception of Texas' reliance on CAIR to meet BART, as discussed in more detail in Section V.D.3.

Texas exercised its option under Section 51.308(e)(4) (as it read at that time) that participation in CAIR is equivalent to BART. This exempted EGUs impacted by CAIR from a BART analysis for SO_2 and NO_X. As a result, the TCEQ did not evaluate BART-eligible EGUs that are included in CAIR for SO_2 and NO_X. This EGU BART exemption does not extend to particulate matter. As explained further in Section V.D.3, we earlier issued a limited disapproval of Texas' regional haze SIP based on its reliance on CAIR. We are now proposing a FIP to replace reliance on CAIR with reliance on the trading programs of CSAPR as an alternative to BART for SO_2 and NO_X emissions from EGUs in the regional haze plan for Texas.

As discussed in more detail in our BART Rule,[221] the BART evaluation process consists of three components: (1) An identification of all the BART-eligible sources, (2) an assessment of whether those BART-eligible sources are in fact subject to BART and (3) a determination of any BART controls. The TCEQ addressed these steps as follows:

1. Identification of BART-Eligible Sources

The first step of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. The TCEQ identified the BART-eligible sources in Texas by utilizing the three eligibility criteria in the BART Guidelines [222] and our regulations (Section 51.301): (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit(s) began operation on or after August 6, 1962, and was in existence on

[219] 64 FR 35736 (July 1, 1999).

[220] The Texas BART Rule is present in Appendix 9–2 of the Texas regional haze SIP.

[221] 70 FR 39104 (July 6, 2005).

[222] 70 FR 39158–39161 (July 6, 2005).

August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year.

The TCEQ did not have a comprehensive database of potential emissions from facilities, so it used annual emissions reporting with some adjustments. The TCEQ's State of Texas Air Reporting System (STARS) database was used to determine which sources were potentially BART-eligible. In addition to NO_X and SO_2, the TCEQ also screened its database for sources of Volatile Organics (VOC) and coarse particulate matter (PM_{10}) greater than 200 tpy. The TCEQ used PM_{10} as a conservative value for direct $PM_{2.5}$. However, because this database does not contain all information necessary to determine BART eligibility, the TCEQ also surveyed companies regarding their potential to emit and construction dates in order to complete the BART eligibility determination. In order to reduce the number of companies requiring clarification, the TCEQ chose to adopt a model plant analysis approach based on our model plants [223] in order to eliminate smaller sources of NO_X and SO_2 sources from being surveyed and potentially subject to BART. Regarding the use of the model plant approach, the BART Guidelines state:[224]

> Based on our analyses, we believe that a State that has established 0.5 deciviews as a contribution threshold could reasonably exempt from the BART review process sources that emit less than 500 tons per year of NO_X or SO_2 (or combined NO_X and SO_2), as long as these sources are located more than 50 kilometers from any Class I area; and sources that emit less than 1000 tons per year of NO_X or SO_2 (or combined NO_X and SO_2) that are located more than 100 kilometers from any Class I area.

Since the STARS database includes reported actual emissions instead of potential to emit, the TCEQ added some conservatism to the inclusion of sources. The TCEQ modified its model plant approach and reduced the emission threshold to 375 tpy for sources greater than 50 km and 750 tpy for sources greater than 100 km to capture sources that might not have been above the BART Guideline's emissions threshold, based only on their 2002 emissions levels.

As a result of the BART eligibility screening analysis, 254 sites/facilities (approximately 12% of the 2,165 facilities in the Texas 2002 emissions inventory) were identified as being potentially BART-eligible based on their county's minimum distance to Class I areas and their actual emissions. The TCEQ then sent surveys to these sites to request additional information in identifying construction or reconstruction dates and whether the potential to emit of potential BART eligible equipment exceeded the BART eligibility threshold of 250 tpy. As a result of the BART eligibility survey, the TCEQ determined that the following sites [225] numbered 1 through 120 were BART-eligible. During TCEQ's review of BART eligible sources another 6 facilities were identified as potentially BART eligible (numbered 121–126):

TABLE 15—POTENTIAL BART-ELIGIBLE SOURCES BASED ON RESULTS OF TCEQ SURVEY

No.	Account	Source	Regulated entity	SIC
1	AC0017B	Abitibi Consolidated Corp	RN100220110	2621
2	TG0044C	AEP Texas	RN101531226	4911
3	CD0013K	AEP Texas Central Company	RN102560687	4911
4	NE0024E	AEP Texas Central Company	RN100642040	4911
5	NE0026A	AEP Texas Central Company	RN100552181	4911
6	JI0030K	AEP Texas North Company	RN100215557	4911
7	CB0003M	Alcoa Alumina & Chemicals	RN100242577	2819
8	MM0001T	Alcoa Inc	RN100221472	3334
9	HT0011Q	Alon USA Lp	RN100250869	2911
10	ED0034O	Ash Grove (Formerly North Texas Cement)	RN100225978	3241
11	HG0558G	Atofina Chemicals Inc	RN100209444	2869
12	BL0021O	BASF Corporation	RN100218049	2869
13	GB0001R	BP Amoco Chemical Company	RN102536307	2869
14	GB0004L	BP Products North America In Texas	RN102535077	2911
15	GH0003Q	Cabot Corporation	RN100221761	2895
16	BG0045E	Capitol Cement Div Capitol	RN100211507	3241
17	GH0004O	Celanese Chemical	RN101996395	2869
18	MH0009H	Celanese Limited	RN100258060	2869
19	ED0011D	Chaparral Steel Midlothian	RN100216472	3312
20	BJ0001T	Chemical Lime Ltd	RN100219856	3274
21	HG0310V	Chevron Phillips Chemical	RN103919817	2869
22	BL0758C	Chevron Phillips Chemical	RN100825249	2869
23	HW0013C	Chevron Phillips Chemical Co	RN102320850	2869
24	NE0027V	Citgo Refining & Chemicals	RN102555166	2911
25	BG0057U	City Public Service	RN100217975	4911
26	BG0186I	City Public Service	RN100217835	4911
27	HW0018P	Conoco Phillips (Formerly Phillips 66)	RN102495884	2911
28	CR0020C	Copano Processing LP	RN101271419	1321
29	AB0012W	DCP (Formerly Duke Energy Field Services)	RN100218684	1321
30	HW0008S	Degussa Engineered Carbons	RN100209659	2895
31	HGA005E	DOW	RN104150123	2869
32	HG0126Q	DOW	RN100227016	2869
33	CI0022A	Dynegy Midstream Services	RN100222900	1321
34	HH0042M	Eastman Chemical Company	RN100219815	2869
35	HG0218K	E.I. Dupont de Nemours & Co	RN100225085	2869
36	OC0007J	E.I. Dupont de Nemours & Co	RN100542711	2869
37	EE0029T	El Paso Electric Co	RN100211309	4911

[223] 70 FR 39162 (July 6, 2005).

[224] 70 FR 39163 (July 6, 2005).

[225] Reproduced from Table 9–2 of the Texas regional haze SIP with additional sources later identified added.

TABLE 15—POTENTIAL BART-ELIGIBLE SOURCES BASED ON RESULTS OF TCEQ SURVEY—Continued

No.	Account	Source	Regulated entity	SIC
38	TH0004D	Electric Utility Dept	RN100219872	4911
39	CG0012C	Enbridge Pipelines	RN102166964	1321
40	MQ0009F	Entergy Gulf States Inc	RN100226877	4911
41	OC0013O	Entergy Gulf States Inc	RN102513041	4911
42	BL0113I	Equistar	RN100218601	2869
43	BL0268B	Equistar Chemicals LP	RN100237668	2821
44	HG0033B	Equistar Chemicals LP	RN100542281	2869
45	HG0228H	Exxon Chemical Co	RN102212925	2869
46	JE0065M	Exxon Mobil Chemical Co	RN100211903	2821
47	HG0229F	ExxonMobil Chemical Co	RN102574803	2869
48	HG0232Q	ExxonMobil Corp	RN102579307	2911
49	JE0067I	ExxonMobil Oil Corp	RN102450756	2911
50	NE0120H	Flint Hills Resources	RN102534138	2911
51	NE0122D	Flint Hills Resources LP	RN100235266	2911
52	JE0052V	Huntsman Corporation	RN100219252	2869
53	JE0135Q	Huntsman Petrochemical Corp	RN100217389	2869
54	EB0057B	Huntsman Polymers	RN101867554	2869
55	BL0002S	INEOS Olefins & Polymers	RN100238708	2869
56	CG0010G	International Paper Co	RN100543115	2621
57	OCA002B	Invista	RN104392626	2869
58	VC0008Q	Invista (Formerly Du Pont De Nemours)	RN102663671	2869
59	WE0005G	Laredo Power	RN100213909	4911
60	MB0123F	Lehigh Cement Company	RN100218254	3241
61	NE0025C	Lon C Hill Power	RN100215979	4911
62	BC0015L	Lower Colorado River Authority	RN102038486	4911
63	FC0018G	Lower Colorado River Authority	RN100226844	4911
64	HG1575W	Lyondell Chemical	RN100633650	2869
65	HG0048L	Lyondell Citgo Refining	RN100218130	2911
66	GB0055R	Marathon Ashland Petroleum	RN100210608	2911
67	HH0019H	NORIT Americas Inc	RN102609724	2819
68	GB0037T	NRG Texas (Formerly Texas Genco LP)	RN101062826	4911
69	ED0051O	Owens Corning	RN100223585	3296
70	HG1451S	Oxyvinyls LP	RN102518065	2821
71	HG0175D	Pasadena Refining	RN100716661	2911
72	JE0042B	Premcor Refining Group	RN102584026	2911
73	MC0002H	Regency Tilden Gas (Formerly Enbridge)	RN100216621	2819
74	HG0697O	Rhodia Inc	RN100220581	2819
75	HG0632T	Rohm & Haas Texas	RN100223205	2869
76	HG0659W	Shell Oil Co	RN100211879	2911
77	HW0017R	Sid Richardson Carbon	RN100222413	2895
78	HT0027B	Sid Richardson Carbon Co	RN100226026	2895
79	BL0038U	Solutia Inc	RN100238682	2869
80	TF0012D	Southwestern Electric Power	RN100213370	4911
81	GJ0043K	Southwestern Electric Power	RN102156916	4911
82	ME0006A	Southwestern Electric Power	RN100542596	4911
83	PG0040T	Southwestern Public Service	RN100224641	4911
84	PG0041R	Southwestern Public Service	RN100224849	4911
85	LN0081B	Southwestern Public Service	RN100224765	4911
86	JE0091L	Sun Marine Terminal	RN100214626	4226
87	WN0042V	Targa	RN102552387	1311
88	CY0019H	Targa (Formerly Dynegy Midstream)	RN102551785	1311
89	OC0019C	Temple-Inland	RN100214428	2621
90	CI0012D	Texas Genco LP	RN100825371	4911
91	FG0020V	Texas Genco LP	RN100888312	4911
92	HK0014M	Texas Lehigh Cement Co	RN102597846	3241
93	HG0562P	Texas Petrochemicals LP	RN100219526	2869
94	BL0082R	The Dow Chemical Co	RN100225945	2869
95	JE0039N	The Goodyear Tire And Rubber Co	RN102561925	2822
96	NE0022I	Ticona Polymers Inc	RN101625721	2869
97	JE0005H	Total Petrochemicals	RN102457520	2911
98	ED0066B	TXI Operations LP	RN100217199	3241
99	FI0020W	TXU Big Brown Company LP	RN101198059	4911
100	DB0251U	TXU Electric Company	RN101559854	4911
101	FB0025U	TXU Generation Company LP	RN102285855	4911
102	HQ0012T	TXU Generation Company LP	RN100664812	4911
103	MB0116C	TXU Generation Company LP	RN102566494	4911
104	MM0023J	TXU Generation Company LP	RN102147881	4911
105	MO0014L	TXU Generation Company LP	RN102285848	4911
106	RL0020K	TXU Generation Company LP	RN102583093	4911
107	TA0352I	TXU Generation Company LP	RN100693308	4911
108	WC0028Q	TXU Generation Company LP	RN102183969	4911
109	YB0017V	TXU Generation Company LP	RN102563426	4911

TABLE 15—POTENTIAL BART-ELIGIBLE SOURCES BASED ON RESULTS OF TCEQ SURVEY—Continued

No.	Account	Source	Regulated entity	SIC
110	TF0013B	TXU Generation Company LP	RN102285921	4911
111	GB0076J	Union Carbide Corp	RN100219351	2869
112	CB0028T	Union Carbide Corporation	RN102181526	2869
113	HR0018T	Valence Midstream Ltd	RN100213685	1321
114	GB0073P	Valero Refining Co Texas	RN100238385	2911
115	NE0043A	Valero Refining Company	RN100211663	2911
116	MR0008T	Valero McKee	RN100210517	2911
117	WH0014S	Vetrotex Wichita Falls Plant	RN100218601	3229
118	VC0003D	Victoria Power	RN100214980	4911
119	JB0016M	Vintage Petroleum Inc	RN100214592	1311
120	JC0003K	Westvaco	RN102157609	2631
121[226]	JE0343H	BMC Holdings Inc		
122	AG0024G	Pueblo Midstream Gas Corp		
123	GBA007G	INEOS		
124	HG0130C	Valero Refining Texas LP		
125	JH0025O	Johns Manville International		
126	PE0024Q	Regency Gas Services		

We have reviewed the TCEQ's development of their list of BART-eligible facilities (ultimately 126 sources) and we propose to conclude that the TCEQ has adequately identified all sources that are BART eligible in the state.

2. Identification of Sources Subject to BART

The second step of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, *i.e.* those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Sources that are not exempted by the state are required to conduct a full BART analysis and the state then makes a determination of what is BART for each of these subject to BART sources.

a. Modeling Methodology

Consistent with the BART Guidelines, the TCEQ chose to evaluate sources and determine if they were exempt from being subject to BART. When exempting sources from BART because they do not cause or contribute to visibility impairment in a Class I area, the BART Guidelines suggest three sub-options for determining that certain sources are not subject to BART: [227]

- The use of model plants to exempt sources with common characteristics.
- A cumulative modeling analysis to show that groups of sources are not subject to BART.
- An individual source attribution approach.

The TCEQ utilized all of these options to determine which sources were subject to BART. These BART exemption exercises are explained below. The BART Guidelines direct states to address SO_2, NO_X and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairing pollutants, and states must exercise their ''best judgment to determine whether VOC or ammonia emissions from a source are likely to have an impact on visibility in an area.'' [228] Ammonia (NH_3) emissions in Texas are primarily due to area sources, such as livestock and fertilizer application.[229] Because these are not point sources, they are not subject to BART. CENRAP modeling demonstrated that VOCs from anthropogenic sources are not significant visibility-impairing pollutants at the Guadalupe Mountains and Big Bend. The TCEQ further investigated VOC and direct PM impacts with the photochemical modeling as discussed below. We have reviewed this information and propose to agree with the TCEQ's decision to address only SO_2, NO_X and PM as visibility impairing pollutants because VOC emissions from anthropogenic sources are not significant visibility-impairing pollutants at Class I areas in Texas and surrounding states and NH_3 emissions in Texas are primarily due to area sources.

The BART Guidelines provide that states may choose to use the CALPUFF [230] modeling system, or another appropriate model, to predict the visibility impacts from a single source on a Class I area and to therefore determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, *i.e.,* ''is subject to BART.'' The Guidelines state that we believe CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment.[231] The TCEQ consulted with us and FLM representatives and used both the Comprehensive Air Quality Model with extensions (CAMx) [232] and CALPUFF modeling systems to determine whether individual sources in Texas were subject to or exempt from BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions, and suggest that states may choose to consult with us and their regional planning organization to address any

[226] Numbers 121–130 were not included in TCEQ's initial list of 120 sources potentially subject to BART but were added during their review and development of the SIP.

[227] 70 FR 39162–3 (July 6, 2005).

[228] 70 FR 39162 (July 6, 2005).

[229] See Tables 7–1 and 7–3 of the Texas regional haze SIP. Area sources comprise approximately 94% of the total 2002 ammonia emissions, and approximately 93% of the total projected 2018 ammonia emissions.

[230] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (*e.g.,* the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer at *http://www.src.com/verio/download/download.htm.*

[231] 70 FR 39162 (July 6, 2005).

[232] CAMx model code and user's guide can be found at *http://www.camx.com/download/default.aspx.Model* code used in our analysis is available with the modeling files.

issues prior to modeling. The CENRAP states, including Texas, developed the ''CENRAP BART Modeling Guidelines.'' [233] Stakeholders, including EPA, FLM representatives, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the CENRAP protocol. CENRAP provided readily available modeling data bases for use by states to conduct their analyses. We note that the original CALPUFF meteorological databases generated by CENRAP did not include observations as our guidance recommends,[234] therefore sources were evaluated using the 1st High values instead of the 8th High values. The use of the 1st High modeling values was agreed to by us, representatives of the Federal Land Managers, and CENRAP stakeholders. We propose to find the chosen model and the general modeling methodology for the initial CALPUFF based screening modeling with CENRAP meteorological data acceptable. We further discuss both refined analyses using CALPUFF and CAMx modeling systems below.

b. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 dv change or more should be considered to 'cause' visibility impairment.'' [235] The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to visibility impairment' may reasonably differ across States,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 dv.'' Further, in setting a contribution threshold, states should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach. Texas adopted a contribution threshold of 0.5 dv for determining which sources are subject to BART. For BART eligible EGUs that were originally covered by CAIR for NO_2 and SO_2, TCEQ used this threshold for PM impacts. For CALPUFF modeling that used the non-guideline CENRAP meteorological data and CAMx modeling we agreed to use the 1st High or maximum impact for evaluation with the threshold value. For the refined CALPUFF modeling that used meteorological data that did meet our guidelines we agreed with the use of the 98th percentile value. We agree with Texas' selection of this threshold value.

The TCEQ first performed cumulative modeling analyses using the CAMx model. TCEQ's CAMx modeling utilized the existing CENRAP photochemical modeling databases and CAMx modeling tools of Particulate Source Apportionment Tagging (PSAT) with Plume-in-Grid (PiG) treatment to assess contribution of groups of sources initially and later individual sources. As a result of this modeling, several BART-eligible sources were eliminated from further consideration due to their insignificant impacts on visibility at Class I areas. The remaining sources were required to perform source-specific screening modeling analyses using either the CALPUFF or the CAMx model setup developed by the TCEQ. TCEQ also utilized model plant approaches to screen out some sources. BART-eligible sources that were not eliminated due to any of the modeling analyses were then given the option of either reducing their emissions from their BART-eligible units using an enforceable mechanism, such as a permit, or performing a BART analysis. The following sections describe this process.

c. Cumulative Modeling Using CAMx PSAT

Due to the large number of sources the TCEQ initially conducted a cumulative modeling analysis to eliminate groups of sources from being subject to BART, as described in its CAMx modeling protocol and its CAMx modeling report.[236] In addition to the cumulative CAMx modeling, the TCEQ developed its model plants based on the CAMx modeling results.[237] CAMx also gave a more sophisticated way to evaluate VOC emissions from BART sources and determine if they needed to be evaluated further. The TCEQ also used the CAMx modeling and source grouping to assess the BART sources' direct PM emissions impacts. It relied on CAIR coverage for NO_X and SO_2 emissions from EGUs subject to CAIR, so it only assessed impacts of VOCs and direct PM from these sources.

The TCEQ's CAMx modeling determined that visibility impacts at Class I areas due to all VOC emissions from BART eligible sources was well below the 0.5 dv threshold. The TCEQ CAMx modeling screened direct PM emissions from 37 EGUs using groupings and some individual source analyses. Of these, 35 of the 37 sources screened out from BART for direct PM emissions with the two remaining sources being from Account TF0012D—SWEPCO Welsh and Account TF0013B—TXU Monticello. The TCEQ also evaluated VOC emissions from non-EGU sources and screened out all but one non-EGU facility, the exception being Account CG0010G—International Paper facility. We have reviewed the TCEQ's analysis as further discussed in our BART TSD, and we propose to concur with the TCEQ's screening out of all BART sources from further screening or BART evaluation for VOC and direct PM emissions except for the International Paper, Monticello and Welsh accounts that were further evaluated for screening to be discussed later.

The TCEQ also developed a Texas model plant for PM based on the previously discussed PM modeling for evaluation of two additional sources that were not in the original CAMx grouping modeling for PM. As further discussed in our BART TSD and the TCEQ's regional haze SIP, two accounts were screened out from being subject to BART. They were Account CI0012D—Texas Genco LP and Account HW004D—Agrium. We have reviewed this analysis and propose to concur with TCEQ's analysis and conclusion to screen out these two facilities from being subject to BART for their potential PM impacts.

For SO_2 and NO_X BART screening, the TCEQ screened out many sources that were BART eligible and determined that they were eliminated from being subject to BART using either the cumulative CAMx modeling analyses or the Texas model plants approach based on sources in the CAMx groupings that screened out or using our model plants.

[233] CENRAP BART Modeling Guidelines, T. W. Tesche, D. E. McNally, and G. J. Schewe (Alpine Geophysics LLC), December 15, 2005, available at *http://www.deq.state.ok.us/aqdnew/RulesAndPlanning/Regional_Haze/SIP/Appendices/index.htm*.

[234] 40 CFR part 51, Appendix W: Guideline on Air Quality Models Parts 8.3(d) and 8.3.1.2(d).

[235] 70 FR 39104, 39161 (July 6, 2005).

[236] Screening Analysis of Potentially BART-Eligible Sources in Texas, and Final Report, Screening Analysis of Potential BART-Eligible Sources in Texas, located in Appendices 9–4 and 9–5 of the Texas Regional Haze SIP, respectively.

[237] See the CAMx modeling report, Addendum I, BART Exemption Screening Analysis, and Addendum II, BART Exemption Screening Analysis, located in Appendices 9–5 and 9–6 of the Texas Regional Haze SIP.

The 94 non-EGU sources were broken into groups of sources (initially 5–10 sources per group approximately). Further analysis used the same sources and broke them into smaller groups for further evaluation and screening. From this second round of CAMx source grouping, the TCEQ developed model plants from the sources in the groups that screened out. The TCEQ's model plant analyses is further discussed in our BART TSD and the Texas regional haze SIP submittal.

If the technical analysis indicated a source was screened out, the TCEQ requested each source to certify that they agreed with the modeling analyses and data inputs (emissions, stack parameters, etc.). BART-eligible sources that were not eliminated from being subject to BART using these methods were required to conduct their own screening modeling analysis using either CALPUFF or CAMx modeling on an individual basis, using protocols developed by the TCEQ. As part of this analysis, the TCEQ also utilized our model plants and more facility specific information to screen out some facilities. Using these three techniques (CAMx grouping modeling, Texas model plants, and our model plants), the TCEQ screened out 72 facilities that were BART eligible based on their NO_X and/or SO_2 emissions from being determined as subject to BART and a full five factor analysis. Table 17 below summarizes all the BART-eligible sources that were eliminated and how each source was eliminated. For sources eliminated from being subject to BART using the cumulative CAMx modeling analyses, CAMx based model plants and our model plants it is indicated in the column titled ''Cum. Model CAMx''. For full details see our BART TSD. We have reviewed the evaluation of facilities in TCEQ's cumulative/grouping CAMx modeling analyses, the TCEQ's Texas Model Plants analyses, and the TCEQ's analyses using our Model Plants; and we propose to concur with the screening out from a full BART analysis of the 72 facilities indicated in Table 17 under the column titled ''Cum. Model CAMx'' based on estimated/modeled impacts from NO_X and SO_2 from each facility.

Many of the facilities not screened out by the TCEQ were further evaluated with individual facility impact modeling using either CALPUFF or CAMx. We discuss the TCEQ's individual facility analysis in the following sections.

d. Individual Source Apportionment Modeling Using CALPUFF

As previously discussed CENRAP developed a CALPUFF modeling protocol and the meteorological modeling files (CALMET files) for conducting individual facility impact analysis from NO_X and SO_2 emissions. The CENRAP CALMET data set did not include observations, so CALPUFF modeling that used the CENRAP CALMET data had to use the 1st High value from the modeling instead of the 8th High. TCEQ contacted the sources that did not previously screen out and gave them the option to do additional analysis with CALPUFF and/or CAMx. Facilities submitted individual source modeling protocols for their facilities and submitted them to TCEQ, us, and FLM representatives for review and comment. For the CALPUFF modeling, some sources used the CENRAP CALMET data and the 1st High metric for evaluation against the screening level of 0.5 del-dv (delta, or change in deciviews) and other sources developed CALMET with inclusion of meteorological observations data and used the 8th High modeling value instead. The TCEQ received and reviewed the additional individual source attribution modeling using the CALPUFF model.[238] The 29 BART-eligible sources that were eliminated from being subject to BART based on CALPUFF modeling results are listed in the column labeled ''CALPUFF'' in Table 17, below.

We have reviewed the modeling reports and files provided for these 29 modeling efforts. Seventeen facilities screened out using the CENRAP No-Observation data set and followed the approved CENRAP protocol, including model setup/flags, post processing procedures, and accepted versions of the CALPUFF modeling suite at the time. Twelve facilities screened out using the refined CALMET data set using the CENSARA MM5 data and incorporating land and upper air meteorological data. From the discussion on PM screening above, there were three facilities that did not screen out (International Paper, TXU—Monticello, and AEP Welsh) which were evaluated in these model runs and these facilities were 3 of the 29 screened out here. We have reviewed the TCEQ's individual source apportionment CALPUFF modeling analysis, and we propose to concur with TCEQ's conclusion to screen these 29 sources from being subject to BART.

e. Individual Source Apportionment Modeling Using CAMx

Some facilities desired to do a single source analysis with CAMx. To standardize the modeling and evaluation, TCEQ developed ''The CAMx modeling guideline, Guidance for the Application of the CAMx Hybrid Photochemical Hybrid Photochemical Grid Model to Assess Visibility Impacts of Texas BART Sources at Class I Areas,'' as a standard protocol for refined single facility assessment with CAMx using the platform used for earlier screening modeling. The modeling emission inventory files were updated to the latest available at the time and the individual sources used their short-term allowable emission rate instead of the doubling of annual emissions to approximate short-term actuals. Six facilities conducted CAMx single facility screening analysis and all were less than 0.5 del-dv impacts based on the 1st High modeling value as agreed to in the Modeling Protocols at the time. The TCEQ included the modeling reports and the modeling protocol for this CAMx modeling of individual facility attribution.[239] In Table 17 below, the column labeled ''Single Source CAMx'' indicates the BART-eligible sources that were eliminated from being subject to BART based on individual facility attribution CAMx modeling results.

These analyses used the maximum impact value on any day to compare against the 0.5 del-dv threshold. We have reviewed the modeling reports for these six facilities, and we propose to concur that the CAMx modeling and the evaluation was conducted in accordance with the modeling protocol approved by us at that time. When we approved the protocols, we did not consider the difference between CAMx and CALPUFF modeling and the natural conditions (''clean'') versus 2018 dirty background. In hindsight, we could have recommended using the ''Clean'' background approach in addition to the 2018 based analysis as we are using in our FIP action discussed below. We note that all six of these facilities were included in the sources that we evaluated in our initial Q/D screening for our FIP analysis (which included all Texas sources in TCEQ's emission database) as discussed below and all had a Q/D ratio to any Class I area that

[238] The TCEQ CALPUFF modeling protocol, Best Available Retrofit Technology (BART) Modeling Protocol to Determine Sources Subject to BART in the State of Texas, and a summary report for each modeling demonstration are included in Appendix 9–8 of the Texas regional haze SIP.

[239] TCEQ's CAMx modeling guideline, Guidance for the Application of the CAMx Hybrid Photochemical Grid Model to Assess Visibility Impacts of Texas BART Sources at Class I Areas is included in Appendix 9–8 of the Texas regional haze SIP. Both it and modeling summary reports for each modeling demonstration are included in the docket for this action.

was less than 10 and were not further evaluated. Sources that had a ratio of less than 10 have a lower potential impact level in general. In light of our concurrence of the protocol and metrics to be used at the time of the Texas Regional Haze SIP development (2006–2007), we are not proposing to disapprove this aspect of TCEQ's analysis.

f. TCEQ-Granted BART Exemptions

In addition to all the BART exemption modeling discussed above, the TCEQ also eliminated sources from being subject to BART based on further model plant analysis, using the BART Guideline approach.[240] Sources that emitted less than 500 tons per year of NO_X or SO_2 (or combined NO_X and SO_2), located more than 50 kilometers from any Class I area; and sources that emitted less than 1,000 tons per year of NO_X or SO_2 (or combined NO_X and SO_2) located more than 100 kilometers from any Class I area were eliminated from being subject to BART, consistent with the BART Guidelines.[241] The TCEQ also exempted a number of other sources for other reasons, including for having a PTE of less than 250 tons per year of any visibility impairing pollutant,[242] not having any emitting units in any of the 26 BART categories, unit shut downs, and de minimis levels of emissions.[243] The results of the TCEQ's granted exemptions are listed in column titled ''Exemption Requested'' in Table 17 below. We have reviewed the screening analysis for these 22 facilities and concur with the TCEQ screening them out from being subject to BART.

Subsequent to the 2002 base year inventory, some BART-eligible sources reduced their permitted emissions and requested exemptions from the TCEQ. These nine sources did screen out/obtain exemptions based on the limits and model plant approaches or reducing PTE below BART thresholds. See Table 17 and the BART TSD for details. Documentation of the emission reductions is in the Texas regional haze SIP, Appendix 9–11: Documentation of Emission Reductions. The sources and the estimated reductions were also presented in our BART TSD and Table 16 below. Reduction estimates are conservative because they are from the 2002 actual emissions level to a new potential to emit level below the 2002 actuals. Since facilities typically operate at less than their allowable emission rate on an annual basis we concur that the estimates of actual emission reductions for most of the sources is conservative. Capitol Cement shut down their BART units.

TABLE 16—POST 2002 EMISSION REDUCTIONS AT TEXAS BART SOURCES

No.	Regulated entity	Source	Account	NO_X Reduced from baseline 2002 (tpy)	SO_2 Reduced from baseline 2002 (tpy)	PM Reduced from baseline 2002 (tpy)
1	RN100211507	CAPITOL CEMENT DIV	BG0045E	1,328	1,193	100
2	RN100227016	DOW	HG0126Q	694	0	0
3	RN102450756	EXXONMOBIL OIL	JE0067I	2.7	290	0
4	RN102609724	NORIT AMERICAS INC	HH0019H	16.6	+5.4	0
5	RN100216621	REGENCY TILDEN GAS (FORMERLY ENBRIDGE PIPELINE).	MC0002H	2	2,276	0.2
6	RN102551785	TARGA (FORMERLY DYNEGY MIDSTREAM SERVICES).	CY0019H	336	0.3	0.5
7	RN102561925	THE GOODYEAR TIRE AND RUBBER CO.	JE0039N	89.1	+11.3	2.9
8	RN100213685	VALENCE MIDSTREAM LTD	HR0018T	247.1	2,743.5	5.6
9	RN100218601	VETROTEX AMERICA ST. GOBAIN	WH0014S	62.6	16.4	59.0
Total estimated reductions in PTE of haze emissions = 9,485.2 tpy.				2,778.1	6,535.9	168.2

Following the conclusion of the BART exemption modeling, model plant analysis, and granted exemptions, all 126 BART-eligible sources were found to be exempted from BART.

g. Summary of Our Review of Texas' BART Screening Analyses and Determinations

The TCEQ analyzed 126 facilities that were potentially BART eligible or needed additional information to rule out their BART eligibility. We have reviewed the different modeling techniques that the TCEQ utilized in evaluating and screening out these sources and we propose to concur with the analysis. The TCEQ's analysis was done in accordance with our 2005 BART Guidelines, our modeling Guidelines on Air Quality Models (40 CFR part 51 App. W), our and Interagency Work Group on Air Quality Monitoring's (IWAQM) modeling guidance for CALPUFF and visibility analysis (several documents) and other pertinent modeling guidance. CALPUFF modeling was conducted pursuant to modeling protocols that were shared and reviewed by us and Federal Land Manager representatives and included the initial CENRAP modeling protocol, the TCEQ's refined modeling protocol, and source specific modeling protocols. The TCEQ and six sources also performed modeling analyses with CAMx based on the TCEQ's modeling protocols (initial TCEQ group/source modeling and refined single source protocols for six facilities). We initially had some concern in early 2007 that some sources may have screened out in the initial CAMx group modeling and model plant source screening in late 2006 based on using the 98th percentile threshold rather than the threshold that was later agreed to in February 2007 of using the maximum (high 1st high instead of the. 8th high). As discussed and analyzed at the time (February 2007) and detailed in our BART TSD, we think that the sources that screened out were analyzed in groups, and it is reasonable to conclude that no one source would have been above either threshold if refined modeling had been conducted. Subsequent screening using

[240] 70 FR 39162 (July 6, 2005).

[241] 70 FR 39119 (July 6, 2005)

[242] 70 FR 39157 (July 6, 2005).

[243] 70 FR 39161 (July 6, 2005). ''Any de minimis values that you adopt may not be higher than the PSD applicability levels: 40 tons/yr for SO_2 and NO_X and 15 tons/yr for PM_{10}. These de minimis levels may only be applied on a plant-wide basis.

these sources and the model plant approach are also valid since each source would be below 0.5 del-dv based on the analysis as further discussed in our BART TSD. Therefore, we propose to concur with the sources that the TCEQ screened out using the model plant approaches.

We also reviewed the results of the CALPUFF and CAMx single-source modeling, and we propose to concur with the screening of those facilities. We propose to concur with the TCEQ's screening analysis overall and its conclusions as discussed above and in the BART TSD. The final list of all BART-eligible sources and the different screening techniques that provided the reason for not considering the source to be subject to BART for its VOC, direct PM, NO_X and SO_2 appears in the following table.

TABLE 17—SUMMARY OF SCREENING ANALYSIS FOR EACH BART-ELIGIBLE FACILITY THAT WAS EVALUATED FOR IMPACTS AT CLASS I AREAS AND REMOVED

[Screened out]

	Account	Company	BART-eligible	Reason for removal			
				Cum. model CAMx	CAL-PUFF	Single source CAMx	Exemption requested
1	TG0044C	AEP TEXAS	y	y			
2	CD0013K	AEP TEXAS CENTRAL COMPANY—La Palma.	y	y			
3	NE0024E	AEP TEXAS CENTRAL COMPANY—Barney M Davis.	y	y			
4	NE0026A	AEP TEXAS CENTRAL COMPANY—Nueces Bay.	y	y			
5	JI0030K	AEP TEXAS NORTH COMPANY—W.T.U.-FT. PHANTOM.	y	y			
6	CB0003M	ALCOA ALUMINA & CHEMICALS	y	y			
7	BL0002S	INEOS OLEFINS & POLYMERS	y	y			
8	HG0558G	ATOFINA CHEMICALS INC	y	y			
9	BL0021O	BASF CORPORATION	y	y			
10	GB0001R	BP AMOCO CHEMICAL COMPANY	y	y			
11	MH0009H	CELANESE LIMITED	y	y			
12	ED0011D	CHAPARRAL STEEL MIDLOTHIAN	y	y			
13	BJ0001T	CHEMICAL LIME LTD	y	y			
14	HG0310V	CHEVRON PHILLIPS CHEMICAL	y	y			
15	HW0013C	CHEVRON PHILLIPS CHEMICAL CO	y	y			
16	BG0057U	CITY PUBLIC SERVICE—Sommers Deely Spruce.	y	y			
17	BG0186I	CITY PUBLIC SERVICE—V.H Brauning	y	y			
18	CR0020C	COPANO PROCESSING LP	y	y			
19	CI0022A	DYNEGY MIDSTREAM SERVICES	y	y			
20	WN0042V	TARGA	y	y			
21	HG0218K	EI DUPONT	y	y			
22	EE0029T	EL PASO ELECTRIC CO	y	y			
23	TH0004D	ELECTRIC UTILITY DEPT	y	y			
24	MQ0009F	ENTERGY GULF STATES INC—Lewis Creek.	y	y			
25	OC0013O	ENTERGY GULF STATES INC—Sabine	y	y			
26	BL0113I	EQUISTAR	y	y			
27	BL0268B	EQUISTAR CHEMICALS LP	y	y			
28	HG0033B	EQUISTAR CHEMICALS LP	y		y	y	
29	HG0228H	EXXON CHEMICAL CO	y	y			
30	JE0065M	EXXON MOBIL CHEMICAL CO	y	y			
31	HG0229F	EXXONMOBIL CHEMICAL CO	y	y			
32	NE0122D	FLINT HILLS RESOURCES LP	y	y			
33	JE0052V	HUNTSMAN CORPORATION	y	y			
34	JE0135Q	HUNTSMAN PETROCHEMICAL CORP	y	y			
35	EB0057B	HUNTSMAN POLYMERS	y		y		
36	GBA007G	INEOS					y
37	NE0120H	FLINT HILLS RESOURCES LP	y	y			
38	WE0005G	LAREDO POWER	y	y			
39	MB0123F	LEHIGH CEMENT COMPANY	y	y			
40	NE0025C	LON C HILL POWER	y	y			
41	BC0015L	LOWER COLORADO RIVER Authority—Lower Colorado River.	y	y			
42	FC0018G	LOWER COLORADO RIVER AUTHORITY—Fayette.	y	y			
43	HG1575W	LYONDELL CITGO REFINING	y	y			y
44	HG1451S	OXYVINYLS LP	y	y			
45	JE0042B	PREMCOR REFINING GROUP	y	y			
46	HG0632T	ROHM & HAAS TEXAS	y	y			
47	BL0038U	SOLUTIA INC	y	y			
48	GJ0043K	SOUTHWESTERN ELECTRIC POWER	y	y			

TABLE 17—SUMMARY OF SCREENING ANALYSIS FOR EACH BART-ELIGIBLE FACILITY THAT WAS EVALUATED FOR IMPACTS AT CLASS I AREAS AND REMOVED—Continued

[Screened out]

	Account	Company	BART-eligible	Reason for removal			
				Cum. model CAMx	CAL-PUFF	Single source CAMx	Exemption requested
49	ME0006A	SOUTHWESTERN ELECTRIC POWER—Wilkes.	y	y			
50	PG0040T	SOUTHWESTERN PUBLIC SERVICE—Nichols.	y	y			
51	PG0041R	SOUTHWESTERN PUBLIC SERVICE—Harrington.	y	y			
52	TF0012D	SOUTHWESTERN ELECTRIC POWER—Welsh.	y			y	
53	JE0091L	SUN MARINE TERMINAL	y	y			
54	CI0012D	TEXAS GENCO LP—Cedar Bayou	y	y			
55	FG0020V	TEXAS GENCO LP—W A Parrish	y	y			
56	GB0037T	NRG Texas—PH Robinson	y		y		
57	HG0562P	TEXAS PETROCHEMICALS LP	y	y			
58	BL0082R	THE DOW CHEMICAL CO	y	y			
59	NE0022I	TICONA POLYMERS INC	y	y			
60	ED0066B	TXI OPERATIONS, L.P.	y		y		
61	FI0020W	TXU BIG BROWN COMPANY LP	y	y			
62	DB0251U	TXU ELECTRIC COMPANY—North Lake Steam.	y	y			
63	FB0025U	TXU GENERATION COMPANY LP—Valley Steam.	y	y			
64	HQ0012T	TXU GENERATION COMPANY LP—Decordova.	y	y			
65	MB0116C	TXU GENERATION COMPANY LP—Tradinghouse.	y	y			
66	MM0023J	TXU GENERATION COMPANY LP—Sandow	y	y			
67	MO0014L	TXU GENERATION COMPANY LP—Morgan Creek.	y	y			
68	RL0020K	TXU GENERATION COMPANY LP—Martin Lake.	y	y			
69	TA0352I	TXU GENERATION COMPANY LP—Eagle Mtn.	y	y			
70	WC0028Q	TXU GENERATION COMPANY LP—Permian Bsn.	y	y			
71	YB0017V	TXU GENERATION COMPANY LP—Graham	y	y			
72	TF0013B	TXU GENERATION COMPANY LP—Monticello.	y		y		
73	GB0076J	UNION CARBIDE CORP	y	y			
74	CB0028T	UNION CARBIDE CORPORATION	y	y			
75	GB0073P	VALERO REFINING CO TEXAS	y	y			
76	VC0003D	VICTORIA POWER	y	y			
77	JB0016M	VINTAGE PETROLEUM, INC.	y	y			
78	LN0081B	SOUTHWESTERN PUBLIC SERVICE	y	y			
79	AC0017B	ABITIBI CONSOLIDATED CORP	y				y
80	MM0001T	ALCOA INC	y		y		
81	HT0011Q	ALON USA LP	y		y		
82	ED0034O	ASH GROVE	y		y		
83	JE0343H	BMC HOLDINGS INC					y
84	GB0004L	BP PRODUCTS NORTH AMERICA IN TEXAS.	y			y	
85	GH0003Q	CABOT CORPORATION	y		y		
86	BG0045E	CAPITOL CEMENT DIV CAPITOL	y				y
87	GH0004O	CELANESE CHEMICAL	y			y	
88	BL0758C	CHEVRON PHILLIPS CHEMICAL	y				y
89	NE0027V	CITGO REFINING & CHEMICALS	y			y	
90	HW0018P	CONOCOPHILLIPS	y		y		
91	AB0012W	DCP	y		y		
92	HW0008S	DEGUSSA ENGINEERED CARBONS	y		y		
93	MR0008T	DIAMOND SHAMROCK REFINING	y				y
94	HGA005E	DOW	y			y	
95	HG0126Q	DOW	y				y
96	HH0042M	EASTMAN CHEMICAL COMPANY	y		y		
97	OC0007J	EI DUPONT DENEMOURS & CO	y				y
98	MC0002H	ENBRIDGE PIPELINE					y
99	CG0012C	ENBRIDGE PIPELINES	y				y
100	HG0232Q	EXXONMOBIL CORP—Baytown	y		y		

TABLE 17—SUMMARY OF SCREENING ANALYSIS FOR EACH BART-ELIGIBLE FACILITY THAT WAS EVALUATED FOR IMPACTS AT CLASS I AREAS AND REMOVED—Continued

[Screened out]

	Account	Company	BART-eligible	Reason for removal			
				Cum. model CAMx	CAL-PUFF	Single source CAMx	Exemption requested
101	JE0067I	EXXONMOBIL OIL CORP—Beaumont	y	.....	y	.....	.....
102	CG0010G	INTERNATIONAL PAPER CO	y	.....	y	.....	.....
103	OCA002B	INVISTA	y	.....	y	.....	.....
104	VC0008Q	INVISTA	y	.....	y	.....	.....
105	JH0025O	JOHNS MANVILLE INTERNATIONAL	.....	.....	.....	.....	y
106	HG0048L	LYONDELL CITGO REFINING	y	.....	.....	y	.....
107	GB0055R	MARATHON ASHLAND PETROLEUM	y	.....	.....	.....	y
108	HH0019H	NORIT AMERICAS INC	y	.....	y	.....	y
109	ED0051O	OWENS CORNING	y	.....	.....	.....	.....
110	HG0175D	PASADENA REFINING	y	.....	y	.....	.....
111	AG0024G	PUEBLO MIDSTREAM GAS CORP	.....	.....	.....	.....	y
112	PE0024Q	REGENCY GAS SERVICES	.....	.....	.....	.....	y
113	HG0697O	RHODIA, INC.	y	.....	y	.....	.....
114	HG0659W ...	SHELL OIL CO	y	.....	y	.....	.....
115	HW0017R	SID RICHARDSON CARBON	y	.....	y	.....	.....
116	HT0027B	SID RICHARDSON CARBON	y	.....	y	.....	.....
117	CY0019H	TARGA	y	.....	.....	.....	y
118	OC0019C	TEMPLE–INLAND	y	.....	y	.....	.....
119	HK0014M	TEXAS LEHIGH CEMENT CO	y	.....	y	.....	.....
120	JE0039N	THE GOODYEAR TIRE AND RUBBER CO ..	y	.....	y	.....	y
121	JE0005H	TOTAL PETROCHEMICALS	y	.....	y	.....	.....
122	HR0018T	VALENCE MIDSTREAM LTD	y	.....	y	y	y
123	NE0043A	VALERO REFINING COMPANY	y	.....	.....	.....	.....
124	HG0130C	VALERO REFINING TEXAS LP	.....	.....	.....	.....	y
125	WH0014S	VETROTEX WICHITA FALLS PLANT	y	.....	.....	.....	y
126	JC0003K	WESTVACO	y	.....	y	.....	.....

h. Subject to BART EGUs

As explained above in Section I.C, in an earlier action, we issued a limited disapproval of the Texas regional haze SIP based on deficiencies arising from its reliance on CAIR to meet certain regional haze requirements.[244] In the same rulemaking, we found that CSAPR, like CAIR, provides for greater reasonable progress towards the national goal than would BART. This finding applied only to EGUs in the states in the CSAPR region and only to the pollutants subject to the requirements of CSAPR.[245] The docket for this earlier limited disapproval of Texas' regional haze SIP may be found at Docket ID No. EPA–HQ–OAR–2011–0729. In that action, we did not disapprove the reasonable progress targets for 2018 that have been set by the states in their SIPs. The reasonable progress goals in the SIPs were set based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. Given the requirement in 40 CFR 51.308(d)(1)(vi) that states must take into account the visibility improvement that is expected to result from the implementation of other Clean Air Act requirements, states set their reasonable progress goals based, in part, on the emission reductions expected to be achieved by CAIR. As CAIR has now been remanded by the D.C. Circuit, the assumptions underlying the development of the reasonable progress targets have changed; however, because the overall EGU emission reductions from CSAPR are larger than the EGU emission reductions that would have been achieved by CAIR, we expect CSAPR to provide similar or greater benefits than CAIR. Given these considerations, we concluded not to disapprove the reasonable progress goals in any of the regional haze SIPs for their reliance on CAIR, including those for Texas. In this earlier action, we did not promulgate a FIP for Texas in order to allow more time for us to assess the Texas regional haze SIP submittal due to the variety and number of BART-eligible sources and the complexity of the SIP.[246] At this time, we propose a FIP to replace reliance on CAIR with reliance on the trading programs of CSAPR as an alternative to BART for SO_2 and NO_X emissions from EGUs in the regional haze plan for Texas.

Previously, CSAPR was stayed by the D.C. Circuit pending resolution of litigation. We moved to have that stay lifted in light of the Supreme Court decision. *EME Homer City Generation, L.P.* v. *EPA,* Case No. 11–1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). In our motion, we asked the Court to toll CSAPR's compliance deadlines by three years, so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). Under the tolled compliance deadline schedule proposed by us in its motion to lift the CSAPR stay, CAIR would sunset at the end of 2014 and be replaced by CSAPR beginning January 1, 2015. On October 23, 2014, the D.C. Circuit granted our request to lift the legal stay on the implementation of CSAPR. Therefore, our proposed FIP to replace Texas' reliance on CAIR with reliance CSAPR is consistent with the Court's ruling.

3. Texas' BART Rule

Texas also promulgated and submitted rule sections that add

[244] 77 FR 33642 (June 7, 2012).

[245] Texas is subject to the requirements of the CSAPR trading program for both NO_X and SO_2. See 76 FR 48208 (August 8, 2011).

[246] 77 FR 33654 (June 7, 2012).

engineering and control requirements for BART on certain affected sources. The full SIP submittal is available in the docket for this proposal at *www.regulations.gov*. Texas' BART rules are codified at 30 TAC 116.1500–116.1540. The rules establish definitions, applicability, exemptions, BART, and exemption from BART. Our technical analysis of the provisions in Texas' BART rules can be found in the TX and BART TSDs in the docket for this rulemaking. On September 22, 2006, we provided substantive comments on Texas' proposed BART rules.[247] In its final adoption of the rules, the TCEQ adequately addressed all of our comments. However, at the time of our comments, CAIR had not yet been vacated by the D.C. Circuit. One provision in Texas' BART rule, 30 TAC 116.1510(d), provides an exemption from BART based on CAIR. Specifically, it states ''BART-eligible electric generating units participating in the Clean Air Interstate Rule Trading Program are not subject to the requirements of Section 116.1520 or Section116.1530 of this title for NO_X and SO_2.'' [248] As discussed in Section I.C, we have already issued a limited disapproval of the Texas regional haze SIP for its reliance on CAIR. However, we determined that CSAPR provides for greater reasonable progress towards the national goal than would BART and Texas is included in CSAPR for NO_X and SO_2. Therefore, our proposed FIP to replace reliance on CAIR with reliance on the trading programs of CSAPR as an alternative to BART includes a FIP to replace Texas' reliance on CAIR in 30 TAC 116.1510(d) with reliance on CSAPR. We propose to approve the remainder of the provisions in the Texas BART rules and Texas' application of the BART rules regarding the identification of all BART eligible sources within the state and the screening of BART sources from full BART analysis.

E. Long-Term Strategy

Section 51.308(d)(3) provides that Texas' long-term strategy include enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established by states having mandatory Class I areas. There are a number of requirements a state must meet when establishing its long-term strategy. These requirements include: (1) states must consult with downwind states to develop coordinated management strategies that address regional haze visibility impairment; [249] (2) where multiple states cause or contribute to visibility impairment in a Class I area, each state must demonstrate that it has put all measures necessary to obtain its share of emission reductions needed to meet the progress goal for the Class I area; [250] and (3) each state must provide and document the technical basis on which the state is relying to determine its share of emission reductions necessary to achieve reasonable progress for each Class I area it affects.[251]

1. Texas' Long-Term Strategy Consultation

Section 51.308(d)(3)(i) requires that where Texas has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I area located in another state or states, it must consult with the other state(s) in order to develop coordinated emission management strategies. Texas must consult with any other state having emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I area within it.

Regarding this requirement, the TCEQ makes the following statement in its SIP: [252]

> The TCEQ reviewed CENRAP modeling to assess which Class I areas in other States might be impacted by Texas' emissions. Modeling indicated that Texas impacts Breton Wilderness Area in Louisiana, the Great Sand Dunes in Colorado, and several Class I sites in New Mexico. The TCEQ also consulted the adjacent States in which the modeling data indicated no significant impact by Texas, including Arkansas, Missouri, and Oklahoma.[253]

As we summarize below, CENRAP visibility modeling in fact demonstrates that Texas sources are responsible for a significant portion of the visibility impacts to Class I areas in a number of states on the worst 20% days for both 2002 and 2018, including Arkansas and Oklahoma.[254] Furthermore, as we discuss below, both Oklahoma and Texas mutually acknowledged that Texas sources significantly impact the visibility at the Wichita Mountains. Regardless, Texas participated in consultation calls with Arkansas, Missouri, and Oklahoma and through letters with Arkansas, Colorado, Louisiana, Missouri, and New Mexico. The TCEQ identified the significant point sources within each AOI and shared this information with nearby states during the consultation process (see Appendix 4–3 of the Texas regional haze SIP for consultation letters).

Pursuant to this review and in response to comments from us and the federal land managers in March 2008, Texas wrote consultation letters to Arkansas, Missouri, Oklahoma, New Mexico, Louisiana, and Colorado to ask whether emission reductions projected in Texas by 2018 are sufficient to meet Texas' apportionment of the impact reduction needed to meet the RPG for each Class I area in each state.

The TCEQ also requested recipients of the letters to confirm they were not expecting any additional emission reductions from Texas sources. These letters and associated documents are included in Appendix 4–3 of the Texas Regional Haze SIP. Texas stated in the record that it had completed its consultation with Louisiana, Arkansas, Missouri, Oklahoma, and Colorado, and none of these states has asked it for further emission reductions to help the it meet its reasonable progress goals for its Class I area(s). Appendix 4–3 to the Texas regional haze SIP contains the official communications from these states to Texas. The following is a summary of the state-by-state review of Texas' consultation under Section 51.308(d)(3)(i):

Colorado (Great Sand Dunes, Rocky Mountains) TCEQ sent Colorado a letter on March 25, 2008 with information of impacts of Texas sources on Colorado Class I areas. On June 19, 2008, Colorado responded in a letter in which it presented its own impact analyses and stated that Texas sources are below the criteria identified in the Colorado SIP (based on regional apportionment modeling used to develop the Colorado SIP, PSAT.). In a June 24, 2008, letter, Colorado's Department of Public Health and Environment responded that no further emission reductions were requested of Texas at this time.

Louisiana (Breton). On November 29, 2007, the Louisiana Department of Environmental Quality (LDEQ) sent an email that stated it determined that emissions from Texas do not contribute to visibility impairment at Breton Wilderness Class I Area in Louisiana. LDEQ stated that it will continue to monitor all state and federal rules and control measures and will include the necessary emission factors in future

[247] See Letter from Thomas Diggs, EPA, to Lola Brown, TCEQ (Sept. 22, 2006), attachment W–16 in the TCEQ's March 19, 2009, SIP submittal.

[248] 30 TAC 116.1510(d).

[249] Section 51.308(d)(3)(i).

[250] Section 51.308(d)(3)(ii).

[251] Section 51.308(d)(3)(iii)–(iv).

[252] Page 4–2 of the Texas Regional Haze SIP.

[253] We assume the statement that modeling data indicates ''no significant impact by Texas'' on Class I areas in Arkansas and Oklahoma is an oversight in the Texas regional haze SIP.

[254] See Table 1 of the TX TSD for a summary of CENRAP source apportionment modeling results for Class I areas in other States impacted by emissions from sources in Texas.

modeling. TCEQ sent LDEQ a letter on March 25, 2008, with information of impacts of Texas sources on Breton.

New Mexico: (Carlsbad Caverns, Salt Creek, White Mountain, Wheeler Peak). On August 8, 2008, TCEQ sent a letter to NMED. As of the date of the submission of the Texas regional haze SIP, New Mexico had not replied. New Mexico's regional haze SIP provides additional clarification on its consultations. New Mexico acknowledges that the long-term strategies adopted by Colorado, Arizona, and Texas in their SIPs and approved by us will include emission reductions from a variety of sources that will reduce visibility impairment in New Mexico's Class I areas.[255]

Missouri (Hercules-Glades, Mingo) and Arkansas (Caney Creek, Upper Buffalo). On August 26, 2007, Missouri and Arkansas invited states including Texas to a series of consultation calls concerning visibility at their four Class I areas. During these calls, a URP was developed for each Class I area in Arkansas and Missouri (Caney Creek and Upper Buffalo in Arkansas, and Hercules Glades and Mingo in Missouri). The participating states also determined that the projected 2018 CENRAP modeling and other findings based on existing and proposed controls arising from local, state, and federal requirements indicated that the two Class I areas in Arkansas and the two Class I areas in Missouri are on the glidepath and are projected to meet the URP goals for the first implementation period ending in 2018. Arkansas Department of Environmental Quality (ADEQ) and Missouri Department of Natural Resources (MDNR) both determined that additional emission reductions from other states were not necessary to address visibility impairment at Caney Creek, Upper Buffalo, Hercules-Glades, and Mingo for the first implementation period ending in 2018, and all states participating in its consultations agreed with this.[256] The TCEQ sent Missouri and Arkansas letters on March 25, 2008, with information of impacts of Texas sources on Missouri and Arkansas Class I areas. On April 21, 2008, Missouri responded with a letter that stated it had reviewed the TCEQ analysis and attachments and they provided results generally consistent with the CENRAP and Missouri modeling and data analysis used in developing its plan. Missouri indicated at this time, that emission reductions from Texas were adequate. In an April 21, 2008, letter, Missouri's Department of Natural Resources responded that no further emission reductions were requested of Texas. Arkansas responded on June 10, 2008. It concurred with the CENRAP PSAT modeling assessment, and those results were used to set Arkansas' RPGs for its 2 Class I areas. Arkansas stated it was not depending on additional reductions at this time to meet its RPGs. In a June 10, 2008, letter, the ADEQ responded that no further emission reductions were requested of Texas.

Oklahoma (Wichita Mountains). The TCEQ attended Oklahoma's three consultation calls held in August and September 2007. On August 3, 2007, ODEQ sent TCEQ a letter that noted the Wichita Mountains is not projected to be on its glide path and that, from ''the work done through the CENRAP process, it is clear that Wichita Mountains suffers from significant anthropogenic impacts from Texas.'' The letter requested that the ODEQ be able to comment on BACT determinations for Prevention of Significant Deterioration (PSD) sources that significantly impact the Wichita Mountains and requested that Class I impact reviews be required for all proposed PSD sources within 300 kilometers of a Class I area. The letter cited several CAA visibility provisions related to PSD visibility requirements and the visibility transport requirement under Section 110 of the CAA. The ODEQ asked that the TCEQ ''fully consider its comments'' about applicable CAA provisions. In a response letter dated October 15, 2007, the TCEQ agreed that the modeling shows Texas to be a ''significant source of visibility impairing pollution on the Wichita Mountains.'' The TCEQ agreed to notify the ODEQ, along with the relevant FLM, whenever modeling indicates that a proposed source significantly impacts Wichita Mountains. The TCEQ also responded to the ODEQ's PSD comments on potential impacts of new and modified sources. The TCEQ did not agree to the ODEQ's 300 kilometer PSD review request, and cited the need for us to adopt significant impact levels for Class I reviews so that there is a consistent approach to requiring Class I reviews. During the interim, the TCEQ committed to working with the federal land managers on mutually acceptable criteria for determining when a proposed PSD source should conduct a Class I review. The TCEQ also stated, in conjunction with work being done through CENRAP, that there will be significant reductions in the next few years and visibility at Wichita Mountains would improve as a result of those reductions.

The TCEQ sent Oklahoma another consultation letter, dated March 25, 2008. In that letter, the TCEQ provides a detailed assessment, based on CENRAP modeling, of the impact of Texas sources on the visibility at the Wichita Mountains. Specifically, the letter contained information related to the 2002 visibility impacts and the 2018 projected visibility impacts from all source areas on the one Class I area in Oklahoma and the impacts apportioned to be from Texas' sources. TCEQ indicated that CENRAP produced these results using particulate matter source apportionment technology (PSAT) modeling and relative response factors according to our regional haze modeling guidance. The data were from the August 27, 2007, version of the PSAT tool that Environ produced for CENRAP. The TCEQ also provided a table of sources of particular interest to Wichita Mountains, identified by the TCEQ due to their emissions and location within the AOI, developed as part of the CENRAP planning process. This table included 2002 and 2018 projected annual emissions from CENRAP, as well as the sources distance from Wichita Mountains. The TCEQ concluded by requesting ODEQ's concurrence on that assessment, and, ''that your State is not depending on any additional reductions from Texas sources in order to meet your reasonable progress goal(s).''

On May 12, 2008, the ODEQ responded to that letter and concurred with the ''information in that letter.'' The ODEQ stated that it developed its RPG through CENRAP deliberation. It also stated that it does not anticipate reductions beyond those that Texas already planned to implement and upon which the CENRAP studies relied. However, the ODEQ stated that its RPG falls short of the uniform rate of improvement necessary to reach the default natural visibility conditions in 2064. The ODEQ stated that reaching its progress goal requires constraints on emissions from new, modified, and existing sources. Referring back to its August 2007 letter, the ODEQ restated its request that the TCEQ perform an analysis of any new or modified PSD subject source within 300 km of the Wichita Mountains to conduct an analysis for its impact on the Wichita Mountains, following FLM guidance, as appropriate. It restated its request to review BACT determinations for proposed sources projected to

[255] New Mexico Regional Haze SIP, Page 4 at: *http://www.nmenv.state.nm.us/aqb/reghaz/documents/Proposed_RH_SIP_309g_03312011.pdf.*

[256] See Appendix 4_3d of the Texas regional haze SIP for July 23, 2007, letter from ADEQ and MDNR to participants in the Central Class I Areas Consultation Process summarizing this series of consultation calls.

significantly contribute to visibility impairment at the Wichita Mountains. The TCEQ committed to provide the ODEQ the opportunity to comment on control determinations for Texas facilities that having the potential to significantly impair visibility at the Wichita Mountains. The ODEQ asked to be informed of actual emission reductions achieved from CAIR. Please see our description of the Texas-Oklahoma consultations, based on the information in Oklahoma's record, in our OK TSD and as summarized in Section VI.B.2, for additional consultation details.

a. Our Review of Texas' Long-Term Strategy State Consultation

Section 51.308(d)(3)(i) requires that Texas consult with other states if its emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area(s), and that Texas consult with other states if those states' emissions are reasonably anticipated to contribute to visibility impairment at Big Bend and Guadalupe Mountains. The TCEQ's consultations with other states that impact Texas Class I areas are described in Section V.C.5 above.

During consultation, Colorado and Louisiana determined that Texas impacts on their Class I areas were not significant enough to warrant additional controls for this planning period. Based on the 2018 CENRAP projections, Missouri and Arkansas [257] established RPGs for their Class I areas that provide for a slightly greater rate of improvement in visibility than needed to attain the URP, and determined that the projected emission reductions included in the model were adequate, and that it was not reasonable to request additional controls from Texas at this time. We find these consultations acceptable.

The CENRAP source apportionment modeling indicates that Texas emissions, particularly SO_2 emissions from point sources, impact a number of Class I areas outside of Texas. Texas SO_2 emissions are projected in 2018 to have the largest visibility impacts, in terms of both absolute contribution to extinction and percent contribution to total extinction, at the Wichita Mountains in Oklahoma.[258] As we discuss above, both the ODEQ and the TCEQ agreed that sources in Texas significantly impact the visibility at the Wichita Mountains in Oklahoma, and that the impacts from point sources in Texas are several times greater than the impact from Oklahoma point sources. Furthermore, the ODEQ asserted in its consultations with the TCEQ, and elsewhere in its regional haze SIP, that it would not be able to reach natural visibility by 2064 without additional reductions from Texas sources. During consultations, the ODEQ specifically requested additional information on controls identified through the CENRAP process that were cost-effective and had the potential to result in visibility improvements due to their location and size. In addition, the ODEQ had information that other sources with existing controls still have a large potential to impact visibility and should be analyzed for control upgrades.

Ultimately, however, Texas determined that no additional controls at its sources were warranted during the first planning period to help achieve reasonable progress at the Wichita Mountains, and Oklahoma did not specifically request any additional reductions from Texas sources. As a result, Oklahoma set RPGs for the Wichita Mountains that do not reflect any reasonable emission reductions from Texas beyond those that will be achieved by compliance with other requirements of the CAA. During the notice-and-comment period on Oklahoma's proposed SIP, several commenters criticized Oklahoma for not requesting additional reductions from Texas. They argued that without such reductions, Oklahoma would not make reasonable progress toward the national goal at the Wichita Mountains. In responding to these comments, Oklahoma acknowledged that sources in Texas had significant impacts on visibility in the Wichita Mountains, but maintained that it did not have the regulatory authority to require emission reductions in other states. Oklahoma asserted that only Texas and we could require such reductions. We believe that the technical analysis developed by Texas did not provide the information necessary to identify reasonable reductions from its sources, and inform consultations in order to develop coordinated management strategies with Oklahoma. As a result, we believe that Texas did not incorporate those potential reasonable reductions into its long-term strategy and those reductions were not included in the reasonable progress goal established by Oklahoma for Wichita Mountains. Consequently, we propose to find that the TCEQ did not adequately address the requirement in Section 51.308(d)(3)(i) to ''consult with the other State(s) in order to develop coordinated emission management strategies.''

2. Texas' Share of Reductions in Other States' Progress Goals

Section 51.308(d)(3)(ii) requires that if Texas emissions cause or contribute to impairment in another state's Class I area, it must demonstrate that it has included in its regional haze SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for that Class I area. Section 51.308(d)(3)(ii) also requires that since Texas participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. As we state in the Regional Haze Rule, Texas' commitment to participate in CENRAP bind it to secure emission reductions agreed to as a result of that process, unless it proposes a separate or supplemental process and performs its consultations on the basis of that process.

While the content of state SIPs cannot be dictated by a regional planning organization, the Regional Haze Rule contemplated that a coordinated regional effort would likely produce results the states would find beneficial in developing their regional haze SIPs. Any state choosing not to follow the recommendations of a regional body would have to provide a specific technical basis that its strategy nonetheless provides for reasonable progress based on the statutory factors and would be responsible for the content of that demonstration. The technical data prepared through the regional planning organization process is typically designed to inform the member states of their apportionment of the visibility impact at Class I areas, project future visibility conditions, and to provide high-level information on potential control strategies to inform consultations and the four-factor analysis necessary to establish RPGs. These analyses may require additional supplementation or refinement by the states in development of their regional haze SIPs to address impacts and potential controls of specific sources or source categories.

Participation in a regional planning organization does not automatically satisfy a state's obligation to ''demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emission reductions needed to meet the progress goal'' for a Class I area. As mentioned in section IV above, the

[257] We note, however, that we disapproved Arkansas' RPGs because it did not perform an adequate four-factor analysis of their own sources and because we disapproved BART determinations in the State. See 76 FR 64186 (October 17, 2011).

[258] See Tables 25 and 26 below and our TX TSD.

control measures in an upwind state's long term strategy should be sufficient to obtain its share of reductions needed to meet an approved, or approvable, progress goal in a downwind state's SIP. In this instance, the CENRAP technical analysis was sufficient to demonstrate that Texas as a whole, and particular source categories such as EGU point sources, had a significant impact on the visibility at the Wichita Mountains and other Class I areas. The analysis also estimated that large emission reductions could be achieved at some of these sources by implementing potentially cost-effective controls. The TCEQ recognized that some aspects of CENRAP's technical analysis were limited and therefore attempted to supplement that analysis, which it used as the technical basis for both its reasonable progress and long-term strategy demonstrations, as we describe in Section V.C. As it states with regard to the development of its long-term strategy on page 10–4 of its regional haze SIP, ''[t]he TCEQ used the control strategy analysis completed by the CENRAP as the starting point for the analysis of additional controls.'' In fact, the TCEQ went beyond the CENRAP analysis by contemplating additional controls, applying a lower cost-effectiveness threshold and estimating the visibility benefit from the identified control set. The TCEQ incorporated this supplemental analysis in the development of its RPG and its long-term strategy. It used this analysis to inform its decision not to control any additional sources, including those that impact the visibility at the Wichita Mountains and other Class I areas in other states.

However, we believe the technical analysis developed by CENRAP and supplemented by the TCEQ did not provide the information needed to evaluate the reasonableness of controls on those sources with the largest potential to impact visibility at the Wichita Mountains. See Sections V.C.2 and V.C.3, as well as the TX TSD for a detailed description and our review of the CENRAP and TCEQ analyses. We believe this information was critical for ODEQ to use in setting the RPG and critical for TCEQ when determining its fair share of reductions.

We propose to find that Texas did not develop an adequate technical basis to inform consultations with Oklahoma and to identify reasonable reductions from its sources. As a result, we find that Texas did not incorporate those reasonable reductions into its long-term strategy. Texas' ''share of the emission reductions needed to meet the progress goal'' for the Wichita Mountains was not properly established because of the inadequacies in its technical analyses, which compromised its consultations with Oklahoma. For these reasons we propose to find that TCEQ did not adequately meet the requirement in Section 51.308(d)(3)(ii).

3. Texas' Technical Basis for Its Long-Term Strategy

Section 51.308(d)(3)(iii) requires that Texas document the technical basis, including modeling, monitoring and emissions information, on which it is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I area it affects. It may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all state participants. Texas must identify the baseline emissions inventory on which its strategies are based. The baseline emissions inventory year is presumed to be the most recent year of the consolidated periodic emissions inventory.

Section 51.308(d)(3)(iv) requires that Texas identify all anthropogenic sources of visibility impairment considered by it in developing its long-term strategy. Texas should consider major and minor stationary sources, mobile sources, and area sources.

The TCEQ addressed the requirements of Sections 51.308(d)(3)(iii)–(iv) mainly by relying on technical analyses developed by CENRAP and approved by all state participants, but it also performed an additional analysis building upon the work of the regional planning organization in order to evaluate additional controls, as described in Section V.C.2. The emissions inventory used in the regional haze technical analyses was developed by CENRAP with assistance from Texas. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from federal and state regulations affecting the emissions of the visibility-impairing pollutants NO_X, PM, SO_2, and VOCs. By analogy, with regard to development of the long-term strategy, the BART Guidelines direct states to exercise judgment in deciding whether VOCs and NH_3 impair visibility in their Class I area(s).[259] CENRAP performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the CENRAP region. Therefore, Texas did not consider NH_3 among visibility-impairing pollutants and did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

a. Texas' 2002 Emission Inventory

The TCEQ and CENRAP developed an emission inventory for five inventory source classifications: Point, area, non-road and on-road mobile sources, and biogenic sources for the baseline year of 2002. Texas' 2002 emissions inventory provides estimates of annual emissions for haze producing pollutants by source category, based on information in Section 7.0 of Texas' regional haze SIP.

Methodologies used in developing the 2002 emissions inventory are documented in Appendix 7–1 of the Texas regional haze SIP and the technical support document for the CENRAP emission inventory development.[260] See our TX TSD and our CENRAP Modeling TSD for a summary and our review of how the 2002 emissions inventory was constructed. The TCEQ noted concerns with the estimate of area source SO_2 emissions included in the CENRAP emission inventory for 2002 and 2018, and stated that the 2002 emissions reported by TCEQ were 15,633 tpy for SO_2 area sources. However, it states that the CENRAP's modeled emissions are not expected to significantly impact visibility estimates for 2018 because of the relatively small contribution for these Texas sources on Class I areas.[261] Texas' 2002 emissions inventory is summarized in Tables 18 and 19:

[259] 70 FR 39114 (July 6, 2005).

[260] Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze SIP, included as Appendix 8–1 of the Texas regional haze SIP.

[261] See page 7–1 of the Texas Regional Haze SIP.

[262] TOG is total organic gas, which includes total hydrocarbons.

TABLE 18—TEXAS' 2002 EMISSIONS INVENTORY

[Tons/year]

	CO	NO_X	SO_2	TOG [262]	$PM_{2.5}$	PM_{10}	NH_3
Area	908,407	280,811	111,853	1,163,549	347,490	1,552,824	380,057
Point	498,467	600,725	821,961	207,695	46,789	80,947	2,609
Non-road mobile	1,210,158	242,551	21,828	148,952	15,089	15,556	56
On-road mobile	4,098,391	664,163	18,814	309,707	11,275	15,476	21,599
Total	6,715,423	1,788,250	974,457	1,829,902	420,642	1,664,803	404,321

TABLE 19—TEXAS' 2002 BIOGENIC EMISSIONS INVENTORY

[Tons/year]

	NO_X	CO	VOC
Biogenic	184,896	755,941	4,033,760

b. Texas' 2018 Emission Inventory

In general, the TCEQ used a combination of our Economic Growth Analysis System (EGAS 5), our mobile emissions factor model (MOBILE 6), our off-road emissions factor model (NONROAD), and the IPM for electric generating units.[263] All control strategies expected to take effect prior to 2018 are included in the projected emission inventory. See our TX TSD and our CENRAP Modeling TSD for a summary and our review of how the 2018 emissions inventory was constructed. Texas' 2018 emissions inventory is summarized in Table 20, based on information in Section 7.0 of the Texas regional haze SIP.

TABLE 20—TEXAS' 2018 EMISSIONS INVENTORY

	CO	NO_X	SO_2	TOG [264]	$PM_{2.5}$	PM_{10}	NH_3
Area	899,497	274,663	114,138	1,420,681	354,712	1,557,089	562,379
Point	542,128	525,174	625,068	283,290	80,577	121,733	6,790
Non-Road	1,921,674	167,451	6,988	119,855	10,588	11,498	239
On-Road	2,710,631	148,387	2,925	125,234	5,337	5,337	32,191
Total	6,073,930	1,115,676	749,119	1,949,060	451,214	1,695,657	601,598

Methodologies used in developing the 2018 emissions inventory are documented in Appendix 7–1 of the Texas regional haze SIP and the technical support document for the CENRAP emission inventory development. CENRAP and the TCEQ used this and other states' 2018 emission inventories to construct visibility projection modeling for 2018.

c. Visibility Projection Modeling

Chapter 8 of the Texas regional haze SIP discuss the modeling methods and protocol used by the TCEQ and CENRAP in developing the assessment. Chapter 7 describes the baseline and 2018 emission inventories used by the TCEQ. A detailed description and discussion of the model selection, modeling protocol, quality assurance, performance evaluation, emission inventory development and data used in the regional haze analysis can be found in our TX and CENRAP Modeling TSDs. A short summary is provided below:

- CENRAP performed modeling for the regional haze long-term strategy for its member states, including Texas. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. CENRAP used the following modeling system:
- Meteorological Model: The Pennsylvania State University/National Center for Atmospheric Research (PSU/NCAR) Mesoscale Meteorological Model (MM5) is a non-hydrostatic, prognostic meteorological model routinely used for urban-and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- Emissions Model: The Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire and biogenic emission sources for photochemical grid models.
- Air Quality Model: Our Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through CENRAP with a module for Secondary Organics Aerosols (SOA) in an open and transparent manner that was also subjected to outside peer review. The Comprehensive Air Quality Model with extensions (CAMx) Version 4.40 model, applied using similar options as used by CMAQ, was used as a secondary corroborative model. CAMx was also utilized with its Particulate Source Apportionment Technology (PSAT) tool to provide source apportionment of predicted nitrate and sulfate aerosol concentrations.

d. Sources of Visibility Impairment in Big Bend National Park

Tables 21 and 22 summarize the modeled contributions to total extinction at Big Bend for each source category and species for 2002 and 2018,

[263] Appendix 7–2 of the Texas regional haze SIP: Integrated Planning Model Projections of Electric Generating Unit Emissions for the Regional Haze State Implementation Plan.

[264] TOG is total organic gas, which includes total hydrocarbons.

respectively.[265] Visibility impairment at Big Bend in 2002 on the worst 20% days is largely due to SO_4 from point sources that contributes 17.7 Mm^{-1} of the total extinction of 47.79 Mm^{-1}. The largest contributions of SO_4 come from Texas (5.50 Mm^{-1} from all source categories), boundary conditions outside the modeling domain (5.82 Mm^{-1}) and Mexico (8.28 Mm^{-1}). Overall, the largest source region contributions to visibility impairment in 2002 are from Mexico (12.75 Mm^{-1}), Texas (11.87 Mm^{-1}), and outside the modeling domain (12.27 Mm^{-1}).

In 2018, Texas, Mexico and sources outside the modeling domain are projected to continue to contribute the most to visibility impairment at Big Bend. The 2018 projection shows the total extinction at Big Bend for the worst 20% days is estimated to be 44.06 Mm^{-1}, a reduction of approximately 8% from 2002 levels. Anticipated reductions of SO_2 emissions primarily from point sources in Texas, the Eastern United States, Indiana, Illinois, Kansas, Alabama and Ohio will account for a decrease of 2.73 Mm^{-1} in total light extinction (1.55 Mm^{-1} decrease from Texas point sources). Even with these expected reductions in SO_2 emissions from point sources in 2018, extinction due to point sources will continue to be the highest contributor to visibility impairment on the worst 20% days, accounting for over one third of the total extinction. Visibility impairment from all Texas sources will decrease by 1.90 Mm^{-1}, primarily due to expected reductions from point sources.

TABLE 21—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT BIG BEND WILDERNESS AREA IN 2002 (MM^{-1})

	Total [1]	Point	Natural	On-road	Non-road	Area
SO_4	26.10	17.70	0.02	0.28	0.45	1.82
NO_3	2.05	0.55	0.33	0.36	0.23	0.30
POA	5.81	0.10	0.08	0.04	0.09	0.83
EC	2.12	0.01	0.03	0.10	0.32	0.45
SOIL	2.54	0.28	1.14	0.01	0.00	1.00
CM	7.03	0.02	5.52	0.00	0.07	1.23
Sum	47.79	18.66	7.12	0.80	1.16	5.63

[1] Totals include contributions from boundary conditions and secondary organic matter but exclude contribution from Rayleigh scattering.

TABLE 22—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT BIG BEND WILDERNESS AREA IN 2018 (MM^{-1})

	Total [1]	Point	Natural	On-road	Non-road	Area
SO_4	23.00	15.15	0.01	0.04	0.20	1.84
NO_3	1.99	0.63	0.38	0.12	0.16	0.35
POA	5.61	0.14	0.06	0.02	0.08	0.67
EC	1.81	0.02	0.02	0.02	0.23	0.29
SOIL	2.54	0.32	1.13	0.01	0.00	0.97
CM	7.03	0.02	5.42	0.00	0.07	1.33
Sum	44.06	16.27	7.03	0.20	0.74	5.46

[1]Totals include contributions from boundary conditions and secondary organic matter but exclude contribution from Rayleigh scattering.

e. Sources of Visibility Impairment in Guadalupe Mountains National Park

Tables 23 and 24 summarize the contributions to total extinction at Guadalupe Mountains for each source category and species for 2002 and 2018, respectively. Visibility impairment at Guadalupe Mountains in 2002 on the worst 20% days is largely due to SO_4 from point sources and course material from natural and area sources. The largest contributions of SO_4 come from Texas (4.28 Mm^{-1} from all source categories), boundary conditions outside the modeling domain (1.90 Mm^{-1}) and Mexico (3.21 Mm^{-1}). Overall, the largest source region contributions to visibility impairment in 2002 are from Texas (16.62 Mm^{-1}), New Mexico (3.49 Mm^{-1}), Mexico (7.90 Mm^{-1}), and source outside the modeling domain (4.16 Mm^{-1}).

In 2018, sulfate and course material from Texas, Mexico, New Mexico and sources outside the modeling domain are projected to continue to contribute the most to visibility impairment at the Guadalupe Mountains. The 2018 projection shows the total extinction at the Guadalupe Mountains for the worst 20% days is estimated to be 44.32 Mm^{-1}, a reduction of approximately 7% from 2002 levels. Anticipated reductions of SO_2 emissions primarily from point sources in Texas, the Eastern United States, Indiana, Alabama and Ohio will account for a decrease of 2.02 Mm^{-1} in total light extinction (0.68 Mm^{-1} decrease from Texas point sources). Even with these expected reductions in SO_2 emissions from point sources in 2018, extinction due to point sources will still be a significant contributor to visibility impairment on the worst 20% days, accounting for over one fourth of the total extinction. Visibility impairment from all Texas sources will decrease by 1.29 Mm^{-1}, primarily due to expected reductions from point sources.

[265] The species contributing to visibility extinction at Big Bend and Guadalupe Mountains, shown on Tables 21, 22, 23 and 24, are the following: Sulfate (SO_4), nitrate (NO_3), primary organic aerosols (POA), elemental carbon (EC), soil dust, and coarse mass (CM). These species' precursors are SO_2, NO_X, and in some cases, NH_3 and VOCs.

TABLE 23—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT GUADALUPE MOUNTAINS IN 2002 (Mm^{-1})

	Total [1]	Point	Natural	On-road	Non-road	Area
SO_4	15.94	12.10	0.02	0.22	0.33	1.36
NO_3	3.67	1.09	0.40	0.79	0.55	0.52
POA	2.75	0.24	0.19	0.10	0.16	1.61
EC	1.19	0.01	0.04	0.15	0.34	0.51
SOIL	4.37	0.41	1.29	0.02	0.00	2.41
CM	16.04	0.19	7.75	0.02	0.39	6.60
Sum	*47.80*	*14.05*	*9.68*	*1.31*	*1.76*	*13.00*

[1] Totals include contributions from boundary conditions and secondary organic matter but exclude contribution from Rayleigh scattering.

TABLE 24—PROJECTED LIGHT EXTINCTION FOR 20% WORST DAYS AT UPPER GUADALUPE MOUNTAINS IN 2018 (Mm^{-1})

	Total [1]	Point	Natural	On-road	Non-road	Area
SO_4	13.65	10.11	0.02	0.03	0.10	1.40
NO_3	3.32	1.18	0.44	0.27	0.37	0.65
POA	2.38	0.29	0.15	0.05	0.13	1.30
EC	0.86	0.02	0.04	0.04	0.23	0.37
SOIL	4.37	0.51	1.29	0.02	0.00	2.31
CM	16.02	0.20	7.69	0.03	0.38	6.65
Sum	*44.32*	*12.31*	*9.62*	*0.43*	*1.22*	*12.68*

[1] Totals include contributions from boundary conditions and secondary organic matter but exclude contribution from Rayleigh scattering.

f. Texas' Contribution to Visibility Impairment in Class I Areas Outside the State

CAMx PSAT results were also utilized to evaluate the impact of Texas emission sources in 2002 and 2018 on visibility impairment at Class I areas outside of the state. Texas sources are modeled to have contributions to the Class I areas in a number of nearby states. Tables 25 and 26 summarize the contribution from Texas emissions of sulfate, nitrate and total visibility degradation at nearby states' Class I areas for the 20% worst days in 2002 and 2018, as modeled by CENRAP and shown in Section 11.2 of the Texas regional haze SIP.[266] The contributions from Texas sources on total visibility impairment decreases from 2002 to 2018 at all impacted Class I areas shown in the tables below. Texas' impacts on other Class I areas in these nearby states are less than the impacts for the areas that are shown in the tables below for each state.

TABLE 25—CONTRIBUTION FROM TEXAS EMISSIONS TO VISIBILITY IMPAIRMENT (Mm^{-1}) AT CLASS I AREAS ON 20% WORST DAYS IN 2002

Class I area	State	Sulfate		Nitrate		Total	
		Texas	Total, all source areas	Texas	Total, all source areas	Texas	Total, all source areas
Salt Creek	New Mexico	4.79	16.75	3.05	11.15	13.41	52.50
White Mountain	New Mexico	2.78	10.51	0.53	3.05	7.40	32.91
Wheeler Peak	New Mexico	0.76	5.27	0.22	1.64	1.85	21.96
Wichita Mountains	Oklahoma	13.98	49.12	7.89	23.72	28.15	100.03
Great Sand Dunes	Colorado	0.66	5.84	0.02	1.94	1.25	27.88
Rocky Mountains	Colorado	0.30	7.69	0.08	5.17	0.58	32.13
Caney Creek	Arkansas	11.55	87.05	1.49	13.78	14.89	133.93
Upper Buffalo	Arkansas	4.41	83.18	0.27	13.30	5.19	131.79
Hercules-Glades	Missouri	3.48	87.94	2.56	17.91	6.59	140.05
Mingo	Missouri	0.69	102.52	1.18	27.24	2.01	159.83
Breton	Louisiana	3.55	96.83	0.15	8.29	4.20	123.99

TABLE 26—CONTRIBUTION FROM TEXAS EMISSIONS (Mm^{-1}) TO VISIBILITY IMPAIRMENT AT CLASS I AREAS ON 20% WORST DAYS IN 2018

Class I area	State	Sulfate		Nitrate		Total	
		Texas	Total, all source areas	Texas	Total, all source areas	Texas	Total, all source areas
Salt Creek	New Mexico	3.50	13.75	2.43	9.81	10.24	46.67
White Mountain	New Mexico	2.37	8.92	0.47	2.68	6.22	29.80

[266] See Appendix E of the *Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze SIP,* included as Appendix 8–1 of the Texas Regional Haze SIP for PSAT modeling results.

TABLE 26—CONTRIBUTION FROM TEXAS EMISSIONS (Mm^{-1}) TO VISIBILITY IMPAIRMENT AT CLASS I AREAS ON 20% WORST DAYS IN 2018—Continued

Class I area	State	Sulfate		Nitrate		Total	
		Texas	Total, all source areas	Texas	Total, all source areas	Texas	Total, all source areas
Wheeler Peak	New Mexico	0.79	5.00	0.19	1.48	1.59	20.80
Wichita Mountains	Oklahoma	9.68	33.33	6.08	18.10	20.79	75.56
Great Sand Dunes	Colorado	0.65	5.32	0.02	1.83	1.11	26.77
Rocky Mountains	Colorado	0.30	6.52	0.06	4.28	0.51	29.41
Caney Creek	Arkansas	7.24	48.95	0.83	7.57	9.74	85.84
Upper Buffalo	Arkansas	2.74	45.38	0.18	9.22	3.38	86.16
Hercules-Glades	Missouri	2.51	50.63	1.51	12.35	4.45	92.49
Mingo	Missouri	0.53	54.45	0.64	19.14	1.28	99.24
Breton	Louisiana	2.66	68.63	0.16	8.20	3.23	94.06

We propose to find that the TCEQ's 2002 and 2018 emission inventories are acceptable and that Texas has satisfied the requirement of Section 51.308(D)(3)(iv) regarding identifying all anthropogenic sources of visibility impairment considered by it in developing its long-term strategy, and that it considered major and minor stationary sources, mobile sources, and area sources.

However, as we discuss in Section IV.C., given the plain language of the CAA, we believe Section 51.308(d)(3)(iii) requires states to consider the four factors used in determining reasonable progress in developing the technical basis for both their own Class I areas and downwind Class I areas. This documentation is necessary so that the interstate consultation process can proceed on an informed basis, and so that downwind states can properly assess whether any additional upwind emission reductions are necessary to achieve reasonable progress at their Class I areas. Therefore, in determining its long-term strategy under Section 51.308(d)(3)(iii), we believe that Texas had an obligation to conduct an appropriate technical analysis, and demonstrate through that technical analysis (required under (d)(3)(ii)), that it provided its fair share of emission reductions to Oklahoma. In addition, we believe that Texas was required through consultation under Section 51.308(d)(3)(i) to provide a reasoned technical analysis, on which it based its long-term strategy, to Oklahoma. The regulations further provide that:

> The State must document the technical basis, including modeling, monitoring and emissions information, on which the State is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. States may meet this requirement by relying on technical analyses developed by the regional planning organization and approved by all State participants.[267]

Thus, states may meet this requirement by relying on reasonable progress four-factor analyses and associated technical documentation prepared by a regional planning organization on behalf of its member states, to the extent that such analyses and documentation were conducted. If the technical analysis performed by the regional planning organization was missing, flawed, or incomplete, it could not be solely relied upon by a state when developing or documenting the technical basis of its long-term strategy. The technical data prepared through the regional planning organization process is typically designed to inform the member states of their apportionment of the visibility impact at Class I areas, project future visibility conditions, and to provide high-level information on potential control strategies to inform consultations and the four-factor analysis necessary to establish RPGs. These analyses may require additional refinements by the states in development of their regional haze SIPs to address impacts and potential controls of specific sources or source categories. As we discuss in Sections V.C., and V.E.2, the TCEQ recognized that some aspects of CENRAP's technical analyses were limited because it supplemented that analysis with its own. It used this analysis to inform its decision not to control any additional sources, including those that impact the visibility at the Wichita Mountains and other Class I areas in other states. For the reasons discussed at length in Section V.C.2, we believe this analysis was inadequate and did not provide the information necessary to determine the reasonableness of controls at those sources in Texas that significantly impact visibility at the Wichita Mountains or other Class I areas. Based on CENRAP data and information shared during consultations, included in the record, the ODEQ and the TCEQ had evidence of some potential controls at certain EGUs in Northeast Texas that were estimated to be cost-effective even according to the TCEQ's own cost threshold and would result in large emission reductions within the source type and region with the largest projected impacts at Wichita Mountains. The ODEQ and the TCEQ were also aware of additional large emission sources in Texas that should have been further evaluated for potential controls. Although both the ODEQ and the TCEQ had abundant evidence that Texas coal fired EGUs had a significant impact on the visibility at Oklahoma and Texas Class I areas, the development of this technical information by either party did not progress to the point where the impacts of individual sources could be determined or to the point where the information on cost-effective controls identified for some sources could be refined from a high level state.

Consequently, we propose to find that Texas did not adequately address the requirements in Section 51.308(d)(3)(iii) to ''document the technical basis, including modeling, monitoring and emissions information, on which the state is relying to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects.''

To determine whether additional controls were reasonable in Texas, we believed it necessary to undertake a cost/control and visibility analysis which is presented in our FIP TSD. In the FIP TSD, we provide detailed information concerning which sources within Texas are the largest contributors to the visibility degradation at the Wichita Mountains and at other Class I areas, and which sources we believe have cost-effective controls. For more

[267] 40 CFR 51.308(d)(3)(iii).

information on our proposed FIP, please see section VII.

4. Texas' Consideration of the Long-Term Strategy Factors

As required by Section 51.308(d)(3)(v), Texas must consider, at a minimum, the following factors in developing its long-term strategy:

(A) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI;

(B) Measures to mitigate the impacts of construction activities;

(C) Emissions limitations and schedules for compliance to achieve the reasonable progress goal;

(D) Source retirement and replacement schedules;

(E) Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes;

(F) Enforceability of emissions limitations and control measures; and

(G) The anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

Texas' long-term strategy incorporates emission reductions due to a number of ongoing air pollution control programs. This includes enforceable emissions limitations, compliance schedules, administrative orders, the issuance and enforcement of permits limiting emissions from all known major sources in Texas, state rules which specifically limit targeted emissions sources and categories, and several other ongoing air pollution control programs. The TCEQ has promulgated rules in order to administer these programs. These rules govern the TCEQ's permitting process, including PSD and BACT requirements, and implementation of federal requirements. The TCEQ also has promulgated rules that limit emissions in order to comply with the NAAQS, which have ancillary benefits of visibility improvements. Other air pollution control programs, including federal mobile emissions programs, the Clean Air Interstate Rule, Maximum Achievable Control Technology, and Refinery Consent Decrees are implemented by TCEQ, have similar ancillary benefits of visibility improvements.

Below we assess how the TCEQ addressed the long-term strategy factors in 40 CFR 51.308(d)(3)(v)(A)-(G). Please see our TX TSD for more information on how the TCEQ has addressed these factors.

a. Reductions Due to Ongoing Air Pollution Programs

The Texas long-term strategy incorporates emission reductions due to a number of ongoing air pollution control programs, which are summarized below.

- The TCEQ implements CAIR.
- The TCEQ implements a number of federal and state rules related to mobile source emissions.
- The TCEQ implements some major point sources NO_X rules, including Texas Senate Bill 7, which required emission reductions at EGUs built before Texas BACT emission control requirements went into effect in 1972, and NO_X emission reductions related to ozone SIP revisions for the Houston-Galveston-Brazoria area, Beaumont-Port Arthur area, Austin, Northeast Texas, and East Texas.
- A number of miscellaneous programs including SO_2 reductions under our refinery consent decrees; the Texas Low Emissions Diesel Program; the Texas Emission Reduction Plan to reduce NO_X and PM emissions by encouraging older road and non-road engine replacement; rules to control opacity and sulfur emissions, such as 30 TAC Chapters 111 and 112; and BACT.

The TCEQ states that the federal land managers for Big Bend and the Guadalupe Mountains, or other Class I areas that are impacted by emissions from Texas sources, have not identified any RAVI caused by Texas sources. Consequently, Texas does not have any measures in place or a requirement to implement RAVI. We propose that Texas has satisfied this requirement.

b. Measures To Mitigate the Impacts of Construction Activities

Section 51.308(d)(3)(v)(B) requires that Texas consider measures to mitigate the impacts of construction activities in developing its long-term strategy. The TCEQ notes that state Rule 30 TAC 111.145, Construction and Demolition, requires precautions to control dust emissions from construction operations and other activities.[268] It also notes that water pollution control requirements to prevent pollution from storm runoff and mud and dirt tracked from construction sites reduces the amount of fine soil material suspended in the air from traffic in these areas. The TCEQ determined that no additional measures were needed to mitigate the impacts of construction activities for purposes of visibility improvement, and we agree with this determination. We propose that Texas has satisfied this requirement.

c. Emissions Limitations and Schedules for Compliance

Section 51.308(d)(3)(v)(C) requires that in developing its long-term strategy, Texas consider emissions limitations and schedules of compliance to achieve the RPGs. No newly adopted source specific measures were identified to achieve the RPGs established by Texas. The TCEQ determined that implementation of existing and ongoing control measures are adequate to achieve the RPGs established by it and other CENRAP states. We propose to find that Texas has not satisfied this requirement, regarding emissions limitations and schedules for compliance to achieve the RPGs for Big Bend and the Guadalupe Mountains. Please see the technical discussion we present in Section V.C regarding the development of the Texas RPGs, as the TCEQ applied the same technical basis to the development of its long-term strategy. As with its RPGs, we propose to find this analysis is inadequate as it does not provide the information necessary to determine the reasonableness of controls at those sources in Texas that significantly impact visibility at the Wichita Mountains.

d. Source Retirement and Replacement Schedules

Section 51.308(d)(3)(v)(D) requires that Texas consider source retirement and replacement schedules in developing its long-term strategy. Retirement and replacement schedules were taken into account, to the extent possible, when developing inputs for the IPM that was used in the CENRAP modeling analysis. Units that the TCEQ knew were going to be shut down under enforceable actions at the time the modeling was performed were removed from the future year emission inventory. We propose that Texas has satisfied this requirement.

e. Smoke Management Techniques

Section 51.308(d)(3)(v)(E) requires that Texas consider smoke management techniques for agricultural and forestry management purposes in developing its long-term strategy. The TCEQ examined the data and modeling for the worst 20% days at Big Bend and the Guadalupe Mountains and determined that smoke from agricultural burning and wildfires in Texas are not a large contributor to visibility impairment at these Class I areas. The TCEQ also determined that agricultural burning and wildfires in Texas are not

[268] Approved into the SIP on January 18, 1994, at 59 FR 02532.

significant contributors to visibility impairment at Class I areas in nearby states. Because of the relatively low contribution of smoke from Texas to visibility impairment, Texas decided that certifying a smoke management plan as part of this SIP revision was unnecessary. The Texas Forest Service (TFS) coordinates fire and smoke management issues in Texas and has developed a voluntary plan under which all land managers in Texas, including the National Park Service, inform the TFS prior to performing prescribed burns. Texas also has an outdoor burning rule (30 TAC Chapter 111, subchapter B) [269] that includes requirements for allowable prescribed burning. Texas counties also have the authority to prohibit open burning in times of drought. The TCEQ found that the current rules, policies, and plans (including smoke management plans of the NPS and other federal agencies) are adequate to meet the long-term strategy. We agree and propose that Texas has satisfied this requirement.

f. Enforceability of emissions Limitations and Control Measures

Section 51.308(d)(3)(v)(F) requires that Texas ensure the enforceability of emission limitations and control measures used to meet RPGs. The TCEQ has rules in place to ensure the enforceability of its emission limitations. This includes rules that govern TCEQ's permitting process for major and minor sources, Prevention of Significant Deterioration (PSD) provisions, and BACT. The TCEQ has the authority to issue permits to all major and minor point sources in Texas, as they are currently defined at 30 TAC Ch. 116. Each permit must contain enforceable limitations on emissions of various defined pollutants, including those which cause or contribute to regional haze at the Texas Class I areas and Class I areas in other states. The TCEQ included information describing their legal authority and applicable laws in the submitted Texas regional haze SIP following the executive summary. We propose that Texas has satisfied this requirement.

g. The Anticipated Net Effect on Visibility Due to Projected Changes in Emissions

Section 51.308(d)(3)(v)(G) requires that in developing its long-term strategy, Texas consider the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. In developing its regional haze SIP, the TCEQ relied on the CENRAP's 2018 modeling projections. As described above, CENRAP used its 2002 emissions inventory as the starting point for its 2018 emissions inventory. The 2018 emissions inventory was designed to capture the anticipated changes in point, area, and mobile sources emissions over the period addressed by the long-term strategy. As we discuss in Section V.G, we propose to approve the TCEQ's obligation to develop a statewide inventory of emissions, including future projected emissions. We believe that these projected changes in emissions were adequately implemented in CENRAP's 2018 modeling, and therefore propose to approve Texas' submission under Section 51.308(d)(3)(v)(G).

F. Coordination of RAVI and Regional Haze Requirements

Under Section 51.308(d)(4), states are required to coordinate their RAVI long-term strategy and monitoring provisions with those for RH. Under our RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the federal land managers pursuant to 40 CFR 51.304. *See* 40 CFR 51.302. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I area includes any integral vista associated with that area. The federal land managers for Big Bend and the Guadalupe Mountains have not identified any RAVI from Texas or other state sources. Also, the federal land managers for the Class I areas that Texas' emissions impact in other states have not identified any RAVI caused by Texas sources. For these reasons, the TCEQ does not have any measures in place or a requirement to address RAVI. Thus, we propose to find that the Texas regional haze SIP has satisfied Section 51.308(d)(4). We discuss the relevant monitoring provisions in the section that follows.

G. Monitoring Strategy and Other SIP Requirements

Section 51.308(d)(4) requires the SIP contain a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in Section 51.305 for RAVI. As Section 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. Since the monitors used for the Guadalupe Mountains and Big Bend are IMPROVE monitors, we propose that the TCEQ has satisfied this requirement.

Section 51.308(d)(4)(i) requires the establishment of any additional monitoring sites or equipment needed to assess whether RPGs to address regional haze for all mandatory Class I areas within the state are being achieved. We do not believe that additional monitoring, beyond the IMPROVE network monitors that are already in place, is necessary in order to assess Texas' RPGs, and are therefore proposing to find that Texas has satisfied this requirement.

Section 51.308(d)(4)(ii) requires that the TCEQ establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within Texas to regional haze visibility impairment at mandatory Class I areas both within and outside the state. The monitors at Big Bend and the Guadalupe Mountains are operated through the IMPROVE monitoring program, which is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. As Section 51.308(d)(4) indicates, participation in the IMPROVE program constitutes compliance with this requirement. We are therefore proposing that the TCEQ has satisfied this requirement.

Section 51.308(d)(4)(iv) requires that the SIP must provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I area in the state. To the extent possible, Texas should report visibility monitoring data electronically. Section 51.308(d)(4)(vi) also requires that the TCEQ provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We believe that Texas' participation in the IMPROVE network ensures the monitoring data is reported at least annually and is easily accessible, and therefore we are therefore proposing to find that the TCEQ has satisfied this requirement.

Section 51.308(d)(4)(v) requires that the TCEQ maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available,

[269] Approved into the SIP on April 28, 2009, at 74 FR 19144.

and estimates of future projected emissions. Texas must also include a commitment to update the inventory periodically. TCEQ provides a summary of the 2005 emission inventory in Appendix 7–1 of the Texas Regional Haze SIP. We discuss our review of the TCEQ's 2002 and 2018 emission inventories above in Section V.E.3. The TCEQ has stated that it intends to update the Texas statewide emissions inventories periodically. We propose that this satisfies the requirement in Section 51.308(d)(4)(v).

H. Federal Land Manager Consultation

Both Big Bend and the Guadalupe Mountains are federally protected national parks for which the United States Department of the Interior, National Park Service is the FLM. Although the federal land managers are very active in participating in the regional planning organizations, the Regional Haze Rule grants the federal land managers a special role in the review of the regional haze SIPs. We view both the federal land managers and the state environmental agencies as our partners in the regional haze process.

Section 51.308(i)(1) requires that by November 29, 1999, Texas must have identified in writing to the federal land managers the title of the official to which the federal land managers of Big Bend and the Guadalupe Mountains can submit any recommendations on the implementation of Section 51.308. We acknowledge that this section has been satisfied by all states via their communications with the federal land managers prior to this SIP action.

Under Section 51.308(i)(2), Texas was obligated to provide the Park Service with an opportunity for consultation, in person and at least 60 days prior to holding a public hearing on its regional haze SIP. In practice, state environmental agencies have usually provided all federal land managers—the Forest Service, the Park Service, and the Fish and Wildlife Service, copies of their regional haze SIP, as the federal land managers collectively have reviewed these regional haze SIPs. The TCEQ followed this practice and sent its draft of this implementation plan revision to the federal land manager staff. The federal land managers were provided a comment period of from November 16, 2007, through January 16, 2008. Their comments were provided to the public 30 days prior to the public hearing, which the federal land managers were notified of, and which occurred on February 19, 2008.

Section 51.308(i)(3) requires that the TCEQ provide in its regional haze SIP a description of how it addressed any comments provided by the federal land managers. The TCEQ has provided that information in Appendix 2–2 of its regional haze SIP.

Lastly, Section 51.308(i)(4) specifies the regional haze SIP must provide procedures for continuing consultation between the state and federal land managers on the implementation of the visibility protection program required by Section 51.308, including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in the mandatory Class I areas. The TCEQ has acknowledged this requirement in its regional haze SIP. We are therefore proposing to find that the TCEQ has satisfied Section 51.308(i).

I. Periodic SIP Revisions and Five-Year Progress Reports

The TCEQ affirmed its commitment to complete certain items required in the future under our Regional Haze Rule. It acknowledged its requirement under Section 51.308(f), to revise and submit its regional haze SIP revision to us by July 31, 2018 and every ten years thereafter. It also acknowledged its requirement under Section 51.308(g), to submit a progress report in the form of a SIP revision every five years following this initial submittal of the Texas regional haze SIP. The TCEQ submitted the first five-year report in March 2014. We are not including our analysis of this SIP revision within this proposed action.

J. Future Determination of the Adequacy of the Existing Implementation Plan

Section 51.308(h) requires that Texas take one of the listed actions, as appropriate, at the same time it is required to submit any 5-year progress report to us in accordance with Section 51.308(g). The TCEQ has committed in its SIP to take one of the actions listed under 51.308(h), depending on the findings of the five-year progress report.

VI. Our Analysis of and Proposed Action on the Remaining Parts of the Oklahoma Regional Haze SIP

A. Previous Rulemakings on the Oklahoma Regional Haze SIP

In a previous rulemaking, we partially approved and partially disapproved portions of the Oklahoma regional haze SIP.[270] We approved certain elements of the Oklahoma regional haze SIP, as follows: Identification of sources that are BART eligible and subject to BART; its determination of baseline and natural visibility conditions; its coordination of regional haze and RAVI; monitoring strategy and other implementation requirements; its coordination with states and federal land managers; and a number of the state's NO_X, SO_2, and PM BART determinations. We disapproved Oklahoma's submitted SO_2 BART determinations for Units 4 and 5 of the OG&E Muskogee plant; Units 1 and 2 of the OG&E Sooner plant; and, Units 3 and 4 of the AEP/PSO Northeastern plant. We also disapproved the long-term strategy in Oklahoma's regional haze SIP because it did not include appropriate controls for these six sources. To remedy these deficiencies in the Oklahoma regional haze SIP, we concurrently promulgated a FIP that established SO_2 BART emission limits for these six sources at three facilities in Oklahoma. We have subsequently withdrawn our FIP for two of the sources, following approval of Oklahoma's SIP revision BART determinations for those two sources.[271] We did not take action on whether Oklahoma satisfied the reasonable progress requirements of Section 51.308(d)(1) in our earlier action. In that proposed action, we stated that to properly assess whether Oklahoma had satisfied these requirements, we must first evaluate and act upon the regional haze SIP revision submitted by the State of Texas.[272] Our proposed action here, insomuch as it concerns Oklahoma's obligations, is limited to our review of Oklahoma's submission under Section 51.308(d)(1).

B. Evaluation of Oklahoma's Reasonable Progress Goals

As required by Section 51.308(d)(1) of the Regional Haze Rule, the ODEQ has established RPGs for its Class I area, the Wichita Mountains. These RPGs must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period.

1. Establishment of the Reasonable Progress Goals

The RPGs established by ODEQ for the Wichita Mountains are derived from the CENRAP modeling of visibility conditions in 2018.[273] The CENRAP

[270] Final action: 76 FR 81728 (December 28, 2011). Proposal: 76 FR 16188 (March 22, 2011).

[271] Approval of OK's partial replacement for FIP: 79 FR 12944 (March 7, 2014). Partial FIP withdrawal: 79 FR 12954 (March 7, 2014).

[272] 76 FR 16177 (Mar. 22, 2011).

[273] The TSD for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State

modeling reflects emission reductions programs already in place from the implementation of the federal CAA and Oklahoma CAA, estimated reductions from the Oklahoma BART rule, and the estimated emission reductions identified in the long-term strategies of Oklahoma, Texas and other nearby states. The ODEQ adopted the results of the CENRAP modeling as the RPGs for the Oklahoma Class I area based on the results of its reasonable progress analysis and additional information developed by CENRAP or obtained through direct consultations with those states anticipated to impact visibility at Wichita Mountains.

The ODEQ established a RPG of 21.47 dv for the Wichita Mountains for 2018 for the 20% worst days. This represents a 2.3 dv improvement in visibility over a baseline of 23.81 dv of visibility impairment. Based on the rate of progress represented by this RPG for the first planning period, the ODEQ calculated that the Wichita Mountains would attain natural visibility conditions in 2102. The ODEQ's RPG for the 20% worst days is shown below, which is adapted from Tables IX–3 and IX–4 and Figure IX–1 of the Oklahoma Regional Haze SIP.

TABLE 27—OKLAHOMA'S REASONABLE PROGRESS GOAL FOR THE 20% WORST DAYS

Class I area	Baseline conditions (dv)	Projected 2018 visibility (RPG) (dv)	Improvement projected by 2018 using RPG (dv)	Improvement by 2018 at URP (dv)	Date natural visibility attained at RPG rate
Wichita Mountains	23.81	21.47	2.33	3.80	2102

ODEQ's RPG for the 20% best days is shown below, which is adapted from Table IX–2 of the Oklahoma regional haze SIP.

TABLE 28—OKLAHOMA'S REASONABLE PROGRESS GOAL FOR THE 20% BEST DAYS

Class I area	Baseline conditions (dv)	Projected 2018 visibility (RPG) (dv)	Improvement by 2018 (dv)
Wichita Mountains	9.78	9.23	0.55

ODEQ's RPGs for the Wichita Mountains are consistent with the minimum requirement of Section 51.308(d)(1) that the RPGs provide for an improvement in visibility for the most impaired days over the period of the SIP and ensure no degradation in visibility for the least impaired days over the same period. For the reasons discussed below in more detail, however, we propose to disapprove Oklahoma's RPGs for the Wichita Mountains. First, in our earlier action on the Oklahoma regional haze SIP, we disapproved the SO_2 BART determinations for six EGUs at three power plants in Oklahoma and promulgated a FIP setting more stringent SO_2 emission limits for these EGUs.[274] Although we subsequently approved a SIP revision from Oklahoma addressing the BART requirements for two EGUs at one power plant,[275] and removed the FIP requirements for this facility,[276] our FIP and the revised Oklahoma SIP require greater reductions overall in emissions of SO_2 than was assumed in setting the RPGs for the Wichita Mountains. Second, we are proposing to disapprove Oklahoma's RPGs for the Wichita Mountains because they were based on an incomplete consultation with Texas under 51.308(d) (1)(iv) that resulted in inadequate reasonable progress towards the national visibility goal.

2. Reasonable Progress Consultation

In developing the RPGs for its Class I area, Oklahoma was required to consult with those states which may reasonably be anticipated to cause or contribute to visibility impairment at the Wichita Mountains.[277] In any situation in which Oklahoma could not agree with another such state or group of states that a goal provides for reasonable progress, Oklahoma was required to describe in its submittal the actions taken to resolve the disagreement. In reviewing Oklahoma's SIP submittal, the Administrator takes this information into account in determining whether Oklahoma's goal for visibility improvement provides for reasonable progress towards natural visibility conditions.

The ODEQ identified several states that were projected through visibility modeling to contribute more than 1 Mm^{-1} of light extinction at the Wichita Mountains in 2018 and invited these states to consult. It conducted four consultations.[278] It directed its first consultation to the tribal leaders in Oklahoma and their environmental managers, on August 14, 2007. The ODEQ held the next three consultations as conference calls with representatives from CENRAP, EPA, the U.S. Fish and Wildlife Service, Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, and Texas.[279] The ODEQ received written responses from the Arkansas Department of Environmental Quality, the TCEQ, and the Missouri Department of Natural Resources.[280] The ODEQ sent a letter to the Iowa Department of Natural Resources as a follow up to the consultation calls for the Wichita Mountains. Below is a summary of Oklahoma's consultations.

Implementation is found in Appendix 4–2 of the Oklahoma Regional Haze SIP.

[274] 76 FR 81728 (Dec. 28, 2011).

[275] 79 FR 12944 (March 7, 2014).

[276] 79 FR 12954 (March 7, 2014).

[277] Section 51.308(d)(1)(iv).

[278] Copies of agendas and presentation materials are available in the docket for this action and at *http://www.deq.state.ok.us/AQDnew/rulesandplanning/Regional_Haze/SIP/Consultation/index.htm.*

[279] These calls were recorded, referenced in OK's regional haze SIP, and placed on ODEQ's Web site.

[280] Copies of these letters can be found in Appendix 10–1 of the Oklahoma regional haze SIP.

For additional detail on Oklahoma's consultation, see the OK TSD.

For the first call with the states, held on August 16, 2007, the ODEQ discussed the current modeling results, comparing the projected visibility conditions in 2018 to the 2018 URP goal.[281] The ODEQ identified that the Wichita Mountains is projected in the 2108 CENRAP modeling to be 1.5 dv short of its 3.8 dv reduction needed to meet the URP. It also discussed the primary anticipated causes of regional haze for the Wichita Mountains in 2018, based on modeling and monitored data. According to the ODEQ, high SO_2 concentrations at the Wichita Mountains reflect long range transport from Texas and the eastern two-thirds of United States. The ODEQ identified that point sources are the most significant contributors to haze at the Wichita Mountains based on the source apportionment results from the CENRAP modeling, with the largest contributing point sources being Texas EGUs.

The ODEQ used the AOI data developed for the Alpine Geophysics report and considered the PSAT modeling results to identify areas, pollutants and source types that contribute to visibility impairment at the Wichita Mountains. The ODEQ identified that SO_2 emissions that impact visibility conditions at the Wichita Mountains generally originate from the south and east. The ODEQ identified sources within the Area of Influence of the Wichita Mountains with a ratio of annual emissions of NO_X or SO_2 to distance (Q/D) greater than 5 based on 2018 projected emissions. The ODEQ then used the Alpine Geophysics report developed for CENRAP (as described in more detail in Section V.C.2 above) to identify estimates of the costs of installing retrofit controls for these sources. The ODEQ applied a maximum cost threshold of $5,000/ton to the list of potential controls to eliminate controls that it considered too costly from additional analysis. The remaining sources were listed in the charts provided to the participants in the consultation process.[282] For these sources, the ODEQ requested that the participating states provide any available information or comments relative to which listed sources are BART sources, planned expansions or installation of controls, feasibility of controls, cost of controls, and any modeling conducted that would indicate the sources' levels of impact on the Wichita Mountains. It stated that it was not yet requesting reductions, but was merely soliciting additional information.

For the August 30, 2007 meeting, the ODEQ focused on the method used to calculate natural conditions at the Wichita Mountains. The ODEQ also reviewed and discussed information it had received following its request for information regarding the sources of interest that it had identified. ODEQ also noted that it had received information from Arkansas, Iowa, Kansas, Louisiana, and Nebraska after the first call but that it still needed information from Texas, Missouri, and Minnesota. Texas indicated that although it had contacted its EGUs, none had provided information as to how they intended to comply with CAIR. Texas stated that it had not received any enforceable commitments for controls from any of its EGUs. For other listed Texas sources, TCEQ said it was seeing significant decreases in emissions from controls or programs that were already in place. According to Texas, in general, growth assumptions for non-EGU Texas sources were wrong. Total emissions for Texas point sources, it claimed, were steadily declining in spite of great economic growth. Louisiana stated that one of its sources, Rhodia, was under a Consent Decree and reducing its emissions. Minnesota and Missouri also offered to provide some additional information to Oklahoma regarding their sources.

For the third and final consultation meeting on September 25, 2007, the ODEQ again followed up on the information request regarding the sources of interest that it had identified. Texas stated that there were no changes to its EGUs projections since very few of its EGUs had committed to controls in order to meet CAIR. Texas again stated that Texas point source 2018 projections were unrealistic and that Texas point source emissions have historically been dropping even when the state has been growing substantially economically. The ODEQ stated that SO_2 is 60% of the particulate issue with most of it coming from Texas, Louisiana, and other states all the way out to the east coast. The ODEQ finished the consultation call with a statement that it was considering the information provided from consultation and was using it in drafting its regional haze SIP.

During the consultation process, Arkansas notified the ODEQ that it disagreed that its sources contribute significantly to visibility impairment at the Wichita Mountains. Missouri similarly informed the ODEQ that it considered current controls on Missouri sources to be sufficient. Later, the ODEQ also concluded based on modeled projections that Iowa would not contribute to visibility impairment at the Wichita Mountains in 2018 and informed Iowa that additional reductions were no longer requested.

During the consultation process, Oklahoma and Texas exchanged letters regarding the Wichita Mountains. On August 3, 2007, the ODEQ sent a letter to the TCEQ in which it noted that despite significant planned reductions in SO_2 and NO_X emissions from sources in Oklahoma and Texas, the Wichita Mountains was not projected to meet the URP. The ODEQ further noted that the analyses by CENRAP had made clear that the Wichita Mountains suffer from significant anthropogenic impacts from Texas. The ODEQ requested that the TCEQ require new and modified PSD sources to conduct analyses of their impacts on visibility at the Wichita Mountains and that the ODEQ be given an opportunity to review and comment on BACT determinations for proposed projects likely to have a certain impact on visibility at the Wichita Mountains. In addition, the ODEQ requested that the evaluations of visibility impacts be extended from within 100 km of the Wichita Mountains to within 300 km of the Wichita Mountains in deference to FLM guidance. On October 15, 2007, the TCEQ sent a response to the ODEQ, agreeing that modeling showed emissions from Texas to be a significant source of visibility impairment at the Wichita Mountains. The TCEQ also noted, however, that significant reductions from Texas will be realized in the next several years. In response to the ODEQ's specific request for the opportunity to comment on BACT for new and modified major sources, the TCEQ stated that it welcomed comment during the public review and comment period and would notify federal land managers and the ODEQ if modeling were to indicate that a proposed source might significantly impact the Wichita Mountains. In response to the ODEQ's request that impact evaluations be extended to 300 km, the TCEQ stated that it was working with federal land managers on mutually acceptable criteria for determining when a proposed PSD source should conduct a Class I area review and would inform ODEQ on the outcome of these

[281] A copy of the presentation containing the information discussed by ODEQ is available in the docket for this action and at: *http://www.deq.state.ok.us/AQDnew/rulesandplanning/Regional_Haze/RegionalHazeStatesConsultation1_081607.ppt.*

[282] A spreadsheet with the list of potential controls shared with the States is available in the docket for this action and at: *http://www.deq.state.ok.us/AQDnew/rulesandplanning/Regional_Haze/RegionalHazeStatesConsultation1_081607_ControlAssumptions.xls.*

discussions. In addition, the TCEQ attached its draft RPG analysis for its two Class I areas, which included analyses the TCEQ used to determine that there are no reasonable costs of installing additional controls beyond CAIR to address Texas impacts at Big Bend National Park and the Guadalupe Mountains.

Several months after this initial exchange of letter, the two states again exchanged letters. On March 25, 2008, following comments made by us and the federal land managers on Texas' draft regional haze SIP, the TCEQ sent a letter to the ODEQ regarding emissions that affect the Wichita Mountains. The TCEQ provided a copy of the PSAT modeling results developed by CENRAP indicating the contribution for each source area to visibility impairment at the Wichita Mountains. The TCEQ stated in the letter that PSAT modeling indicated that the probable impacts of Texas sources at the Wichita Mountains will be reduced by 2018 due to expected emission reductions from current and planned controls. A list of sources that are within the area of interest and have an emissions over distance ratio equal to or greater than five (Q/D ≥5) was included with the letter, along with information on projected emissions and distance to Wichita Mountains for those sources. The TCEQ then requested concurrence from Oklahoma on this assessment and a verification that Oklahoma was not depending on any additional reductions from Texas sources in order to meet RPG for the Wichita Mountains. On May 12, 2008, the ODEQ sent a response to the TCEQ in which it noted that it concurred with the information the TCEQ had provided. The ODEQ stated that it had developed its RPG for the worst 20% days for the Wichita Mountains through the CENRAP deliberations and that its RPG did not anticipate emission reductions beyond those that Texas already planned to implement and upon which CENRAP modeling studies have relied. The letter also states that reaching the Wichita Mountains' RPG requires constraints on emissions from new, modified, and existing sources. The letter then recaps the ODEQ's initial request made in its August 3, 2007 consultation letter that all sources within 300 km conduct an analyses of the impacts to the Wichita Mountains and that it be given the opportunity to comment on BACT for proposed sources projected to significantly contribute to visibility impairment at the Wichita Mountains.

We reviewed the information developed by ODEQ and the participating states during the consultation process, as well as the CENRAP source apportionment modeling results and additional data developed by CENRAP and Alpine Geophysics. We propose to agree with the following conclusions made by the ODEQ in its consultations:

- With all the reductions anticipated to occur in the contributing states, the CENRAP modeling projects that the Wichita Mountains will fall short of meeting the URP goal for this planning period.
- NO_X and SO_2 are the primary causes of haze at the Wichita Mountains, with SO_2 as the predominant cause of visibility impairment at the Wichita Mountains in 2002 and 2018.
- For this planning period, it is reasonable to not require additional controls for NO_X sources, as NO_X is not the predominant cause of visibility impairment at the Wichita Mountains in 2002 or 2018.
- Texas is a significant contributor to the visibility impairment at the Wichita Mountains.
- Point sources are the most significant contributors to haze at the Wichita Mountains, and the largest contributing point sources are Texas EGUs.
- Texas point sources identified during consultation by Oklahoma and other large sources within the AOI of Wichita Mountains are excellent candidates for additional analysis for potential controls.
- Control cost data developed by Alpine Geophysics, and shared by Oklahoma during consultations, indicated potential SO_2 controls were available for those Texas sources discussed during consultations at an average cost of less than $2,000/ton, and that for all but two of those identified Texas sources, potential controls are below the $2,700/ton threshold established by Texas in its analysis and development of its LTS. More specifically, for the largest of the identified sources, Alpine Geophysics estimated the cost of SO_2 controls at the two units at Big Brown to be approximately $1,500/ton. They also projected that these controls would achieve greater than 40,000 tpy in SO_2 emission reductions. Alpine Geophysics estimated the cost of SO_2 controls at two units at Monticello to be approximately $1,850/ton. They also projected that these controls would achieve greater than 35,000 tpy in SO_2 emission reductions.

For this planning period, we propose to find that Oklahoma reasonably determined that additional SO_2 reductions from Arkansas, Louisiana, Missouri, and Iowa were not necessary for reasonable progress. This proposed determination is based, in part, on our review of the CENRAP modelling showing the projected impact from sources in these states and the relative contributions from SO_2 point sources in these states. See our OK TSD for additional discussion and presentation of CENRAP source apportionment results for impacts on Wichita Mountains.

We agree with the ODEQ's approach for identifying those states with sources that may impact visibility at the Wichita Mountains and its decision to invite those states to consult. Through the consultation process, the ODEQ was able to gain additional information regarding the potential impacts from nearby states. We do not agree, however, with the ODEQ's approach to consultation to address impacts from emissions from Texas. At the time that Oklahoma was developing its SIP, it had (1) abundant information showing the impact of Texas sources on visibility at the Wichita Mountains, particularly from EGU sources in northeast Texas, and (2) evidence that cost-effective controls on these sources were likely available. Despite this information, the ODEQ neither requested that the TCEQ further investigate controls at these sources nor did it request additional reductions from Texas sources to address the impacts of emissions from these sources at the Wichita Mountains. The Regional Haze Rule requires states to use the consultation process under Sections 51.308(d)(1)(iv) in the development of RPGs to ensure that all states, including downwind states, take a hard look at what measures are necessary for ensuring reasonable progress towards improving and maintaining visibility at Class I areas. Lacking development of critical information during its consultations with Texas, we believe that Oklahoma did not have adequate information to reasonably establish its RPG for the Wichita Mountains, and, as explained below, should have requested that the TCEQ further investigate these sources or requested additional reductions from Texas sources to ensure that all reasonable measures to improve visibility were included in Texas' LTS and incorporated into Oklahoma's RPG for the Wichita Mountains.

3. The Oklahoma's Reasonable Progress ''Four Factor'' Analysis

In establishing RPGs for a Class I area, Oklahoma is required by CAA Section 169A(g)(1) and Section 51.308(d)(1)(i)(A) to ''[c]onsider the costs of compliance, the time necessary

for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.''

The ODEQ analyzed the largest sources of visibility impairing pollutants within Oklahoma, including sources of sulfur, nitrates, NH_3, VOCs, and directly emitted coarse and fine particles. The ODEQ calculated that sulfurous pollutants contribute approximately 44% and nitrate bearing pollutants contribute approximately 21% of the total light extinction (or visibility impairment) to the Wichita Mountains. The ODEQ also calculated that sources from all source categories combined within Oklahoma contribute only approximately 13% of the total pollutants that contribute to light extinction at the Wichita Mountains in the 2002 modeled base year.

To evaluate any additional control measures necessary to demonstrate reasonable progress, the ODEQ initially relied on the same CENRAP analysis, including the Alpine Geophysics report commissioned by CENRAP, that the TCEQ relied upon, that we describe above in Section V.C.

The CENRAP control case sensitivity evaluation projected that visibility at the Wichita Mountains would be improved by an additional 0.75 dv on the worst 20% days over what the ODEQ projects as its RPG of 21.47 dv for 2018, if controls were implemented at the sources that met the combination of baseline emissions, potential for cost-effective add-on controls, and location selected by CENRAP for the sensitivity analysis. The ODEQ pointed out that even if all controls contemplated in the CENRAP sensitivity evaluation were implemented, the Wichita Mountains would still fall significantly short of meeting the URP glide path for the 20% worst days in 2018, and ODEQ noted that most of the sources were located in Texas or other states outside of ODEQ's jurisdiction. The ODEQ also stated that the control scenario presented in the Alpine Geophysics evaluation includes some already implemented, prohibitively costly, technically infeasible, or otherwise unreasonable controls. Following this analysis, the ODEQ examined additional controls for sources within Oklahoma, the full list of which we present in our OK TSD.

In its analysis, the ODEQ considered the four statutory factors under Section 51.308(d)(1)(i)(A) in its evaluation of the potential for additional controls. In summary, the ODEQ analyzed the cost of compliance by reviewing the cost information previously developed by CENRAP and made changes to the cost information based on its knowledge of the particular facilities and experience with implementing ozone reduction strategies. The ODEQ's analysis focused on moderate cost controls for sources likely to contribute to visibility impairment at the Wichita Mountains. In considering the time necessary for compliance, the ODEQ determined that any such controls would have to be installed and in operation by 2018. It did not identify any detrimental non-air quality environmental impacts associated with any controls considered, and any energy impacts were factored into the cost of controls. In considering the remaining useful life of any potentially affected sources, the ODEQ stated that none of the sources considered for additional emission reductions had indicated plans to shut down.

The ODEQ also evaluated the major sources of each visibility impairing pollutant within the state. In its analyses of additional SO_2 control, it noted that the three largest sources of sulfur emissions in the state, OG&E Muskogee, OG&E Sooner, and AEP/PSO Northeastern, were subject to BART.[283] The ODEQ also stated that sulfur controls at the Grand River Dam Authority (GRDA) would be costly and result in little visibility benefit given the location of the facility. Furthermore, the GRDA already utilized flue gas desulfurization. It noted that additional sulfur emission reductions were already required due to consent decrees on refineries.

For NO_X emissions, the ODEQ identified that three of the four largest NO_X point sources and a number of smaller sources close to Wichita Mountains would be controlled under BART. Similar to its analysis for SO_2, the ODEQ also stated that NO_X controls at the GRDA would be costly and result in little visibility benefit given the location of the facility. The ODEQ determined that controls for other point and area sources, especially those associated with oil and gas activities, would be expensive and that violations would entail large costs to detect and enforce. The ODEQ stated that improved emission inventories in the future could help in developing state rules for area sources. In addition, the ODEQ stated that new oil and gas sources are covered by new source performance standards.

Based on the above analysis of the four factors, the ODEQ concluded that retrofitting these identified point sources of NO_X and SO_2 would impose unreasonable costs for negligible visibility improvement. The ODEQ reasoned that most of the largest sources of SO_2 and NO_X were already being controlled through BART, consent decrees or other regulatory mechanisms; already had adequate controls in place; or are located too far from the Wichita Mountains, and therefore have too little visibility impact to justify the cost of additional controls. The ODEQ concluded that further emission reductions from such sources were unreasonable. It also stated that it would be unreasonable to require severe or over-control of Oklahoma sources to compensate for the contribution from Texas, other states, and foreign countries, especially considering that the vast majority of the visibility impairment at the Wichita Mountains originates from sources beyond the borders of Oklahoma.

The ODEQ determined that the majority of VOC emissions are from biogenic sources. Anthropogenic sources of VOC are largely covered under federal mandates and have a small contribution to visibility impairment. Fine and coarse particulate emissions are also primarily due to natural sources such as dust storms and fires. The ODEQ noted that despite the prominence of agricultural burning and wildfires in the Oklahoma emissions inventory, it does not believe that these sources contribute significantly to regional haze at the Wichita Mountains or at any other Class I area. It pointed out that there are state regulations already in place (see the Oklahoma Administrative Code 252:100–13–7(4)) to address the burning of forestland, cropland, and rangeland. In addition, pursuant to the regional haze requirements at Section 51.308(d)(3)(v)(E), the ODEQ considered smoke management techniques for purposes of agricultural and forestry management. The ODEQ stated that it believes that most emissions of fine and coarse PM originate from natural sources, and that even those originating in Oklahoma are beyond the regulatory purview of ODEQ.

In establishing its RPGs for 2018 for the 20% worst days, the ODEQ relied on the improvements in visibility that were anticipated to result from federal and state control programs that were either currently in effect or with mandated future-year emission reduction schedules that predate 2018, including the long-term strategies of Oklahoma, Texas, and other states, and

[283] In our FIP (76 FR 81728), we disagreed with the ODEQ's BART determinations for these three facilities (two units at each facility) and required a more stringent level of control.

presumptive emission reductions expected to result from the submitted Oklahoma BART rule. Based on the emission reductions from these measures, CENRAP modeled the projected visibility conditions anticipated at each Class I area in the region in 2018, and the ODEQ used these results to establish its RPGs.

We agree with the ODEQ's decision to focus the analysis of the four statutory factors on point sources, as the CENRAP modeling results and ODEQ's analysis in Section V.F of the Oklahoma regional haze SIP indicate that sulfate is the predominant pollutant that affects the state's ability to meet the URP goals in 2002 on the worst 20% days at the Wichita Mountains, and comes primarily from point sources. CENRAP modeling results also indicate that Oklahoma point sources contribute only 3.25 Mm^{-1} of the total 111.03 Mm^{-1} visibility extinction at the Wichita Mountains in 2002 and only 2.95 $MmSO^{-1}$ of the total 86.56 Mm^{-1} projected for 2018. This modeling projection does not include the level of controls required under BART by the FIP and the revised SIP for the three largest sources of SO_2 in the state. The ODEQ also considered sources of VOC emissions, coarse and fine PM emissions, mobile source emissions and area source emissions in its discussion and analysis of the four factors.

There are large EGU sources of SO_2 for which the ODEQ did not propose control, including the GRDA Units 1 and 2,[284] Muskogee Unit 6, and Hugo Unit 1. Oklahoma considered these sources for additional control under reasonable progress but ultimately for the reasons described above, declined to further control them. However, the total contribution from those sources not identified for control is only a fraction of the 1.23 Mm^{-1} projected from all SO_2 point sources, and none of the those sources are located such that we would anticipate significant visibility benefits at the Wichita Mountains on the 20% worst days should they be controlled. The 20% worst days at the Wichita Mountains are dominated by days impacted by emissions from sources in Texas. The largest impacts from sources in Oklahoma rarely occur on the 20% worst days as identified by the IMPROVE monitor data during the baseline period. For these reasons and others that we more fully explore in our OK TSD, we believe that Oklahoma has adequately controlled its own sources for reasonable progress to the extent necessary for this planning period.

As the ODEQ notes in several places in its SIP, point sources in Texas account for a much greater portion of the visibility impact at the Wichita Mountains than Oklahoma point sources. Compared to the 1.23 Mm^{-1} due to point source emissions of SO_2 in Oklahoma discussed above, Texas point source emissions of SO_2 are projected to contribute 7.83 Mm^{-1} to the total extinction in 2018. We agree with the ODEQ's statement regarding this situation: ''The vast majority of visibility impairment at the Wichita Mountains comes from sources beyond the borders of the State of Oklahoma. The federal Regional Haze Rule in 40 CFR 51.308(d)(3)(ii) does not require DEQ to compensate for the lack of control of emissions in Texas, other states, and foreign countries.'' The Regional Haze Rule does not require a state to over control its own sources in order to compensate for under controlled sources from another state. However, the Regional Haze Rule does require, under Section 51.308(d)(1)(iv), that in developing its RPGs, Oklahoma consult with those states which may reasonably be anticipated to cause or contribute to visibility impairment at the Wichita Mountains to identify reasonable measures for improving visibility at its Class I area.

4. Uniform Rate of Progress

Section 51.308(d)(1)(i)(B) requires Oklahoma to analyze and determine the URP needed to attain natural visibility conditions by 2064. To calculate the URP, Oklahoma must compare baseline visibility conditions to natural visibility conditions at the Wichita Mountains and determine the uniform rate of visibility improvement (measured in deciviews) that would need to be maintained during each implementation period in order to attain natural visibility conditions by 2064. In establishing the RPG, Oklahoma must consider the URP and the emission reduction measures needed to achieve it for the period covered by the implementation plan. In a previous final rulemaking,[285] we found that ODEQ appropriately calculated the URP for the Wichita Mountains. Therefore, the only portion of 40 CFR 51.308(d)(1)(i)(B) that we address is Oklahoma's requirement to consider the emission reduction measures needed to achieve the URP when establishing the RPG for the Wichita Mountains.

In establishing the RPGs for the Wichita Mountains, the ODEQ compared the baseline visibility conditions to the natural visibility conditions and determined the URP needed in order to attain natural visibility conditions by 2064. It calculated that the URP results as a visibility improvement of 3.80 dv for the period covered by this SIP revision submittal (up to and including 2018). The ODEQ noted that the CENRAP modeling results indicated that complete elimination of all anthropogenic emissions in Oklahoma are likely to be insufficient to meet the URP at the Wichita Mountains and that a majority of the visibility impairment at the Wichita Mountains comes from sources beyond Oklahoma's borders.

After considering the URP, the results of the CENRAP modeling and the four reasonable progress factors, the ODEQ determined that meeting the URP goal for 2018 was not reasonable. It then adopted the 2018 projected visibility conditions from the CENRAP photochemical modeling as the RPGs for the 20% best days and 20% worst days for the Wichita Mountains.

TABLE 29—COMPARISON OF URP TO THE REASONABLE PROGRESS GOAL ON MOST IMPAIRED DAYS FOR THE WICHITA MOUNTAINS

	Extinction	Deciview
Natural Visibility Conditions	21.23 Mm^{-1}	7.53 dv.
Baseline Visibility Conditions (2002–2004)	108.15 Mm^{-1}	23.81 dv.
Improvement Needed to Reach Natural Conditions	86.91 Mm^{-1}	16.28 dv.
Improvement by 2018 at Uniform Rate of Progress	34.18 Mm^{-1}	3.80 dv.
Improvement by 2018 under Oklahoma's RPG	22.52 Mm^{-1}	2.33 dv.
Rate of Improvement from 2004–2018 under Oklahoma's RPG (dv/year)		0.166 dv/year.

[284] Both GRDA Units 1 and 2 plan to install low NO_X burners and overfire air in order to reduce NO_X by construction permit No. 2009–179–C (M–2)(PSD). Unit 2 of the GRDA is fitted with a dry scrubber. We have recently became aware that Unit 1 (which is not scrubbed) is scheduled to be retired or converted to natural gas and a third natural gas powered unit may be added under a draft permit evaluation.

[285] 76 FR 81728 (Dec. 28, 2011).

TABLE 29—COMPARISON OF URP TO THE REASONABLE PROGRESS GOAL ON MOST IMPAIRED DAYS FOR THE WICHITA MOUNTAINS—Continued

	Extinction	Deciview
Shortfall between Oklahoma's RPG and the URP (for this implementation period)	.....	−1.47 dv.
Improvement by 2064 Extrapolated from Oklahoma's RPG	68.38 Mm^{-1}	10.01 dv.
Visibility in 2064 from Oklahoma's RPG (extrapolated)	39.76 Mm^{-1}	13.80 dv.
Visibility in 2102 Extrapolated from Oklahoma's RPG (natural visibility conditions achieved)	21.23 Mm^{-1}	7.53 dv.

The ODEQ believes the RPGs it established for the Wichita Mountains are reasonable, and that it is not reasonable to achieve the URP in 2018. In support of this conclusion it included a discussion of the pollutant contributions and the sources of visibility impairment at the Wichita Mountains (see Sections IX.D and E of the Oklahoma regional haze SIP). The ODEQ also took several other factors into consideration in determining that it was not reasonable to achieve the glide path in 2018 and that the RPG adopted by it is reasonable. See our OK TSD for a summary of these factors and the CENRAP visibility modeling source apportionment results.

We evaluated the analysis provided by the ODEQ along with the CENRAP modeling results, CENRAP emission inventories and other information in examining the RPGs established by ODEQ. Our review of the CENRAP emission inventory, modeling protocol and model results can be found in our CENRAP Modeling TSD. Below we present a summary of that evaluation:

- The ODEQ demonstrated through the CENRAP control sensitivity modeling scenario discussed in Section V.C.2, above, that application of a wide suite of controls across CENRAP states determined to meet a cost-effective threshold of $5,000/ton and emissions in relation to location criteria, would also not be sufficient to meet the URP goal, falling approximately 0.71 dv deciview short of the goal. However, we note that this control sensitivity modeling also demonstrated that an additional improvement of 0.75 dv was achievable through implementation of the identified controls. Based on source apportionment data, a large portion of that improvement would likely result from implementation of identified controls in Texas. A 0.75 dv improvement represents nearly 33% additional improvement over the 2.3 dv improvement projected to occur between the baseline period and 2018 due to all of the reductions included in the model from on the book controls, implementation of CAIR and assumptions of reductions due to BART.
- Evidence in the record demonstrated that additional reductions at sources in Texas were likely feasible, result in visibility improvement, and be cost-effective, but the ODEQ did not pursue this with Texas. Consequently, we believe the ODEQ did not have sufficient information to adequately consider emission reductions for sources in Texas in establishing its RPGs and demonstrating that it is reasonable.
- We believe the current approach to estimate natural conditions used by ODEQ follows our default methods and is acceptable to establish the 2064 goal, calculate the URP, and evaluate the RPGs established by Oklahoma.
- We note the more recent IMPROVE monitored data at the Wichita Mountains indicates that more progress than anticipated by the CENRAP modeling has occurred.[286] The most recent five-year (2009–2013) average conditions for the 20% worst days is 21.2 dv. This is below the level anticipated in the CENRAP projection for 2018 of 21.5 dv. We believe that this observed improvement is the result of meteorological conditions, reduction in the impact from fires, and reduction in the impacts from SO_2 emissions. More recent emission inventory data shows reductions in emissions in most states beyond what was projected in the 2018 modeling, including large reductions in emissions from the Eastern United States. Emissions from non-EGU Texas point sources are lower than have been projected in the modeling. We note that additional reductions are still needed to meet or exceed the URP goal for 2018 of 20.01 dv. As discussed above, emissions at some of the sources that impact visibility the most are still above the emission levels projected in the model and cost-effective controls are likely available at these sources. Based on information provided by the TCEQ, we do not expect large additional emission reductions of SO_2 in Texas between 2013 and 2018 under federal programs and the SIP as submitted.[287]

Based on the above considerations, we propose to agree with the ODEQ's demonstration that it is not reasonable to meet the URP for the Wichita Mountains for this planning period. We also agree with the ODEQ that emissions and transport from outside of Oklahoma will severely limit the rate of progress achievable at the Wichita Mountains on the 20% worst days. As the ODEQ itself (and we through our analysis detailed in the FIP TSD) have demonstrated, there are large visibility impacts at the Wichita Mountains from outside Oklahoma, the largest percentage coming from point sources in Texas. In addition, we believe the ODEQ has also demonstrated there is the likelihood of a sizeable visibility improvement from controlling a subset of these sources, with likely cost-effective controls.

5. Reasonable Progress Goal Minimum

Under Section 51.308(d)(1)(vi), Oklahoma may not adopt a RPG that represents less visibility improvement than is expected to result from implementation of other requirements of the CAA during the applicable planning period.

The RPGs established by Oklahoma are based on CENRAP 2018 modeling projections. The modeling projections conducted by CENRAP contain projections of the visibility conditions that are anticipated to be realized at each Class I area between the 2002 base year and the 2018 future year. These projections are based on the emission reductions resulting from federal and state control programs that are either currently in effect or with mandated future-year emission reduction schedules that predate 2018, including the long-term strategies of Oklahoma, Texas, and other states, and presumptive emission reductions expected to result from the submitted Oklahoma BART rule. Since CENRAP's 2018 modeling projections are based on local, state, and federal control programs that are either currently in effect or with mandated future-year emission reduction schedules, we believe that the ODEQ's RPGs represent at least as much visibility improvement as is expected to result from implementation of other requirements of the CAA (*i.e.,* requirements other than regional haze) during the applicable

[286] Available at: *http://vista.cira.colostate.edu/tss/.*

[287] TCEQ comment letter to EPA on draft modeling platform dated June 24, 2014. '2018 EMP signed.pdf'.

planning period. We therefore propose to approve Oklahoma's submission under Section 51.308(d)(1)(vi) that its RPG for the Wichita Mountains does not represent less visibility improvement than is expected to result from the implementation of other requirements of the CAA during this planning period.

6. Oklahoma's Assertion That Its Progress Goals Are Reasonable

Section 51.308(d)(1)(ii) provides that for the period of the SIP, if Oklahoma establishes a RPG that provides for a slower rate of improvement in visibility than the rate that would be needed to attain natural conditions by 2064, it must demonstrate based on the factors in Section 51.308(d)(1)(i)(A) that the rate of progress for the SIP to attain natural conditions by 2064 is not reasonable; and that the progress goal it adopted is reasonable. As part of its SIP assessment, Oklahoma must provide to the public for review the number of years it would take to attain natural conditions if visibility improvement continues at the rate of progress it selected as reasonable.

The ODEQ's RPG for the 20% worst days establishes a slower rate of progress than the URP for the Wichita Mountains. As shown in Table IX–1 of the Oklahoma regional haze SIP, under the RPG adopted by ODEQ, it projected that natural visibility conditions will not be attained at the Wichita Mountains by 2064. ODEQ calculated that under the rate of progress selected by it as reasonable, it would attain natural visibility conditions at the Wichita Mountains in 2102. See Table 29 above.

In the Oklahoma Regional Haze SIP, the ODEQ states that the RPGs it established for the Wichita Mountains are reasonable and that it is not reasonable to achieve the URP in 2018. In support of this conclusion, it included a discussion of the pollutant contributions and the sources of visibility impairment at the Wichita Mountains (see Sections IX.D and E of the Oklahoma regional haze SIP). The ODEQ also took several other factors into consideration in determining that it was not reasonable to achieve the glide path in 2018 and that the RPG adopted by it is reasonable. See our OK TSD for a summary of these factors and the CENRAP visibility modeling source apportionment results.

The ODEQ indicated that Oklahoma's ability to meet the URP is impeded primarily by the following: the significant contribution of emissions from Texas and other areas outside the ODEQ's jurisdiction; the uncertainty in the effect of CAIR; the economic and energy cost of additional controls on Oklahoma point sources; the lack of a quality-assured enhanced Oklahoma emissions inventory and ODEQ's reluctance to target area sources for emissions controls until such an emissions inventory is developed; the ODEQ's lack of jurisdiction over non-road and on-road mobile sources; and, the limitations involved with utilizing the default EPA method to determine natural visibility conditions. See our OK TSD for a more complete summary of these factors.

We evaluated the analysis provided by the ODEQ along with the CENRAP modeling results, CENRAP emission inventories and other information in examining the RPGs established by ODEQ. Our review of the CENRAP emission inventory, modeling protocol and model results can be found in our CENRAP Modeling TSD.

7. Our Evaluation of Oklahoma's Reasonable Progress Goals for the Wichita Mountains.

In the sections above, we discuss how Oklahoma constructed its RPGs for the Wichita Mountains, how in doing so it consulted with Texas and other states, applied the four reasonable progress factors in evaluating sources within Oklahoma for additional controls in the development of that RPG, and calculated the URP for the Wichita Mountains. In this section we consider those efforts and present our evaluation of Oklahoma's RPGs for the Wichita Mountains.

We believe that with the exception of certain BART sources, Oklahoma appropriately concluded that no additional reasonable progress measures for Oklahoma sources were necessary during this first planning period. However, BART is a component of reasonable progress, and the RPGs selected by the ODEQ for the Wichita Mountains do not include the level of reductions necessary to meet the requirements under Section 51.308(e) for BART. In our December 28, 2011 rulemaking, we disapproved the SO_2 BART determinations for certain units and promulgated a BART FIP to impose controls for these units.[288] Therefore, implementation of our SO_2 BART FIP and the revised BART SIP for the AEP units is expected to result in greater reasonable progress than is anticipated in Oklahoma's February 19, 2010, regional haze SIP submit.[289]

In addition, as required by Section 51.308(d)(1)(iv), Oklahoma's development of its RPGs must be informed by its consultations with other states. Oklahoma demonstrated that the unrealistic scenario of eliminating all Oklahoma sources would not be sufficient to meet the URP for 2018. It realized that efforts to meet the goal of natural visibility by 2064 would require further emission reductions from other states in the region. The CENRAP modeling, monitoring data and other technical analyses that informed consultations demonstrated that NO_X and SO_2 are the primary causes of haze at the Wichita Mountains with SO_2 from point sources being the predominant driver. It also showed that SO_2 point sources in Texas were a significant contributor to the haze at the Wichita Mountains. Furthermore, the control and cost information developed by CENRAP and Alpine Geophysics showed that cost-effective controls on Texas sources were likely available, some with a cost-effectiveness on a $/ton basis within TCEQ's own benchmark. The Regional Haze Rule envisioned that a state would use the consultation processes under Sections 51.308(d)(1)(iv) in the development of its RPGs, and 51.308(d)(3)(i) regarding the development of its long-term strategy, in identifying visibility impairing emissions that cross state boundaries, and in the coordination of strategies to reduce those emissions. However, despite this information in the record about the impact of Texas sources on the Wichita Mountains, the ODEQ did not request that the TCEQ further investigate these sources, nor did it request additional reductions from Texas sources to address this impact. As we discuss in Section V.E, we believe that the technical analysis developed by Texas did not provide the information necessary to identify reasonable reductions from its sources, and inform consultations in order to develop coordinated management strategies with Oklahoma. Therefore, due to this absence of the development of this critical information during consultations, we believe that Oklahoma did not have adequate information to establish its RPG for the Wichita Mountains, and should have requested that the TCEQ further investigate these sources or requested additional reductions from Texas sources to ensure that all reasonable measures to improve

[288] 76 FR 81728 (Dec. 28, 2011).

[289] In our August 21, 2013, proposed approval of Oklahoma's June 20, 2013, regional haze SIP revision we proposed to find that the SO_2 emission reductions associated with Oklahoma's revised BART determination for Northeastern Units 3 and 4, when combined with enforceable commitments from ODEQ, will be consistent with the levels of control assumed in the CENRAP modeling and relied on by other States as part of their reasonable progress demonstrations (78 FR 51586).

visibility were included in Texas' LTS and incorporated into Oklahoma's RPG for the Wichita Mountains. Thus, the basic intent of our consultation requirements was not realized.

In addition to the explicit statutory requirement under Section 51.308(d)(1)(ii) to consider the four reasonable progress factors, the Regional Haze Rule also establishes an analytical requirement to ensure that each state considers the emission reduction measures necessary to attain the URP. The Regional Haze Rule provides that we will evaluate Oklahoma's consideration of the four factors in Section 51.308(d)(1)(i)(A), its analysis of the URP required under Section 51.308(d)(1)(i)(B) and the demonstration developed pursuant to Section 51.308(d)(1)(ii), ''[i]n determining whether the State's goal for visibility improvement provides for reasonable progress.'' As explained in the preamble to the Regional Haze Rule, the URP analysis was adopted to ensure that states use a common analytical framework and to ensure an informed, equitable, and transparent decision making process that would, among other things, ensure that the public would be provided with the information necessary to understand the emission reductions needed, the costs of such measures, and other factors associated with improvements in visibility. We note that this analytical requirement is met only through consultation and is not restricted to the consideration of only those sources within the state with the impacted Class I area. As we stated in the Regional Haze Rule regarding this requirement: [290]

> In doing this analysis, the State must consult with other States which are anticipated to contribute to visibility impairment in the Class I area under consideration. Because haze is a regional problem, States are encouraged to work together to develop acceptable approaches for addressing visibility problems to which they jointly contribute. If a contributing State cannot agree with the State establishing the reasonable progress goal, the State setting the goal must describe the actions taken to resolve the disagreement.

However, Oklahoma's consultation was incomplete. While the analyses developed by CENRAP provide a great deal of information on contributions to visibility impairment and a set of potential available add-on controls and cost associated with those controls, the data was insufficient to fully assess the impacts and available emission reduction measures for Texas sources. Given the large contributions from sources in Texas and EGU point sources in particular, Oklahoma could not reasonably consider all the emission reductions needed to meet or approach the URP without considering emission reduction measures available for those sources in Texas that contribute the most to visibility impairment at Wichita Mountains. In summary, we propose to find the following:

- Oklahoma has demonstrated that it is not reasonable to require additional emission reductions for its sources for this planning period.
- BART is a component of developing the RPGs, and the RPGs are inadequate because BART controls were not adequately considered. We note this deficiency is addressed by our BART FIP and the revised Oklahoma SIP.
- Oklahoma's consultations with Texas were flawed, which prevented it from adequately developing its RPGs for the Wichita Mountains.
- Also because Oklahoma's consultations with Texas were flawed, Oklahoma did not consider the emission reduction measures necessary to achieve the URP for the Wichita Mountains and did not adequately demonstrate that the RPGs it established were reasonable based on the four statutory factors under 51.308(d)(1)(ii).

In consideration of these flaws, we propose to disapprove Oklahoma's submission under Section 51.308(d)(1), except for those portions addressing Section 51.308(d)(1)(vi), which we propose to approve.

VII. Our Proposed Oklahoma and Texas Regional Haze FIPs

Below, we list all of the portions of Section 51.308 that we propose to find that Texas and Oklahoma did not meet, which we have discussed above, and more fully in our TX TSD and OK TSD documents.

We propose to disapprove the parts of the Texas regional haze SIP addressing the following requirements:

- Section 51.308(d)(1)(i)(A), regarding Texas' reasonable progress four factor analysis.
- Section 51.308(d)(1)(i)(B), regarding Texas' calculation of the emission reductions needed to achieve the URPs for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(1)(ii), regarding Texas' RPGs for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(2)(iii), regarding Texas' calculation of the natural visibility conditions for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(2)(iv)(A) regarding Texas' calculation of natural visibility impairment.
- Section 51.308(d)(3)(i) regarding Texas' long-term strategy consultation.
- Section 51.308(d)(3)(ii) regarding Texas securing its share of reductions in other states' RPGs.
- Section 51.308(d)(3)(iii) regarding Texas' technical basis for its long-term strategy.
- Section 51.308(d)(3)(v)(C), regarding Texas' emissions limitations and schedules for compliance to achieve the RPGs for Big Bend and the Guadalupe Mountains.

We propose to disapprove the RPGs for the Wichita Mountains set by Oklahoma in its regional haze SIP. In setting its RPG, we propose to find that Oklahoma generally did not meet the requirements of Section 51.308(d)(1) of the Oklahoma regional haze SIP, except for Section 51.308(d)(1)(vi).

Below we present a summary of our proposed Texas and Oklahoma FIPs and why we believe these FIPs would cure the SIP deficiencies in those portions of the Texas and Oklahoma SIPs that we propose to disapprove, thereby satisfying our FIP obligation. Please see our FIP TSD and our Cost TSD for a full development of the technical basis of our FIPs.

A. Summary of Our Proposed Texas FIP

We believe our proposed FIP and its rationale as presented here provide the technical analysis that was lacking in Texas' development of its RPGs for the Guadalupe Mountains and Big Bend, and in its consultations with Oklahoma for the development of the RPGs for the Wichita Mountains, as well as addressing its long-term strategy. As Texas did in the development of its SIP, we have also used the same analysis to address both tasks. We began our review of Texas' conclusions with an initial analysis of all point sources in Texas and an assessment of the visibility impact from those sources with the greatest potential to contribute to visibility impairment. A refinement of this analysis resulted in our focus on a much smaller group of sources that essentially reduced down to an analysis of whether, in light of the balance between the cost of control and visibility benefits of control at each source, additional SO_2 controls should be installed on each of certain large coal fired EGUs in Texas in order to improve the visibility at these Class I areas. We conducted our analysis using the four reasonable progress factors listed in Section 51.308(d)(1)(i)(A). We propose to find that this portion of our proposed Texas FIP would make whole our disapproval of those portions of the Texas SIP intended to meet:

- Section 51.308(d)(1)(i)(A).

[290] 64 FR 35732 (July 1, 1999).

- Section 51.308(d)(3)(i).
- Section 51.308(d)(3)(ii).
- Section 51.308(d)(3)(iii).
- Section 51.308(d)(3)(v)(C).

We also establish the natural visibility conditions for the Guadalupe Mountains and Big Bend. We then use those values and the analysis we have developed above to consider the emission reductions needed to achieve the URPs for the Guadalupe Mountains and Big Bend and establish their RPGs. We propose that these portions of our Texas FIP, developed below, make whole our disapproval of those portions of the Texas SIP intended to meet:

- Section 51.308(d)(2)(iii).
- Section 51.308(d)(2)(iv)(A).
- Section 51.308(d)(1)(i)(B).
- Section 51.308(d)(1)(ii).

B. Summary of Our Proposed Oklahoma FIP

We believe some of the same portions of our proposed Texas FIP would also largely address the portions of the Oklahoma regional haze SIP we are proposing to disapprove. We believe that Oklahoma's incomplete consultation with Texas denied it the knowledge it needed—the visibility impacts of individual sources in Texas with the largest potential to impact the visibility at the Wichita Mountains and the extent to which cost-effective controls were available—in order to properly construct its RPG for the Wichita Mountains. As indicated in the record, both the ODEQ and the TCEQ acknowledged during the development of their respective regional haze SIPs that Texas point sources have a significant visibility impact at the Wichita Mountains and that cost-effective controls were likely available for these sources. However, the ODEQ did not pursue the point in its consultations with the TCEQ under Section 51.308(d)(1)(iv). Our proposed Oklahoma FIP will address these deficiencies in the Oklahoma's consultations by establishing new RPGs for the Wichita Mountains. These RPGs are based on our analysis of the proposed controls for Texas sources in our proposed Texas FIP. We do not believe that any further control measures for sources within Oklahoma are necessary to resolve the issues identified above in its SIP.

C. Technical Overview of Our Proposed Oklahoma and Texas FIPs

As discussed in our FIP TSD, we have determined that based on their visibility impacts, a smaller subset of the facilities that we have initially analyzed should be further evaluated to determine (1) if cost-effective controls are available and (2) considering their projected visibility benefits, which, if any controls should be proposed. With one exception, the PPG Flat Glass plant in Wichita Falls, all of the facilities in the smaller subset of Texas sources are coal fired power plants. While some of these coal fired power plants have scrubbers, all but one are partially bypassed. Also as discussed in that section, we are limiting our analyses to the consideration of SO_2 controls for these EGU sources, as our modeling indicates that the impacts from these sources on the 20% worst days are primarily due to sulfate emissions. In our Cost TSD, we conduct a SO_2 cost analyses for the following facilities and units:

TABLE 30—SOURCES UNDERGOING REASONABLE PROGRESS AND LONG-TERM STRATEGY ANALYSES

Facility	Units	Currently scrubbed?	Currently bypassed?
Big Brown	1, 2	No.	
Sandow 4	1	Yes	Yes.
Monticello	1, 2	No.	
Monticello	3	Yes	Yes.
Martin Lake	1, 2, 3	Yes	Yes.
Coleto Creek	1	No.	
Limestone	1, 2	Yes	Yes.
San Miguel	1	Yes	No.
Tolk	1, 2	No.	
Welsh	1, 2, 3	No.	
W. A. Parish	5, 6, 7	No.	
W. A. Parish	8	Yes	Yes.

In addition to these sources, we have examined the PPG Flat Glass Plant in Wichita Falls, Texas. This is the only non-EGU and the only source for which NO_X controls are considered. For all of the sources we examined, visibility impacts were dominated by the impacts from SO_2 emissions with the exception of the PPG Flat Glass Plant. Because of the proximity of this facility to Wichita Mountains, NO_X and SO_2 emissions from the facility were both responsible for the visibility impacts at Wichita Mountains. As discussed in more detail below, we evaluated these impacts and considered recent emissions and permit data in considering the potential need for additional controls for this facility.

D. Approach to Reasonable Progress and Long-Term Strategy

We are simultaneously conducting reasonable progress and long-term strategy analyses. These analyses address both (1) the requirements to consider the four reasonable progress factors for the Texas Class I areas, and (2) the technical basis required to develop the long-term strategy for the Texas Class I areas and the Wichita Mountains in Oklahoma. We use the ''four factor analysis'' method outlined in 40 CFR 51.308(d)(1)(A) that states are directed to use in establishing a RPG:

(1) Reasonable progress goals. For each mandatory Class I Federal area located within the State, the State must establish goals (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility conditions. The reasonable progress goals must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period.

(i) In establishing a reasonable progress goal for any mandatory Class I Federal area within the State, the State must:

(A) Consider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.

To assist in interpreting these reasonable progress factors, we will rely

on our reasonable progress Guidance.[291] Our Reasonable Progress Guidance notes the similarity between some of the reasonable progress factors and the BART factors contained in Section 51.308(e)(1)((ii)(A), and suggests that the BART Guidelines be consulted regarding cost, energy and non-air quality environmental impacts, and remaining useful life. We are therefore relying on our BART Guidelines for assistance in interpreting those reasonable progress factors, as applicable.

We note that, with one exception,[292] the issues relating to the evaluation of three of these factors: (1) Time necessary for compliance, (2) energy and non-air quality environmental impacts of compliance, and (3) remaining useful life, are common to all the units we are analyzing. Thus, we are analyzing these factors for all the units simultaneously.

In analyzing the remaining factor, cost of compliance, we are including in our evaluation a consideration of any control technology that may already be installed at the facility. Also, similar to a BART analysis, we are also considering the projected visibility benefit in our analysis. As we state in our Arizona proposal: [293]

> While visibility is not an explicitly listed factor to consider when determining whether additional controls are reasonable, the purpose of the four-factor analysis is to determine what degree of progress toward natural visibility conditions is reasonable. Therefore, it is appropriate to consider the projected visibility benefit of the controls when determining if the controls are needed to make reasonable progress.

For each unit, we are weighing the cost of compliance against the projected visibility benefit.

1. Time Necessary for Compliance, and the Oklahoma and Texas RPGs

We discuss the time necessary for compliance reasonable progress factor in our Reasonable Progress Guidance: [294]

> It may be appropriate for you to use this factor to adjust the RPG to reflect the degree of improvement in visibility achievable within the period of the first SIP if the time needed for full implementation of a control measure (or measures) will extend beyond 2018. For example, if you anticipate that constraints on the availability of construction labor will preclude the installation of controls at all sources of a particular category by 2018, the visibility improvement anticipated from installation of controls at the percentage of sources that could be controlled within the strategy period should be considered in setting the RPG and in establishing the SIP requirements to meet the RPG.

Due to delays in processing the Texas regional haze SIP and the remaining portion of the Oklahoma regional haze SIP, we cannot assume that the SO_2 controls we are proposing will be installed and operational within this planning period, which ends in 2018. For instance, typical SO_2 scrubber installations can take up to five years to plan, construct and bring to operational readiness. This would mean that any such controls that we may require in our final action may not be operational until after 2018. Therefore, although we are proposing revised RPGs for Oklahoma and Texas, we are proposing RPGs that only account for the scrubber upgrades included in this FIP anticipated to be completed by 2018.

We request that Oklahoma and Texas consider the additional visibility improvements anticipated from any proposed FIP controls implemented after 2018 with the submission of their next regional haze SIPs due July 13, 2018.

2. Energy and Non-Air Quality Environmental Impacts of Compliance

Regarding the analysis of energy impacts, the BART Guidelines advise, ''You should examine the energy requirements of the control technology and determine whether the use of that technology results in energy penalties or benefits.'' [295] As discussed below in our cost analyses for Dry Sorbent Injection (DSI) and Spray Dryer Absorber (SDA) SO_2 scrubbers, our cost model allows for the inclusion or exclusion of the cost of the additional auxiliary power required for the pollution controls we considered to be included in the variable operating costs. We chose to include this additional auxiliary power in all cases. Consequently, we believe that any energy impacts of compliance have been adequately considered in our analyses.

Regarding the analysis of non-air quality environmental impacts, the BART Guidelines advise: [296]

> Such environmental impacts include solid or hazardous waste generation and discharges of polluted water from a control device. You should identify any significant or unusual environmental impacts associated with a control alternative that have the potential to affect the selection or elimination of a control alternative. Some control technologies may have potentially significant secondary environmental impacts. Scrubber effluent, for example, may affect water quality and land use. Alternatively, water availability may affect the feasibility and costs of wet scrubbers. Other examples of secondary environmental impacts could include hazardous waste discharges, such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when sensitive site-specific receptors exist or when the incremental emission reductions potential of the more stringent control is only marginally greater than the next most-effective option. However, the fact that a control device creates liquid and solid waste that must be disposed of does not necessarily argue against selection of that technology as BART, particularly if the control device has been applied to similar facilities elsewhere and the solid or liquid waste is similar to those other applications. On the other hand, where you or the source owner can show that unusual circumstances at the proposed facility create greater problems than experienced elsewhere, this may provide a basis for the elimination of that control alternative as BART.

The SO_2 control technologies we considered in our analysis—DSI and scrubbers—are in wide use in the coal-fired electricity generation industry. Both technologies add spent reagent to the waste stream already generated by the facilities we analyzed, but do not present any unusual environmental impacts. As discussed below in our cost analyses for DSI and SDA SO_2 scrubbers, our cost model includes waste disposal costs in the variable operating costs. Consequently, we believe that with one possible exception, any non-air quality environmental impacts have been adequately considered in our analyses. An examination of the aerial photo of the Tolk facility, which we present in our FIP TSD, does not reveal any obvious source of surface water. We therefore assume that well water is used. In light of this and its potential relationship to the energy and non-air quality environmental impacts of compliance, we limit our SO_2 control analysis for Tolk to DSI and dry scrubbers.

3. Remaining Useful Life

Regarding the analysis of the remaining useful life, the BART Guidelines advise:

> The ''remaining useful life'' of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls. For example, the methods for calculating annualized costs in EPA's OAQPS Control Cost Manual require the use

[291] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, June 1, 2007.

[292] For reasons we discuss in our FIP TSD, we believe that the Tolk facility may merit a special consideration of the energy and non-air quality environmental impacts of compliance.

[293] See 79 FR 9353, footnote 137. We also finalized our proposal in 79 FR 52420, using this same reasoning.

[294] Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program, June 1, 2007. Page 19.

[295] 70 FR 39168 (July 6, 2005).

[296] 70 FR 39169 (July 6, 2005).

of a specified time period for amortization that varies based upon the type of control. If the remaining useful life will clearly exceed this time period, the remaining useful life has essentially no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time period for amortizing costs, you should use this shorter time period in your cost calculations.

In determining the cost of scrubbers in our prior Oklahoma FIP, we used a lifetime of 30 years. In so doing, we noted [297] that scrubber vendors indicate that the lifetime of a scrubber is equal to the lifetime of the boiler, which might easily be over 60 years. We also noted that many scrubbers that were installed between 1975 and 1986 are still in operation today (*e.g.,* Coyote Station, H.L. Spurlock Unit 2, East Bend Unit 2, Laramie River Unit 3, Cholla 5, Basin Electric, Mitchell Unit 33, and all of the units in Table 30 that currently have scrubbers). Further, we noted that standard cost estimating handbooks and published papers report 30 years as a typical life for a scrubber and that many utilities routinely specify 30+ year lifetimes in requests for proposal and to evaluate proposals. We have used this 30 year lifetime approach in prior actions and we therefore adopted the same scrubber lifetime in our present analysis. See 76 FR 52388 (Aug. 22. 2011); 76 FR 81728 (Dec. 28, 2011); *Oklahoma* v. *EPA,* 723 F.3d 1201 (July 19, 2013), *cert. denied* (U.S. May 27, 2014).

We see no reason to assume that a DSI system installation, which is a much less complex and costly (capital costs, as opposed to annualized costs) technology in comparison to a scrubber installation, should have a shorter lifetime. As with a scrubber, we expect the boiler to be the limiting factor when considering the lifetime of a coal-fired power plant. We have therefore similarly assumed that the lifetime of a DSI system is 30 years, as constrained by the boiler lifetime, as noted above.

The BART Guidelines provide further clarification:

> Where this affects the BART determination, this date should be assured by a federally- or State-enforceable restriction preventing further operation. We recognize that there may be situations where a source operator intends to shut down a source by a given date, but wishes to retain the flexibility to continue operating beyond that date in the event, for example, that market conditions change. Where this is the case, your BART analysis may account for this, but it must maintain consistency with the statutory requirement to install BART within 5 years. Where the source chooses not to accept a federally enforceable condition requiring the source to shut down by a given date, it is necessary to determine whether a reduced time period for the remaining useful life changes the level of controls that would have been required as BART.

As in a BART determination, we propose to adopt the same requirement regarding the need for a federally enforceable restriction for any DSI or scrubber remaining useful life of less than 30 years.

4. Analysis of the PPG Flat Glass Plant

The Wichita Falls PPG flat glass plant is located in Wichita Falls, Texas. The plant began operations in 1974.[298] The facility produces flat glass on two production lines, each with its own natural gas furnace. A furnace typically lasts ten to twelve years until re-bricking is required. In 2007, PPG applied to the TCEQ for a standard permit registration [299] in order to obtain authorization for the implementation of a low-NO_X oxy-fuel injection conversion to its Melting Furnace No. 1. As a result of this upgrade, PPG calculated its NO_X emissions from Furnace No. 1 would decrease by approximately 1,996 tpy to 894.25 tpy. PPG also further reduced their NO_X emissions as a result of a fuel conservation project which occurred with the rebuilding of Furnace No. 2. This project lowered the NO_X emissions of Furnace No. 2 from an allowable annual NO_X limit of 3,236.82 tpy to 2,947.49 tpy. These reductions were incorporated into a permit alteration.[300]

Table 31 below compares the 2018 projected CENRAP emission inventory to the 2002 CENRAP emission inventory, the current permit limits for the two furnaces, and average actual annual emissions for the facility. We projected the visibility impact from this facility at the 2018 projected emission level to be 0.635 Mm^{-1} at the Wichita Mountains (using source apportionment). Permit allowable emissions for NO_X for the two furnaces are much lower than projected and modeled for 2018 and lower than the 2002 emission level. The 2018 projected emissions for SO_2 also exceed the permitted emissions for furnace No. 2. Average annual emissions are only 44% of the projected 2018 emissions for NO_X and 81% of the projected SO_2 emissions. Therefore, we estimate that the current visibility impact due to the facility is significantly lower than the 2018 projected value. We are proposing to find that the Wichita Falls PPG flat glass plant is adequately controlled to address visibility impacts from this facility for the first planning period. We encourage the State of Texas to revisit this issue when Furnace No. 2 is scheduled for its next re-bricking.

TABLE 31—EMISSION COMPARISON FOR PPG FLAT GLASS PLANT

	CENRAP 2002 emission inventory (tpy)		CENRAP 2018 emission inventory (tpy)		Permit allowable [301] (tpy)		Average annual emissions (tpy, 2009–2012) [302]	
	NO_X	SO_2	NO_X	SO_2	NO_X	SO_2	NO_X	SO_2
Furnace No. 1	2,694.5	48.0	4,526.8	80.7	894.3	180.3	.....	.....
Furnace No. 2	2,495.2	279.7	4,191.9	470.0	2,947.5	350.4	.....	.....
Furnace No. 1 and No. 2	5,189.7	327.7	8,718.8	550.6	3,841.7	530.7	.....	.....
Facility total	5,317.0	371.0	8,929.0	623.0	.....	.....	3,887.8	501.9

[297] Technical Support Document for the Oklahoma Regional Haze State Implementation Plan and Federal Implementation Plan. March 2011, p. 14.

[298] *http://corporate.ppg.com/Our-Company/Worldwide-Operations/North-America/Wichita-Falls.*

[299] Standard Permit Registration, PPG Industries, Inc., Wichita Falls Plant, Account No. WH–0040–R. Submitted by ENVIRON, dated October 11, 2007.

[300] Permit Alteration, Permit Number: 898, Flat Glass Manufacturing Facility, Wichita Falls, Wichita County, Regulated Entity Number: RN102522950, Customer Reference Number: CN600124614, Account Number: WH–0040–R.

[301] Permit Alteration, Permit Number: 898, Flat Glass Manufacturing Facility, Wichita Falls, Wichita County, Regulated Entity Number: RN102522950, Customer Reference Number:

[302] TCEQ point source emission inventory. Downloaded from *https://www.tceq.texas.gov/airquality/point-source-ei/psei.html* and available in the docket for this action.

E. Use of Confidential Business Information

Within our Cost TSD, we calculate the SO_2 removal efficiencies for the underperforming scrubbers listed in Table 30, and present information that discusses how these scrubbers have been historically upgraded and what kinds of equipment revisions are typically required. In order to assess the potential range of options available to upgrade the scrubbers in the facilities listed in Table 30, we must have an understanding of what upgrades may have already been performed. Because most of this information is not available publicly, we requested it under authority granted to us under Section 114(a) of the CAA. For each unit, we then conducted a cost analysis for eliminating any scrubber bypass and upgrading the units' overall SO_2 removal efficiency to at least 95%. As most of the information we received in response to our Section 114(a) requests was claimed as Confidential Business Information (CBI) under 40 CFR part 2, subpart B, we are limited in what we are able to publicly state in this analyses. Consequently, although our full cost analysis is available on a facility-by-facility basis for viewing by the companies who provided us with the CBI material, we can only provide a summary of it below.

F. Reasonable Progress and Long-Term Strategy Scrubber and DSI Cost Results

As we discuss in our Cost TSD, we evaluated each unit at its maximum recommended level of control, considering the type of SO_2 control device:

- We evaluated each unit at its maximum recommended DSI performance level, according to the IPM DSI documentation, assuming milled trona: 80% SO_2 removal for an ESP installation and 90% SO_2 removal for a baghouse installation. This level of control is within the range of control of SO_2 scrubbers, and thus allows a better comparison of the costs of DSI and scrubbers.
- However, we believe that the maximum performance level for DSI can only be determined after an onsite performance test. We believe it is useful to evaluate lesser levels of DSI control (and correspondingly lower costs). We therefore also evaluated all the units at a DSI SO_2 control level of 50%, which we believe is likely achievable for any unit.
- The SDA level of control was assumed to be a maximum of 95% not to go below 0.06 lbs/MMBtu.
- The wet FGD level of control was assumed to be a maximum of 98% not to go below 0.04 lbs/MMBtu.

Below, we present a summary of our DSI, SDA, and wet FGD cost analysis:[303]

TABLE 32—SUMMARY OF DSI, SDA, AND WET FGD COST ANALYSIS

Facility	Unit	Control	Control level (%)	SO_2 Reduction (tpy)	$/Ton reduced	Capital cost	Annualized cost
Big Brown	1	DSI	50.0	15,334	$2,223	$19,096,000	$34,086,871
		DSI	90.0	27,600	2,996	33,357,000	82,684,241
		SDA	95.0	29,134	1,377	226,656,000	40,104,566
		Wet FGD	98.0	30,054	1,255	256,032,000	37,708,999
	2	DSI	50.0	15,407	2,201	19,035,000	33,909,822
		DSI	90.0	27,733	2,994	32,965,000	81,649,586
		SDA	95.0	29,273	1,373	229,544,000	40,185,893
		Wet FGD	97.9	30,169	1,257	259,141,000	37,909,708
Monticello	1	DSI	50.0	8,933	2,728	17,137,000	24,364,819
		DSI	90.0	16,079	3,420	23,580,000	54,991,417
		SDA	95.0	16,972	2,012	224,262,000	34,154,932
		Wet FGD	97.0	17,328	1,937	250,804,000	33,558,169
	2	DSI	50.0	8,215	3,086	17,057,000	25,351,370
		DSI	90.0	14,786	3,845	23,468,000	56,850,489
		SDA	95.0	15,608	2,254	227,409,000	35,183,025
		Wet FGD	96.8	15,907	2,170	254,177,000	34,523,884
Coleto Creek	1	DSI	50.0	8,030	2,792	15,888,000	22,416,218
		DSI	90.0	14,453	3,460	21,863,000	50,001,685
		SDA	93.5	15,012	2,356	240,408,000	35,366,916
		Wet FGD	95.7	15,361	2,278	262,435,000	34,996,979
Tolk	171B	DSI	50.0	5,016	3,084	13,938,000	15,465,578
		DSI	90.0	9,028	3,592	19,179,000	32,426,429
		SDA	91.7	9,195	3,178	218,306,000	29,218,836
		Wet FGD	94.4	9,474	3,204	243,048,000	30,352,765
	172B	DSI	50.0	5,517	2,828	13,873,000	15,600,155
		DSI	90.0	9,931	3,221	19,090,000	31,985,880
		SDA	90.8	10,015	2,998	226,957,000	30,022,609
		Wet FGD	93.8	10,355	3,019	252,559,000	31,257,301
Welsh	1	DSI	50.0	4,042	3,718	14,888,000	15,026,538
		DSI	80.0	6,467	4,019	18,901,000	25,992,966
		SDA	88.7	7,169	3,489	201,549,000	25,009,785
		Wet FGD	92.5	7,474	3,508	221,282,000	26,216,294
	2	DSI	50.0	4,128	3,611	14,775,000	14,906,814
		DSI	80.0	6,605	3,879	18,758,000	25,622,166
		SDA	88.2	7,285	3,438	202,108,000	25,045,518
		Wet FGD	92.2	7,608	3,454	221,821,000	26,276,805

[303] In this table, the capital cost is the total cost of constructing the facility. The annualized cost is the sum of the annualized capital cost and the annualized operational cost. See our Cost TSD for more information on how these costs were calculated.

TABLE 32—SUMMARY OF DSI, SDA, AND WET FGD COST ANALYSIS—Continued

Facility	Unit	Control	Control level (%)	SO_2 Reduction (tpy)	$/Ton reduced	Capital cost	Annualized cost
	3	DSI	50.0	4,305	3,690	15,023,000	15,884,663
		DSI	80.0	6,887	3,998	19,071,000	27,531,831
		SDA	88.7	7,634	3,368	204,177,000	25,713,148
		Wet FGD	92.5	7,959	3,379	224,298,000	26,895,390
W. A. Parish	5	DSI	50.0	7,079	2,559	15,227,000	18,111,990
		DSI	90.0	12,741	2,995	20,953,000	38,161,382
		SDA	92.5	13,095	2,441	240,112,000	31,970,651
		Wet FGD	95.0	13,449	2,389	260,195,000	32,124,808
	6	DSI	50.0	7,654	2,699	15,934,000	20,660,436
		DSI	90.0	13,776	3,229	21,924,000	44,478,086
		SDA	93.1	14,251	2,401	248,503,000	34,220,158
		Wet FGD	95.4	14,603	2,334	270,350,000	34,085,705
	7	DSI	50.0	6,168	2,805	14,641,000	17,301,527
		DSI	90.0	11,102	3,296	20,145,000	36,594,402
		SDA	92.7	11,432	2,559	211,443,000	29,250,022
		Wet FGD	95.1	11,733	2,542	233,698,000	29,821,127

G. Reasonable Progress and Long-Term Strategy Scrubber Upgrade Cost Results

In our Cost TSD, we analyze those units listed in Table 30 with an existing SO_2 scrubber in order to determine if cost-effective scrubber upgrades are available. Because all of the scrubber systems we evaluate are wet scrubbers, we limit our analyses of scrubber upgrades to wet scrubbers. Below, we present a summary of the results of that analysis.

With the exception of San Miguel, we are limited in what information we can include in this section, because in developing our scrubber cost estimates we used information that was claimed as CBI. This information was submitted in response to our Section 114(a) requests. We can therefore only present the following summary. With the exception of San Miguel, we propose to find that for all the units we analyzed:

- The absorber system had either already been upgraded to perform at an SO_2 removal efficiency of at least 95%, or it could be upgraded to perform at that level using proven equipment and techniques.
- The SO_2 scrubber bypass could be eliminated, and the additional flue gas could be treated by the absorber system with at least a 95% removal efficiency.
- Additional modifications necessary to eliminate the bypass, such as adding fan capacity, upgrading the electrical distribution system, and conversion to a wet stack could be performed using proven equipment and techniques.
- The additional SO_2 emission reductions resulting from the scrubber upgrade are substantial, ranging from 68% to 89% reduction from the current emission levels, and are cost-effective.

A summary of our analyses is as follows:

TABLE 33—SUMMARY OF SCRUBBER UPGRADE RESULTS

Unit	2009–2013 3-Year avg. SO_2 emissions (eliminate max and min) (tons)	SO_2 Emissions at 95% control (tons)	SO_2 Emission reduction due to scrubber upgrade (tons)	SO_2 Emission rate at 95% control (lbs/MMBtu)
W. A. Parish WAP8	2,586	836	1,750	0.04
Monticello 3	13,857	1,571	12,286	0.06
Sandow 4	22,289	4,625	17,664	0.20
Martin Lake 1	24,495	3,706	20,789	0.12
Martin Lake 2	21,580	3,664	17,917	0.12
Martin Lake 3	19,940	3,542	16,389	0.11
Limestone 1	10,913	2,466	8,446	0.08
Limestone 2	11,946	2,615	9,331	0.08

We calculated the cost-effectiveness for each of these units. Because those calculations depended on information claimed by the companies as CBI we cannot present it here, except to note that in all cases, the cost-effectiveness was less than $600/ton. We invite the facilities listed above to make arrangements with us to view the full cost analysis for their units.

H. Summary of the Modeled Benefits of Emission Controls

Prior to doing the control cost evaluations discussed in the sections above, we conducted several steps in support of our review which was ultimately used in our proposed FIP. We initially conducted a Q/D analysis on all facilities in Texas, using the distances to Class I areas in Texas and surrounding states. This Q/D analysis narrowed the list of over 1,600 facilities to 38 facilities. We chose to use the CENRAP photochemical modeling platform with some minor upgrades to evaluate the 38 facilities and determine if this smaller subset of sources, or individual sources, would yield visibility benefits worth considering for reasonable progress analysis. We chose to use the CAMx photochemical model instead of

CALPUFF for several reasons, including:

- The large distances between sources and Class I areas are outside the typical range of CALPUFF. Because of the range, we were concerned that CALPUFF could overestimate impacts.
- Using a photochemical model allowed us to assess improvements on the 20% worst and the 20% best days.
- Using a photochemical model allowed us to use a more refined chemistry mechanism and use the same scientific tools used for reasonable progress analysis at Class I areas.
- CAMx has both PSAT and Plume-In-Grid capabilities, whereas the other available photochemical model CMAQ (Community Multi-scale Air Quality modeling system) did not have these tools.

Full details of our Q/D and initial evaluation of 38 facilities with CAMx are discussed further in Appendix A of our FIP TSD. Based on the results of modeling the 38 facilities, we further narrowed the list to the smaller group of sources that we evaluated in a second round of CAMx modeling. Please see Appendix A of our FIP TSD, where we describe in detail the different modeling runs we conducted for our review, our methodology and selection of emission rates, our modeling results, and our final modeling analysis that we used to evaluate the benefits of the proposed controls and their associated emission decreases on visibility impairment values. We used modeling results from the initial modeling and a second round of modeling to estimate the benefits of emission reductions from controls/control upgrades. Below we present a summary of our analysis and our proposed findings regarding the estimated visibility benefits of emission reductions based on the CAMx modeling results.

Our modeling focused on calculating the extinction and visibility impacts and benefits at the Wichita Mountains, the Guadalupe Mountains, and Big Bend primarily, but also included analysis at a number of other Class I areas in states surrounding Texas. In so doing, we focused on the same sources listed in Table 30, above, that we did in our control cost evaluations. In evaluating the impacts and benefits of potential controls, we utilized a number of metrics, including change in deciviews in 2018 and natural conditions situations, change in extinction, change in percentage of total extinction, recent actuals vs. CENRAP 2018 projections, etc. For a full discussion of our review of all the modeling results, and factors that we considered in evaluating and weighing all the results, precedents, please see Appendix A of our FIP TSD. Below, we present the modeled visibility impacts based on their percentage extinction levels for the 20% worst days for the Wichita Mountains, Big Bend, and the Guadalupe Mountains:

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Figure 1. Extinction level and percent of total extinction at the Wichita Mountains for 20% worst days for the 9 facilities

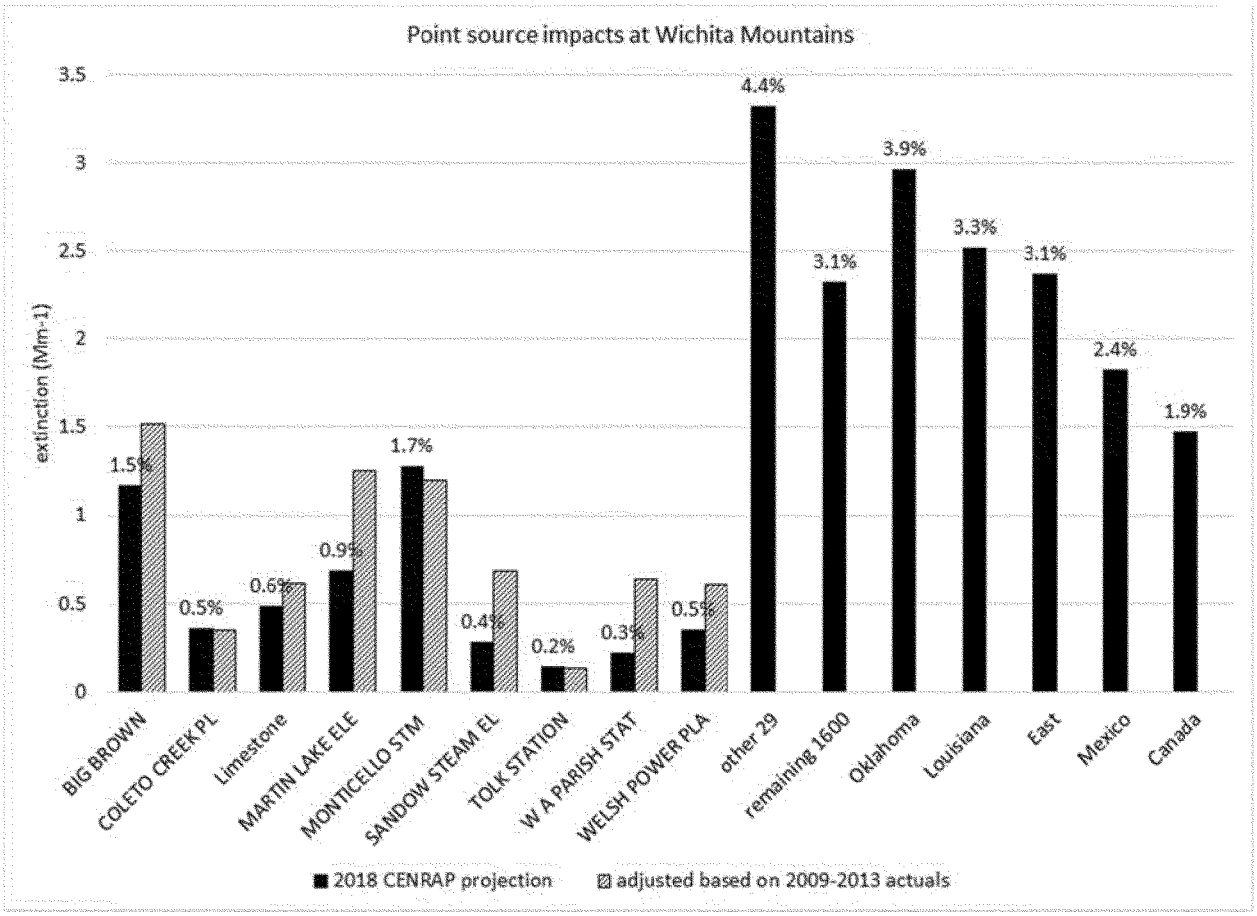


Figure 2. Extinction level and percent of total extinction at Big Bend for 20% worst days for the 9 facilities

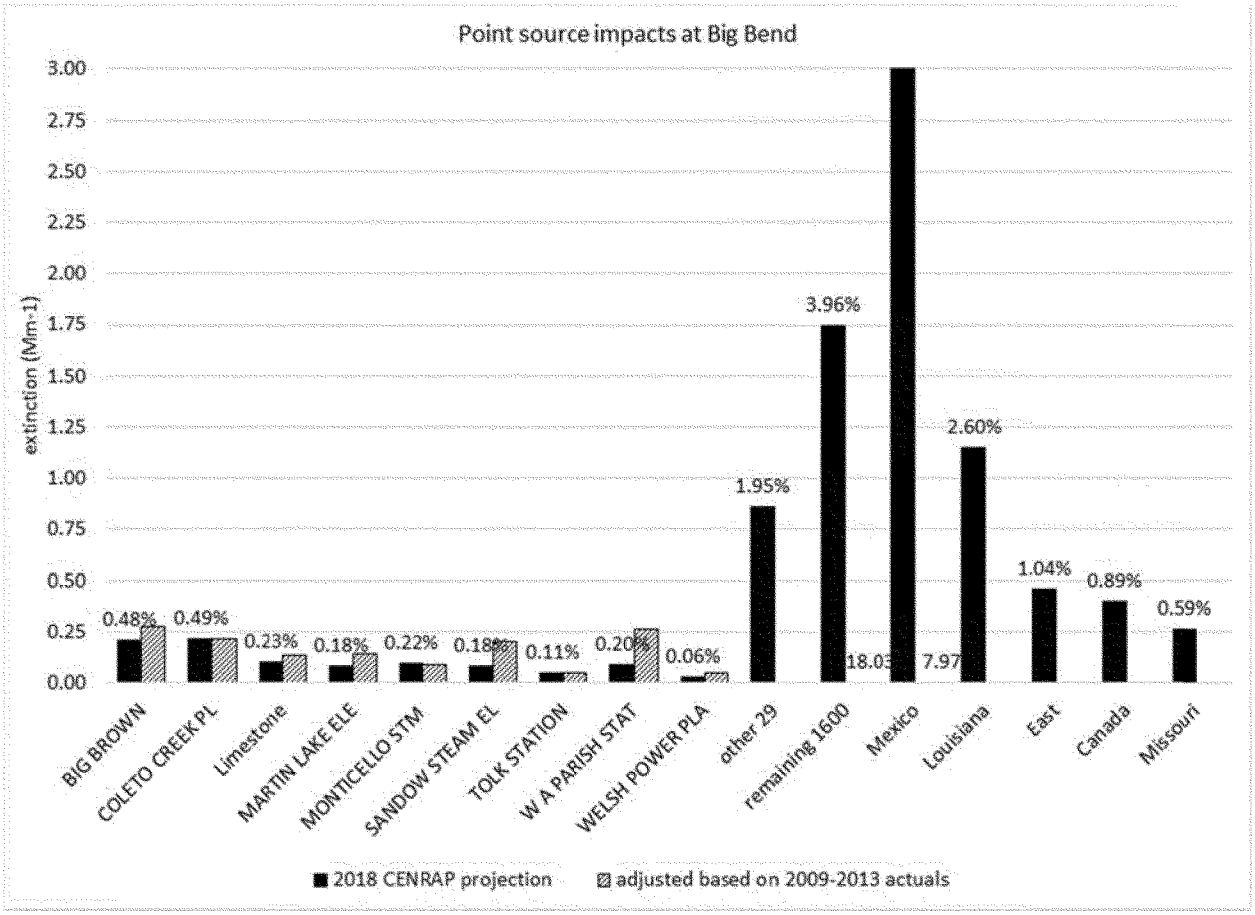
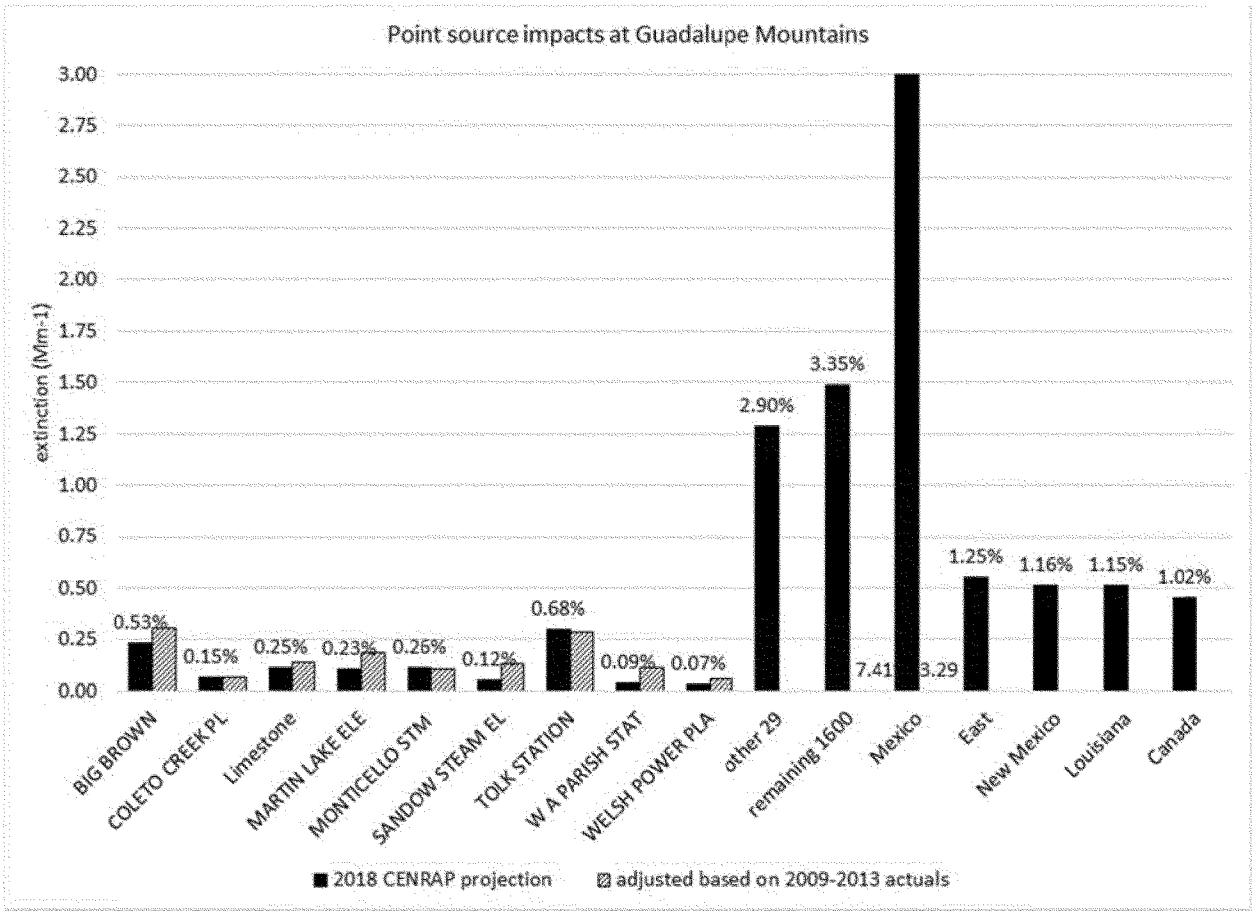


Figure 3. Extinction level and percent of total extinction at the Guadalupe Mountains for 20% worst days for the 9 facilities



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In Figures 1, 2, and 3, above, the visibility impacts from all of the units in Table 30 are represented, with the exception of San Miguel, for the reasons we discuss below in Section VII.I. In addition, the collective visibility impact from the remaining 29 sources which included San Miguel and 28 sources we elected not to include in our control cost analysis are also represented. As shown by Figure 1, a number of these facilities have significant visibility impacts at the Wichita Mountains. For instance, using actual emissions, Big Brown alone accounts for an impact equivalent to more than ⅓ of the total impact from point sources within the State of Oklahoma. Visibility impacts from these sources at Texas' Class I areas are much more limited.

In evaluating benefits of potential controls, we also considered estimated deciview improvements based on both a degraded 2018 background and a ''clean'' background based on average annual natural conditions, as shown in the tables below. Because our analysis is based on a full photo-chemical grid model that includes modeling all emissions in the modeling domain, the model results are inherently a degraded background analysis and the results are impacted by emissions from other sources. To estimate the full benefit of reductions on a source we have estimated the ''clean'' background results based on the modeled extinction impact levels for each source and calculated the del-dv based on annual average natural conditions. A true ''clean'' background model would not include interactions from emissions from other sources. Due to the inclusion of all these other sources at 2018 estimated emission levels, the estimated impacts from a source (or from controlling a source) are less than the results that would be obtained using emission levels of sources that would exist when natural conditions are achieved. We note that CALPUFF based modeling simulates 'clean' background conditions with no other sources included than the source(s) being evaluated. See our FIP TSD for more discussion on this issue. The deciview improvement based on the 2018 background conditions provides an estimate of the amount of benefit that can be anticipated in 2018 and the impact a control may have on the established RPG for 2018. However, this estimate based on degraded or ''dirty'' background conditions underestimates the visibility improvement that would be realized for the control options under consideration. Because of the non-linear nature of the deciview metric, as a Class I area becomes more polluted the visibility impairment from an individual source in terms of deciviews becomes geometrically less. Results based solely on a degraded background, will rarely if ever demonstrate an appreciable effect on incremental visibility improvement in a given area. Rather than providing for incremental improvements towards the goal of

natural visibility, degraded background results will serve to instead maintain those current degraded conditions. Therefore, the visibility benefit estimated based on natural or ''clean'' conditions is needed to assess the full benefit from potential controls. In our final decision for our North Dakota SIP and FIP,[304] we explained this by noting:

> 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.

The Eighth Circuit Court upheld this point in *North Dakota* v. *EPA*. 730 F.3d 750, 766 (8th Cir. 2013).

1. Visibility Benefits of DSI, SDA, and Wet FGD

We evaluated the visibility benefits of DSI, for the thirteen units depicted in Table 30 that currently have no SO_2 control. We evaluated all the units using the same control levels we employed in our control cost analyses. In summary, we evaluated these units at a DSI SO_2 control level of 50%, which we believe is likely achievable for any unit. We also evaluated each unit at its maximum recommended DSI performance level, of 80% SO_2 removal for an ESP installation and 90% SO_2 removal for a baghouse installation. As we note in Section VII.F, we believe these are maximum performance levels for DSI but we do not know whether a given unit is actually capable of achieving these DSI control levels. At the lower performance level we assumed, we conclude that the corresponding visibility benefits from DSI would also be close to half of the benefits from scrubbers resulting in the visibility benefits from scrubber retrofits being much more beneficial.[305]

We also evaluated the visibility benefits for scrubber retrofits (wet FGD and SDA) for these same units, assuming the same control levels corresponding to SDA and wet FGD that we used in our control cost analyses. The visibility benefits from DSI, SDA, and wet FGD are quantified specifically in Appendix A of our FIP TSD. Below, we present a summary of some of those visibility benefits:

TABLE 34—AVERAGE CHANGE IN DECIVIEW LEVELS AT THE WICHITA MOUNTAINS FOR THE 20% WORST DAYS

Unit	Visibility improvement 2018 background (Environ)					Visibility improvement (average natural conditions)				
	DSI Low	DSI High	SDA	WFGD	WFGD Upgrade	DSI Low	DSI High	SDA	WFGD	WFGD Upgrade
Big Brown 1	0.045	0.081	0.085	0.088	.....	0.225	0.401	0.423	0.436	.....
Big Brown 2	0.045	0.081	0.086	0.088	.....	0.226	0.403	0.425	0.438	.....
Coleto Creek 1	0.021	0.038	0.039	0.040	.....	0.105	0.189	0.196	0.200	.....
Limestone 1	.....	.....	.....	.....	0.027	.....	.....	.....	.....	0.135
Limestone 2	.....	.....	.....	.....	0.030	.....	.....	.....	.....	0.149
Martin Lake 1	.....	.....	.....	.....	0.047	.....	.....	.....	.....	0.234
Martin Lake 2	.....	.....	.....	.....	0.040	.....	.....	.....	.....	0.202
Martin Lake 3	.....	.....	.....	.....	0.037	.....	.....	.....	.....	0.185
Monticello 1	0.026	0.047	0.050	0.051	.....	0.132	0.236	0.249	0.254	.....
Monticello 2	0.024	0.043	0.046	0.047	.....	0.121	0.217	0.229	0.233	.....
Monticello 3	.....	.....	.....	.....	0.036	.....	.....	.....	.....	0.181
Sandow 4	.....	.....	.....	.....	0.062	.....	.....	.....	.....	0.312
Tolk 171b	0.004	0.006	0.006	0.007	.....	0.018	0.032	0.033	0.034	.....
Tolk 172b	0.004	0.007	0.007	0.007	.....	0.020	0.035	0.036	0.037	.....
WA Parish 5	0.012	0.022	0.023	0.023	.....	0.062	0.111	0.114	0.117	.....
WA Parish 6	0.013	0.024	0.025	0.025	.....	0.067	0.120	0.124	0.127	.....
WA Parish 7	0.011	0.019	0.020	0.020	.....	0.054	0.097	0.099	0.102	.....
WA Parish 8	.....	.....	.....	.....	0.003	.....	.....	.....	.....	0.015
Welsh 1	0.012	0.019	0.021	0.022	.....	0.059	0.094	0.105	0.109	.....
Welsh 2	0.012	0.019	0.021	0.022	.....	0.060	0.096	0.106	0.111	.....
Welsh 3	0.012	0.020	0.022	0.023	.....	0.063	0.101	0.111	0.116	.....

TABLE 35—AVERAGE CHANGE IN DECIVIEW LEVELS AT BIG BEND FOR THE 20% WORST DAYS

Unit	Visibility improvement 2018 background (Environ)					Visibility improvement (average natural conditions)				
	DSI low	DSI high	SDA	WFGD	WFGD upgrade	DSI low	DSI high	SDA	WFGD	WFGD upgrade
Big Brown 1	0.012	0.021	0.022	0.023	.....	0.046	0.082	0.086	0.089	.....
Big Brown 2	0.012	0.021	0.022	0.023	.....	0.046	0.082	0.087	0.089	.....
Coleto Creek 1	0.018	0.033	0.034	0.035	.....	0.071	0.128	0.133	0.136	.....
Limestone 1	.....	.....	.....	.....	0.008	.....	.....	.....	.....	0.033
Limestone 2	.....	.....	.....	.....	0.009	.....	.....	.....	.....	0.036
Martin Lake 1	.....	.....	.....	.....	0.008	.....	.....	.....	.....	0.030
Martin Lake 2	.....	.....	.....	.....	0.007	.....	.....	.....	.....	0.026
Martin Lake 3	.....	.....	.....	.....	0.006	.....	.....	.....	.....	0.023
Monticello 1	0.003	0.005	0.005	0.006	.....	0.011	0.020	0.021	0.022	.....
Monticello 2	0.003	0.005	0.005	0.005	.....	0.010	0.018	0.019	0.020	.....
Monticello 3	.....	.....	.....	.....	0.004	.....	.....	.....	.....	0.015

[304] 77 FR 20912 (Apr. 6, 2012).

[305] Our multiple CAMx runs yielded data on three or more levels of emissions (controlled and uncontrolled) on a number of facilities and based on the data a linear relationship between emission level and visibility impairment on a source specific basis is a reasonable analytical approach. See FIP TSD Appendix A for more details.

TABLE 35—AVERAGE CHANGE IN DECIVIEW LEVELS AT BIG BEND FOR THE 20% WORST DAYS—Continued

Unit	Visibility improvement 2018 background (Environ)					Visibility improvement (average natural conditions)				
	DSI low	DSI high	SDA	WFGD	WFGD upgrade	DSI low	DSI high	SDA	WFGD	WFGD upgrade
Sandow 4	.....	.....	.....	.....	0.026	.....	.....	.....	.....	0.102
Tolk 171b	0.002	0.003	0.003	0.003	.....	0.007	0.012	0.013	0.013	.....
Tolk 172b	0.002	0.003	0.003	0.004	.....	0.008	0.014	0.014	0.014	.....
WA Parish 5	0.007	0.013	0.013	0.014	.....	0.028	0.051	0.052	0.054	.....
WA Parish 6	0.008	0.014	0.015	0.015	.....	0.031	0.055	0.057	0.058	.....
WA Parish 7	0.006	0.011	0.012	0.012	.....	0.025	0.044	0.046	0.047	.....
WA Parish 8	.....	.....	.....	.....	0.002	.....	.....	.....	.....	0.007
Welsh 1	0.001	0.002	0.002	0.002	.....	0.005	0.008	0.008	0.009	.....
Welsh 2	0.001	0.002	0.002	0.002	.....	0.005	0.008	0.009	0.009	.....
Welsh 3	0.001	0.002	0.002	0.002	.....	0.005	0.008	0.009	0.009	.....

TABLE 36—AVERAGE CHANGE IN DECIVIEW LEVELS AT THE GUADALUPE MOUNTAINS FOR THE 20% WORST DAYS

Unit	Visibility improvement 2018 background (Environ)					Visibility improvement (average natural conditions)				
	DSI Low	DSI High	SDA	WFGD	WFGD Upgrade	DSI low	DSI high	SDA	WFGD	WFGD upgrade
Big Brown 1	0.014	0.024	0.026	0.027	.....	0.054	0.096	0.101	0.105	.....
Big Brown 2	0.014	0.025	0.026	0.027	.....	0.054	0.097	0.102	0.105	.....
Coleto Creek 1	0.006	0.010	0.011	0.011	.....	0.023	0.041	0.043	0.044	.....
Limestone 1	.....	.....	.....	.....	0.009	.....	.....	.....	.....	0.037
Limestone 2	.....	.....	.....	.....	0.010	.....	.....	.....	.....	0.041
Martin Lake 1	.....	.....	.....	.....	0.010	.....	.....	.....	.....	0.041
Martin Lake 2	.....	.....	.....	.....	0.009	.....	.....	.....	.....	0.036
Martin Lake 3	.....	.....	.....	.....	0.008	.....	.....	.....	.....	0.033
Monticello 1	0.004	0.006	0.007	0.007	.....	0.014	0.025	0.027	0.027	.....
Monticello 2	0.003	0.006	0.006	0.006	.....	0.013	0.023	0.024	0.025	.....
Monticello 3	.....	.....	.....	.....	0.005	.....	.....	.....	.....	0.019
Sandow 4	.....	.....	.....	.....	0.017	.....	.....	.....	.....	0.069
Tolk 171b	0.012	0.022	0.022	0.023	.....	0.048	0.085	0.087	0.090	.....
Tolk 172b	0.013	0.024	0.024	0.025	.....	0.052	0.094	0.095	0.098	.....
WA Parish 5	0.003	0.006	0.006	0.006	.....	0.013	0.023	0.024	0.024	.....
WA Parish 6	0.004	0.006	0.007	0.007	.....	0.014	0.025	0.026	0.027	.....
WA Parish 7	0.003	0.005	0.005	0.005	.....	0.011	0.020	0.021	0.021	.....
WA Parish 8	.....	.....	.....	.....	0.001	.....	.....	.....	.....	0.003
Welsh 1	0.002	0.003	0.003	0.003	.....	0.007	0.011	0.012	0.012	.....
Welsh 2	0.002	0.003	0.003	0.003	.....	0.007	0.011	0.012	0.012	.....
Welsh 3	0.002	0.003	0.003	0.003	.....	0.007	0.011	0.012	0.013	.....

The tables above show the estimated benefit (in deciviews) anticipated from the evaluated controls at each unit on the 20% worst days for each Class I area, considering both ''dirty'' background conditions projected in 2018 modeling completed by Environ and the ''clean'' background conditions consistent with the estimated annual average natural conditions. We weighed these del-dv benefits, as well as extinction benefits and percentage of total extinction basis information, as further discussed in our TSD, in making our proposed findings about the benefits of potential controls. For brevity we are not including all the information that we considered which is discussed in FIP TSD Appendix A. Based on the information presented here and in our TSD materials, we propose to find that installing either wet FGD or SDA scrubbers on five of these units would yield significant visibility improvements at the Wichita Mountains. These five units are: Big Brown 1 and 2, Coleto Creek, and Monticello 1 and 2. We propose to find that scrubber installations on Big Brown 1 and 2 would also yield significant benefits at both Guadalupe Mountains and Big Bend, and that a scrubber installation on the Coleto Creek unit would also yield significant visibility benefits at Big Bend.

In comparison to the above five units, we propose to find that the visibility benefits from installing scrubbers on the W. A. Parish 5, 6, and 7 units; and Welsh 1, 2, and 3 units would not yield large enough visibility benefits to be considered at this time.

We also evaluated the visibility benefits of installing scrubbers on Tolk units 171B and 172B, limiting our analysis to SDA. The visibility benefits of SDA scrubbers on the Tolk units are projected to occur mainly at the Guadalupe Mountains. We note that the deciview visibility benefits projected at the Guadalupe Mountains from controls on the Tolk units are smaller than those from scrubber upgrades at W. A. Parish or Welsh for impacts at the Wichita Mountains. However, when we evaluated other metrics, such as extinction benefit or percent of extinction benefits, we believe that the overall visibility benefit for installing scrubbers on the Tolk units was superior to either the W. A. Parish or the Welsh units. In particular, the Wichita Mountains has a much higher total extinction for the baseline and the 2018 projection than the Guadalupe Mountains, so the relative improvement

in extinction levels is higher when the Tolk units are controlled for the Guadalupe Mountains, than if the W. A. Parish or the Welsh units were controlled for the Wichita Mountains. Therefore, considering all the visibility benefits relative to the respective Class I areas, we propose to find that the visibility benefits from installation of dry scrubbers on the Tolk units would be significant and beneficial towards the goal of meeting natural visibility conditions at Guadalupe Mountains.

2. Visibility Benefits of Scrubber Upgrades

We also modeled the visibility benefits of those same units for which we conducted control cost analysis for upgrading their existing scrubbers. We assumed the same 95% control level we used in our control cost analyses. The visibility benefits from these scrubber upgrades are quantified specifically in Appendix A of our FIP TSD. Below, we present a summary of the del-dv visibility benefits. For the other visibility benefit results based on extinction and percentage of extinction see Appendix A of our FIP TSD.

TABLE 37—DECIVIEW IMPROVEMENT AT CLASS I AREAS FOR SCRUBBER UPGRADES

Emission unit	Control (%)	SO_2 Reduction (tpy)	WIMO		BIBE		GUMO	
			2018	avg. NC	2018	avg. NC	2018	avg. NC
Limestone 1	95	8,446	0.027	0.135	0.008	0.033	0.009	0.037
Limestone 2	95	9,331	0.030	0.149	0.009	0.036	0.010	0.041
Martin Lake 1	95	20,789	0.047	0.234	0.008	0.030	0.010	0.041
Martin Lake 2	95	17,917	0.040	0.202	0.007	0.026	0.009	0.036
Martin Lake 3	95	16,389	0.037	0.185	0.006	0.023	0.008	0.033
Monticello 3	95	12,286	0.036	0.181	0.004	0.015	0.005	0.019
Sandow 4	95	17,664	0.062	0.312	0.026	0.102	0.017	0.069
WA Parish 8	95	1,750	0.003	0.015	0.002	0.007	0.001	0.003

Our review of the impacts/benefits of scrubber upgrades on eight units at five facilities show that scrubber upgrades conducted at seven of the eight units would result in significant visibility improvements at the Wichita Mountains. These seven units are: Limestone 1 and 2; Martin Lake 1, 2, and 3; Monticello 3; and Sandow 4. We also project some visibility benefit at Big Bend, the Guadalupe Mountains and other Class I areas. We propose to find that the level of visibility improvement from a scrubber upgrade on W. A. Parish 8 to be relatively small in comparison to the other units we evaluated, and not large enough to consider as beneficial at this time.

I. Proposed Reasonable Progress and Long-Term Strategy Determinations

Below, we present our proposed reasonable progress and long-term strategy determinations for our Texas and Oklahoma FIPs. This includes proposed determinations for those units with no SO_2 controls for which we conducted DSI, SDA, and wet FGD cost analysis and visibility modeling. This also includes proposed determinations for those units already scrubbed to some degree, for which we conducted scrubber upgrade cost analysis and visibility modeling. Please see our FIP and Cost TSDs for more information.

1. Proposed Reasonable Progress and Long-Term Strategy Determination for San Miguel

We propose to find that the San Miguel facility has upgraded its SO_2 scrubber system to perform at the reasonably highest level that can be expected (94% based on a 2009–2013 average) based on the extremely high sulfur content of the coal being burned, and the technology currently available. We thus do not propose any further control. We propose to find that the San Miguel facility maintain a 30 Boiler Operating Day rolling average SO_2 emission rate of 0.60 lbs/MMBtu based on the most recent actual emissions data. We believe that based on the scrubber upgrades it has recently performed and its demonstrated ability to maintain an emission rate below this value on a monthly basis from December 2013 to June 2014 that it can consistently achieve this emission level. See our Cost TSD for more details about our analysis of the scrubber upgrades that San Miguel has performed on its unit. We are specifically soliciting comments on this proposed emission limit and the potential need for a slightly higher limit to provide sufficient operational headroom to demonstrate compliance.

2. Proposed Reasonable Progress and Long-Term Strategy Determination for Units Other Than San Miguel

In Section VII.F, we present the results of our SO_2 control cost analysis for those units listed in Table 30 with no SO_2 control. In Section VII.G, we present the results of our control cost analysis for upgrading those units equipped with underperforming wet FGD scrubbers. In Section VII.H, we present the results of our modeled visibility benefits for these controls. We believe that we have provided the technical analysis that was lacking in Texas' development of its RPGs for the Guadalupe Mountains and Big Bend, and in its consultations with Oklahoma for the development of the RPG for the Wichita Mountains. Further, we believe that our proposed control set, which we discuss below, developed through our reasonable progress four factor analysis, would ensure that Texas secures its share of the reductions needed for the RPGs of the Wichita Mountains, the Guadalupe Mountains, and Big Bend. Specifically, we propose to find that our technical analysis and control set makes whole our disapproval of:

- Section 51.308(d)(1)(i)(A), regarding Texas' reasonable progress four factor analysis.
- Section 51.308(d)(1)(i)(B), regarding Texas' calculation of the emission reductions needed to achieve the URPs for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(1)(ii), regarding Texas' RPGs for the Guadalupe Mountains and Big Bend.
- Section 51.308(d)(3)(i) regarding Texas' long-term strategy consultation.
- Section 51.308(d)(3)(ii) regarding Texas securing its share of reductions in other states' RPGs.
- Section 51.308(d)(3)(iii) regarding Texas' technical basis for its long-term strategy.
- Section 51.308(d)(3)(v)(C), regarding Texas' emissions limitations and schedules for compliance to achieve the RPGs for Big Bend and the Guadalupe Mountains.

We also believe that this technical analysis and control set makes whole our proposed disapproval of Oklahoma's submission under Section 51.308(d)(1), except for Section

51.308(d)(1)(vi), which we propose to approve. We believe our technical analysis provides the information that Oklahoma should have had during its consultations with Texas in order to determine whether sources in Texas should have been controlled to improve the visibility at the Wichita Mountains. We believe our proposed control set would ensure that Texas' share of the emission reductions are incorporated into Oklahoma's RPGs.

For all but one of the units we analyzed that currently have no SO_2 controls, even at the lower level of control of 50%, the cost-effectiveness of DSI was worse (higher $/ton) than either SDA or wet FGD, even with the latter options offering much greater levels of control and visibility benefit. At the higher 80% or 90% level of control, the cost-effectiveness of DSI was worse than either SDA or wet FGD in all cases. Consequently, we are not proposing that DSI be installed at any unit.

With the exception of Tolk,[306] all of the scrubber retrofits were analyzed on the basis of both SDA and wet scrubbers. The SDA level of control was assumed to be a maximum of 95% not to go below 0.06 lbs/MMBtu. The wet FGD level of control was assumed to be a maximum of 98% not to go below 0.04 lbs/MMBtu. As we discuss in our Cost TSD, the cost-effectiveness ($/ton) of wet FGD was better than SDA in all cases except for the Tolk and Welsh units, which burn Power River Basin (PRB) coal. However, even in those cases, the cost-effectiveness of wet FGD was only 0.5 to 0.8% greater than SDA. Given the greater visibility improvement of wet FGD over SDA, we propose to base our cost/benefit reasonable progress and long-term strategy determination on wet FGD, except for the Tolk units, due to their potential water issue.

3. Proposed Reasonable Progress and Long-Term Strategy Determination for Scrubber Upgrades

We propose to find that the cost-effectiveness of the scrubber upgrades ($600/ton or less) to be reasonable, and that on an individual basis, any reasonable amount of visibility improvement due to their installation justifies their cost. We believe this is the case for all of the scrubber upgrades except for the Parish 8 unit. Despite the same level of cost-effectiveness of the Parish 8 unit, we do not believe that the visibility benefits are large enough to justify the implementation of a scrubber upgrade on that unit. Therefore we propose that the scrubbers for the Sandow 4; Martin Lake 1, 2, 3; Monticello 3, and Limestone 1 and 2 units be upgraded to perform at a 95% control level. This level of control corresponds to the emission limits listed in Table 38, below.

4. Proposed Reasonable Progress and Long-Term Strategy Determination for Scrubber Retrofits

The cost-effectiveness of the scrubber retrofits for the Welsh and Parish units are within a $/ton range that we have previously found to be cost-effective in BART determinations. However, we do not believe that their individual projected visibility improvements merit the installation of scrubbers at this time. We encourage the State of Texas to re-evaluate this determination as part of its next regional haze SIP submittal.

Similar to the scrubber upgrades, we believe the scrubber retrofits for the Big Brown units to be cost-effective and we find the projected visibility benefits from them to be significant. We therefore propose that the Big Brown units meet emission limits corresponding to this evaluation. Our proposed SO_2 emission limits for the Big Brown units are shown in Table 38.

In comparison to the Big Brown units, the cost-effectiveness of the scrubber retrofits for the Monticello, Coleto Creek, and Tolk units are less, although still well within the range that we have found acceptable for BART. Also, in comparison to the Big Brown units, the visibility improvements projected to occur due to the installation of the scrubber retrofits are less. For instance, as we discuss above in Section VII.H, the visibility benefits of SDA scrubbers on the Tolk units are projected to occur mainly at the Guadalupe Mountains. Those visibility benefits are smaller than the visibility benefits at Wichita Mountains from scrubber upgrades at W. A. Parish or Welsh, which we are not proposing to control. However, when we evaluated other metrics, such as extinction benefit or percent of extinction benefits, we concluded that the overall visibility benefit for installing scrubbers on the Tolk units was superior to either the W. A. Parish or the Welsh units. Thus, we consider these visibility benefits to be significant. Consequently, we propose that the Monticello, Coleto Creek, and Tolk units meet SO_2 emission limits corresponding to this evaluation. Our proposed SO_2 emission limits for these units are shown in Table 38. In recognition of their lesser cost/benefit ratio, we are specifically soliciting comments on the appropriateness of one or more of these scrubber retrofits.

We propose that compliance be based on a 30 Boiler Operating Day (BOD) period. As the BART Guidelines direct, ''[y]ou should consider a boiler operating day to be any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.''[307] To calculate a 30 day rolling average based on boiler operating day, the average of the last 30 ''boiler operating days'' is used. In other words, days are skipped when the unit is down, as for maintenance. This, in effect, provides a margin of safety by eliminating spikes that occur at the beginning and end of outages. Although we are not conducting BART determinations, our reasonable progress guidance notes the similarity between some of the reasonable progress factors and the BART factors contained in Section 51.308(e)(1)((ii)(A), and suggests that the BART Guidelines be consulted regarding cost, energy and non-air quality environmental impacts, and remaining useful life. We are therefore relying on our BART Guidelines for assistance in establishing the emission limit averaging period as well.

TABLE 38—PROPOSED 30 BOILER OPERATING DAY SO_2 EMISSION LIMITS

Unit	Proposed SO_2 emission limit (lbs/MMBtu)
Scrubber Upgrades:	
Sandow 4	0.20
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0,06
Limestone 2	0.08
Limestone 1	0.08
San Miguel*	0.60
Scrubber Retrofits:	
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Tolk 172B	0.06
Tolk 171B	0.06

*As we note elsewhere, we do not anticipate that San Miguel will have to install any additional control in order to comply with this emission limit.

J. Treatment of Potential Error in Scrubber Upgrade Efficiency Calculations

In our Cost TSD, we discuss how we calculated the SO_2 removal efficiency of the units we analyzed for scrubber upgrades. We note that due to a number

[306] As we discuss in section VII.D.2, we are only considering SDA in our cost/benefit analysis for Tolk due to a potential water issue that may have energy and non-air quality impact considerations.

[307] 70 FR 39172 (July 6, 2005).

of factors we could not accurately quantify, our calculations of scrubber efficiency may contain some error. Based on the results of our scrubber upgrade cost analysis, we do not believe that any reasonable error in calculating the true tons of SO_2 removed affects our proposed decision to require emission reductions, as all of the scrubber upgrades we analyzed are cost-effective (low $/ton). In other words, were we to make reasonable adjustments in the tons removed to account for any potential error in our scrubber efficiency calculation, we would still propose to upgrade these SO_2 scrubbers. We believe we have demonstrated that upgrading an underperforming SO_2 scrubber is one of the most cost-effective pollution control upgrades a coal fired power plant can implement to improve the visibility at Class I areas.

However, our proposed FIP does specify a SO_2 emission limit that is based on 95% removal in all cases. This is below the upper end of what an upgraded wet SO_2 scrubber can achieve, which is 98–99%, as we have noted in our Cost TSD. We believe that a 95% control assumption provides an adequate margin of error for any of the units for which we have proposed scrubber upgrades, such that they should be able to comfortably attain the emission limits we have proposed. However, for the operator of any unit that disagrees with us on this point, we propose the following:

(1) The affected unit should comment why it believes it cannot attain the SO_2 emission limit we have proposed, based on a scrubber upgrade that includes the kinds of improvements (*e.g.,* elimination of bypass, wet stack conversion, installation of trays or rings, upgraded spray headers, upgraded ID fans, using all recycle pumps, etc.) typically included in a scrubber upgrade.

(2) After considering those comments, and responding to all relevant comments in a final rulemaking action, should we still require a scrubber upgrade in our final decision making action we will provide the company the following option to seek a revised emission limit after taking the following steps:

(a) Install a CEMS at the inlet to the scrubber.

(b) Pre-approval of a scrubber upgrade plan conducted by a third party engineering firm that considers the kinds of improvements (*e.g.,* elimination of bypass, wet stack conversion, installation of trays or rings, upgraded spray headers, upgraded ID fans, using all recycle pumps, etc.) typically performed during a scrubber upgrade. The goal of this plan will be to maximize the unit's overall SO_2 removal efficiency.

(c) Installation of the scrubber upgrades.

(d) Pre-approval of a performance testing plan, followed by the performance testing itself.

(e) A pre-approved schedule for 2.a through 2.d.

(f) Should we determine that a revision of the SO_2 emission limit is appropriate, we will have to propose a modification to our decision making to do so. It should be noted that any proposal to modify the SO_2 emission limit will be based largely on the performance testing and may result in a proposed increase or decrease of that value.

K. Proposed Natural Conditions for the Texas Class I Areas

As discussed in Section V.B.1, we propose to disapprove Texas' calculation of the natural visibility conditions for the Big Bend and Guadalupe Class I areas under Section 51.308(d)(2)(iii). The TCEQ used a refined approach to calculating the natural conditions for the Guadalupe Mountains and Big Bend. This approach, among other things, requires knowledge about the amount of coarse mass and soil that is attributable to natural sources. The TCEQ has provided data that supports the conclusion that a large portion of dust impacting visibility at its Class I areas is likely due to natural sources. We agree that dust storms and other blown dust from deserts are a significant contributor to visibility impairment at the Texas Class I areas that may not be captured accurately by our default method. However, we do not believe, as the TCEQ asserts, that all coarse mass and soil can be attributable to 100% natural sources.

Although we believe that some coarse mass and soil should be attributable to natural sources, we do not have the information necessary to determine how much should be attributable to natural sources. We therefore acknowledge that like the TCEQ, we cannot accurately reset the natural conditions for the Guadalupe Mountains and Big Bend by using the TCEQ's methodology, which depends on this information. In lieu of this, we propose to rely on the adjusted default estimates for the new IMPROVE equation from the Natural Conditions II committee,[308] which was the starting point for the Texas natural visibility calculations, but solicit comment on the acceptability of alternate estimates in the range between our default estimates and the Texas estimates. We propose that the natural conditions for the Guadalupe Mountains and Big Bend be set as follows:

TABLE 39—NATURAL CONDITIONS (NC II) FOR THE GUADALUPE MOUNTAINS AND BIG BEND

Class 1 area	20% Best days (dv)	20% Worst days (dv)
Guadalupe Mountains	0.99	6.65
Big Bend	1.62	7.16

We recommend that the State of Texas re-evaluate the natural conditions for its Class I areas in the next regional haze SIP.

L. Calculation of Visibility Impairment for the Texas Class I Areas

Using our proposed natural visibility conditions for the Guadalupe Mountains and Big Bend, we propose to reset the amount of natural visibility impairment for these Class I areas under Section 51.308(d)(2)(iv)(A). We do this by modifying the table we present in our TX TSD. We replace Texas' calculations of natural visibility for its Class I areas, with the adjusted default values (NC II), discussed above. We retain the baseline visibility values we proposed to approve, then recalculate the amount the baseline values exceed the natural visibility conditions. We propose that the natural visibility impairment for the Guadalupe Mountains and Big Bend be set as follows:

[308] Regional Haze Rule Natural Level Estimates Using the Revised IMPROVE Aerosol Reconstructed Light Extinction Algorithm, Copeland, S. A., et al, Final Paper # 48, available in our docket.; NC II, or new IMPROVE natural visibility conditions are available at: *http://vista.cira.colostate.edu/Docs/IMPROVE/Aerosol/NaturalConditions/NaturalConditionsII_Format2_v2.xls*, for which we have filtered the data for Texas Class I areas and which is also available in our docket.

TABLE 40—REVISED VISIBILITY METRICS FOR THE CLASS I AREAS IN TEXAS

Class I area	Haze index (deciviews)	
	Most impaired	Least impaired
Estimate of Natural Visibility Conditions		
Big Bend	7.16	1.62
Guadalupe Mountains	6.65	0.99
Baseline Visibility Conditions, 2000–2004		
Big Bend	17.30	5.78
Guadalupe Mountains	17.19	5.95
Estimate of Extent Baseline Exceeds Natural Visibility Conditions		
Big Bend	10.14	4.16
Guadalupe Mountains	10.54	4.96

M. Uniform Rates of Progress and the Emission Reductions Needed To Achieve Them

Section 308(d)(1)(i)(B) requires that we analyze and determine the rates of progress needed to attain natural visibility conditions by the year 2064 and consider the uniform rate of improvement in visibility and the emission reduction measures needed to achieve them. Below, we present the URPs for the 20% worst days for the Guadalupe Mountains and Big Bend, using the natural conditions we propose to establish above:

TABLE 41—URP FOR BIG BEND

Baseline conditions (dv)	Annual improvement needed to meet URP (dv)	Visibility at 2018 (dv)	Improvement needed by 2018 (dv)	Natural conditions at 2064 (dv)
17.30	0.17	14.93	2.37	7.16

TABLE 42—URP FOR THE GUADALUPE MOUNTAINS

Baseline conditions (dv)	Annual improvement needed to meet URP (dv)	Visibility at 2018 (dv)	Improvement needed by 2018 (dv)	Natural conditions at 2064 (dv)
17.19	0.18	14.73	2.46	6.65

Please see our FIP TSD for graphical representations of these URPs. We propose to find that it is not reasonable to provide for rates of progress at Wichita Mountains, Big Bend, or Guadalupe Mountains that would attain natural visibility conditions by 2064 (*i.e.,* the URP). Our demonstration that a slower rate of progress is reasonable is based on the reasonable progress analyses performed by us and Texas that considered the four statutory reasonable progress factors, as described above.

N. Reasonable Progress Goals and Demonstration

We are quantifying proposed RPGs (in deciviews) for the 20-percent worst days in 2018. The proposed RPGs for Oklahoma's Class I area, the Wichita Mountains, and Texas' two Class I areas, Big Bend and the Guadalupe Mountains, account for the emission reductions from the reasonable progress control measures identified above in our proposed regional haze FIPs. The proposed RPGs reflect the results of our reasonable progress analysis of point sources as described in detail in our FIP TSD. These proposed RPGs are established based on an adjustment of the 2018 RPGs established by Texas and Oklahoma that were based on the 2018 CENRAP modeling. We note that we do not anticipate implementation of the identified scrubber retrofits by the end of 2018. Therefore, we are only adjusting the RPGs established by the states to reflect the additional anticipated visibility benefit from the scrubber upgrades over the 2018 projected visibility conditions. The tables below show the new adjusted RPGs as well as the additional improvement that is anticipated once all the scrubber retrofits have been implemented sometime after 2018. These new RPGs provide for an improvement in visibility on the worst days during this planning period. Table 44 below estimates the RPG if all proposed controls were implemented by 2018.

TABLE 43—PROPOSED RPGS FOR 20% WORST DAYS BASED ON PREDICTED BENEFIT OF SCRUBBER UPGRADES BEYOND 2018 CENRAP PROJECTED VISIBILITY CONDITIONS.

	Baseline (dv)	2018 CENRAP Projection (dv)	Predicted additional benefit due only to FIP scrubber upgrades (dv)	Proposed RPG (dv)	Natural visibility	Number of years needed to reach natural visibility
Wichita Mountains	23.81	21.47	0.14	21.33	7.58	92
Big Bend	17.30	16.6	0.03	16.57	7.16	194
Guadalupe Mountains	17.19	16.3	0.04	16.26	6.65	159

TABLE 44—CALCULATED RPGS FOR 20% WORST DAYS BASED ON PREDICTED BENEFIT OF ALL PROPOSED CONTROLS BEYOND 2018 CENRAP PROJECTED VISIBILITY CONDITIONS

	Baseline (dv)	2018 CENRAP Projection (dv)	Predicted additional benefit due only to FIP scrubber upgrades (dv)	Additional benefit predicted due to FIP scrubber retrofits (dv)	Total benefit from proposed controls	RPG Assuming all controls in place by 2018	Natural visibility	Number of years needed to reach natural visibility
Wichita Mountains	23.81	21.47	0.14	0.30	0.45	21.03	7.58	82
Big Bend	17.3	16.6	0.03	0.09	0.12	16.48	7.16	173
Guadalupe Mountains	17.19	16.3	0.04	0.12	0.15	16.14	6.65	141

As discussed in more detail in the FIP TSD, current actual emissions for many of the units that we propose to control are higher than the projected CENRAP 2018 emission rate. Therefore, the actual visibility impact due to emissions from these sources and the anticipated benefit from controls are larger than the benefits calculated above based on the 2018 CENRAP projected visibility conditions. The table below summarizes the amount of visibility benefit we anticipate will occur from the implementation of our proposed FIP controls and the resulting emission reductions from the current actual average annual emissions.

TABLE 45—ANTICIPATED VISIBILITY BENEFIT DUE TO EMISSION REDUCTIONS FROM ACTUAL EMISSION LEVELS

	Predicted benefit due to FIP scrubber upgrades (dv)	Benefit predicted due to FIP scrubber retrofits (dv)	Total benefit from proposed controls (dv)
Wichita Mountains	0.28	0.33	0.62
Big Bend	0.07	0.10	0.17
Guadalupe Mountains	0.07	0.12	0.20

We propose to find that it is not reasonable to provide for rates of progress at the Wichita Mountains, Big Bend, or the Guadalupe Mountains that would attain natural visibility conditions by 2064 (*i.e.,* the URP). Our demonstration that a slower rate of progress is reasonable is based on the reasonable progress analyses performed by us and the states that considered the four statutory reasonable progress factors, as described above. Although progress is slower than the URP, the proposed FIP would provide for RPGs that reflect an improved rate of progress and a shorter time period to reach natural visibility conditions at each of the Class I areas, compared with the RPGs established by Texas and Oklahoma in their regional haze SIPs. We have provided an estimate of the number of years needed to meet natural visibility conditions at the rate of progress proposed by us as reasonable. We have also estimated the RPG and the number of years to meet natural visibility conditions if all proposed controls were in place by 2018. We note that this does not take into account the visibility benefit from scrubber retrofits included in this proposed FIP that will be implemented after 2018.

VIII. Our Evaluation of the Texas Infrastructure SIP Submittals for Interstate Transport and Visibility Protection

To determine whether the CAA Section 110(a)(2)(D)(i) requirement for visibility protection is satisfied, the SIP must address the potential for interference with visibility protection caused by the pollutant (including precursors) to which the new or revised NAAQS applies. Pollutants which could interfere with visibility protection include: (1) SO_2 (which is also a precursor for $PM_{2.5}$), (2) nitrogen oxides (which includes NO_2 and are precursors for ozone and $PM_{2.5}$) and (3) particulate matter.[309] An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the infrastructure SIP submittals for the ozone, $PM_{2.5}$, NO_2 and SO_2 NAAQS Texas indicated that the Regional Haze SIP fulfilled its obligation for addressing emissions that would interfere with measures required to be included in the SIP for any other state to protect visibility.

As we note above, we gave limited disapproval to the Texas Regional Haze SIP based on its reliance on CAIR. As

[309] Section II.A.3 of Appendix Y to Part 51—Guidelines for BART Determinations Under the Regional Haze Rule and 40 CFR 51.166(b)(i)(b).

explained in our limited disapproval of the Texas regional haze SIP, many states (including Texas) relied on the improvement in visibility expected to result from the implementation of CAIR in developing their long-term strategy.[310] Texas relied on its own CAIR SIP as legal justification for these planned controls and did not include separate enforceable measures in its regional haze SIP to ensure these EGU reductions. As CAIR has been replaced by CSAPR, and CSAPR is going into effect in 2015, we propose to determine that Texas may not rely on its regional haze SIP to ensure that emissions from Texas do not interfere with the measures to protect visibility in nearby states. We propose to disapprove Texas' SIP submittals for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2 and 2010 SO_2 NAAQS, with respect to interstate transport of air pollution and visibility protection. CSAPR and our proposed FIP, which relies on emission reductions from the implementation of CSAPR in lieu of BART, addresses this deficiency in the Texas SIP.

An additional reason for our proposed disapproval of the submittals for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$ and 2010 SO_2 NAAQS is our proposed conclusion that additional control of SO_2 emissions in Texas is needed to prevent interference with measures required to be included in the Oklahoma SIP to protect visibility. Our proposed FIP addresses this deficiency in the Texas SIP.

IX. Proposed Determination of Nationwide Scope and Effect

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' [311]

We propose to find and publish that this rule is based on a determination of nationwide scope and effect. The rule discusses our interpretation of multiple provisions of the Regional Haze Rule and explains how those provisions operate in the visibility-transport context. Our interpretation of our regulations is applicable to all states, not just Texas and Oklahoma. Consequently, our determination of nationwide scope and effect is ''consistent with the legislative history of the CAA, which evinces a clear congressional intent to 'centralize review of 'national' SIP issues in the D.C. Circuit.' '' [312] This determination is also appropriate because in the 1977 CAA Amendments that revised CAA Section 307(b)(1), Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has ''scope or effect beyond a single judicial circuit.'' [313] Here, the scope and effect of this rulemaking extends to two judicial circuits.

Accordingly, we propose to determine that this is a rulemaking of nationwide scope or effect such that any petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit.

X. Proposed Action

A listing of our proposed actions is provided below.

A. Texas Regional Haze

We propose to partially approve and partially disapprove a revision to the Texas SIP received from the State of Texas on March 31, 2009, that intended to address regional haze for the first planning period from 2008 through 2018. This revision was intended to address the requirements of the CAA and our rules that require states to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas. We propose to approve a portion of this SIP revision as meeting certain requirements of the regional haze program and to disapprove portions addressing the requirements related to RP, the long-term strategy and the calculation of natural visibility conditions. We propose a FIP to implement SO_2 emission limits on fifteen Texas sources, and to establish the natural visibility conditions at two Class I areas in Texas to address these issues. Specifically, we propose to disapprove the portions of the Texas regional haze SIP addressing the following regional haze rule requirements:

- 51.308(d)(1)(i)(A)
- 51.308(d)(1)(i)(B)
- 51.308(d)(1)(ii)
- 51.308(d)(2)(iii)
- 51.308(d)(2)(iv)(A)
- 51.308(d)(3)(i)
- 51.308(d)(3)(ii)
- 51.308(d)(3)(iii)
- 51.308(d)(3)(v)(C)

We propose a FIP to cure these defects in the Texas regional haze SIP. We propose to approve all other sections of the Texas regional haze SIP.

With regard to Texas' BART Rules, we propose a FIP to replace Texas' reliance on CAIR in 30 TAC 116.1510(d) with reliance on CSAPR. We propose to approve the remainder of the provisions in Texas' BART rules.

Our proposed regional haze FIP relies on the already promulgated CSAPR FIP for Texas at 40 CFR 52.2283–84 to satisfy the BART requirement for SO_2 and NO_X emissions from EGUs.

Our proposed FIP requires that the following SO_2 emission limits be met on a 30 BOD period.

TABLE 46—PROPOSED 30 BOILER OPERATING DAY SO_2 EMISSION LIMITS

Unit	Proposed SO_2 emission limit (lbs/MMBtu)
Scrubber Upgrades:	
Sandow 4	0.20
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0.06
Limestone 2	0.08
Limestone 1	0.08
San Miguel*	0.60
Scrubber Retrofits:	
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Tolk 172B	0.06
Tolk 171B	0.06

*As we note elsewhere, we do not anticipate that San Miguel will have to install any additional control in order to comply with this emission limit.

We propose that compliance with these limits be within five years of the effective date of our final rule for Big Brown Units 1 and 2, Monticello Units 1 and 2, Coleto Creek Unit 1, and Tolk Units 171B and 172B. Although this is not a BART action, this is the maximum amount of time allowed under the regional haze Rule for BART compliance. We based our cost analysis on the installation of wet FGD and SDA scrubbers for these units, and in the past we have typically required that scrubber retrofits under BART be operational within five years.

[310] 77 FR 33643 (June 7, 2012).

[311] 42 U.S.C. Section 7607(b)(1).

[312] *Texas* v. *EPA,* 2011 U.S. App. LEXIS 5654 at *15 (5th Cir. Feb. 14, 2011) (citing Admin. Conference of the U.S., Recommendations on Judicial Review Under the Clean Air Act, 41 FR 56767, 56769 (Dec. 30, 1976) (Comments of G. William Frick)).

[313] H.R. Rep. No. 95–294 at 323–24, reprinted in 1977 U.S.C.C.A.N. 1402–03.

We propose that compliance with these limits be within three years of the effective date of our final rule for Sandow 4; Martin Lake Units 1, 2, and 3; Monticello Unit 3; and Limestone Units 1 and 2. We believe that three years is appropriate for these units, as we based our cost analysis on upgrading the existing wet FGD scrubbers of these units, which we believe to be less complex and time consuming that the construction of a new scrubber. We solicit comments on alternative timeframes, of from two years up to five years from the effective date of our final rule.

We propose that compliance with these limits be within one year for San Miguel. We believe that one year is appropriate for this unit because we based our analysis on scrubber upgrades that San Miguel has already performed, and because it has demonstrated its ability to meet this emission limit. We are specifically soliciting comments on this proposed emission limit and the potential need for a slightly higher limit to provide sufficient operational headroom to demonstrate compliance.

Our proposed FIP also resets the natural conditions and the URPs for the Guadalupe Mountains and Big Bend Class I areas, and establishes new RPGs for the 20% worst days for these Class I areas.

We propose that this FIP will fully satisfy the FIP obligation stemming from our proposed disapproval of portions of the Texas SIP.

B. Oklahoma Regional Haze

We are also proposing to partially disapprove a portion of a revision to the Oklahoma SIP submitted by the State of Oklahoma on February 19, 2010. Specifically, we propose to disapprove the portion of the Oklahoma regional haze SIP that addresses the requirements of Section 51.308(d)(1), except for Section 51.308(d)(1)(vi).

We propose a FIP to reset Oklahoma's RPGs based on our analysis conducted in support of our proposed Texas FIP. We propose to find that the same controls we have proposed above in our Texas FIP also serve to cure the defects in these sections of Oklahoma's regional haze SIP as well, thus satisfying the FIP obligation stemming from our proposed disapproval of portions of the Oklahoma SIP.

C. Interstate Transport of Air Pollution and Visibility Protection

We propose to disapprove portions of Texas SIP submittals that address CAA provisions for prohibiting air pollutant emissions from interfering with measures required to protect visibility in any other state for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2 and 2010 SO_2 NAAQS (CAA Section 110(a)(2)(D)(i)(II) and visibility protection). Specifically, we propose to disapprove portions of the following SIP submittals made by Texas for new or revised NAAQS:

- April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual)
- May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual)
- November 23, 2009: 2006 24-hour $PM_{2.5}$
- December 7, 2012: 2010 NO_2
- December 13, 2012: 2008 8-hour Ozone
- May 6, 2013: 2010 1-hour SO_2 (Primary NAAQS)

We propose to determine that our regional haze FIP will satisfy our FIP obligation for interstate transport of air pollution and visibility protection.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 [314] and is therefore not subject to review under Executive Orders 12866 and 13563.[315] The proposed FIP applies to only eight facilities. It is therefore not a rule of general applicability.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. Section 3501 *et seq.* Because it does not contain any information collection activities, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's 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 today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements or create impacts on small entities. This proposed SIP action under Section 110 of the CAA will not in-and-of itself create any new requirements on small entities but simply approves or disapproves certain state requirements for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* emission limitations) may or will flow from this action does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. We have therefore concluded that, this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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

[314] 58 FR 51735 (October 4, 1993).

[315] 76 FR 3821 (January 21, 2011).

number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, Section 205 of 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.

EPA has determined that Title II of UMRA does not apply to this proposed rule. In 2 U.S.C. Section 1502(1) all terms in Title II of UMRA have the meanings set forth in 2 U.S.C. Section 658, which further provides that the terms ''regulation'' and ''rule'' have the meanings set forth in 5 U.S.C. Section 601(2). Under 5 U.S.C. Section 601(2), ''the term 'rule' does not include a rule of particular applicability relating to . . . facilities.'' Because this proposed rule is a rule of particular applicability relating to eight named facilities, EPA has determined that it is not a ''rule'' for the purposes of Title II of UMRA.

E. Executive Order 13132, Federalism

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

F. Executive Order 13175, Coordination with Indian Tribal Governments

This proposed action does not have tribal implications, because the SIP submittals the EPA is proposing to approve or disapprove would not have a substantial direct effect on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed rule does not have tribal implications as specified by Executive Order 13175 [316], nor will it impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA policy the EPA nonetheless is offering consultation to tribes regarding this rulemaking action. The EPA will respond to relevant comments in the final rulemaking action.

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

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks [317] 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 Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of SO_2 the rule will have a beneficial effect on children's health by reducing air pollution.

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

This proposed action is not subject to Executive Order 13211 [318] 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. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's 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 [319] 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 proposed rule, if finalized, 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 proposed federal rule limits emissions of SO_2 from eight facilities in Texas.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Dated: November 24, 2014.

Ron Curry,

Regional Administrator, Region 6.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be 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.*

[316] 65 FR 67249 (Nov. 9, 2000).

[317] 62 FR 19885 (Apr. 23, 1997).

[318] 66 FR 28355 (May 22, 2001).

[319] 59 FR 7629 (Feb. 16, 1994).

■ 2. Part 52 is proposed to be amended by adding paragraph (d) in Section 52.2284 and paragraphs (d) and (e) in Section 52.2304.

The additions read as follows:

Subpart SS—Texas

§ 52.2284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?

* * * * *

(d) Requirements for Martin Lake Units 1, 2, and 3; Monticello Units 1, 2, and 3, Limestone Units 1 and 2; Sandow Unit 4; Big Brown Units 1 and 2; Coleto Creek Unit 1; Tolk Units 1 and 2; and San Miguel affecting visibility.

(1) *Applicability.* The provisions of this section shall apply to each owner or operator, or successive owners or operators, of the coal burning equipment designated as: Martin Lake Units 1, 2, and 3; Monticello Units 1, 2, and 3, Limestone Units 1 and 2; Sandow Unit 4; Big Brown Units 1 and 2; Coleto Creek Unit 1; Tolk Units 1 and 2; and San Miguel.

(2) *Compliance Dates.* Compliance with the requirements of this section is required within 3 years of the effective date of this rule for Martin Lake Units 1, 2, and 3; Monticello Unit 3, Limestone Units 1 and 2; and Sandow Unit 4. Compliance with the requirements of this section is required within 5 years of the effective date of this rule for Big Brown Units 1 and 2; Monticello Units 1 and 2; Coleto Creek Unit 1; and Tolk Units 1 and 2. Compliance with the requirements of this section is required within one year for San Miguel. These compliance dates apply unless otherwise indicated by compliance dates contained in specific provisions.

(3) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the Clean Air Act and in parts 51 and 60 of this title. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes selective catalytic control units, baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

Boiler-operating-day means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

Daily average means the arithmetic average of the hourly values measured in a 24-hour period.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises any of the coal burning equipment designated in paragraph (a).

Regional Administrator means the Regional Administrator of EPA Region 6 or his/her authorized representative.

Unit means one of the coal fired boilers covered under paragraph (a) of this section.

(4) *Emissions Limitations.* SO_2 emission limit. The individual sulfur dioxide emission limit for a unit shall be as listed in the following table in pounds per million British thermal units (lb/MMBtu) as averaged over a rolling 30 boiler-operating-day period.

Unit	SO_2 Emission limit (lbs/MMBtu)
Sandow 4	0.20
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0.06
Limestone 2	0.08
Limestone 1	0.08
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Tolk 172B	0.06
Tolk 171B	0.06
San Miguel	0.60

For each unit, SO_2 emissions for each calendar day shall be determined by summing the hourly emissions measured in pounds of SO_2. For each unit, heat input for each boiler-operating-day shall be determined by adding together all hourly heat inputs, in millions of BTU. Each boiler-operating-day of the thirty-day rolling average for a unit shall be determined by adding together the pounds of SO_2 from that day and the preceding 29 boiler-operating-days and dividing the total pounds of SO_2 by the sum of the heat input during the same 30 boiler-operating-day period. The result shall be the 30 boiler-operating-day rolling average in terms of lb/MMBtu emissions of SO_2. If a valid SO_2 pounds per hour or heat input is not available for any hour for a unit, that heat input and SO_2 pounds per hour shall not be used in the calculation of the 30 boiler-operating-day rolling average for SO_2.

(5) *Testing and monitoring.*

(i) No later than the compliance date of this regulation, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for SO_2 on the units listed in Section (1) in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for SO_2 shall be determined by using data from a CEMS.

(ii) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2 and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 pounds per hour, or SO_2 pounds per million Btu emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive boiler operating days.

(6) *Reporting and Recordkeeping Requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, to the attention of Mail Code: 6PD, at 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS as required in this section, the

owner or operator shall comply with the following requirements:

(i) For each emissions limit in this section, comply with the notification, reporting, and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d).

(ii) For each day, provide the total SO_2 emitted that day by each emission unit. For any hours on any unit where data for hourly pounds or heat input is missing, identify the unit number and monitoring device that did not produce valid data that caused the missing hour.

(7) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(8) *Enforcement.*

(i) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(ii) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

* * * * *

§ 52.2304 Visibility protection.

* * * * *

(d) Portions of SIPs addressing noninterference with measures required to protect visibility in any other state are disapproved for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 1997 ozone, 2008 ozone, 2010 NO_2 and 2010 SO_2 NAAQS.

(e) *Measures Addressing Disapproval Associated with* NO_X and SO_2.

(1) The deficiencies associated with NO_X identified in EPA's disapproval of the regional haze plan submitted by Texas on March 31, 2009, are satisfied by Section 52.2283

(2) The deficiencies associated with SO_2 identified in EPA's disapproval of the regional haze plan submitted by Texas on March 31, 2009, are satisfied by Section 52.2284.

[FR Doc. 2014–28930 Filed 12–15–14; 8:45 am]

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Part III

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Miscellaneous Consumer Refrigeration Products; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2013–BT–TP–0029]

RIN 1904–AD44

Energy Conservation Program: Test Procedures for Miscellaneous Consumer Refrigeration Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is proposing new test procedures that would measure the energy efficiency of wine chillers and other related miscellaneous refrigeration products that maintain warmer compartment temperatures than refrigerators. These procedures would apply both to those products that use a vapor-compression refrigeration system and those that do not. DOE is also proposing new definitions and test procedures for cooled cabinets, refrigerators that do not use a vapor-compression refrigeration system, hybrid refrigeration products, which incorporate warm compartments such as wine storage compartments in products that otherwise provide the functions of refrigerators, refrigerator-freezers, or freezers, and ice makers. The proposal also seeks to clarify the definitions for refrigerators, refrigerator-freezers, and freezers.

DATES: DOE will hold a public meeting on Thursday, January 8, 2015 from 10 a.m. to 5 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than March 2, 2015. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. See Section V, ''Public Participation,'' for details.

Any comments submitted must identify the NOPR for Test Procedures for Miscellaneous Consumer Refrigeration Products, and provide docket number EE–2013–BT–TP–0029 and/or regulatory information number (RIN) number 1904–AD44. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: MiscResRefrigProd2013TP0029@ee.doe.gov*. Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation.''

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at regulations.gov. All documents in the docket are listed in the regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=105*. This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov* or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

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H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
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V. Public Participation
A. Attendance at Public Meeting
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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, *et seq.*; ''EPCA'' or, in context, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).) Part B of title III, which for editorial reasons was re-designated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' These include conventional consumer refrigerators, refrigerator-freezers, and freezers, which are among the subjects of today's notice. (42 U.S.C. 6292(a)(1)) The other products addressed by this notice, all of which are consumer products, are hybrid (or combination) refrigerators, refrigerator-freezers, and freezers (*i.e.*, products that include warm compartments such as wine storage compartments in products that otherwise perform the functions of refrigerators, refrigerator-freezers, or freezers), cooled cabinets (including wine chillers), refrigeration products that do not use vapor-compression refrigeration systems (*i.e.*, products that do not include a compressor and condenser unit as an integral part of the cabinet assembly), and standalone ice makers (*i.e.*, ice makers not contained within a refrigerator, refrigerator-freezer, or freezer), which this notice refers to generally as ''ice makers.'' DOE raised the possibility in an October 31, 2013, coverage determination proposal of adding all of these other products as covered products under EPCA. 78 FR 65223 (referred to in this notice as the October 2013 Coverage Proposal).[1]

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

A. General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that adoption or amendment of a test procedure is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, when amending a test procedure, DOE would determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1))

EPCA further requires that any new or amended DOE test procedure for a covered product integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if a separate test is technically feasible. (42 U.S.C. 6295(gg)(2)(A)) The current DOE test procedures for refrigerators, refrigerator-freezers, and freezers measure the energy use of these products during extended time periods that include periods when the compressor and other key components are cycled off. All of the energy these products use during the ''off cycles'' is already included in the measurements. The amended and new test procedures proposed in this notice would address standby and off mode energy use in a similar fashion. To address this EPCA requirement for ice makers, the notice proposes to integrate into the energy use measurement the energy consumed in an ice storage test in which the ice maker would be maintaining a full bin of ice rather than producing ice to fill the bin.

B. DOE Test Procedures for the Products in This Rulemaking

EPCA covers various specific consumer products identified in the Act, as well as any other product as to which DOE has determined that (1) coverage is necessary and appropriate for carrying out the purposes of EPCA and (2) the average annual energy use of the product is likely to exceed 100 kilowatt-hours per-household in households that use the product. (*See* 42 U.S.C. 6292) The statute precludes the coverage of any product ''designed solely for use in recreational vehicles and other mobile equipment.'' (42 U.S.C. 6292(a))

Refrigerators, refrigerator-freezers, and freezers are among the consumer products listed as covered products in EPCA. See 42 U.S.C. 6292(a)(1). The Act, however, does not define these terms, although it specifies that statutory coverage applies to a product of one of these types if it (1) can operate

[1] Although DOE has previously indicated its belief that wine chillers, and, by extension, cooled cabinets that use compressor and condenser systems are covered under EPCA, it nevertheless has recently proposed to add them as separately enumerated covered products. This is discussed below in Section I.A.

using alternating current electricity, (2) includes a compressor and condenser unit as an integral part of the cabinet assembly, and (3) is designed to be used with doors. *Id.* (These compressor/condenser-based products use what are commonly referred to as vapor-compression-based systems to provide cool air to the interior of the cabinet assembly.) DOE has adopted definitions for these products, which are located in 10 CFR 430.2.

The current DOE test procedures apply only to those refrigeration products that are identified as covered products in the text of EPCA at 42 U.S.C. 6292(a)(1). The test procedures that apply to basic models of these products manufactured prior to September 15, 2014, are located at 10 CFR part 430, subpart B, Appendix A1, Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers, and Appendix B1, Uniform Test Method for Measuring the Energy Consumption of Freezers. The DOE test procedures for models manufactured starting on September 15, 2014, are located in Appendices A and B to subpart B of part 430. DOE's current regulatory definitions for ''electric refrigerator'' and ''electric refrigerator-freezer,'' found at 10 CFR 430.2, exclude refrigeration products that are not designed to be capable of achieving storage temperatures below 39 degrees Fahrenheit (°F). This temperature threshold is not listed in EPCA. Although DOE has set a regulatory definition that includes limitations not found in EPCA, DOE is not precluded from expanding that regulatory definition. DOE has indicated that the term ''refrigerator'' as used in EPCA does not exclude products that are not designed to be capable of achieving storage temperatures below 39 °F, and that EPCA authorizes DOE to adopt test procedures and standards for those products. 75 FR 59470, 59486 (Sept. 27, 2010). DOE's purpose in adding the 39 °F criterion to its ''electric refrigerator'' definition was to draw a distinction between refrigerators and wine chillers. DOE drew this distinction on the grounds that these wine chillers were different from standard refrigerators because they are not suitable for fresh food storage. 66 FR 57845, 57846 (Nov. 19, 2001); 64 FR 37706 (July 13, 1999). DOE did not assert that EPCA excludes wine chillers from being considered as a class of refrigerator. *Id.*

Similarly, in a notice of proposed determination published in November, 2011, (the November 2011 Proposed Determination) and in its recent rulemaking to promulgate standards for refrigerators, refrigerator-freezers, and freezers, DOE again clearly indicated that it interprets EPCA as authorizing it to develop standards and test procedures for wine chillers, and many stakeholders agreed. See 76 FR 69147, 69149–50 (Nov. 8, 2011). See also 75 FR at 59486 (Sept. 27, 2010). Furthermore, construing a ''refrigerator'' as including wine chillers and other cooled cabinets using integrated compressor/condenser systems would be consistent with EPCA's statutory framework. Namely, they are designed to be used with doors, use a compressor and condenser unit as an integral part of the cabinet assembly, and operate on alternating current electricity. (42 U.S.C. 6292(a)(1))

Despite this history, DOE has also stated that the exclusion of wine chillers from its definition of ''electric refrigerator'' means that they are ''not a covered product.'' 64 FR 37706, 66 FR 37846; *see* 76 FR 57516, 57534 (Sept. 15, 2011). DOE notes that it has the authority to adopt test procedures and standards for consumer products if they are ''covered products.'' (*See* 42 U.S.C. 6293(b) and 6295(a)). In light of its past positions and its statutory authority to affirmatively establish coverage, DOE has decided to evaluate all of the varied consumer refrigeration products addressed in today's notice (including wine chillers) under the provisions of 42 U.S.C. 6292(a)(20) and (b), rather than proposing to expand the regulatory definition of refrigerator to include some of these products. See 78 FR 65223 (Oct. 31, 2013). Applying this approach requires that DOE issue a determination regarding the appropriateness of covering and then—if merited—set standards for these products using the applicable statutory criteria. See 42 U.S.C. 6292(b) and 6295(l).

DOE began examining whether to adopt energy conservation standards for the products addressed in this NOPR by issuing a framework document explaining the issues, analyses, and process the agency considered in developing standards. 77 FR 7547 (Feb. 13, 2012).[2] Among the issues discussed in the framework document were test procedures for cooled cabinets, to which the document referred generally as ''wine chillers.'' (Docket No. EERE–2011–BT–STD–0043, Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, No. 3 at pp. 21–22) As part of that discussion, DOE identified what it believed to be the key issues in developing test procedures for these products and specifically requested comment as to the existence and nature of any other key issues on this subject. *Id.* DOE also solicited written comments on these and the other matters addressed in the framework document and held a public meeting on February 20, 2012, at which it presented and solicited discussion on these issues. 77 FR at 7547 (Feb. 13, 2012).

This NOPR addresses products DOE categorizes as ''cooled cabinets,'' which include units commonly referred to as wine chillers, beverage centers, and beverage coolers. These cooled cabinets are not designed to maintain compartment temperatures below 39 °F. Thus, they do not meet the current regulatory definition of ''electric refrigerator'' in 10 CFR 430.2 and are not currently subject to DOE's energy efficiency regulations for refrigerators. As discussed above, DOE believes that those cooled cabinets that contain a compressor and condenser unit as an integral part of the cabinet assembly could be included within the definition of ''refrigerator'' as that term is used in EPCA. Nevertheless, DOE is evaluating vapor-compression-based cooled cabinets as miscellaneous refrigeration products under the provisions of 42 U.S.C. 6292(a)(20) and (b). See 78 FR 65223 (Oct. 31, 2013). Other cooled cabinets use thermoelectric or absorption technology rather than vapor-compression technology to provide refrigeration. These products are not currently covered under EPCA because the Act specifically excludes refrigerators that do not include a compressor and condenser unit as an integral part of the cabinet assembly. See 42 U.S.C. 6292(a)(1). In November 2011, DOE proposed to classify as ''covered products'' under EPCA these and other non-compressor consumer refrigeration products because they meet the criteria for coverage in 42 U.S.C. 6292(b), set forth above. 76 FR 69147 (Nov. 8, 2011) (the ''November 2011 Coverage Proposal''). DOE reiterated this view in its October 2013 Coverage Proposal. 78 FR at 65224–28 (Oct. 31, 2013).

This NOPR also addresses consumer products that combine a refrigerator (fresh food) compartment, a freezer compartment, or both fresh food and freezer compartments with a refrigerated but higher-temperature compartment for storing wine, other beverages, or other non-perishable items. DOE issued guidance on the treatment of such products in February 2011 (''Guidance

[2] The framework document is available at *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0043-0003.*

on Scope of Coverage for Hybrid Refrigeration Products Issued Feb. 10, 2011,'' No. 5, (''February 2011 Guidance'')).[3] However, the October 2013 Coverage Proposal and this notice propose an alternative treatment of such products. Some of them would meet one of the revised definitions proposed in this notice for ''refrigerator,'' ''refrigerator-freezer,'' or ''freezer,'' and would therefore fall into the class of products identified as covered by EPCA at 42 U.S.C. 6292(a)(1). Depending on the specific characteristics of the model, others would meet the proposed definition of a ''hybrid refrigeration product.'' These products are evaluated in today's notice as miscellaneous refrigeration products under the provisions of 42 U.S.C. 6292(a)(20) and (b). *See* 78 FR 65223 (Oct. 31, 2013). DOE has determined that the former group would continue to be tested using the current test procedures in Appendices A and B. The latter group would be tested using test procedures proposed in this notice. Additionally, this notice proposes to clarify the distinctions between the different product types and how to test them.

II. Summary of the Notice of Proposed Rulemaking

DOE is proposing to establish definitions and test procedures for several consumer refrigeration products whose energy efficiency DOE does not currently regulate. These products include wine chillers and similar products with compartment temperatures too warm to be suitable for food storage (collectively called ''cooled cabinets''); refrigeration products that are cooled with refrigeration system technologies such as thermoelectric and absorption-based systems that do not rely on compressor and condenser units; hybrid (combination) refrigerators, refrigerator-freezers, and freezers (*i.e.*, those that include a refrigerated but higher-temperature compartment for storing wine, other beverages, or other non-perishable items; DOE proposes the term ''cellar compartment'' to describe these warmer compartments); and ice makers. DOE is also proposing to make clarifying amendments to the definitions of refrigerator, refrigerator-freezers, and freezer. For all definitions that include a compartment temperature specification, DOE proposes to clarify that the compartments must be capable of maintaining the required temperatures during operation at an ambient temperature of 72 °F.

Today's notice proposes test procedures for cooled cabinets that would address testing set-up, temperature control adjustment, volume calculation, and energy use measurement and calculation. These test procedures would be nearly identical to the current test procedures used by the State of California to measure wine chiller efficiency. The California procedures are based on the DOE test procedure for refrigerators, but apply a different compartment standardized temperature and usage adjustment factor (0.85 instead of the 1.0 factor used in the DOE refrigerator test procedure). See California Code of Regulations, Title 20, Sections 1601 through 1608 (September 2012).[4] The proposed DOE test procedure for cooled cabinets would use a different adjustment factor than the California test (0.55 v. 0.85), which DOE believes better reflects household usage. In addition, this notice proposes that cooled cabinets using refrigeration technology other than vapor-compression would be tested in 72 °F ambient temperature conditions, rather than the 90 °F ambient temperature currently required in both Appendix A and Appendix B, and would use a different usage factor to account for this difference in test ambient temperature. This proposal is based on DOE's tentative conclusion that testing these products in an elevated ambient temperature would not appropriately simulate added loads, such as the load associated with door openings, because many of these products cannot maintain standardized compartment temperatures in the 90 °F ambient temperature test conditions.

This notice also proposes new test procedures for refrigerators that do not use vapor-compression refrigeration technology. These proposed test procedures would require the same 90 °F ambient temperature condition that is used for testing conventional refrigerators. DOE proposes this approach because refrigerators, which are intended to store fresh food, would be expected to maintain their compartment temperatures when subjected to the same door-opening and other loads that are simulated with closed-door testing in 90 °F temperature conditions. Failing to maintain compartment temperatures when subjected to such loads would constitute a food safety risk, which DOE does not consider to be appropriate for refrigerators. This approach differs from that proposed for cooled cabinets, which would be tested with a 72 °F ambient temperature as described in the previous paragraph.

Today's notice proposes test procedures for ''hybrid refrigeration products.'' DOE proposes that this term would include products that have freezer and/or fresh food compartments, but for which at least 50 percent of the refrigerated volume is comprised of cellar compartments that are not suitable for food storage. The proposal would establish procedures for setting temperature controls, calculating volume and adjusted volume, and measuring and calculating energy use for these products. Today's notice also proposes clarifying amendments to the test procedures for refrigerators, refrigerator-freezers, and freezers to address products that include cellar compartments such as wine storage compartments that occupy less than 50 percent of their total storage volume. Such products would not be included under the proposed definition for hybrid refrigeration products; these products would be classified as refrigerators, refrigerator-freezers, and freezers, and would be required to meet the applicable energy conservation standards for these product types. The proposal also includes clarifying amendments to the definitions for refrigerator, refrigerator-freezer, and freezer to better distinguish them from the new product types.

This notice also proposes new test procedures for ice makers. The proposed amendments include definitions for these products and test procedures indicating how to measure their ice production capacity (*i.e.*, harvest rate) and their annual energy use. The proposed annual energy use calculation would be based on a daily average ice production rate of 4 pounds per day. The annual energy use calculation would account for the energy use during active ice production as well as idle operation. The energy use during idle operation, called ice storage energy use, would account for energy use during times when the ice maker is maintaining a full bin of ice but not replacing ice used by a consumer. Including the ice storage energy use would address the statutory requirement to integrate measures of standby mode and off mode energy consumption into the overall energy consumption descriptor. (42 U.S.C. 6295(gg)(2)(A))

DOE's proposal for ice maker test procedures considers different ice maker design configurations. Specifically, the proposal provides a

[3] This and other DOE guidance documents are available for viewing at *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1.*

[4] Available at *http://www.energy.ca.gov/2012publications/CEC-400-2012-019/CEC-400-2012-019-CMF.pdf.*

different approach for measuring the energy use associated with ice storage for products that maintain ice storage temperature below freezing temperature than for products without cooled ice storage. Further, it provides different test procedures for batch-type and continuous-type ice makers.

All of the amended and new test procedures for these products would be added to the Code of Federal Regulations (CFR) at 10 CFR 430.23, and also at 10 CFR part 430, subpart B, appendices A (amendments for uniform test method for non-hybrid refrigerators and refrigerator-freezers with cellar compartments,[5] as well as all products newly covered by this proposal except ice makers), B (amendments to uniform test method for non-hybrid freezers with cellar compartments); and BB (new appendix with uniform test method for ice makers).

As explained above, this notice covers two groups of refrigeration products. The first group contains products included in 42 U.S.C. 6292(a)(1)—refrigerators, refrigerators-freezers, and freezers. Amended test procedures for refrigerators and refrigerator-freezers would be addressed in 10 CFR 430.23(a), and amended test procedures for freezers would be addressed in 10 CFR 430.23(b). DOE is proposing to make clarifying amendments to the definitions of refrigerator, refrigerator-freezer, and freezer found at 10 CFR 430.2. DOE is also proposing amendments to the test methods for these products found at Appendices A and B to subpart B of 10 CFR part 430 to clarify how non-hybrid refrigerators, refrigerator-freezers, and freezers with cellar compartments should be tested.

The second group falls under 42 U.S.C. 6292(a)(20) and (b)—cooled cabinets, non-compressor refrigerators, hybrid refrigeration products, and ice makers. Test procedures for all of these products except ice makers would be addressed in a new section 10 CFR 430.23(cc). Test procedures for ice makers would be addressed in a new section 10 CFR 430.23(dd). Definitions associated with these products would also be added to 10 CFR 430.2. Despite the fact that these products are treated separately, there are many similarities among certain of them that warrant applying similar test methods to those DOE currently applies to refrigerators and refrigerator-freezers. Therefore, DOE is proposing to amend 10 CFR part 430, subpart B, appendix A to address cooled cabinets, non-compressor refrigerators, and hybrid refrigeration products in addition to refrigerators and refrigerator-freezers. Test methods for freezers would continue to be found at 10 CFR part 430, subpart B, appendix B. Ice makers do not share these similarities. Therefore, DOE is proposing separate test methods for ice makers at 10 CFR part 430, subpart B, appendix BB.

When amending a test procedure, DOE typically determines the extent to which its proposal would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) DOE notes that most of the products addressed in this notice (*e.g.*, cooled cabinets, products not using vapor-compression refrigeration technology, and ice makers) are not currently covered by energy conservation standards or test procedures. Hence, there would be no change in measured energy efficiency by an amendment to a test procedure. While DOE's February 2011 Guidance previously laid out an approach regarding certain hybrid refrigeration products, this proposal, assuming a coverage determination is finalized, would alter that approach but not result in a change in measured energy use for purposes of 42 U.S.C. 6293(e).

III. Discussion

The discussion below details the various products addressed in today's proposal and the specific changes to the current regulations that would be made to accommodate the testing of these products. These products include all of those consumer refrigeration products that, for a variety of reasons, do not lend themselves to being readily tested under the current test procedures laid out in DOE's regulations. The proposal seeks to remedy this situation by providing manufacturers with the framework to test these refrigeration products. Table III–1 below lists the affected subsections and indicates where the proposed amendments would appear in each appendix or section.

TABLE III–1—DISCUSSION SUBSECTIONS

Section	Title	Affected Appendices or sections
III.A	Products Covered by the Proposed Rule 1. Refrigerators, Refrigerator-freezers, and Freezers. 2. Cooled Cabinets. 3. Non-Compressor Cooled Cabinets/Refrigerators. 4. Hybrid Refrigerators/Refrigerator-Freezers/Freezers. 5. Ice makers. 6. General Terms for the Groups of Products Addressed in this Notice. 7. Test Procedure Sections and Appendices Addressing the New Products.	10 CFR 430.2 and 10 CFR 430.23.
III.B	Elimination of Definition Numbering in the Appendices	Appendices A and B.
III.C	Removal of Provisions for Externally Vented Products	Appendix A.
III.D	Sampling Plans and Certification Reporting	10 CFR 429.61, 10 CFR 429.72, 10 CFR 429.134.
III.E	Compartment and Product Classification	10 CFR 429.14, 10 CFR 429.61, 10 CFR 430.2, Appendices A and B.
III.F	Cellar Compartments 1. Cellar Compartment Definition. 2. Cellar Compartment Standardized Temperature. 3. Cellar Compartment Temperature Measurement. 4. Cellar Compartments as Special Compartments. 5. Temperature Settings and Energy Use Calculations. 6. Volume Calculations. 7. Convertible Compartments.	Appendices A and B.
III.G	Test Procedures for Cooled Cabinets 1. Ambient Temperature and Usage Factor.	Appendix A.

[5] The notice proposes the term ''cellar compartment'' to refer to compartments with a temperature range warmer than that of fresh food compartments, for example, compartments that may be suitable for storage of wine.

TABLE III–1—DISCUSSION SUBSECTIONS—Continued

Section	Title	Affected Appendices or sections
	2. Light Bulb Energy.	
III.H	Non-Compressor Refrigeration Products	Appendix A.
	1. Ambient Temperature for Non-Compressor Refrigerators.	
	2. Refrigeration System Cycles.	
III.I	Extrapolation for Refrigeration Products other than Non-Compressor Products	Appendices A and B.
III.J	Hybrid Refrigeration Product Test Procedure Amendments	Appendix A.
	1. Ambient Temperature and Usage Factor.	
	2. Standardized Temperature, Temperature Control Settings, and Energy Use Calculations for Hybrid Refrigeration Products.	
III.K	Ice maker Test Procedure Amendments	10 CFR 430.2 and Appendix BB.
	1. Establishment of New Section 10 CFR 430.23(dd) and New Appendix BB for Ice makers.	
	2. Definitions for Ice makers.	
	3. Energy Use Metric for Ice makers	10 CFR 430.23(dd) and Appendix BB.
	4. Daily Ice Consumption Rate	Appendix BB.
	5. Test Conditions and Set-up.	
	6. Icemaking Test.	
	7. Ice Storage Test.	
	8. Ice Hardness for Continuous-Type Ice Makers.	
	9. Energy Use Calculations.	
III.L	Incidental Changes to Test Procedure Language to Improve Clarity	Appendices A and B.
III.M	Incidental Changes to Volume Calculation Instructions	Appendices A and B.
III.N	Removal of Appendices A1 and B1 from the CFR	Appendices A1 and B1.
III.O	Compliance With Other EPCA Requirements	No test procedure amendments are proposed in these sections.
	1. Test Burden.	
	2. Changes in Measured Energy Use.	
	3. Standby and Off Mode Energy Use.	

A. Products Covered by the Proposed Rule

Today's notice proposes new test procedures for several consumer refrigeration products DOE does not currently regulate. They include (a) cooled cabinets (*e.g.,* wine chillers) that do not meet the definition for ''refrigerator'' because their compartment temperatures are warmer than the 39 °F threshold established for refrigerators (*see* 10 CFR 430.2), (b) refrigeration products regardless of compartment temperature that do not use vapor-compression refrigeration technology (*i.e.,* no compressor and condenser unit used as an integral part of the cabinet assembly), (c) hybrid products, for which cellar compartments (*e.g.,* wine storage compartments) comprise at least half of the total refrigerated volume within a product that would otherwise meet the definitions for ''refrigerator,'' ''refrigerator-freezer,'' or ''freezer,'' and (d) ice makers. Collectively, these products (*i.e.,* products not currently covered by EPCA as a refrigerator, refrigerator-freezer, or freezer) are referred to by DOE as miscellaneous refrigeration products, and DOE has proposed a definition to distinguish them from the other consumer refrigeration products that DOE's regulations currently cover. The following sections discuss the products affected by this proposed rule and the manner in which DOE proposes to address them for the purposes of regulatory coverage, including (1) distinguishing between those items covered as consumer products from those covered as industrial equipment under EPCA and (2) the status of products currently covered as refrigerators, refrigerator-freezers, and freezers.

1. Refrigerators, Refrigerator-Freezers, and Freezers

Today's notice proposes amendments to the definitions for refrigerators, refrigerator-freezers, and freezers. These amendments would not change the meaning of the definitions, but in light of the proposed addition of numerous related refrigeration product types, these proposed changes would provide a consistent definition structure and improve clarity. These proposed amendments are described below.

DOE is proposing to clarify the compartment temperature ranges used for these products. The current definitions for ''electric refrigerator'' and ''electric refrigerator-freezer'' in 10 CFR 430.2 include cabinets that are ''designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C).'' DOE last modified these definitions in the December 2010 final rule. 75 FR at 78815–17 (Dec. 16, 2010). Prior to the 2010 rule, the definition for electric refrigerator included cabinets that are ''designed for the refrigerated storage of food at temperatures above 32 °F and below 39 °F.'' (66 FR 57845, at 57848 (Nov. 19, 2001). In 2010, DOE proposed to add the new language to the definition of electric refrigerator-freezer in order to clarify that that combination wine storage-freezer units without fresh food compartments are not refrigerator-freezers. 75 FR 29824, at 29829 (May 27, 2010) Responding to stakeholder concerns that most refrigerator-freezers can maintain fresh food temperatures above 39 °F (and the fact that most refrigerators can do the same), DOE modified both definitions to clarify that the ability to maintain temperatures above 39 °F does not preclude a product from being classified as a refrigerator or refrigerator-freezer. DOE also noted that this change was intended to clarify that a poorly constructed product that happens to be incapable of actually achieving 39 °F is not excluded from coverage. 75 FR at 78817.

DOE has observed that the current definition has created ambiguity. Specifically, as DOE noted in its 2010 rule, the phrase ''designed to be capable of achieving'' leaves room for products to be classified as refrigerators even though they cannot actually maintain temperatures that are safe for storing fresh food—provided they are ''designed to be capable'' of doing so. DOE's

concern in 2010 was to ensure that these products are not excluded from being ''covered products.''

To address these difficulties, DOE proposes to replace the phrase, ''designed to be capable of achieving [the specified temperature],'' with ''capable of maintaining compartment temperatures at [the specified temperature].'' With this modification, product classification could be definitively determined through testing and would rely on the product's actual capability to serve its intended purpose rather than relying on the design intent of the manufacturer. DOE believes that a clear delineation based upon actual product performance would ensure accurate product classification by manufacturers and enable more effective enforcement of the energy conservation standards. In addition to refrigerators, refrigerator-freezers, and freezers, DOE would apply this approach to the definitions for all refrigeration products whose performance is based on maintaining internal compartment temperatures.

As discussed in Section III.A.3, DOE understands that certain products marketed as refrigerators cannot maintain temperatures below 39 °F at ambient temperatures of 90 °F. The current definitions do not specify the ambient temperature at which a product must be capable of maintaining the specified temperature ranges within the cabinet. To clarify this issue, DOE proposes that the product must be capable of maintaining compartment temperatures as specified during operation at a typical room ambient condition of 72 °F. These proposed changes would appear in the product definitions in 10 CFR 430.2 and would reference product classification sections in the certification requirements in 10 CFR 429.14 and 429.61. DOE proposes this approach for all refrigeration products whose performance is based on maintaining internal compartment temperatures. DOE requests comments on these additional proposed modifications.

DOE's current definitions in 10 CFR 430.2 for refrigerator, refrigerator-freezer, and freezer require that the product be ''designed for the refrigerated storage of food.'' The use of the word ''designed'' and the fact that ''food'' is not defined has led to questions from manufacturers similar to those encountered with the temperature range language. As mentioned above, DOE believes a clear delineation based on product performance would ensure accurate product classification and enable more effective enforcement of the energy conservation standards. Furthermore, DOE sees no reason to exclude products that are not marketed or configured for food storage, provided that they are capable of maintaining the specified temperatures. Therefore, DOE proposes removing references to storage of food.

Section III.A.4 discusses DOE's proposal to define hybrid products as those for which warm compartments not capable of maintaining compartment temperatures below 39 °F comprise at least half of the refrigerated volume. Section III.F discusses DOE's proposal to call such warm compartments ''cellar compartments''. Although the definitions for refrigerators, refrigerator-freezers, and freezers found in 10 CFR 430.2 do not preclude the possibility that such warm compartments could be included as part of these products, they do not clarify whether such compartments could be included. DOE is proposing edits to these definitions to ensure a clear distinction between these products and the hybrid refrigeration products to be addressed in this proposed rule. Specifically, DOE proposes to clarify the definitions for refrigerator, refrigerator-freezer, and freezer by specifying that the product may include cellar compartments—so long as they comprise less than half of the product's refrigerated volume. DOE notes that specific test procedures associated with the cellar compartments in these products are discussed in sections III.F.3 and III.F.4.

DOE also proposes to amend the definitions in 10 CFR 430.2 for refrigerator, refrigerator-freezer, and freezer to provide a clear mechanism for determining whether a given basic model is a consumer refrigeration product or commercial refrigeration equipment. The current definitions do not make this distinction explicit, which has also created ambiguity. DOE's proposal is intended to reduce or eliminate situations in which DOE, manufacturers, and consumers must rely primarily upon inference or assumptions in order to make such determinations.

DOE's proposed definitions categorically exclude three types of products that would otherwise meet the definitions of refrigerator, refrigerator-freezer, and freezer. These three criteria, which are characteristics of commercial refrigeration equipment, are derived from a combination of sources, including statutory provisions, DOE analysis of the market for refrigeration products, and comments received from manufacturers. Specifically, DOE proposes to exclude from the definition any products: (1) With one or more permanently open compartments; (2) that do not include a compressor and condenser unit as an integral part of the cabinet assembly; or (3) that are certified under ANSI/NSF 7–2009 International Standard for Food Equipment—Commercial Refrigerators and Freezers, or ANSI/UL 471–2006 UL Standard for Commercial Refrigerators and Freezers.

Under this proposal, the criteria proposed in today's notice would be the primary means for determining which refrigeration products are covered consumer products. All refrigeration products that are excluded from coverage as consumer products by the three criteria in the definitions, but which meet the definition of a commercial refrigerator, refrigerator-freezer, or freezer under EPCA, would be considered covered as commercial refrigeration equipment and could be subject to the energy conservation standards in section 431.66 of 10 CFR part 431.

DOE proposes to revise the order of the requirements in the definitions of refrigerator, refrigerator-freezer, and freezer to create a parallel structure. Amending the definitions to follow the same structure would enhance readability and simplify product classification.

DOE is also proposing to remove the word ''electric'' from the definitions of ''electric refrigerator'' and ''electric refrigerator-freezer.'' The current definition for ''refrigerator'' in 10 CFR 430.2 indicates only that the product is an ''electric refrigerator.'' The actual characteristics of the product are detailed in the definition for ''electric refrigerator.'' Similarly, the definition for ''refrigerator-freezer'' in 10 CFR 430.2 references the definition for ''electric refrigerator-freezer.'' An early version of 10 CFR 430.2 defined ''refrigerator'' as ''an electric refrigerator or a gas refrigerator.'' See 42 FR 46140, 46143 (Sept. 14, 1977). This reference to ''gas refrigerator'' has since been deleted; therefore, DOE tentatively concludes there is little reason to retain definitions for both ''refrigerator'' and ''electric refrigerator.'' Hence, DOE proposes to eliminate the definitions for ''electric refrigerator'' and ''electric refrigerator-freezer,'' and to move the detailed descriptions to the definitions for ''refrigerator'' and ''refrigerator-freezer.'' DOE also notes that Appendix B uses the term ''electric freezer'', which is not currently defined, in sections 2.3 and 6.2.2. DOE proposes to change this term to ''freezer'' in these sections of the appendix. These changes would enhance clarity by eliminating duplicate terms. DOE requests comment on this proposal.

The definition for ''all-refrigerator'' currently appears in Appendices A and A1. Whether a product satisfies this definition can determine its product class as well as how to test it. For this reason, DOE proposes to move the definition for all-refrigerator from Appendix A to 10 CFR 430.2. Because Appendix A1 has not been valid for testing since September 15, 2014, and because DOE is proposing to remove Appendix A1 from the CFR as discussed in section III.N, DOE is not proposing to make an accompanying change in that appendix.

DOE notes that the current definition in 10 CFR 430.2 for electric refrigerator-freezer indicates that at least one compartment has attributes consistent with a fresh food compartment and that at least one compartment has attributes consistent with a freezer compartment. DOE proposes to clarify that the same compartment could not satisfy both of these requirements in a refrigerator-freezer—*i.e.,* at least one of the compartments is capable of maintaining compartment temperatures between 32 °F and 39 °F and at least one of the *remaining* compartments is capable of maintaining compartment temperatures below 8 °F.

Finally, DOE is proposing to add language to the freezer definition in 10 CFR 430.2 to clarify the distinction between freezers and ice makers, discussed below in Section III.A.5. Specifically, DOE is proposing to exclude from the freezer definition ''any refrigerated cabinet that consists solely of an automatic icemaker and an ice storage bin arranged so that operation of the automatic icemaker fills the bin to its capacity.'' Tests conducted by DOE indicate that some ice makers have refrigerated space that the product can cool to temperatures of 0 °F or below. (Cooled-Storage Ice Maker Test Summary, No. 3) Because many freezers contain automatic icemakers, DOE considered the potential difficulty of distinguishing ice makers from freezers. Typically, the ice storage bin of an ice maker becomes filled with ice during operation. In most cases, this would preclude use of the product to store items other than ice. However, one could consider a product very similar to an ice maker that has, in addition to the automatic icemaker and the ice storage bin, a compartment maintained at temperatures of 0 °F or below. Such a product would have space for storage of items other than ice and be considered a freezer. Consequently, the key distinctions between ice makers and freezers would include (a) many ice makers do not maintain internal temperatures at or below 0 °F, and (b) ice makers do not have space for storage of items other than ice.

DOE requests comment on all of these proposed changes to the definitions for refrigerator, refrigerator-freezer, and freezer.

2. Cooled Cabinets

DOE proposes adopting in 10 CFR 430.2 the term ''cooled cabinet'' to denote consumer refrigeration products such as wine chillers that do not meet the definition for ''refrigerator'' because their compartment temperatures are warmer than the 39 °F threshold established for refrigerators.

EPCA does not specify the temperature conditions that a product must meet to be considered a refrigerator. (42 U.S.C. 6292(a)(1)) DOE initially defined refrigerators using the term ''electric refrigerator'' to include products ''designed for the refrigerated storage of food at temperatures above 32 °F.'' 42 FR 46140, 46143 (Sept. 14, 1977). However, DOE modified this definition to exclude wine chillers by adding an upper limit of 39 °F to the temperature range cited in the refrigerator definition. 66 FR 57845, 57848 (Nov. 19, 2001) (explaining DOE's reasoning for altering the final definition it adopted for the term ''electric refrigerator'').

DOE further amended the definition for ''refrigerator'' as part of a final rule published on December 16, 2010. See 75 FR 78810, 78817. This revision clarified that a product is not necessarily disqualified from coverage as a refrigerator if its compartments can maintain average temperatures above 39 °F for some temperature control settings. *Id.* This modification to the refrigerator definition did not affect the coverage of products that are not designed to store fresh food at temperatures under 39 °F. DOE explained that it would consider initiating a future rulemaking to establish coverage and energy standards for wine chillers and related products. *Id.*

On February 13, 2012, DOE announced the availability of a framework document that discussed the process it would follow when considering potential energy conservation standards for wine chillers and other related products. 77 FR 7547. In that document, the agency noted that it was considering how to refer to products such as wine chillers that would not, through the use of ''wine'' in the name, suggest a limitation to products designed for wine storage. (Docket No. EERE–2011–BT–STD–0043, Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, No. 3 at p. 13) DOE received no comment on this issue and is proposing to use the term ''cooled cabinet'' to denote all products such as wine chillers that do not meet the definition for refrigerator because they are not capable of maintaining compartment temperatures below 39 °F (3.9 °C). DOE is proposing to state this explicitly in the definition so that the conditions under which the category of coverage is established will be clearly understood.

DOE is aware that the Australian/New Zealand Standard 4474.1–2007 [6] (AS/NZS 4474.1–2007) defines a ''cooled appliance'' as a refrigerating appliance that cannot be classified as a refrigerator, refrigerator/freezer, or freezer. AS/NZS 4474.1–2007 further defines a ''refrigerating appliance'' as a self-contained, factory-produced, insulated cabinet of a design and volume which is suitable for general household use, cooled by energy consuming means and intended for the preservation of foodstuffs, frozen or unfrozen. DOE believes that the term ''cooled cabinet'' is more precise than ''cooled appliance,'' since the word ''cabinet'' clarifies that the product is, or includes, a cabinet for storage purposes. Accordingly, DOE is proposing to define such a product as a cabinet having a source of refrigeration requiring electric energy input only and capable of maintaining compartment temperatures not below 39 °F (3.9 °C).

DOE is also aware that some products marketed for the storage of wine or beverages in a temperature range suitable for storage of such products, *i.e.,* in a range from 50 °F to 60 °F, may have the capability to maintain compartment temperatures close to 39 °F and in some cases cross over this threshold by one or two degrees. Rather than require such products to be regulated as refrigerators, and/or their compartments be tested as fresh food compartments, DOE is proposing to allow a small temperature crossover in the definition for cooled cabinet, provided that the product's temperature range extends through the range considered appropriate for wine. Specifically, DOE proposes that the definition specify that a cooled cabinet is capable of maintaining compartment temperatures either (a) no lower than 39 °F (3.9 °C) or (b) in a range that

[6] ''Australian/New Zealand Standard, Performance of Household Electrical Appliances—Refrigerating Appliances, Part 1: Energy Consumption and Performance,'' AS/NZS 4474.1:2007, available for purchase at *http://infostore.saiglobal.com/store/results2.aspx?searchType=simple&publisher=all&keyword=AS/NZS%204474.*

extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C). As discussed for the other products covered by this notice in the sections below, DOE is proposing also to use this description of temperature range to denote warm compartments, discussed as ''cellar compartments'' in section III.F.1, in its proposals for other products. Also, as discussed in section III.A.1, DOE clarifies that the term ''capable of maintaining'' when used in the product definitions in reference to the compartment temperatures used to delineate coverage (*e.g.,* 39 °F) applies to operation in a typical room ambient condition of 72 °F as specified in 10 CFR 429.14 and 429.61. DOE notes that products that are capable of maintaining compartment temperatures below 39 °F, but not less than 37 °F, and are not capable of maintaining compartment temperatures above 60 °F would be considered refrigerators or refrigerator-freezers, as appropriate.

DOE notes that the proposed definition would cover any product that is capable of maintaining a cooler internal storage temperature than the temperature outside the cabinet. Hence, it would apply to products that provide compartment temperatures warmer than the range that is typical for wine chillers.[7] DOE also notes that the proposed cooled cabinet definition would not be limited to products with alternating current power input. This aspect of the definition addresses the possibility that these products may be cooled using thermoelectric refrigeration systems, which can be powered by direct current as well as alternating current electric power. (Docket No. EERE–2011–BT–STD–0043, Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, True Manufacturing, No. 3 at pp. 21, 22)

DOE requests comment on the use of the term ''cooled cabinet'' to denote products such as wine chillers that maintain compartment temperatures that are warmer than 39 °F or between 37 °F and at least 60 °F, and on the proposed definition for these products.

[7] Wine chillers operate with compartment temperatures above 40 °F and generally near 55 °F (see 75 FR 59469, 59486 (September 27, 2010))

3. Non-Compressor Cooled Cabinets/Refrigerators

For refrigerators, refrigerator-freezers, and freezers, EPCA specifies that coverage applies to those products that include a compressor and condenser unit as an integral part of the cabinet assembly. (42 U.S.C. 6292(a)(1)(B)) These are products that use vapor-compression refrigeration technology. However, DOE is aware of consumer refrigeration products that cool their interiors using other refrigeration technologies, notably those products that use thermoelectric and absorption refrigeration. These refrigeration technologies are described in the framework document noted above. (Docket No. EERE–2011–BT–STD–0043, Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, No. 3 at p. 5) While DOE is aware of products sold as wine chillers and refrigerators that use thermoelectric and/or absorption technology, it is unaware of any such products sold as refrigerator-freezers or freezers.

DOE proposes to use the term ''non-compressor'' to describe refrigeration products that do not use vapor-compression refrigeration technology and to define non-compressor variants of refrigerators and cooled cabinets. DOE is proposing to define a non-compressor cooled cabinet as ''a cooled cabinet that has a source of refrigeration that does not include a compressor and condenser unit.'' A non-compressor refrigerator would be defined as ''a cabinet that has a source of refrigeration that does not include a compressor and condenser unit, requires electric energy input only, and is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C).'' The definition would also indicate that such a product could have a compartment capable of maintaining compartment temperatures below 32 °F (0 °C). The proposed definition would also specify that these products may have one or more cellar compartments, as described in section III.F. DOE's proposed definitions would account for hybrid and non-hybrid versions of these products (*i.e.,* having cellar compartments comprising at least half or less than half of their refrigerated volume, respectively). The definition for non-compressor refrigerator would clarify that these cellar compartments would comprise less than half of the product's refrigerated volume, and the definition for hybrid non-compressor refrigerators would denote the case in which these cellar compartments would comprise at least half of the product's refrigerated volume.

DOE notes that the proposed amendments to the term ''refrigerator'' used without a modifier explicitly exclude those products that do not use vapor-compression technology. (A ''refrigerator'' would be the type of product already covered by the statute.) Thus, a ''non-compressor cooled cabinet'' would be treated as a type of ''cooled cabinet,'' but a ''non-compressor refrigerator'' would not be a type of ''refrigerator.''

DOE considered whether the non-compressor refrigerator definition should state explicitly that the ability to maintain a 39 °F or lower compartment temperature applies when a product operates in a 90 °F ambient temperature condition. The current definition for refrigerator does not explicitly specify the ambient temperature associated with the 39 °F requirement. As discussed in section III.A.1, DOE interprets the temperature range capability for the purposes of determining product status to apply to typical room temperature ambient temperature conditions, *i.e.,* 72 °F. DOE has observed that many products marketed as refrigerators that do not use vapor-compression refrigeration technology cannot maintain the 39 °F standardized temperature that is used for fresh food compartments when tested using the required 90 °F ambient temperature condition. As described in section III.G.1, refrigerators are tested with closed doors in a 90 °F ambient temperature condition to simulate the added thermal loads associated with door openings and the insertion of warm food items. DOE test results for five non-compressor refrigeration products in 90 °F test conditions are summarized in Table III–2. Each of these products was marketed as a ''refrigerator'', but none could attain a 39 °F compartment temperature at the 90 °F test conditions—none were even within 9 °F of the target.

TABLE III–2—TEST RESULTS FOR THERMOELECTRIC AND ABSORPTION PRODUCTS MARKETED AS REFRIGERATORS

Product	Refrigeration technology	Lowest compartment temperature achieved in 90 °F ambient temperature
Model 1	Thermoelectric	57.5 °F
Model 2	Thermoelectric	48.2 °F
Model 3	Thermoelectric	48.6 °F
Model 4	Thermoelectric	58.2 °F
Model 5	Thermoelectric	61.1 °F
Model 6	Absorption	52.6 °F

In DOE's view, the ability of a product to maintain temperatures that are safe for food storage, *i.e.,* 39 °F or lower, is a key attribute of refrigerators. While most vapor-compression refrigerators generally have no trouble meeting this target, even in 90 °F ambient temperature conditions, DOE's investigation shows that most products, if not all, that are marketed as refrigerators and do not use vapor-compression technology fail to reach this target in 90 °F ambient temperature conditions. In spite of the inability of these products to reach safe food temperatures under these conditions, it may be inappropriate to classify them as cooled cabinets rather than refrigerators, because they are marketed as refrigerators, and DOE expects that they are used as such by consumers. Hence, the definition for non-compressor refrigerator does not indicate that the ability to maintain temperatures below 39 °F applies to operation in a 90 °F ambient temperature condition. This approach has consequences for testing, which is generally conducted in a 90 °F ambient temperature condition. Specifically, the compartment temperature for a non-compressor refrigerator is generally warmer than 39 °F when operating with the temperature control set in the coldest position. DOE's proposals for addressing this issue are discussed in Section III.H.1.

DOE notes that it is not at this time defining ''non-compressor refrigerator-freezers'' and ''non-compressor freezers'' because it is not aware of the existence of such products. However, this does not imply that such products would not be covered under any final coverage determination established for miscellaneous refrigeration products, as proposed by the October 2013 Coverage Proposal.

DOE requests comment on the use of the terms ''non-compressor cooled cabinet'' and ''non-compressor refrigerator'' to denote products that use refrigeration systems that do not use vapor-compression refrigeration technology. DOE also requests comment on the definitions proposed for these products, and on DOE's initial market research indicating that non-compressor refrigerator-freezers and non-compressor freezers are not available for sale.

4. Hybrid Refrigerators/Refrigerator-Freezers/Freezers

In 2007, Liebherr sought a waiver from the refrigerator test procedure for its combination freezer-wine chillers. It argued that it would be inappropriate to test these products with the wine storage compartment set at the 45 °F standardized temperature used at that time (prior to September 15, 2014) for the fresh food compartments of refrigerator-freezers. Liebherr petitioned to use a standardized temperature of 55 °F for the wine storage compartment to represent energy use because, in its view, the higher temperature would more accurately reflect the energy consumption at the intended temperatures of the wine storage compartments. DOE granted Liebherr's waiver request and permitted the manufacturer to use this alternative test procedure with the condition that the wine storage volume must constitute at least 50 percent of the total volume of the tested product. 72 FR 20333 (April 24, 2007).

On December 16, 2010, DOE issued a final rule that modified the definitions of ''electric refrigerator'' and ''electric refrigerator-freezer.'' The final rule's preamble discussion explained that combination products such as combination wine storage-refrigerators would be treated as covered products (*see* 75 FR 78810, 78817). DOE reinforced this statement with the February 2011 Guidance, which clarified that a wine storage compartment added to a product that would otherwise be a refrigerator or a refrigerator-freezer does not change the product's coverage status as a refrigerator or refrigerator-freezer. The February 2011 Guidance also indicated, however, that products combining freezer compartments and wine storage compartments are not covered. DOE indicated in its December 2010 final rule that it would address wine storage-refrigeration combination products in a separate rulemaking. 75 FR at 78817.

In its October 2013 coverage proposal, DOE proposed that some products that combine fresh food compartments with warmer compartments such as wine storage compartments (or that combine fresh food and freezer compartments with warmer compartments) would be considered to be hybrid products that are not subject to regulation as refrigerators and/or refrigerator-freezers. 78 FR at 65224 (Oct. 31, 2013). However, DOE did not, in that notice, define the term ''hybrid'' or elaborate on those characteristics that would distinguish hybrid products from refrigerators and refrigerator-freezers. In today's notice, DOE proposes that hybrid refrigeration products would be required to have wine storage or similar types of warm compartments that comprise half or more, but not all, of the refrigerated volume of the product. As described in section III.F.1, DOE proposes to use the term ''cellar compartments'' for such warm compartments.

DOE's proposal for the 50-percent minimum threshold is based on the expectation that a hybrid product must be designed, built, and marketed with an emphasis on the storage of beverages or other non-perishable items rather than food storage. DOE adopted this same threshold when granting Liebherr a waiver for a product incorporating freezer and wine storage compartments. 72 FR at 20334 (April 24, 2007). DOE is basing its proposal that the cellar compartment volume of a hybrid product be less than 100 percent of the refrigerated volume on the observation that a product comprised entirely of one or more cellar compartments would be a cooled cabinet rather than a hybrid product.

DOE proposes to define a hybrid refrigerator as a product that has ''at least half but not all of its refrigerated volume comprised of one or more cellar compartments.'' Otherwise the proposed definition is similar to the definition for a non-hybrid ''refrigerator.'' DOE is

proposing similar definitions for hybrid refrigerator-freezers and freezers. All of these definitions would appear in CFR 430.2. DOE's proposals also specify that these products have refrigeration systems that include a compressor and condenser unit and require electric energy input only.

DOE recognizes that refrigerators, refrigerator-freezers, and freezers may also have cellar compartments whose combined refrigerated volume is less than half the total refrigerated volume of the product. Section III.A.1 discusses DOE's proposal to address such compartments in the definitions for these products.

For hybrid non-compressor refrigerators, DOE proposes to define these items as referring to ''a non-compressor refrigerator with at least half of its refrigerated volume composed of one or more cellar compartments.''

DOE also proposes to include a general term for hybrid refrigeration products, which would specify that they include hybrid refrigerators, hybrid refrigerator-freezers, hybrid freezers, and hybrid non-compressor refrigerators.

DOE notes that the proposed definitions for hybrid products are based on the concept of compartments; *i.e.,* they would be products in which half or more of the volume comprises one or more cellar compartments. While compartments are generally considered to be enclosed spaces within a cabinet, the DOE test procedures do not define ''compartment.'' Section III.E.1 discusses the need for this term and DOE's proposal for a definition.

DOE requests comment on the definitions for hybrid products, including on the proposed requirement that hybrid status would require that at least 50 percent of the product's refrigerated volume comprise one or more cellar compartments.

5. Ice Makers

DOE proposes to define in 10 CFR 430.2 the term ''ice maker'' as ''a consumer product other than a refrigerator, refrigerator-freezer, freezer, hybrid refrigeration product, non-compressor refrigerator, or cooled cabinet that is designed to automatically produce and harvest ice, but excluding any basic model that is certified under NSF/ANSI 12–2012 *Automatic Ice Making Equipment.* Such a product may also include a means for storing ice, dispensing ice, or storing and dispensing ice.''

DOE's proposed definition indicates that the functions of an ice maker may include ice storage and/or ice dispensing. This part of the definition is consistent with the characteristics of ice makers designed and sold for consumer markets, as demonstrated by product information for a representative sample of ice makers (Product Information for Representative Ice Makers, No. 9). DOE is not aware of any ice makers that do not incorporate an ice storage bin for ice storage. The proposed definition would cover such products, although the proposed test procedures would not necessarily address them. DOE would consider developing additional test procedures to address such products if and when they are commercialized.

The proposed definition would distinguish ice makers from automatic commercial ice makers (ACIM)—ice makers would be consumer products as defined in 42 U.S.C. 6291(1). The definition would exclude from coverage any ice makers with basic models certified to NSF/ANSI Standard 12–2012, which is used to certify commercial ice makers. Therefore, any ice maker that is not certified to NSF/ANSI 12–2012 would be classified as an ice maker rather than an ACIM even if its harvest rate falls within the range for which there are energy conservation standards for ACIMs (*i.e.,* over 50 pounds of ice produced per day). (42 U.S.C. 6313(d)(1)) Likewise, any ice maker that is certified to NSF/ANSI 12–2012 would not be classified as an ice maker even if it produces 50 or less pounds of ice per day. Such a product may meet the definition for ACIM, even though there are currently no standards for ACIMs that produce less than 50 pounds of ice per day.

This proposed definition would also distinguish ice makers from other types of consumer refrigeration products. As discussed above, DOE considered the difficulty of distinguishing ice makers from other refrigeration products that have automatic ice makers. In order to prevent the ice maker definition from also covering models that would otherwise meet the definition for a freezer or other refrigeration product, DOE is proposing to exclude from the ice maker definition any product that meets the definition for one of the other refrigeration products covered by this notice.

DOE requests comment on its proposed definition for ice makers.

6. General Terms for the Groups of Products Addressed in This Notice

DOE proposes to define ''miscellaneous refrigeration product'' as a consumer refrigeration product other than a refrigerator, refrigerator-freezer, or freezer, which includes hybrid refrigeration products, cooled cabinets, non-compressor refrigerators, and ice makers. DOE also proposes to define ''consumer refrigeration product'' as a refrigerator, refrigerator-freezer, freezer, or miscellaneous refrigeration product. DOE requests comment on these proposed definitions.

7. Test Procedure Sections and Appendices Addressing the New Products

Appendices A and B, along with 10 CFR 430.23(a)–(b), contain the test procedures for refrigerators, refrigerator-freezers, and freezers. To limit the impact of the amendments that may be required to adopt test procedures for all of the additional products mentioned in this notice, DOE proposes to modify only Appendix A to address the new products whose primary function is to provide refrigerated storage within their cabinets: cooled cabinets, non-compressor refrigerators, and hybrid refrigeration products. This would mean that the test procedure requirements for hybrid freezers would be inserted into Appendix A rather than Appendix B. DOE proposes to adopt this approach to limit the duplication of amendments that would be required in both appendices if hybrid freezer test procedures were inserted into Appendix B. While the notice proposes some amendments to Appendix B, these amendments would apply to freezers that have cellar compartments that do not comprise a sufficiently large fraction of the product's refrigerated volume to meet the proposed hybrid refrigeration product definition—that is, a product that would continue to be classified as a freezer. DOE also proposes to adopt a new section 10 CFR 430.23(cc) for cooled cabinets, non-compressor refrigeration products, and hybrid refrigeration products.

Regarding ice makers, DOE is proposing to add a new section 10 CFR 430.23(dd) and a new Appendix BB for ice makers, because the proposed test procedure for these products has many differences compared to the test procedures for the other consumer refrigeration products.

B. Elimination of Definition Numbering in the Appendices

Appendices A, B, A1, and B1 each have an introductory section (''Section 1'') that defines terms that are important for describing the test procedures for these products. These sections are currently numbered such that each definition has a unique sub-section number. DOE believes that this approach is unnecessary because the definitions are all listed in alphabetical order. To improve the readability of these sections and to limit confusion

from renumbering when definitions are added or removed, DOE proposes to eliminate the sub-section numbering to simplify the structure of these sections of the appendices.

C. Removal of Provisions for Externally-Vented Products

Externally-vented refrigerators and refrigerator-freezers can reduce energy use by using outside air to help cool the condenser and compressor when the outside air is cooler than the inside air. The condenser and compressor of such a product would be surrounded by a box connected to air ducts that would penetrate the exterior wall of a house, allowing cooler air to be drawn by the condenser fan into the box to cool down these internal components. By using cooler outdoor air to cool these components, an externally-vented product can, in theory, achieve a higher level of efficiency by increasing the efficiency of the product's refrigeration system and reducing the thermal impacts associated with the condenser and compressor heat. DOE established test procedures for these products in Appendix A1 on September 9, 1997. 62 FR 47536. These provisions were retained for the more recent Appendix A. See 75 FR 78853, 78858–59.

Since the inception of this procedure, more than 15 years have elapsed and DOE, after having researched whether any refrigeration product employs this technology, is unaware of any externally-vented refrigeration products that are either currently available or that manufacturers plan to offer. Because these provisions do not appear to apply to any known products—or those that are likely to be produced—DOE proposes to remove the externally-vented products provisions from Appendix A to help simplify and improve its clarity. These changes would entail the removal of a number of provisions, including certain definitions, required testing conditions, testing measurement sections, and calculation methods. DOE also proposes to remove all references to externally vented products from the regulatory text in section 430.23(a) of subpart B. Specifically, DOE proposes to make the following modifications to section 430.23(a): (1) Remove all references to externally vented products from sections 430.23(a)(1) through 430.23(a)(5), (2) remove sections 430.23(a)(7) through 430.23(a)(9), and (3) re-number section 430.23(a)(10) as section 430.23(a)(7). DOE requests comment on this proposal.

D. Sampling Plans, Certification Reporting, and Measurement/Verification of Volume

DOE's sampling plans for both consumer and commercial refrigeration products all use identical statistical evaluation criteria for the samples. (*See,* for example, 10 CFR 429.14, 429.42, and 429.45.) DOE proposes to apply the same sampling plan criteria to all of the miscellaneous refrigeration products addressed in this test procedure notice. DOE proposes to establish a new section 10 CFR 429.61, which would be titled ''Miscellaneous refrigeration products,'' to address sampling plans and certification reporting for these products.

The information DOE typically requires to be included in a certification report generally falls into three broad categories, (1) general information applicable to any product, (2) public product-specific information, and (3) non-public information. DOE proposes to treat certain information that would be required to be submitted for cooled cabinets, hybrid refrigeration products, and non-compressor refrigerators as public—the annual energy use in kilowatt-hours per year, the total refrigerated volume of the product, and the total adjusted volume. The total adjusted volume for the product can be used to determine the allowed annual energy use under the standard. DOE would also require that certification reports for these products indicate whether they have variable defrost control or variable anti-sweat heater control, and whether the locations of temperature sensors were modified from their standard locations during testing, as is currently required for refrigerators, refrigerator-freezers, and freezers. While this information may not apply to most cooled cabinets, hybrid refrigeration products, and non-compressor refrigerators, DOE proposes to require its inclusion in the certification reports for any such product for which the information does apply. DOE would also require manufacturers to report other non-public details regarding variable defrost and variable anti-sweat heater control in a manner similar to what is currently required for refrigerators, refrigerator-freezers, and freezers.

Regarding ice makers, DOE is proposing to require that manufacturers provide the following information which would be treated as public for each certified product: the annual energy use in kilowatt-hours per year and the harvest rate in pounds per day. In case the model is a continuous-type ice maker (see further description of ice maker types in section III.K.2), manufacturers would also need to report whether the standard default value of ice hardness was used in the calculation of energy use, and, if it was not, the measured value of ice hardness.

DOE has not yet added ''miscellaneous refrigeration product'' to the list of covered products. Accordingly, DOE has not yet established product classes or product class definitions for this product type. Further, DOE has not yet proposed energy conservation standards for miscellaneous refrigeration products. DOE may modify these proposed requirements once these elements are finalized in order to harmonize the reporting elements with these other requirements. For example, if DOE were to propose and finalize an energy conservation standard for an ice maker that did not depend on that product's harvest capacity to verify whether its certified energy rating meets that standard, DOE might not require the reporting of this value.

On April 21, 2014, DOE amended its regulations to allow use of computer-aided design (CAD) models when determining volume for refrigerators, refrigerator-freezers, and freezers, adding a new section 429.72(c) within 10 CFR part 429 for this purpose. 79 FR 22319, 22336. DOE proposes to add a section 429.72(d) to establish the same approach for use of CAD for miscellaneous refrigeration products. DOE also amended its regulations to establish procedures for evaluating certified volume data and for determining whether to use certified or measured volume in calculating allowable energy use, adding a new section 429.134 for this purpose. *Id.* DOE proposes to add a section 429.134(c) to establish the same approach for miscellaneous refrigeration products.

DOE requests comment on its proposed sampling plans and certification report requirements for the products covered by this proposed test procedure. DOE also requests comments on its proposal to establish requirements for allowing use of CAD for volume measurements and for regulations associated with verifying certified volumes for miscellaneous refrigeration products.

E. Compartment and Product Classification

Section III.F.1 discusses a proposal to define ''cellar compartment'' as a compartment with a warmer temperature range than fresh food compartments. Although the term ''compartment'' has been used

extensively in the DOE test procedures, it has not been defined. DOE considered whether further clarification of the term is required. DOE notes that Sanyo commented on this topic in response to the framework document for the energy conservation standard rulemaking for wine chillers and miscellaneous products. Specifically, Sanyo commented that the term ''compartment'' requires greater clarity, as hybrid products create multiple temperature zones in a variety of ways. (Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, Docket No. EERE–2011–BT–STD–0043, Sanyo, No. 12 at p. 2) Sanyo did not, however, offer any suggestions on how to define that term.

DOE is aware of only one specific definition for ''compartment'' in finalized test procedures. The term is found in the Australian/New Zealand test procedures (AS/NZS 4474.1–2007). Those procedures define a compartment as ''an enclosed space within a refrigerating appliance, which is directly accessible through one or more external doors. A compartment may contain one or more sub-compartments and one or more convenience features.'' This use of the term ''compartment'' suggests that there may be multiple compartments in a refrigeration product of a given type. This approach is consistent with its use in parts of the DOE test procedures, such as the definition for ''electric refrigerator-freezer''—defined as a cabinet which consists of two or more compartments (*see* 10 CFR 430.2). AS/NZS 4474.1–2007 further defines a ''sub-compartment'' as ''a permanent enclosed space within a compartment or sub-compartment which is designated as being a different type of food storage space (*i.e.,* has a different compartment temperature range) from the compartment or sub-compartment within which it is located,'' and ''convenience features'', as enclosures or containers with temperature conditions which may or may not be different from the compartment within which they are located. The test standard indicates that ''compartment'' may be taken to mean ''compartment'' or ''sub-compartment'', as appropriate for the context. The ''sub-compartment'' and ''convenience feature'' definitions are similar to the concept of a ''special compartment'' as defined in the DOE test procedures—these are compartments other than butter conditioners, without doors directly accessible from the exterior, and with separate temperature control. (*See* Appendix A, section 1).

However, DOE notes that the AS/NZS 4474.1–2007 approach is not fully consistent with all of the uses of the term ''compartment'' in the DOE test procedures. In some cases, the term denotes all of the space within a refrigeration product that operates within a designated temperature range. For example, Appendix A, section 5.1.3 describes ''*the* fresh food compartment temperature'' and section 5.1.4 describes ''*the* freezer compartment temperature.'' Similarly, Appendix A, section 5.3 refers to *the* fresh food compartment volume and *the* freezer compartment volume for refrigerators and refrigerator-freezers.

After carefully evaluating the uses of the term ''compartment'', DOE was not convinced that any of them fully addresses the issue that Sanyo raised when suggesting that a definition for ''compartment'' should be established. Sanyo's comments responded to DOE's requests for comment on its framework document discussing potential energy conservation standards for wine chillers and miscellaneous refrigeration products. (Energy Conservation Standards for Wine Chillers and Miscellaneous Refrigeration Products, Docket No. EERE–2011–BT–STD–0043, Sanyo, No. 12 at p. 2) Among the issues raised by DOE were questions related to how DOE should regulate hybrid products, how to determine whether a product is a hybrid product, and how to establish test procedures and energy conservation standards for them. (Energy Conservation Standards Rulemaking Framework Document for Wine Chillers and Miscellaneous Refrigeration Products, Docket No. EERE–2011–BT–STD–0043, No. 3 at p. 68) Because Sanyo's comment was primarily concerned with clarifying the concept of ''compartment'' for the purpose of classifying basic models and conducting tests, DOE has focused on these issues in this notice, while questions regarding the establishment of energy conservation standards would be addressed in the ongoing energy conservation standard rulemaking for wine chillers and miscellaneous refrigeration products.

In light of the different uses of the term ''compartment'' that already exist in the test procedures, DOE concluded that developing a single definition for the term would not add greater clarity or uniformity to the test procedures, since it would require establishing a new term to denote some of the existing uses of the term. Instead, DOE is proposing to add a dual definition that mirrors its understanding of the term's two key meanings in the test procedures. DOE also proposes to add instructional language to its test procedures that will clarify how the concept of compartments should be used in classifying products and in conducting tests.

In order to determine which definition applies to a given basic model (*e.g.,* cooled cabinet, refrigerator, or hybrid refrigerator), DOE proposes that the person testing the unit must first determine the volume and temperature range of each compartment within the unit. The proposed language provides instructions for how to determine which spaces within a cabinet must be evaluated as compartments and how to configure those spaces to determine their volume. Once the volume and temperature range of each compartment has been identified, the product would be classified according to the existing definitions for refrigerator, refrigerator-freezer, and freezer, and the new definitions proposed in this notice for cooled cabinets, hybrid refrigeration products and non-compressor products. For example, if at least half, but not all, of the refrigerated volume of a particular refrigerated cabinet is comprised of a compartment or multiple compartments that are capable of maintaining compartment temperatures above 39 °F, but not below 39 °F, or in a range that extends no lower than 37 °F but at least as high as 60 °F, that cabinet would be classified as a hybrid refrigeration product. The compartment types within the remainder of the volume of the cabinet and its refrigeration system technology would dictate whether it is a hybrid refrigerator, hybrid refrigerator-freezer, hybrid freezer, or hybrid non-compressor refrigerator.

DOE proposes that manufacturers and testing facilities use the following principles when selecting spaces within a given basic model to evaluate as compartments: (1) Each compartment to be evaluated would be an enclosed space without subdividing barriers that divide the space—a subdividing barrier would be defined as a solid barrier (including those that contain thermal insulation) that is sealed around all of its edges to prevent air movement from one side to the other, or has edge gaps insufficient to permit thermal convection transfer from one side to the other that would cause the temperatures on both sides of the barrier to equilibrate; (2) each evaluated compartment would not be a zone of a larger compartment unless the zone is separated from the larger compartment by subdividing barriers; and (3) if a subdividing barrier can be placed in multiple locations, it would be placed in the median position, or, if it can be placed in an even number of locations,

it would be placed in the near-median position that results in less cellar compartment volume.

The first instruction would prevent multiple compartments from being evaluated in aggregate when classifying a basic model. This step would prevent, for example, considering a freezer compartment and fresh food compartment of a refrigerator-freezer to be all one single compartment. The second instruction would require that there be a substantial physical barrier between zones that are treated as separate compartments, which would prevent, for example, a single compartment with warm temperatures at the top and cool temperatures at the bottom from being considered two separate compartments. Although some products could maintain different temperature zones in such a fashion, DOE is concerned that allowing such zones to be considered separate compartments would significantly complicate classifying models because the separation between the zones would not be very well defined, and it could change depending on operating conditions and temperature control settings. The third instruction seeks to ensure consistency in how to prepare a subdivided compartment for testing set-up in case the consumer can adjust the position of a compartment-subdividing barrier.

DOE proposes that these instructions be followed when classifying a given basic model based on the volume of its compartment(s)—they would be inserted as a new paragraph within section 5.3 of Appendix A and Appendix B. DOE proposes to establish a definition for ''compartment'' allowing two meanings—one consistent with the proposed instructions for classifying products, and the second to denote all of the space within a product that is associated with a given temperature range. This definition would appear in Section 1 of both Appendices A and B. Finally, DOE proposes to include the set-up requirement for moveable subdividing barriers in section 2.7 of Appendix A and in section 2.5 of Appendix B. DOE requests comment on these proposals and their placement in the regulations.

DOE proposes to include in 10 CFR 429.14 and 429.61 descriptions of how manufacturers would determine the appropriate compartment classifications. DOE proposes that the product category would be based on measured compartment volumes and temperatures. The proposed provisions in 10 CFR 429.14 and 429.61 would require manufacturers to determine compartment volumes according to the provisions in the applicable test procedure, including the proposed clarifications to section 5.3 of Appendix A and Appendix B discussed in the paragraph above, and to base the product classification on these measured volumes. Compartment temperatures would be determined according to the applicable test procedure for the certified product, but at an ambient temperature of 72.0 °F±1.0 °F (22.2±0.6 °C). These measurements would determine the temperature a compartment is capable of maintaining. The measured compartment volumes and temperatures would determine the appropriate product category for certification based on the proposed product definitions in 10 CFR 430.2. These proposed provisions would help to clarify the distinction between different refrigeration products—*e.g.,* whether a given product is a miscellaneous refrigeration product or a refrigerator-freezer.

F. Cellar Compartments

While the term ''cellar compartment'' has a connotation associated with the storage of wine, DOE is tentatively proposing an approach that would determine the appropriate test method for a compartment based on that compartment's physical and performance characteristics. DOE is taking this approach in order to apply an objective set of criteria that would enable a manufacturer or testing facility to readily determine whether a given compartment should be treated as a cellar compartment for testing purposes. This additional level of clarity should provide manufacturers and testing facilities sufficient instruction to ensure that all parties test compartments in a consistent manner. DOE is also interested in whether other, more usage-neutral terms might be better suited in designating this type of compartment other than the term ''cellar.''

1. Cellar Compartment Definition

With coverage and definitions proposed for cooled cabinets, DOE also proposes to define the volume within a cabinet that is not designed to maintain compartment temperatures below 39 °F. DOE previously referred to these volumes as wine storage compartments. (*See, e.g.,* 77 FR 3559, 3569 (Jan. 25, 2012).) However, using ''wine storage compartment'' could potentially conflict with DOE's goal of using terms that do not suggest a specific cooling application. AS/NZS 4474.1–2007 includes a definition for ''cellar compartment'' to describe a compartment designed to reach temperatures warmer than those of fresh food compartments. DOE proposes adopting this term and defining it as ''a refrigerated compartment within a consumer refrigeration product that is capable of maintaining compartment temperatures either (a) no lower than 39 °F (3.9 °C), or (b) in a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C).''

However, DOE is not proposing to use the same definition as AS/NZS 4474.1–2007, which applies a complicated set of requirements for classifying cellar compartments.[8] DOE believes that its proposed definition sufficiently distinguishes cellar compartments from fresh food and freezer compartments without the need for the more complex requirements set out in the AS/NZ protocol.

As with the use of the term ''compartment'' for freezer compartments and fresh food compartments, DOE proposes that the term ''cellar compartment'' would be used in different ways, as described in section III.E. For example, one would be able to consider a single cellar compartment within a wine chiller that has multiple cellar compartments. However, one would also be able to consider ''*the* cellar compartment temperature'' or ''*the* cellar compartment refrigerated volume,'' concepts that would refer to the entire cellar compartment space within the product in the same way that this concept is applied in sections 5.1.3 and 5.3 of Appendix A for fresh food compartments.

DOE invites comment on its definition for cellar compartment.

2. Cellar Compartment Standardized Temperature

In order to ensure that energy test results are both repeatable and representative of consumer use, the DOE test procedures require the use of compartment temperatures that target standardized temperatures representative of those that are typical of consumer usage. For example, the standardized freezer compartment temperature for the DOE test of a freezer is 0 °F (*see* Appendix B, section 3.2). For cellar compartments, DOE proposes to specify a standardized temperature of 55 °F. This temperature has already

[8] For example, the average temperature in such a compartment must, for at least one setting of the controls, be within the range 8 °C to 14 °C (46 °F to 57 °F) when tested in a 32 °C (90 °F) ambient temperature condition—however, for some product types, if the product has no fresh food compartment, a temperature within this range must also be attainable when tested in 10 °C and 43 °C ambient temperature conditions. *See* AS/NZS 4474.1–2007, sections 3.6 and 3.6.3 and Table 3.2.

been adopted as a standardized test temperature for wine storage compartments in the test procedures for wine chillers adopted by California (2012 Appliance Efficiency Regulations, CEC–400–2012–019–CMF, Table A–1, p. 70), Canada (Energy Performance and Capacity of Household Refrigerators, Refrigerator-Freezers, Freezers, and Wine Chillers, Canadian Standards Association, Standard C300–08 (''CSA C300–08''), section 5.3.6.2), and the Association of Home Appliance Manufacturers (AHAM) (AHAM HRF–1–2008, section 5.6.2), as well as in DOE test procedure waivers for products combining wine storage and other compartments (*see,* for example, the decision and order notices granting waivers to Liebherr (72 FR 20333 (Apr. 24, 2007)) and Sanyo (77 FR 49443 (Aug. 16, 2012))). It is also very close to the 12 °C (54 °F) temperature already adopted in AS/NZS 4474.1–2007, Table 3.5, for cellar compartments. Because a standardized temperature of 55 °F has already been widely adopted, this requirement is familiar to industry and is based on an engineering approach that has been vetted and reviewed. In addition, DOE market research of products with cellar compartments revealed common temperature ranges of 45 °F to 65 °F, with 55 °F often representing the most common target temperature used. Accordingly, DOE is proposing to modify section 3.2 of Appendix A to require a 55 °F standardized temperature be used for cellar compartments.

DOE requests comment on its selection of 55 °F as the cellar compartment standardized temperature.

3. Cellar Compartment Temperature Measurement

The DOE test procedures provide instructions for measuring compartment temperatures during tests. For example, section 5.1 of Appendix A requires that temperatures be measured at the locations prescribed in Figures 5.1 and 5.2 of AHAM HRF–1–2008. Section 5.1.1 of Appendix A indicates that the compartment temperature at any given time be equal to the average at that time of the temperatures measured by all sensors placed in that compartment. Similarly, section 5.1.2 of Appendix A indicates that the measured compartment temperature for the test is based on a time average of the compartment temperatures recorded during the test period. Finally, section 5.1.3 of Appendix A requires that the fresh food compartment temperature be calculated as the volume average of the temperatures of the fresh food compartments within the product, and section 5.1.4 provides a similar requirement for freezer compartments.

With respect to temperature sensor placement within a compartment, section 5.5.5.4 of AHAM HRF–1–2008, which is referenced in the DOE test procedure, requires that the temperature measurement of wine storage compartments in wine chillers follow the same sensor placement requirements as fresh food compartments. DOE proposes to adopt the same approach for the measurement of cellar compartment temperatures in cooled cabinets and in hybrid refrigeration products. To implement this step, DOE is proposing to add a reference to cellar compartments in section 5.1 of Appendix A, indicating that temperature sensor placement within these compartments would be performed as indicated in Figure 5.1 of AHAM HRF–1–2008. DOE also proposes to require volume-weighted averaging of cellar compartment temperatures in cases where there are multiple cellar compartments, similar to the current requirements for volume-weighted averaging of fresh food and freezer compartments in sections 5.1.3 and 5.1.4 of Appendix A.

For cellar compartments contained in products such as refrigerators or refrigerator-freezers that are not hybrid refrigeration products, DOE is not proposing to require a cellar compartment temperature measurement. The temperature of the fresh food and/or freezer compartments of such products would be the basis of energy use calculations, without consideration of the temperatures maintained in the cellar compartments. This proposal is consistent with the current testing requirements for special compartments, and for ice freezing compartments of all-refrigerators, which are also compartments representing a small portion of the refrigerated space that do not dominate their products' energy use. The cellar compartments of these products would represent less than half of the refrigerated volume, and the energy use of the product would be dominated by the colder fresh food and/or freezer compartments, making measurement of the cellar compartments' temperatures unnecessary. Also, as proposed in section III.F.4, any temperature controls of these compartments would be set in their coldest position for the test, as required for special compartments by the current test procedure (see section 2.7 of Appendix A).

The requirements for measurement of temperatures in cellar compartments would be placed in a new section 5.1.5.

DOE requests comments on these proposals for the measurement of cellar compartment temperatures.

4. Cellar Compartments as Special Compartments

Section III.F.3 discusses DOE's proposal to not require that cellar compartment temperatures be measured for products that are not cooled cabinets or hybrid refrigeration products. In DOE's view, the fresh food and/or freezer compartments would dominate product energy consumption when compared to cellar compartments both because of the cellar compartments' much warmer standardized temperature and the relative volume size differences between the cellar compartment (which is small) and the remaining colder compartments (*i.e.,* fresh food and freezer compartments). However, cellar compartments that have their own separate temperature control may have a significant influence on product energy use. Hence, in these cases, DOE proposes to treat these types of compartments as special compartments, which would require a manufacturer to apply the existing test procedure requirements for special compartments. These procedures require that special compartments be tested at their coldest temperature setting except for those special compartments for which any portion of the temperature range is achieved through the addition of heat to the compartment. In those cases involving the addition of heat, the measurement would be the average of two sets of tests, with the temperature settings for the special compartments in the coldest setting for one set of tests and in the warmest setting for the other. (*See* Appendix A, section 2.7 or Appendix B, section 2.5.) DOE requests comment on this proposal to require that cellar compartments with their own temperature control within products that are not cooled cabinets or hybrid refrigeration products be treated as special compartments.

5. Temperature Settings and Energy Use Calculations

The refrigerator and refrigerator-freezer test procedure (Appendix A) uses the compartment temperatures measured in fresh food and freezer compartments to determine the temperature settings for additional tests and to calculate the energy use associated with the product at the standardized compartment temperatures. DOE proposes using a similar approach for cellar compartments.

DOE's proposed approach to incorporate cellar compartments into

the temperature control setting and test selection requirements, which are used to calculate energy use, would apply to hybrid refrigeration products and cooled cabinets. The amendments DOE is considering adding to section 3 of Appendix A would consist of the following steps:

(1) The temperature controls for cellar compartments would be placed in the median position for a first test.

(2) The temperature control setting for the second test would depend on all of the measured compartment temperatures, including that of the cellar compartment. The setting would be warm for all compartments, including the cellar compartment, if the compartment temperatures measured for the first test are all below their standardized temperatures; otherwise, the temperature controls would all be set to their coldest settings.

(3) If all of the measured compartment temperatures are lower than their standardized temperatures for both tests, the energy use calculation would be based only on the second test.

(4) If the measured compartment temperature of any compartment is warmer than its standardized temperatures for a test with the controls in the cold setting, the energy use calculation would be based on cold- and warm-setting tests, subject to specific restrictions based on compartment temperatures, measured energy use, except that for non-compressor refrigeration products, the energy use calculation would be based only on the cold-setting test.

(5) If neither (3) nor (4) occur, the energy use calculation would be based on both tests.

(6) The test procedure would also allow an energy use rating to be based simply on the results of a single first test, if that test is conducted with the compartment temperature controls in their warmest setting, provided that the measured compartment temperatures are all cooler than their standardized temperatures.

For cellar compartments that are not part of cooled cabinets or hybrid refrigeration products, these requirements would not apply; as discussed in section III.F.3, the temperatures of such compartments would not be measured.

DOE proposes that the energy use calculations for cooled cabinets and hybrid refrigeration products be based on the measured cellar compartment temperatures (as well as the fresh food and/or freezer compartment temperatures for hybrid refrigeration products), using the measured cellar compartment temperature to calculate a weighted average energy use, as is done in the existing test procedures for refrigerators and refrigerator-freezers (see Appendix A, section 6.2). For hybrid refrigeration products, the highest of the energy use calculations would be used as the product's energy use rating. In some cases, this would be the highest of three calculations, one each based on the measured freezer, fresh food, and cellar compartment temperatures.

DOE requests comment on these proposals for incorporating cellar compartment temperature measurements into the test procedure requirements for temperature control settings and the test selections to be used to calculate energy use for cooled cabinets and hybrid refrigeration products.

6. Volume Calculations

Existing test procedures for wine chillers prescribe capacity ratings that are based on volume (see for example, AHAM HRF–1–2008, section 4). The test procedures generally explain how to calculate the volume of a wine chiller. These instructions are the same as those used when calculating the volume of a refrigerator. *See, e.g.,* AHAM HRF–1–2008, section 4.1, and CSA C300–2008, section 4.1. In addition, the existing test procedures provide that the adjusted volume for wine chillers is equal to the total refrigerated volume. Similarly, these procedures indicate that the volume adjustment factor for wine chillers is equal to 1.0. *See, e.g.,* AHAM HRF–1–2008, section 6.3.5 and CSA C300–2008, sections 7.3.1 and 7.3.2. Consistent with this approach, DOE proposes to require that calculating the refrigerated volume of a cellar compartment be conducted the same way as for the refrigerated volume of a fresh food compartment. In calculating the adjusted volume of cooled cabinets, the volume adjustment factor for cellar compartments would be set equal to 1.0.

However, DOE proposes to apply a volume adjustment factor for those cellar compartments in refrigeration products that combine cellar compartments with other types of compartments to account for the warmer temperature and reduced thermal load of the cellar compartments. Similar to the determination of the volume adjustment factor for freezer compartments, DOE proposes to set a volume adjustment factor for cellar compartments based on the difference between the 55 °F standardized compartment temperature and the 90 °F ambient temperature required for testing. The adjustment factor is equal to the ratio between this difference for a compartment type and the temperature difference for a fresh food compartment. Hence, the volume adjustment factor for cellar compartments of hybrid products would be determined as follows.

$$CC = \frac{(90 - 55)}{(90 - 39)} = 0.69$$

The adjustment factor would reduce the weighting of a cellar compartment in calculating the adjusted volume to account for its reduced thermal load, similar to the way the adjustment factors for freezer compartments increase the weighting of their volume in the calculation. DOE requests comments on the proposals for calculating cellar compartment volume and for using a volume adjustment factor of 1.0 for these compartments for cooled cabinets and a volume adjustment factor of 0.69 for other refrigeration products.

7. Convertible Compartments

The DOE test procedures have special requirements for compartments that are convertible between fresh food and freezer compartment temperature ranges. With the proposed amendments to account for cellar compartments, some compartments may also be convertible between fresh food and cellar compartment temperature ranges, or they may be convertible over all three temperature ranges (*i.e.,* cellar, fresh food, and freezer compartment temperatures). To address these possibilities, DOE proposes to modify the requirements for convertible compartments. The proposed changes would include establishing target temperature ranges in Appendix A, section 3.2.3 for convertible compartments that are appropriate for compartments that can achieve cellar compartment temperature ranges. The existing requirement that the convertible compartment be tested in its highest energy use position would not change, nor would the requirement that separate auxiliary convertible compartments be tested with the convertible compartment set as the compartment type (freezer, fresh food, or cellar) that represents the highest energy use position. DOE requests comments on these proposed test procedure changes to address compartments that are convertible between the cellar compartment temperature range and fresh food and/or freezer temperature range.

G. Test Procedures for Cooled Cabinets

1. Ambient Temperature and Usage Factor

The DOE test procedures require testing of refrigerators and refrigerator-freezers in an environmentally controlled room at 90 °F temperature conditions, with the cabinet doors kept closed to simulate operation in more typical room temperature conditions (72 °F (22.2 °C)) with door openings (see 10 CFR 430.23(a)(10)). The test procedures for freezers also require testing with closed doors in a 90 °F room, but the test procedures apply adjustment factors to the measurements of energy use during the test to adjust for average household usage (*see* Appendix B, section 5.2.1.1). The adjustment factors account for the overestimation of the impacts from door-openings and related thermal loads associated with the 90 °F test condition. Appendix B corrects for this overestimation by applying correction factors equal to 0.7 for chest freezers and 0.85 for upright freezers (see Appendix B, section 5.2.1.1). These correction factors acknowledge that the added load associated with door openings and other field use thermal loads are significantly less for freezers than for refrigerators and refrigerator-freezers, because the doors of products such as upright freezers and chest freezers are expected to be opened less frequently than the doors of a typical household refrigerator or refrigerator-freezer.

California initially established test procedures unique for wine chillers in its 2002 Appliance Efficiency Regulations. (Appliance Efficiency Regulations, California Energy Commission, P400–02–021F, Nov. 2002) These test procedures used a 55 °F standardized compartment temperature and a 0.85 adjustment factor. In material presented in the October 19, 2000 California workshop discussing the potential establishment of energy standards for wine chillers, Sub-Zero suggested using the 0.85 adjustment factor. Sub-Zero indicated that because the door opening frequency for wine chillers is much more similar to that of freezers than refrigerators, the 0.85 adjustment for upright freezers would be appropriate for wine chillers. (Comments Presented at the California Energy Commission October 19, 2000, Workshop, No. 1 at p. 10) California adopted this usage factor for wine chillers, and it was also adopted in wine chiller test procedures contained in AHAM HRF–1–2008 and CSA C300–08.

DOE considered adopting a test procedure for cooled cabinets using a 90 °F ambient temperature condition and a 0.85 usage factor. To investigate whether these would be appropriate parameters for the test procedure, DOE evaluated a limited amount of field energy use data for wine chillers and tested a number of wine chillers, including products using vapor-compression refrigeration systems and thermoelectric refrigeration systems.[9]

DOE conducted field testing for two vapor-compression wine chillers. The test results for these products are summarized in Table III–3 below. DOE calculated the average annual field energy use by adjusting the energy use measured for the test period, which was several months in duration, multiplying by hours in a year and dividing by the number of hours in the test period. DOE used these field data to calculate the adjustment factor to apply to the laboratory test measurement to correctly predict the observed field test energy use. The field data suggest that the 0.85 adjustment factor is too high for wine chiller-type products, such as the cooled cabinets DOE is considering regulating.

TABLE III–3—WINE CHILLER FIELD TEST DATA

Unit No.	Rated energy use (kWh/year)*	Laboratory energy consumption (kWh/year, without 0.85 adjustment factor)**	Average field energy use (kWh/year)	Field/ Laboratory energy consumption ratio
1	368	433	181	0.42
2	320	376	144	0.38

* Ratings obtained from the California Energy Commission's Appliance Efficiency Database, available at *http://www.appliances.energy.ca.gov/AdvancedSearch.aspx.*

** The laboratory energy consumption measurement without the 0.85 factor is calculated by dividing the rated energy use by 0.85.

DOE tested eight vapor-compression wine chillers, using a standardized temperature of 55 °F, with the products' light switches turned off. Each unit was tested at two ambient temperatures: 90 °F, the temperature that DOE is currently proposing, and 72 °F, a temperature selected to represent typical field usage conditions. This temperature had been selected as an appropriate one to represent room temperature in the waiver test procedure initially proposed by GE for refrigerator-freezers with variable anti-sweat heater controls. (73 FR 10425, 10427 (Feb. 27, 2008)). DOE's laboratory test data is presented in Table III–4. This data is presented without any adjustment for usage or other correctional factors.

TABLE III–4—VAPOR-COMPRESSION WINE CHILLER LABORATORY TEST DATA

DOE sample number	Total refrigerated volume (ft^3)	72 °F ambient energy use (kWh/year)	90 °F ambient energy use (kWh/year)	Ratio of 72 °F & 90 °F energy tests
1	1.7	120	238	0.50
2	5.9	165	375	0.43
3	5.7	225	564	0.40

[9] Vapor-compression refrigeration systems use a compressor and condenser unit integrated into the product's cabinet assembly. This type of system is used for the vast majority of refrigerators, refrigerator-freezers, and freezers.

TABLE III–4—VAPOR-COMPRESSION WINE CHILLER LABORATORY TEST DATA—Continued

DOE sample number	Total refrigerated volume (ft^3)	72 °F ambient energy use (kWh/year)	90 °F ambient energy use (kWh/year)	Ratio of 72 °F & 90 °F energy tests
4	5.4	106	268	0.40
5	5.9	134	315	0.42
6	5.9	85	189	0.45
7	15.4	238	423	0.56
8	17.3	224	430	0.53
Average	.....	.....	.....	0.46

Note: Energy use is as measured, without multiplying by usage adjustment factors.

The table also presents the ratios between the energy use measured in 72 °F temperature conditions and the energy use measured in 90 °F conditions. These energy use ratios can be considered to represent the correction factors that would be appropriate to apply to measurements made in 90 °F temperature, in order to estimate energy use at 72 °F with no door openings. These ratios were determined to vary from 0.40 to 0.56, with a 0.46 average. If door openings for wine chillers are limited, and represent a modest load, a usage factor that accounts for not only the difference in ambient temperature between test and field conditions, but also for these door openings, would therefore likely be slightly higher than 0.46.

The usage factor of 0.85 currently adopted in existing wine chiller test procedures is based on the test procedure for upright freezers, and was initially suggested for use with wine chillers based on a claim that upright freezers and wine chillers had similar usage frequencies—specifically with respect to door openings. However, the elevated ambient temperature most likely does not have as significant of an effect on freezer energy consumption as it does on cooled cabinet energy consumption due to the higher standardized compartment temperature of the latter. Specifically, for a freezer compartment at 0 °F, the difference between the compartment and the ambient temperatures increases by 25 percent between 72 °F and 90 °F; whereas, for a wine chiller, this same elevation in ambient temperature represents a 106-percent increase in the temperature difference between the ambient and a compartment temperature of 55 °F. From this information, DOE tentatively concludes that the current test procedures for wine chillers overcompensate for added loads, and that the appropriate adjustment factor for a test conducted in a 90 °F condition should be significantly lower than 0.85.

Because of the precedent set by the California Energy Commission (CEC) and AHAM procedures for testing vapor-compression wine chillers in a 90 °F ambient condition, DOE proposes to use this same condition for its procedure for testing vapor-compression cooled cabinets. Unlike non-compressor refrigerators, discussed later in this section, vapor-compression wine chillers generally are able to maintain the 55 °F target temperature in a 90 °F ambient temperature test condition, so testing at this ambient temperature would be representative of their energy use. However, DOE proposes to use an adjustment factor of 0.55 for vapor-compression cooled cabinets. This factor is more consistent with the expected actual energy use of these products, based upon the laboratory and field data that DOE has obtained, than the 0.85 factor used in the current CEC, Natural Resources Canada (NRCan), and AHAM tests. Specifically, this 0.55 factor is based on the 0.46 ratio of measured energy use values observed between the closed-door energy test results in typical room conditions (72 °F) and the 90 °F ambient test condition, multiplied by the 1.2 usage factor representing additional loads (0.46 times 1.2 equals 0.55). This approach would be consistent with current testing for vapor-compression wine chillers, but would provide a more appropriate estimate of field energy use.

In the case of thermoelectric-based wine chillers, the available data present a less clear picture. DOE's laboratory test data for thermoelectric wine chillers is presented in Table III–5. DOE tested three thermoelectric products in both 72 °F and 90 °F ambient temperature conditions, using a 55 °F standardized temperature. The energy use results for both 72 °F and 90 °F ambient temperature conditions are presented without any adjustment factor. The results are for tests with the products' light switches turned off. The table presents the ratios between the energy use measured in 72 °F temperature conditions and the energy use measured in 90 °F conditions.

TABLE III–5—THERMOELECTRIC WINE CHILLER LABORATORY TEST DATA

DOE sample number	Total refrigerated volume (ft^3)	72 °F Ambient energy use (kWh/year)	90 °F Ambient energy use (kWh/year)	Ratio of 72 °F & 90 °F energy tests
1	0.6	118	485	0.24
2	1.1	366	647	0.57
3	2.3	553	552	1.00
Average	.....	.....	.....	0.60

Notes: Energy use is as measured, without multiplying by usage adjustment factors.

The energy use of the thermoelectric wine chillers measured in 72 °F conditions increased in a fashion that is roughly consistent with the product volume. However, the same was not true for the tests conducted in 90 °F conditions. Test samples 1 and 3 were not able to maintain a 55 °F compartment temperature in 90 °F

ambient tests. For sample 1, the compartment temperature was 57 °F at both the cold and the median temperature control settings, and 66 °F for the warm setting, while for sample 3, the compartment temperature was 71 °F for any selected setting. The energy use of these products did not increase consistently with elevated ambient temperature because the thermoelectric refrigeration systems did not have sufficient refrigeration capacity to maintain a 55 °F compartment temperature. In contrast, Sample 2, which was able to maintain a compartment temperature of 55 °F in the 90 °F ambient condition while operating in the median temperature control setting, used the most energy. This unit has sufficient refrigeration system capacity to maintain the target temperature, which correspondingly caused its energy use to be higher.

The results show that testing these products in a 90 °F ambient temperature condition does not provide a representative indication of their energy use in typical field use conditions. This observation is also consistent with the varying field/laboratory energy use ratios exhibited for these products. Test sample 3 used no more energy in 90 °F testing than it did in 72 °F testing, which suggests that it was already operating at its maximum refrigeration capacity at the 72 °F ambient condition. The energy use of this product would be significantly underestimated by testing it in 90 °F temperature conditions and applying an appropriate adjustment factor. While a different usage adjustment factor could be chosen to provide a proper prediction of the unit's energy use in 72 °F field conditions, some products may have sufficient refrigeration system capacity for operation in 90 °F conditions, and such products would require a lower usage adjustment factors to accurately predict energy use in 72 °F conditions. In other words, based on these data, a single adjustment factor may not necessarily apply to all thermoelectric-based wine chiller units.

To address the problems noted above, DOE proposes that non-compressor cooled cabinets be tested with closed doors in a 72 °F ambient temperature, with an upward adjustment in the measured energy use to account for the added load associated with door openings. DOE does not have data that would provide direct evidence of the energy use impact associated with added field loads typical for wine chillers (or upright freezers, which are claimed to have usage similar to wine chillers) as compared to operation with doors closed in the same ambient conditions. However, DOE considered the 0.7 and 0.85 adjustment factors used for chest and upright freezers, respectively, and noted that the adjustment factor for upright freezers is 1.2 times the adjustment factor for chest freezers. DOE believes that chest freezers experience less frequent door openings than upright freezers, which is likely to yield a negligible impact on their energy use in the field. While DOE does not have data to support this view, DOE believes it is a reasonable assumption, one which leads to the conclusion that the ratio of 1.2 mentioned above would be an appropriate usage factor to represent the energy use impact associated with door-opening and related loads at the usage frequency typical of upright freezers, and, by extension, wine chillers. Hence, multiplying by 1.2 the energy use measured in a closed-door test in normal room temperature conditions, *i.e.,* 72 °F, would provide a projection of typical field energy use for upright freezers or wine chillers. In the absence of additional data demonstrating the impact, DOE proposes to apply a 1.2 adjustment factor for testing thermoelectric and other non-compressor cooled cabinets tested with closed doors in a 72 °F ambient condition.

DOE requests comment on its proposals for ambient temperatures and usage adjustment factors for both vapor-compression and non-compressor cooled cabinets. DOE requests information regarding field energy use of wine chillers and other cooled cabinets which it could use to confirm or adjust the proposed adjustment factors.

2. Light Bulb Energy

Cooled cabinets such as wine chillers often have glass doors that permit consumers to display stored items and manually-operated lighting to illuminate these items for better viewing. The procedures under Appendices A and B provide that electrically-powered features not required for normal operation and that are manually-initiated and manually-terminated, must be set in their lowest energy use position during the energy test. *See, e.g.,* HRF–1–2008, section 5.5.2(e) (incorporated by reference in Appendix A). However, for wine chillers with manual light switches, CSA C300–08 requires two tests, one with the lights turned on and one with the lights turned off, and averaging the results. See CSA C300–08, section 5.3.7.1. In contrast, the CEC and AHAM tests do not provide instructions for light switches for testing wine chillers. Instead, these test procedures include or refer to language similar to that cited above, which indicates that such features should be set in their lowest energy use position for testing.

Field survey data collected by LBNL suggests that testing with the lights off would be more representative of field use than testing with the lights on or using the average of the results of tests conducted with the lights on and off. Specifically, the survey found that roughly 63 percent of respondents indicated that their wine chillers or beverage coolers had internal lights, and of these, 10 percent indicated that the lights are usually on compared with 90 percent who indicated that the lights are usually off. (U.S. Residential Miscellaneous Refrigeration Products: Results from Amazon Mechanical Turk Surveys, LBNL–6194E, No. 10 at pp. 43–44)

Because the survey data point to the limited use of interior lighting in these products, and the added test burden of conducting tests both with the lights switched on and off, DOE proposes to require that cooled cabinets be tested only with the light switches in their lowest energy use position, consistent with the test procedures for other refrigeration products and the wine chiller test procedures of the CEC and AHAM. DOE requests comment on this proposal.

H. Non-Compressor Refrigeration Products

1. Ambient Temperature for Non-Compressor Refrigerators

As discussed in section III.G.1, DOE is proposing to require that non-compressor cooled cabinets be tested in 72 °F ambient temperature conditions because testing in 90 °F conditions would not be representative of field energy use. However, DOE has concerns about adopting a similar approach for non-compressor refrigerators. Refrigerators are designed for storing perishable food items and must maintain their standardized compartment temperatures in 90 °F closed door testing conditions to ensure food safety. The 90 °F ambient test conditions are an accepted method for simulating the thermal loads on household refrigerators that would occur in more typical room temperature conditions with the expected door openings and insertion of warm food. This situation is in contrast to cooled cabinets, which are not expected to have a door opening frequency and usage pattern consistent with refrigerators. Consequently, DOE proposes that non-compressor refrigerators be tested in 90

°F ambient conditions, similar to conventional vapor-compression refrigerators. The usage factor for non-compressor refrigerators would also be consistent with vapor-compression refrigerators, equal to 1.0.

However, DOE notes that in its testing of products marketed as non-compressor refrigerators, none was able to maintain its internal compartment temperature within 9 °F of 39 °F, which is the standardized temperature for fresh food compartments in the DOE test procedure and the temperature cited in the definition for refrigerator in 10 CFR 430.2 as the storage temperature that these products must be able to achieve. However, unlike non-compressor cooled cabinets, non-compressor refrigerators would be expected to have a usage intensity (*i.e.,* added load associated with door openings and other factors) in the field that would push their refrigeration systems to work at full capacity. Similarly, such a product would be operating at full capacity in a test if its temperature controls are set in the coldest position and the compartment temperature is above 39 °F. Hence, DOE expects that testing thermoelectric or absorption-based ''refrigerators'' in a 90 °F ambient temperature condition would be representative of their energy use, and that the energy measured for the cold-setting test would be the appropriate measurement if the compartment temperature rises above the standardized temperature in this setting.

When measured compartment temperatures are warmer than the applicable standardized temperatures, Appendices A and B specify that product energy use cannot be rated. The previous test procedures in Appendices A1 and B1, which DOE proposes to remove from subpart B to 10 CFR part 430 in this notice, used an ''extrapolation'' approach to calculate energy use when compartment temperatures are warmer than their standardized temperatures in the cold setting (see, for example, Appendix A1, section 3.2.3). Extrapolation in this case means that the energy use is calculated for a compartment temperature that is not between the two compartment temperatures measured during the two tests. DOE has concerns about adopting the extrapolation approach for non-compressor refrigerators for two reasons. First, the compartment temperatures for these products, as shown in Table III–2, are much higher than the standardized temperature. Hence, the energy use calculated for the standardized temperature would be much higher than the highest level of energy use actually measured for the product. As discussed above, the product would be running at maximum capacity for the cold-setting test, and would not be expected to operate with higher energy use. Second, DOE testing of non-compressor refrigerators shows that these products often yield compartment temperatures during the cold- and warm-setting tests used in the extrapolation approach that are very close to each other, which can result in energy use calculated at the standardized temperature (see, for example, Appendix A1, section 6.2.1.2) that is unrealistically high or low, and sometimes negative. For these products, DOE believes that a more consistent result that is more representative of field energy use would be obtained by simply using the cold-setting test energy use measurement, rather than both sets of measurements.

Hence, to comply with EPCA requirements that test procedures be consistent with a representative average use cycle (see 42 U.S.C. 6293(b)(3)), DOE proposes that non-compressor refrigerators be tested in a 90 °F ambient temperature, similar to refrigerators and refrigerator-freezers, and that the test result be the energy use measured in the cold setting test if one or more compartment temperatures are warmer than their standardized temperature for this setting.

On the other hand, DOE recognizes that test measurements for non-compressor refrigerators for which the coldest compartment temperatures are far above the standardized temperatures would effectively be rated at a condition that theoretically should require less energy use than for operation at the standardized temperature. DOE may consider implementing an adjustment in the allowable maximum energy use for such products as part of the ongoing energy conservation standard rulemaking in order to compensate for this potential difference in measured energy use. In order to prepare for such a possibility, DOE proposes to require that certification reports for non-compressor refrigerators indicate the coldest fresh food compartment temperature achieved by the product in the cold setting during the test, if this is warmer than 39 °F. The reported value would be the average of the coldest compartment temperatures observed for the tests used as the basis for the certification. DOE proposes that this information would be part of the public product-specific information required to be reported for non-compressor refrigerators.

DOE seeks comment on its proposal to require testing of non-compressor refrigerators in 90 °F ambient temperature conditions, and to require that their energy use be calculated with a usage factor equal to 1.0. Further, DOE requests comment on its proposal to require reporting of the coldest fresh food compartment temperature achieved in the test if such a product cannot maintain an internal temperature of 39 °F or cooler during a test in 90 °F conditions. Finally, DOE requests comment on its potential consideration of adjustments to the energy conservation standards to be developed for non-compressor cooled cabinets that would address the reduced stringency of a test in which the compartment temperature is warmer than the standardized temperature.

2. Refrigeration System Cycles

The DOE test procedures for refrigerators and refrigerator-freezers use test periods based on the operation of the component within the product that consumes the most energy—typically, the compressor. *See, e.g.,* Appendix A, section 4.1. The test procedures specifically require that the test periods comprise a whole number of complete ''compressor cycles.'' Applying a similar approach to non-compressor products, even though they do not have compressors and would instead have alternative refrigeration systems that may cycle to maintain compartment temperatures, would be based on similar reasoning—*i.e.,* to help capture the energy usage of the tested product by focusing on the most energy consumptive component. To ensure that non-compressor products have clear test procedure requirements, DOE proposes to indicate, in 10 CFR 430.23(cc)(8), that, in the context of non-compressor products, the term ''compressor cycle'' means a ''refrigeration cycle'' and that the term ''compressor'' refers to a ''refrigeration system.'' DOE views this as a simpler approach than establishing parallel identical test procedures for non-compressor products or inserting the term ''or refrigeration system cycles for non-compressors products'' in the existing test procedures where compressor cycles are discussed. DOE seeks comment on this proposal.

DOE notes that it recently modified its test procedures for refrigerators, refrigerator-freezers, and freezers to more accurately measure the energy consumption of multiple-compressor products. See 79 FR 22320, 22325–22330 (April 21, 2014). DOE is also aware of non-compressor products that use multiple refrigeration systems. The recently promulgated test procedures for multiple-compressor products would also be suitable for application to products with multiple refrigeration

systems. Hence, DOE is proposing to apply these same procedures to non-compressor products if DOE establishes coverage over them. This step would require no further amendments in the test procedures, other than the proposed change discussed above (*i.e.,* modifying 10 CFR 430.23) that the term ''compressor'' would refer more generally to a ''refrigeration system'' when used in the context of testing non-compressor products.

I. Extrapolation for Refrigeration Products Other Than Non-Compressor Refrigerators

Section III.H.1 above discusses proposed test procedure requirements for non-compressor refrigerators, which generally do not maintain temperatures near fresh food compartment standardized temperatures when operating in 90 °F ambient temperature conditions. DOE proposes that their calculated energy use be calculated as the energy used during the test for the cold temperature setting. In contrast with this approach, the test procedures of Appendices A and B indicate that a product that fails to meet its standardized temperature in any compartment during a test cannot be rated, even if it otherwise would meet the definition of a refrigerator, refrigerator-freezer, or freezer in 10 CFR 430.2 based on operation at ambient conditions of typical consumer use. This approach was established by DOE an interim final rule published December 16, 2010. See 75 FR 78810, 78840–78842.

DOE considered whether to propose adopting the extrapolation approach that was previously used in Appendices A1 and B1 as a means for testing and rating such products. This approach involved calculating energy use for the product at the standardized temperature using the measured energy use and compartment temperatures for two tests, one conducted using the cold temperature control settings and the other using the warm temperature control settings. For this calculation, the compartment temperatures measured for both tests are warmer than the standardized temperature. The equations used for the calculations are found in section 6.2.1.2 of Appendix A for all-refrigerators and section 6.2.2.2 for refrigerators with freezer compartments or refrigerator-freezers—these equations are mathematically identical to those used when the standardized temperature falls between the compartment temperatures. As discussed in section III.H.1, DOE is concerned that in some cases the extrapolation approach can result in energy use measurements that are unrealistically high or low. In order to safeguard against this possibility, DOE proposes to restrict use of the extrapolation approach to tests in which the compartment temperature for the warm temperature setting is higher than the compartment temperature for the cold temperature setting, and the energy use measured for the warm setting is lower than the energy use measured for the cold setting.

DOE expects the proposed restriction to resolve potential issues for most refrigeration products that use vapor-compression refrigeration technology. For these products, DOE expects that the cold-setting compartment temperatures are unlikely to be significantly warmer than their standardized temperatures in cases that require use of the extrapolation approach—perhaps up to 5 °F higher, rather than the overshoot of 9 °F or more observed for non-compressor products, as discussed in section III.H.1. Further, DOE expects that the warm temperature control settings for these products will generally allow operation at compartment temperature more than 5 °F higher than the standardized temperature. Hence, the potential crossover of observed compartment temperatures (*i.e.,* measuring compartment temperature in the warm setting that is not higher than the temperature measured in the cold setting) would not likely occur for such products. There may be some vapor-compression refrigeration products for which such crossover does occur. However, DOE expects that few if any products with such characteristics are likely to exist. In such cases, a test procedure waiver would be required.

As discussed in section III.H.1, DOE notes that for non-compressor refrigerators, where the cold-setting compartment temperature is 9 °F or more higher than the standardized compartment temperature, the chance that the compartment temperatures are nearly the same for both cold and warm temperature control settings is much higher. DOE also notes that the very large deviation from typical operating compartment temperature for non-compressor refrigerators means that the measured energy use associated with extrapolation would not be representative of field energy use. Hence, while DOE is proposing to add the extrapolation approach to Appendices A and B for use with vapor-compression products, DOE is not proposing this approach for non-compressor refrigerators for the reasons noted above.

DOE requests comments on its proposal to adopt the extrapolation approach for measurement of energy use in Appendices A and B for refrigeration products other than non-compressor refrigerators, subject to the requirement that the measured warm-setting compartment temperature(s) must be warmer than the cold-setting compartment temperatures and that the measured energy use must be lower in the warm setting.

J. Hybrid Refrigeration Product Test Procedure Amendments

To adequately address the testing issues involved with assessing the energy usage of hybrid refrigeration products, DOE examined a number of factors. These factors included appropriate ambient temperatures, usage adjustment factors, standardized temperatures, temperature control settings, and energy use calculations. These different elements, along with DOE's proposals in addressing them, are discussed in detail below.

1. Ambient Temperature and Usage Factor

DOE proposes to require that hybrid refrigeration products be tested in 90 °F ambient temperature conditions. These products do not have the combination of characteristics that led DOE to consider an alternative ambient temperature for testing non-compressor cooled cabinets. Most hybrid refrigeration products have vapor-compression refrigeration systems that should have sufficient capacity to maintain the product's intended compartment temperatures in 90 °F ambient temperature conditions. Although DOE is not aware of any hybrid non-compressor products that can safely store food, such products (if developed) should reasonably be expected to maintain compartment temperatures at or below the 39 °F standardized temperature for fresh food compartments, even with elevated use that would be simulated with closed door operation in 90 °F ambient temperature conditions, as would be expected for the types of refrigerators and refrigerator-freezers that are currently covered. Consequently, DOE sees no reason to deviate from this specified test condition, which is currently used for all regulated consumer refrigeration products.

DOE also proposes a usage adjustment factor of 0.85 for hybrid refrigeration products. Because at least half of the refrigerated volume of these products is occupied by the cellar compartment, which is often for wine storage, DOE believes that the door opening frequency of these products would be

closer to that of wine chillers than refrigerators. As discussed in section III.G.1, a number of test procedures prescribe a usage adjustment factor of 0.85 for wine chillers. Although that section suggests that a lower adjustment factor than 0.85 may be more appropriate for cooled cabinets because of the differing impact of testing in 90 °F ambient temperature compared to testing of refrigerators, refrigerator-freezers, and freezers, the same argument would not necessarily apply to hybrid products because a substantial portion of the refrigerated space of hybrid products would be dedicated to fresh food and/or freezer compartments. Because hybrid products include fresh food and or freezer compartments, using an elevated ambient temperature would not produce as dramatic an impact on energy use of a hybrid product compared to a cooled cabinet. Also, the refrigeration system of a hybrid product would generally be working to cool the coldest compartment in the product, while the warmer compartments would be cooled by transferring air from the cooler compartments, which means the refrigeration system operating efficiency (coefficient of performance, ''COP'') of a hybrid product would be more typical of the refrigeration systems of refrigerators, refrigerator-freezers, or freezers than that of cooled cabinets. Hence, the COP trend while operating in an elevated ambient temperature environment for a hybrid refrigeration product should be more consistent with the COP behavior for refrigerators, refrigerator-freezers, and freezers, than for cooled cabinets. These arguments suggest that the greater sensitivity to elevated ambient temperature for cooled cabinets would not necessarily apply to hybrid products. DOE does not have data indicating that a 0.85 usage adjustment factor would be inappropriate for hybrid refrigeration products. In the absence of such data, DOE proposes to use this factor for calculating energy use for hybrid products.

DOE seeks comments on its proposal to specify that hybrid refrigeration products be tested in 90 °F ambient temperature conditions, and that their energy use be calculated using a 0.85 usage adjustment factor.

2. Standardized Temperature, Temperature Control Settings, and Energy Use Calculations for Hybrid Refrigeration Products

Hybrid refrigeration products have cellar compartments, in addition to fresh food and/or freezer compartments. As discussed in section III.F.2, DOE proposes that 55 °F be used as the standardized temperature for cellar compartments. Consistent with this approach, this proposal would require testing of the cellar compartments found in hybrid refrigeration products using the same standardized temperature.

When testing hybrid refrigeration products, there may be two or three compartment temperatures to compare with standardized temperatures, including the cellar, fresh food, and freezer compartment temperatures. DOE proposes to require that the procedures for setting temperature controls and test selection be consistent with the current test procedures for refrigerators, refrigerator-freezers, and freezers (*see, e.g.,* Appendix A, sections 3.2.1 and 3.2.2), as described below:

(1) A first test would be conducted with all temperature controls set in their median position.

(2) If the measured compartment temperatures during the first test are all lower than the compartments' standardized temperatures, a second test would be conducted with all temperature controls set in their warmest positions. If the measured compartment temperatures for the second test are still lower than the compartments' standardized temperatures, the energy use would be calculated based on the results of the second test only. Otherwise, the energy use would be calculated based on the results of both tests.

(3) Conversely, if one or more of the measured compartment temperatures during the first test are warmer than the standardized temperature(s), the second test would be conducted with all temperature controls set in their coldest positions. If, for this second test, the measured compartment temperatures are all lower than the compartments' standardized temperatures, the results of both tests would be used to calculate the energy consumption. If one or more of the compartment temperatures are still warmer than the standardized temperatures, the energy use would be calculated based on cold- and warm-setting tests, subject to restrictions on measured compartment temperatures, measured energy use, and product status as a non-compressor refrigerator.

(4) Alternatively, the energy use could be calculated based on a single test conducted with all temperature controls set in their warmest position, if the measured compartment temperatures are all lower than their compartments' standardized temperatures.

DOE also proposes to calculate energy use in a manner consistent with the procedures currently specified in the test procedures for refrigerators and refrigerator-freezers (*see, e.g.,* Appendix A, section 6.2). Specifically, if the compartment temperatures measured for a test conducted with all temperature controls set in their warmest positions are all lower than their compartments' standardized temperatures, the results of this test alone would be used to determine energy use. Also, if two tests were used to determine energy use as described above, a weighted average of the test results would first be determined based on each of the compartment temperatures individually. See 10 CFR part 430, subpart B, Appendix A, section 6.2.2.2. For hybrid refrigeration products, this calculation would be performed for the cellar compartment temperature as well as the fresh food and/or freezer compartment temperature. The rated energy use for the product would be based on the highest of the three calculations performed in this fashion, or the higher of the two calculations performed. DOE proposes to add a third table describing the temperature setting logic in section 3 of Appendix A. The table would describe the test sequence and the tests to be used for the energy use calculation, similar to the existing tables in this section, but for a generalized case in which the product may have one, two, or three compartments of different standardized temperatures. Also, DOE proposes to restructure section 3.2.1 for better clarity.

DOE requests comment on these proposed procedures for setting temperature controls, conducting tests, and calculating product energy consumption.

K. Ice Maker Test Procedure Amendments

In developing a means to reliably test the energy usage of ice makers, DOE is considering adding new provisions to its testing regulations. These provisions, which would be located in 10 CFR 430.23 and a new Appendix BB, would detail the testing, measuring, and calculation of energy usage of these products. DOE would also add a definition to describe the scope of those products that would be treated as ice makers. Additional detail regarding these provisions follows.

1. Establishment of New Paragraph 10 CFR 430.23(dd) and New Appendix BB for Ice Makers

DOE believes that testing ice makers would require a substantially different procedure from the approach proposed for refrigerator-freezers and freezers, products that DOE already regulates. In light of these differences, DOE proposes to add a new paragraph (dd) to 10 CFR 430.23 and a new Appendix BB to

contain the test procedures for ice makers. The new paragraph (dd) would explain how to calculate the annual energy consumption for ice makers, which would involve multiplying the daily average energy consumption by the number of days in a year (365). The new Appendix BB would describe how to measure ice maker energy use.

2. Definitions for Ice Makers

DOE proposes to add several new definitions to clarify components or characteristics of ice makers, as described below. Some of the definitions would be added to 10 CFR 430.2 while others would be added to a new section 1 within the new Appendix BB.

The definitions being proposed for 10 CFR 430.2 would distinguish among the different types of ice makers that DOE is considering addressing in a separate effort to evaluate potential energy conservation standards for these products. First, DOE proposes to distinguish between ''batch-type'' and ''continuous-type'' ice makers. The proposed definitions for these two ice maker categories are identical to those used in DOE's ACIM test procedure and are commonly understood in the industry: In the context of consumer ice makers, ''batch-type ice maker'' would mean an ice maker having alternate freezing and harvest periods, and ''continuous-type ice maker'' would mean an ice maker that continually freezes and harvests ice at the same time. Although most ice makers are batch-type, DOE is aware of at least one continuous-type product. (Continuous-Type Ice maker, No. 2) The operating characteristics of these products are sufficiently different to require different testing methods. Hence, distinguishing between the types is necessary in establishing the procedures that apply to a given model of ice maker.

Furthermore, the energy use characteristics of these two types of ice makers may be different, which may justify establishing different product classes. DOE may establish different product classes of a given category of product if they have performance-related features that justify a higher or lower standard. (42 U.S.C. 6295(q)(1)(B)) If DOE decides to propose separate product classes for batch-type and continuous-type ice makers, further discussion and an opportunity for comment would be provided in the appropriate rulemaking proceeding.

Second, DOE proposes to establish definitions to distinguish ''cooled-storage'' and ''uncooled-storage'' ice makers. DOE proposes to define a ''cooled-storage ice maker'' as an ice maker that maintains ice storage bin temperatures below 32 °F. A cooled-storage ice maker would be distinct from an ''uncooled-storage ice maker,'' which DOE proposes to define as an ice maker that does not maintain ice storage bin temperatures below 32 °F between periods of ice production. Such units often, but not always, have a drain connection to remove the melt water that collects in the bin.

Although the terms ''cooled-storage ice maker'' and ''uncooled-storage ice maker'' are not widely used in industry, DOE proposes to use them to distinguish between these two types of ice makers because they have different operating characteristics requiring unique test procedures. For example, cooled-storage ice makers consume energy after filling their ice storage bins with ice by operating their refrigeration systems to cool their ice storage bins and prevent the melting of ice. Consequently, cooled-storage ice makers only need to replace the ice removed by the user.

In contrast, uncooled-storage ice makers do not operate their refrigeration systems after filling their ice storage bins and may consume very little energy when they are not actively producing ice. However, because the ice in the bin melts, uncooled-storage ice makers need to replace the ice that melts in the uncooled ice storage bin in addition to replacing the ice that is removed by the user. Although the proposed test procedure has very similar provisions for measuring icemaking energy use for both of these types of ice makers, the proposal has different provisions for measuring the energy associated with ice storage. For cooled-storage ice makers, ice storage energy use comprises the energy required to maintain the ice storage bin at its below-freezing temperature, whereas for uncooled-storage ice makers, it comprises the energy required to replace melted ice. The differences between these products may extend to specific features, such as the production of different types of ice, and others that may affect energy usage, which may help justify the creation of separate product classes. Consequently, in DOE's view, the proposed definitions should help address these different operating characteristics and the potential that these products may constitute different product classes.

Finally, DOE proposes to define the term ''portable ice maker'' as an ice maker that does not require connection to a water supply and instead has one or more reservoirs that would be manually supplied with water. This style of ice maker is also generally small (Portable Ice Maker, No. 8); hence, both the lack of a fixed water connection and the small size of these units contribute to their portability. Not using a water supply represents a difference in operation of portable ice makers that requires differences in the test procedure as compared with procedures with water inlet connections. In addition, as described in section III.K.9, DOE proposes to apply an adjustment factor of 0.5 for portable ice makers to account for the likelihood that they would not be energized throughout the year, due to their portability.

DOE requests comments on the proposed definitions delineating different types of ice makers. DOE also seeks comment on whether there exists common industry terminology that would be more suitable for distinguishing cooled-storage and uncooled-storage ice makers.

DOE is also proposing to include a number of definitions as part of a new Appendix BB that would relate to icemaking and be used to describe the icemaking operation and the test procedures necessary to measure icemaking energy use. In particular, DOE is proposing to define the terms ''harvest,'' ''harvest rate,'' ''ice hardness factor,'' ''ice storage bin,'' ''icemaking cycle,'' and ''replacement cycle.'' Some of these definitions exist in similar forms in the test procedures for refrigerators and refrigerator-freezers, or in the test procedures for ACIM. With the exception of the proposed definition for ''replacement cycle,'' which DOE included to clarify the duration of the ice storage test period for uncooled-storage ice makers, these proposed definitions are all commonly understood in the industry. The proposed definitions for ''harvest rate'' and ''ice hardness factor'' are identical to those used in DOE's ACIM test procedure.

DOE requests comment on these proposed definitions.

3. Energy Use Metric for Ice Makers

DOE's regulations do not currently incorporate a test procedure for consumer ice makers. While DOE is aware that manufacturers are using the current ACIM test procedure (see 10 CFR part 431, subpart H) to represent the energy use of consumer ice makers, DOE is unaware of any procedure that has been specifically developed for these ice makers. DOE's research indicates that there is very little reporting of energy use information for consumer ice makers.

In developing the test procedures for ice makers, DOE considered its approach for ACIM (see 10 CFR

431.134) and the proposed approach for consumer refrigeration products with ice makers. 78 FR 41609 (July 10, 2013). The DOE test procedure for ACIM incorporates by reference the test procedures of AHRI Standard 810–2007 with Addendum 1, Performance Rating of Automatic Commercial Ice-Makers, March 2011 (''AHRI 810''), as well as ANSI/ASHRAE Standard 29–2009, Method of Testing Automatic Ice Makers, (including Errata Sheets issued April 8, 2010 and April 21, 2010), approved January 28, 2009 (''ANSI/ASHRAE 29–2009''). The energy use of an ACIM is reported in kilowatt-hours per 100 pounds of ice. This metric represents the efficiency of ice production when operating in a 90 °F ambient temperature room with 70 °F inlet water temperature. The metric does not account for standby energy use between icemaking periods or the energy use associated with replenishing the ice that melts in the storage bin.

Similarly, DOE's previously proposed approach for measuring icemaking energy use in refrigerators, refrigerator-freezers, and freezers, which DOE is continuing to consider (see 78 FR 41610 (July 10, 2013)) is based on a procedure developed by AHAM. (Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers, Docket No. EERE–2012–BT–TP–0016, No. 5). The energy conservation standards for these products are based on an energy use metric in units of kilowatt-hours per year (kWh/year). *See, e.g.,* 10 CFR 430.32(a). The proposed procedures would, if eventually adopted, measure the energy use associated with icemaking in these products by determining the energy required by the product to produce each pound of ice and multiplying that energy consumption by an average daily ice production rate. See 78 FR at 41628 (discussing in detail DOE's 2013 proposal for calculating the energy use attributable to the icemaking process in consumer refrigerator-freezers). This daily energy consumption, which would include icemaking energy use, would then be multiplied by 365 to yield the energy use in kilowatt-hours per year, which is consistent with the manner in which the annual energy usage must be calculated for refrigeration products. *See, e.g.,* 10 CFR 430.23(a)(5). The ice produced in these products is stored in an ice storage bin located in the freezer compartment or in an icemaking compartment within the fresh food compartment that is maintained at sub-freezing temperatures. The energy required by the product's refrigeration system to maintain these sub-freezing temperatures in the ice storage bin is already accounted for in the existing test procedure, which measures the energy use of these products while maintaining their compartment temperatures at the appropriate standardized temperatures (*e.g.,* temperatures that are less than 32 °F in the freezer compartment).

While ice makers, unlike the refrigeration products noted immediately above, do not necessarily maintain cold compartment temperatures, they do store ice. In these cases, the ice is not stored in a separate compartment; rather, the ice is stored in the open interior of the product, *i.e.,* within the ice bin itself, as opposed to having a separate storage compartment. ACIMs operate in a similar manner—while an ACIM ''may include [a] means for storing ice'' (see 10 CFR 431.132), many ACIM models do not include separate ice storage bins. The energy use metric for ACIMs, kilowatt-hours per 100 pounds of ice, does not include the energy use required to store ice or to replenish ice that melts.

Today's proposal considers whether the energy use metric for ice makers should include the energy use associated with ice storage and/or replenishment of melted ice. As part of this effort, DOE conducted testing to observe the energy use characteristics of ice makers and to measure energy use, both for ice production and for ice storage. The tests and energy consumption calculations were based on today's proposed test procedure, which calls for testing in 72 °F ambient temperature conditions (see section III.K.5). Table III–6 presents the test results for four ice makers. The table displays the annual energy consumption attributable to both ice production and ice storage for both a low and a high daily ice consumption rate estimate. The low production estimate is equal to the average daily ice production proposed for the icemaking test for refrigerators, refrigerator-freezers, and freezers, while the high production rate estimate would represent an extreme daily average production rate scenario, because it exceeds the harvest capacity of some of the tested ice makers. The test data show that the energy use associated with ice storage is a significant portion of the energy use of these products. Hence, DOE's proposed test procedure would measure this portion of the energy consumption and include it in the proposed energy use metric.

TABLE III–6—ICE MAKER TEST RESULTS

Ice maker No.	Storage type	Icemaking energy consumption (kWh/lb)	Annual energy consumption (kWh/year)					
			1.8 lb/day Ice consumption rate			20 lb/day Ice consumption rate		
			Ice production	Ice storage	% storage	Ice production	Ice storage	% storage
1	Uncooled ...	0.15	101	495	83	1,121	102	8
2	Uncooled ...	0.14	90	925	91	1,003	508	34
3*	Uncooled ...	0.073	24	38	61	268	16	5
4*	Uncooled ...	0.17	56	144	72	624	40	6
5**	Cooled	0.21	141	120	46	1,562	N/A	N/A
6**	Cooled	0.29	188	182	49	2,084	N/A	N/A

* Portable ice maker.
** Measured harvest rate is less than 20 lb/day.

DOE requests comment on this proposed energy use metric and whether it would sufficiently capture the total energy consumption of both cooled-storage and uncooled-storage ice makers.

4. Daily Ice Consumption Rate

DOE proposes to use a value of 4 pounds per day as the daily ice consumption rate for calculating the

annual energy consumption of ice makers. In a separate rulemaking, DOE had previously proposed to apply an ice consumption rate of 1.8 pounds per day for measuring the energy use associated with icemaking in consumer refrigerators, refrigerator-freezers, and freezers. 78 FR at 41628. In response to the proposed test procedure for refrigerators, refrigerator-freezers, and freezers, AHAM commented that based on a Northwest Energy Efficiency Alliance (NEAA) field study and member data on ice production rates for products in the NEAA field study, the average ice consumption rate would be 0.76 pounds per day. (Test Procedures for Refrigerators, Refrigerator-freezers, and Freezers; Docket No. EERE–2012–BT–TP–0016; AHAM, No. 41 at p. 2) DOE notes that ice makers within consumer refrigerator-freezers or freezers are a feature of that particular product type, while ice makers are a product specifically designed to produce ice. Accordingly, the daily ice consumption likely varies between these ice makers. DOE lacks data on the difference in daily ice consumption between ice makers and ice makers within refrigerator-freezers and freezers; however, DOE assumes that consumers who choose to purchase a dedicated ice maker will consume, on average, more ice than consumers who rely on their refrigerator-freezers or freezers to supply ice. Given the lack of usage data for ice makers, DOE selected 4 pounds per day as a reasonable daily ice consumption rate that is substantially higher than both the 1.8 pounds per day and 0.76 pounds per day referenced for ice makers in refrigerator-freezers and freezers.

Moreover, dedicated ice makers are typically capable of producing much more ice per day than the automatic icemakers used in refrigerator-freezers and freezers, with some ice makers having claimed harvest rates ranging from 10 to 70 pounds per day. DOE recognizes that these rates may have been measured under different testing conditions than those being proposed in today's notice.[10] In the absence of comprehensive and reliable field data that would suggest a particular national-average daily ice consumption rate, DOE is assuming that these products will, for the reasons noted immediately above, have an ice production rate roughly double that which DOE previously considered for the automatic icemakers of refrigerator-freezers and freezers.

DOE requests comment on this proposed daily ice consumption rate. DOE also seeks access to field or survey data that indicate whether this value is representative of actual ice consumption for ice makers. Because the harvest rates of ice makers vary widely, DOE recognizes the limitations of using a 4 pound per day estimate for all ice makers. Therefore, DOE requests comment on whether the daily ice consumption rate used in the test procedure should vary based on harvest rate, and if so, how the rate should vary.

5. Test Conditions and Set-Up

Because of the similarities between ice makers and other consumer refrigeration products, DOE proposes to require that ice makers be tested using many of the same test conditions as are required for refrigeration products such as refrigerators, refrigerator-freezers, and freezers. Specifically, DOE proposes to require that ice makers meet the same set-up requirements and operating conditions (excluding those requirements that are not applicable to ice makers), clearance distances, steady-state conditions as applicable, and icemaking cycle indication provisions. DOE expects that using the same set-up and test conditions will help ensure testing consistency for ice makers while minimizing manufacturer burden.

DOE initially considered proposing that ice makers be tested in an ambient temperature condition of 90 ± 1 °F, which is considerably warmer than the average ambient temperature that these products would likely face in consumers' homes. The 90 °F ambient temperature is used for many refrigeration products because the test procedure requires testing with the doors closed and the elevated temperature simulates thermal loads associated with door openings and other loads, such as cooling down warm food. However, ice makers would likely experience much less frequent door openings than refrigerators or refrigerator-freezers since an ice maker's door would be expected to be opened primarily when retrieving ice for use in cool drinks, while refrigerator and refrigerator-freezer doors would be accessed when retrieving or preparing any food that requires refrigeration or is cooled before consumption. In addition, the load associated with the freezing and cool down of ice would be measured directly in the ice maker test procedure, while the load associated with cool-down of foods inserted into a refrigerator or refrigerator-freezer is not directly measured in the test procedure for these products, suggesting that using an elevated temperature to simulate these loads is inappropriate when testing ice makers. Consequently, DOE's proposal would require that ice makers be tested in a 72 °F ambient temperature condition. See also section III.G.1.

DOE requests comment on its proposal to require testing of ice makers in a 72 °F ambient temperature condition and its proposal to apply all of the set-up requirements that are currently required for refrigerators, refrigerator-freezers, and freezers to ice makers. DOE also seeks comment on its assumption that ice makers are not opened as frequently as other refrigeration products along with its estimated ice production rate for ice makers.

For ice makers that are not portable (*i.e.,* units that use water provided by a water supply line), DOE proposes to require that the inlet water temperature be the same as the 72 °F ambient temperature condition required for the test, but with a modified tolerance requirement of ± 2 °F. DOE has proposed a similar approach for measuring the energy use associated with icemaking in refrigerator-freezers and freezers. *See* 78 FR at 41621 (proposing that testing be conducted with water inlet temperature of 90 ± 2 °F). DOE offered this approach as a means to minimize the potential complications associated with maintaining water temperature at a level other than the ambient temperature in the supply water lines when water is not flowing. DOE also proposes to require the same inlet water pressure as proposed for testing of automatic icemakers in refrigerators, refrigerator-freezers, and freezers, 60 ± 15 psig. *Id.* DOE also proposes to clarify that the pressure range would apply while the water is flowing.

DOE considered whether to propose the same 72 ± 2 °F water supply temperature requirement for portable ice makers. However, during testing of a portable ice maker, DOE determined that the water in the reservoir reached a steady-state temperature of approximately 45 °F after several hours. Therefore, to reduce the time required during testing to reach a steady-state, DOE proposes that the water used to fill the reservoir of portable ice makers be 55 ± 2 °F.

DOE requests comment on whether its proposed water temperature and pressure conditions for portable and non-portable ice makers are appropriate.

The DOE proposal for ice makers would use many of the same requirements as those used for other consumer refrigeration products. Many of these requirements are from HRF–1–2008 and are incorporated by reference into DOE's regulations. See Appendix A, section 2.2. This group of requirements addresses the test room,

[10] Daily Harvest Rates for Representative Residential Ice Makers, No. 4.

the placement of the unit under test within the test room, the electric power supply, measurement instrumentation, sensor placement for measuring ambient air temperatures, and product set-up conditions. Many of these requirements would also apply when testing ice makers. Hence, DOE's proposed test procedures for Appendix BB would incorporate by reference many of the same provisions as Appendix A.

To ensure that consumer refrigeration products are set up for testing in a manner consistent with their normal use set-up, DOE's Appendix A requires that set-up be in accordance with the printed consumer instructions supplied with the cabinet. However, the test procedure permits certain exceptions designed to ensure test consistency for set-up parameters that could affect test results, but allow for set-up flexibility for those parameters that do not affect energy test results. See Appendix A, section 2.6. DOE proposes to use the same set-up approach for ice makers, with some adjustments to the exceptions. Specifically, the proposed ice maker test procedure would not include the exceptions that (a) waive the need for the installation of water lines and water filters, (b) highlight specific requirements for setting the temperatures of convertible or special compartments, and (c) require ice bins to be emptied of ice.

DOE's proposal includes instructions for setting temperature controls for ice makers. These requirements would apply primarily to cooled-storage ice makers. While DOE found from its research that not all cooled-storage ice makers have user-operable temperature controls, the proposal addresses how to test products equipped with such controls. The proposal would require these types of controls to be set at the median setting during testing, for both the ice production and ice storage parts of the test. This proposed requirement would differ from the current requirements for refrigerators, refrigerator-freezers, and freezers. These provisions require multiple tests and the results are used to calculate energy use based on standardized compartment temperatures. Such an approach is unnecessary for ice makers because they are not designed to maintain storage space within compartments at specific temperatures.

Furthermore, the detailed requirements that DOE proposed earlier for measuring icemaking energy use in refrigerator-freezers are unnecessary when testing ice makers. This is because, for refrigerator-freezers and freezers, any ''drift'' in compartment temperature associated with the initiation of icemaking can change the energy use associated with maintaining the compartment temperatures. To control this drift, temperature readjustment is necessary to help minimize the change in compartment-related energy use. *See* 78 FR at 41623. Ice makers do not consume energy to maintain compartment temperatures because they have no separate internal spaces apart from the ice storage bin that could be considered a ''compartment'' for the purposes of the test. Accordingly, DOE is not proposing similar requirements in the test procedure for ice makers.

On the other hand, some features of ice makers raise set-up concerns that do not arise for refrigerators, refrigerator-freezers, or freezers (*e.g.,* ice piece size control, drain lines, and elevated-drain auxiliary pumps). The proposed procedure would account for these concerns.

DOE is not aware of user-accessible ice piece size control for any automatic icemakers used in refrigerator-freezers or freezers. While DOE is similarly unaware of such controls in ice makers, DOE expects that such a control feature would be more likely to be offered in an ice maker, since the main function of these products is the production of ice. In addition, the impact of varying ice piece size in an ice maker that has such a control feature would be expected to affect the energy use measurement much more for these products, since most of the energy use of refrigerator-freezers and freezers is associated with maintaining cold individual compartment temperatures. DOE proposes that any user-accessible control allowing ice piece size adjustment to be set for the largest ice piece size when testing ice makers. This approach would be consistent with maximizing ice production rate, one of the key sales features of ice makers that distinguish them, for example, from the icemaking capabilities of conventional refrigerator-freezers.

As mentioned above, many uncooled-storage ice makers have drain connections to remove water that remains from the ice production process or that collects at the bottom of the ice storage bin. To ensure that this water freely flows out of the ice maker, DOE proposes to require that any tubing used to convey such water away from the unit under test to a test lab floor drain be as specified in the consumer instructions supplied with the cabinet, and that, unless otherwise specified by the instructions, the drain lines must be installed running downwards from the ice maker's drain outlet. DOE is aware that ice maker manufacturers offer optional pumps that can pump the drain water to a higher location, which is useful in those cases where the drain piping in the house is at a higher elevation than the ice maker's drain outlet. DOE's proposal does not permit the use of such optional pumps in the test.

Further, DOE is aware that some ice makers have on-board pumps integrated within the products' cabinets that can be used for this purpose if necessary. DOE's proposal would also allow these integrated pumps to be shut off or disconnected for the test, if the consumer instructions supplied with the cabinet indicate that such pumps can be switched off or disconnected when they are not needed for lifting the drain water to a higher location. If the integrated pump cannot be turned off by the consumer during typical operation, the pump would be operational during the test and its energy consumption would be included during testing.

DOE is proposing a data collection frequency interval for temperature, power, and energy measurements to be not less than once per minute. The current DOE test procedures in Appendices A and B allow a recording interval of up to four minutes. Because the icemaking test involves multiple recurring events (*i.e.,* icemaker cycles and compressor cycles) that are not synchronized, a shorter recording interval would improve the accuracy of the measurements. Additionally, updating the requirements to reflect the increased accuracy of the equipment routinely employed by test facilities would ensure that the procedure adequately accounts for the improved technology already used in the field. DOE believes that the test burden associated with this requirement, if any, would be insignificant because most, if not all, test facilities already use one-minute recording intervals during testing.

DOE's proposed batch-type ice maker procedure would measure the energy use for test periods that comprise complete icemaking cycles. This concept is consistent with both the established ACIM test procedure and the test procedure DOE proposed for measuring icemaking energy use in refrigerator-freezers and freezers. The concept is also based on a correlation between the energy used to produce ice during each cycle, which is used to accurately calculate the energy use per mass of produced ice.

For most ice makers, identifying icemaking cycles from recorded data (*e.g.,* power input and temperatures) is straightforward, since the compressor power measured for an uncooled-storage

ice maker will change suddenly in the transition from the harvest cycle to the freeze cycle, or the mold heater of a cooled-storage ice maker will be energized to free the ice from the icemaking mold. However, identifying the icemaking cycles for some ice makers may be difficult because the power required to energize the mold heater (or other ice release mechanism) may be negligible compared to the overall power draw of the unit, and/or the compressor power may not change significantly during harvest. To address this situation for the icemaking test procedure for refrigerator-freezers and freezers, DOE proposed three alternative methods that would allow one to readily identify the start and end of icemaking cycles. See 78 FR at 41622 (describing in detail the alternative methods proposed by DOE). DOE's proposal for ice makers would follow this same approach to identifying icemaking cycles.

Additionally, DOE's proposal would require manufacturers to measure the energy used for icemaking and ice storage. Measuring the energy use of the ice storage function for cooled-storage ice makers requires measuring how much energy is used to maintain the ice maker's storage bin at a steady state ice storage temperature. A test would be needed to confirm that the unit is operating in a steady state before such a measurement is made. For refrigerators, refrigerator-freezers, and freezers, steady state is determined based on compartment temperatures—*i.e.,* once the rate of temperature change within a compartment is less than 0.042 °F per hour. See Appendix A, section 2.9. DOE proposes to use a similar temperature-based method for ice makers to confirm that uncooled-storage ice makers have reached steady state. However, as mentioned above, ice makers do not have compartments to provide refrigerated storage space. Hence, the evaluation of stability would not be based on an evaluation of compartment temperature, as it is for other refrigeration products, but rather, a less complex measurement of the interior temperature of the ice maker.

DOE also notes that because its proposed approach for ice makers would not be based on the maintenance of particular storage temperatures (*i.e.,* standardized temperatures), in DOE's tentative view, for the purpose of evaluating stability, temperature sensor locations are not as critical for ice makers as they are for the compartments of other consumer refrigeration products (*e.g.,* refrigerator-freezers). As a result, today's proposal would require manufacturers to evaluate steady-state conditions on the basis of a single temperature sensor located one inch above the maximum ice level of the ice storage bin as close to the center of the bin as possible but in a location that would not interfere with the operation of the ice maker, such as when ice falls into the bin during harvest. In addition, because the space available in this location of the ice maker may be limited, DOE's proposal does not require use of weighted temperature sensors, for example, as described in HRF–1–2008 section 5.5.4. However, the proposal would require a measurement accuracy of at least ± 0.5 °F for these sensors. DOE also proposes to apply the same steady state criterion already used for refrigerators, refrigerator-freezers, and freezers to the single measured temperature to confirm that a steady state condition has been achieved for the ice storage test for cooled-storage ice makers.

DOE requests comment on all of its proposals for test conditions and for set-up of ice makers for testing. DOE also requests comment on its proposals related to the treatment of ice maker drain lines and drain pumps, along with information regarding the power consumption of such pumps.

6. Icemaking Test

To measure icemaking energy use, DOE proposes to require a test similar to its ACIM test procedure, which involves measuring ice and monitoring energy use once per icemaking cycle for three consecutive icemaking cycles to determine the energy use per 100 pounds of produced ice. However, rather than requiring the collecting and weighing of ice after every icemaking cycle, DOE's proposal for batch-type ice makers would measure icemaking energy use for a whole, but unspecified, number of icemaking cycles over at least 6 hours, unless the bin fills first. For continuous-type ice makers with no icemaking cycles, DOE's proposal would measure energy use over 6 hours, unless the bin fills first. DOE proposes to use the same approach to minimize any thermal losses from door openings in order to mitigate their potential impacts on the measured energy use. The thermal loss associated with ice collection would have a much greater impact on energy use measurement for an ice maker than for a typical ACIM because ice collection for an ice maker requires opening the door and exposing much more of the cooled surfaces of the interior to warm test room air. Many ACIM models drop the produced ice through a hole in the bottom of the ACIM assembly at the end of each icemaking cycle, which reduces the thermal exposure associated with ice collection. In addition, the harvest capacity of most ice makers is much lower than that of ACIMs, so any amount of thermal loss would have a greater impact on the energy use measurement. Reducing this thermal loss by requiring ice collection only once would reduce the test uncertainty that would be associated with a once-per-cycle collection of ice.

DOE notes that for batch-type ACIMs, the ACIM test procedure requires icemaking stabilization to occur prior to taking measurements. This stabilization is achieved when the difference in the weight of harvested ice for two consecutive icemaking cycles does not exceed 2 percent. *See* ANSI/ASHRAE 29–2009, section 7.1.1. DOE proposes to require a stabilization period for the ice maker test procedure as well, but stabilization would be achieved after two hours of icemaking operation rather than confirmed based on batch weight. This method would avoid the potential thermal loading associated with door openings that is likely to occur if DOE were to adopt the ice production-based approach followed by the ACIM-based procedure. DOE observed during ice maker testing that the temperatures and power consumption of these products reach steady-state within these times. (Ice maker Stabilization Data, No. 6)

DOE requests comment on the proposed two-hour stabilization period for both batch-type and continuous-type ice makers.

Also, similar to the procedure for ACIM, DOE proposes to require that a perforated container be placed in the ice storage bin to collect the ice that will be weighed at the end of the test period. DOE proposes to require that the container used to catch the harvested ice shall be perforated such that the ice of the unit under test cannot fall through the container's holes and the water hold-up weight is no more than 1.0 percent of the weight of the smallest batch of ice for which the container is used. DOE expects that some portion of the ice collected during a test of an uncooled-storage ice maker may melt before the container is removed for weighing of the ice. The water that melts off the ice in a consumer's home would drop to the bottom of the ice storage bin and would not be available for use as ice. In order to maintain consistency with field use, DOE proposes that melted ice should not be included in the ice mass measurement at the end of the test period—hence, the proposed use of a perforated container. However, DOE is aware that surface tension may prevent melt water from passing through the holes in the

container. To address this possibility, DOE proposes that the perforated container may not ''hold'' water representing more than 1.0 percent of any ice mass measurement made during testing. To help with this measurement, DOE is including a procedure to determine the water hold-up weight of the container that involves immersing the container in water, letting it drain, and measuring the weight of the remaining water that does not drain.

DOE also proposes to require using a perforated container for continuous-type ice makers. This is in contrast to the test procedure for continuous-type ACIMs, which requires using a non-perforated container to capture ice. *See* ANSI–ASHRAE 29–2009, section 7.2.1, which is incorporated by reference in the DOE ACIM test procedure. As with batch-type ice, the water that melts off continuous-type ice and drains to the bottom of the bin prior to the retrieval of ice from the bin is not useful as ice. Hence, DOE proposes use of a perforated container for continuous-type ice makers as well as for batch-types.

During its tests of ice makers, DOE noted one unit whose design severely limited the size of a perforated container that could be placed within its bin to collect harvested ice because the ice bin did not slide or tilt out. Consequently, a perforated container that could be placed in the bin was unable to fit all of the ice that was produced within the specified icemaking test period. For such units, in which it is impossible to place a perforated container large enough to capture all of the ice produced during the icemaking test period, DOE proposes to allow additional door openings during the test period for ice retrieval and measurement. The collected ice would be placed into the ice storage bin of the unit under test, underneath the perforated container. The proposal would also allow (in the case of batch-type ice makers) the perforated container to be sized so that it can capture the ice associated with no less than five icemaking cycles. The ice produced during the test period would be retrieved and weighed multiple times during the test period, but no more frequently than once every five icemaking cycles. For continuous-type ice makers, the proposal would allow the perforated container to be sized so that it can capture the ice associated with no less than an hour of ice production. The ice produced during the test would be retrieved and weighed multiple times during the test period, but no more frequently than once per hour.

DOE proposes to apply weighing requirements identical to those used for ACIMs, *i.e.,* using a scale for weighing ice with an accuracy and precision within 1 percent of the measured ice weight. *See* ANSI–ASHRAE 29–2009, section 5.51.

For measuring the energy use of batch-type ice makers, DOE proposes using a test period that would begin with the start of the first icemaking cycle occurring after the two-hour stabilization period. The perforated container would be placed into the ice bin after the last batch of ice harvested prior to the start of the test period drops into the bin, and the bin would not be emptied of ice before inserting the container. The test period would consist of a whole number of icemaking cycles and be at least six hours in duration, or until the ice storage bin fills and ice production stops automatically. The ice container would be retrieved for weighing of the ice within two minutes of the time that the last batch of ice produced during the test period falls into the bin.

For continuous-type ice makers, the test procedure would also require a two-hour stabilization period, and the test period duration would last either six hours or until icemaking is automatically stopped—whichever comes first. The container for collecting the ice would be retrieved for weighing of the ice either at the end of the six hours or within two minutes of the termination of icemaking.

To limit thermal loss associated with the door opening, the proposal would require that the elapsed time during which the ice maker door is open when placing or retrieving the container must not exceed 15 seconds. DOE anticipates that this is a reasonable amount of time to retrieve or place the container without creating a substantial thermal loss.

DOE proposes to require the rapid retrieval of the ice for weighing after the end of the test period to ensure that the ice weight does not decrease significantly after the test period due to melting that would occur in uncooled-storage ice makers. However, DOE recognizes that the test would require close monitoring to make sure that the two minutes are not exceeded. DOE requests comment on the two-minute requirement and suggestions of alternative ice collection delay limits.

DOE also requests comment on other aspects of the proposed test procedure, including use of a perforated container and the container specifications, requirements for the scale used to measure the ice weight, the requirement to leave the ice produced during the stabilization period in the ice storage bin, the six-hour test period, or any other aspect of the proposed test.

DOE notes that the measurements that would be made under the proposed icemaking test would include the energy consumed during the test period and the mass of ice produced during the test period. This energy use would be divided by the ice mass to determine the energy consumption per pound of ice produced. The estimated daily energy use in kilowatt-hours associated with ice production would then be calculated as the daily average production rate multiplied by the calculated energy use per pound of ice. This is discussed in further detail in section III.K.9.

7. Ice Storage Test

For both cooled-storage and uncooled-storage ice makers, DOE proposes to require that the ice storage test be conducted when the ice maker enters ice storage mode to maintain cool ice storage conditions or when replenishing the ice supply to replace melted ice. In these cases, the ice storage bin would be full of ice during this part of the test. During testing, however, an ice maker may not have completely filled its bin during the test period specified for the icemaking test. If this occurs, icemaking may have to continue after completion of the icemaking test in preparation for the ice storage test. The proposal would allow the ice that would have been collected at the end of the icemaking test period to be placed back into the bin after being weighed. However, the proposal would prohibit the use of ice from a different source to accelerate the filling of the bin. This precautionary step would ensure that the ice storage test results would not be affected by any potential subcooling (*i.e.,* temperature below 32 °F) or different melt characteristics associated with the size or shape of ice from a different source.

The proposal would also use a stabilization period for cooled-storage ice makers after the initial filling of the ice storage bin automatically terminates ice production. DOE proposes that completion of this stabilization period be defined based on the stabilization criteria used for the testing of refrigerators, refrigerator-freezers, or freezers, as described, for example, in Appendix A, section 2.9. This proposal, and the requirements for the temperature sensor used to confirm stabilization, are described in section III.K.5. DOE is not proposing to require a stabilization period for uncooled-storage ice makers because of the lengthiness of the proposed ice storage test period described below.

The proposed ice storage measurement test periods would also be different for cooled-storage and uncooled-storage ice makers because of the different operation of these two ice maker types. For cooled-storage ice makers, DOE proposes to specify a test period as required for refrigerators, refrigerator-freezers, or freezers with manual defrost, *i.e.,* the test period would comprise at least two whole compressor cycles and be of a duration not less than 3 hours. See Appendix A, section 4.1.

For uncooled-storage ice makers, DOE proposes a test period duration of at least 48 hours that would start at the end of ice production and end once the following replacement cycle stops. During testing of uncooled-storage ice makers, DOE observed that the periods of ice production initiated to replace melted ice did not always occur at regular intervals, nor did they consistently last the same amount of time. The change in the average energy use measured for the entire ice storage period, evaluated after each replacement cycle, continued to represent a significant portion of ice maker total energy use for a long period of time. Test data show that a test period as long as 48 hours is generally required to limit this variation to roughly one percent of total ice maker energy use. (''Ice Storage Test Period Stabilization'', No. 7) DOE proposes using a test period of at least 48 hours to reduce the potential variability associated with the ice storage test for uncooled storage ice makers.

DOE requests comment on its proposed methodology for measuring ice storage energy consumption for both cooled-storage and uncooled-storage ice makers. In particular, it requests comment on whether its proposed duration for the uncooled-storage test period is sufficiently long to reduce the variability in test results that might be caused by the inconsistent intervals between ice production and idle periods when the ice maker is operating only to replenish melted ice. DOE is also interested in whether a shorter duration would be viable. In either case, DOE is interested in any supporting data suggesting a different duration than the one proposed or data supporting the proposed duration.

8. Ice Hardness for Continuous-Type Ice Makers

DOE is aware of at least one continuous-type ice maker on the market: a nugget ice maker, which compresses the continuously formed ice to produce uniformly-sized cylindrical pieces. ANSI/ASHRAE 29–2009, ''Method of Testing Automatic Ice Makers,'' Annex A, ''Method of Calorimetry,'' addresses the hardness of ice produced by continuous-type ACIMs. Ice hardness, which represents the fraction of the delivered ice product which is frozen as opposed to liquid water, is defined as the percentage value or ratio obtained by dividing the measured latent heat capacity of the ice, expressed in British thermal units per pound (Btu/lb), by the value 144 Btu/lb, which is the latent heat capacity of water assuming all of the water freezes.

DOE's ACIM test procedure adjusts the energy consumption calculations using the ice hardness. *See* 10 CFR 431.134(2)(i). This adjustment corrects the measured energy use per pound of ice so that it represents the energy use that would have been required to produce ice of 100 percent hardness. The adjustment ensures that a higher efficiency rating cannot be obtained simply by designing a continuous ice maker that produces lower-hardness ice. Similarly, the adjustment partially corrects for the typically greater energy use per pound of batch type ice makers (compared with continuous type) by eliminating the portion of the energy use rating difference associated with the reduced frozen water content found in ice produced by continuous-type ice makers. DOE proposes that an ice hardness factor be used in the same way to adjust the measurement of energy use per pound of ice for continuous-type ice makers to calculate an adjusted energy use per pound of ice produced. As described in section III.K.6, energy use per pound of ice would be multiplied by the daily average ice production to determine the daily average energy use for ice production.

However, DOE recognizes that the ice hardness measurement procedure prescribed in Annex A: Method of Calorimetry in ASHRAE 29–2009 could incur a significant test burden. Therefore, DOE proposes to allow manufacturers the option of either using an ice hardness measurement determined using the ASHRAE 29–2009 procedure or a standard ice hardness factor of 0.85, which is a typical ice hardness value for nugget ice, the style of ice produced in the continuous-type ice maker mentioned above. This approach will reduce the test burden by avoiding the need for measuring ice hardness, while still providing manufacturers the option of using the ice hardness measurement if they desire to do so.

DOE requests comment on its proposal to adjust the icemaking energy use for continuous-type ice makers to account for ice hardness under 100 percent and its proposed approach to allow manufacturers to use either an ice hardness value measured using calorimetry or a standard ice hardness factor when calculating energy usage. DOE also requests comment on whether its proposed ice hardness factor of 0.85 is an appropriate value to represent the nugget ice expected to be produced by consumer continuous-type ice makers.

9. Energy Use Calculations

As discussed in section III.K.3, DOE proposes to use an energy use metric for ice makers that includes energy use associated both with icemaking and with ice storage. Section III.K.4 discusses DOE's proposal to use an average daily ice production rate of 4 pounds to calculate the contribution to daily energy use associated with icemaking. DOE's proposal would involve calculating the energy use per ice mass by dividing the total energy use measured during the icemaking test period by the total mass of ice produced during the test period. Daily icemaking energy use would be calculated by multiplying the energy use per ice mass by the daily ice consumption rate of 4 pounds per day. For continuous-type ice makers, the energy use per ice mass would be adjusted by multiplying this value by the ice hardness adjustment factor, I_{HAF}, which is equal to:

$$I_{HAF} = \frac{144\frac{Btu}{lb} + 40\frac{Btu}{lb}}{\left(144\frac{Btu}{lb} \times I_H\right) + 40\frac{Btu}{lb}}$$

I_H is the ice hardness factor, either a standard value of 0.85 or the measured value obtained using the procedure specified in Annex A of ASHRAE 29–2009. The ice hardness factor corrects the energy use per ice mass to account for the reduced refrigeration load associated with the production of ice such as nugget ice, which is not 100 percent frozen water. The 40 Btu/lb in the above expression represents the cooling load required to reduce the temperature of a pound of the incoming water from its inlet temperature of 72 °F to the ice temperature of 32 °F.

To calculate daily ice storage energy use, DOE is proposing that the average ice storage power consumption be multiplied by the amount of time per day that the ice maker is not producing the 4-pound average daily ice consumption. This approach avoids attributing ice storage energy use to ice makers during the time when they would be operating in active mode to produce the projected daily amount of 4-pounds of ice. This amount of time would be calculated based on the 4-

pound consumption and the measurements of ice mass and duration of the icemaking test period. The ice storage time would be equal to the number of minutes in a day, 1,440, minus the number of minutes required to produce 4 pounds of ice. This ice storage time would then be multiplied by the energy consumption measured during the ice storage test period and divided by the duration of that test period to provide the daily energy use associated with ice storage.

The ice production and ice storage energy use contributions would be added to provide the daily average energy use. For portable ice makers, this sum would be further multiplied by a usage adjustment factor to account for the fact that portable ice makers are not energized and producing or storing ice at all times. DOE proposes applying a usage adjustment factor equal to 0.5 for portable ice makers. DOE has no data to indicate, on average, what portion of the year portable ice makers are energized—DOE has proposed use of 0.5 for this factor and requests comments and any information that might refine this estimate.

DOE requests comment on its proposed method for calculating the daily energy consumption of ice makers. In addition, DOE requests comment on whether 0.5 is an appropriate annual usage adjustment factor for portable ice makers and seeks access to field or survey data that could help it develop a more representative assumption.

L. Incidental Changes To Test Procedure Language To Improve Clarity

DOE proposes to change the description for calculating the energy use for products in the majority of cases where two tests are conducted using two different temperature control settings that bracket the compartments' standardized temperatures. Specifically, section 6.2.1.2 of Appendix A currently refers to these two tests as two ''test periods.'' DOE proposes to change the language to refer to ''tests.'' DOE proposes similar changes in sections 6.2.1.1, 6.2.2.1, 6.2.3.1, and 6.2.4.1 of Appendix A and in sections 6.2.1.1 and 6.2.1.2 of Appendix B. DOE requests comment on this proposal.

DOE also proposes to amend the regulatory language associated with separate auxiliary compartments. Rather than discussing ''first'' fresh food or freezer compartments, DOE is proposing to use the term ''primary'' fresh food or freezer compartments. DOE requests comment on this proposal.

DOE proposes to modify its definition for variable defrost. Rather than indicating that ''the times between defrost *should* vary with different usage patterns and include a continuum of lengths of time between defrosts as inputs vary.'' DOE proposes to modify the language by replacing ''should'' with ''must''. DOE requests comment on this proposal.

DOE proposes to extend certain set-up provisions to some of the new product classes addressed by this notice. For example, section 2.4 of Appendix A describes requirements for automatic defrost refrigerator-freezers. DOE proposes to indicate in the title of this section that it applies to all automatic defrost refrigeration products covered by Appendix A with freezer compartments that have a temperature range equivalent to the freezer compartments of refrigerator-freezers. These products include hybrid refrigerator-freezers and hybrid freezers. Also, section 2.5 describes requirements for all-refrigerators with small compartments for the freezing and storage of ice. DOE proposes that the title of this section would be modified to also cite hybrid all-refrigerators, non-compressor all-refrigerators, and hybrid non-compressor all-refrigerators. Finally, section 2.11 addresses refrigerators and refrigerator freezers with demand-response capability. DOE proposes that this requirement would generally apply to refrigeration products covered by the test procedure. DOE requests comment on these proposed extensions of the set-up requirements.

M. Changes to Volume Measurement and Calculation Instructions

Section 5.3 of Appendices A and B, which references AHAM HRF–1–2008 section 3.30 and sections 4.2 through 4.3, provides instructions for measuring a unit's refrigerated volume. Since establishing the test procedures in Appendices A and B, DOE has received questions regarding how to account for certain component volumes when determining the total refrigerated volume according to AHAM HRF–1–2008. DOE issued guidance on the proper treatment of such components in August 2012 (''Guidance on Component Consideration in Volume Measurements,'' No. 11, (''August 2012 Guidance'')).[11] DOE is proposing to amend Appendices A and B to clarify the appropriate volume measurements consistent with the instructions provided in the August 2012 Guidance.

Specifically DOE proposes that the following component volumes would not be included in the compartment volume measurements: Icemaker compartment insulation (*e.g.,* insulation isolating the icemaker compartment from the fresh food compartment of a product with a bottom-mounted freezer with through-the-door ice service), fountain recess, dispenser insulation, and ice chute (if there is a plug, cover, or cap over the chute per Figure 4–2 of AHAM HRF–2–2008). DOE proposes that the following component volumes would be included in the compartment volume measurements: Icemaker auger motor (if housed inside the insulated space of the cabinet), icemaker kit, ice storage bin, and ice chute (up to the dispenser flap, if there is no plug, cover, or cap over the ice chute per Figure 4–3 of HRF–1–2008). DOE requests comment on the proposed volume measurement clarifications.

Adjusted total volume is designated VA in Appendices A and B, whereas it is designated AV in 10 CFR 430.32. DOE proposes to change the designation to AV in the test procedure appendices for consistency.

Rounding for volume calculations, as specified in HRF–1–2008, is to the nearest 0.01 cubic foot or 0.1 liter for freezer and fresh food compartments. DOE proposes to require that volumes of freezer, fresh food, and cellar compartments be rounded off to the nearest 0.01 cubic foot, and that, if the volumes of these compartments are recorded in liters, that they be converted to cubic feet and rounded off to the nearest 0.01 cubic foot before use in calculations of total refrigerated volume or adjusted total volume. DOE proposes also that total refrigerated volume and adjusted volume be recorded to the nearest 0.1 cubic foot.

DOE requests comments on these proposals and is particularly interested in the proposed conversion when calculating refrigerated and adjusted total volumes.

N. Removal of Appendices A1 and B1

On September 15, 2011, DOE published a final rule establishing amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers. (76 FR 57516) Any refrigerator, refrigerator-freezer, or freezer manufactured starting on September 15, 2014, must be compliant with those amended standards to be legally distributed in commerce in the United States. To determine whether products comply with the amended standards, DOE requires that manufacturers use the test procedures set forth in Appendix A for refrigerators and refrigerator-freezers and Appendix B for freezers. Products manufactured

[11] This and other DOE guidance documents are available for viewing at *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1.*

prior to September 15, 2014, were required to be tested for compliance with the existing standards using Appendices A1 or B1 unless the manufacturer was certifying the product for early compliance with the amended standards, in which case the manufacturer would use Appendix A or B. However, beginning on September 15, 2014, the Appendix A1 and B1 test procedures will be displaced by Appendices A and B. To prevent confusion after the compliance date of the amended standards and to eliminate unnecessary regulatory text, DOE proposes to remove Appendix A1 and Appendix B1 from subpart B to 10 CFR part 430 and to remove reference to these appendices in other parts of the regulations.

In addition, DOE proposes to remove from the list of materials incorporated by reference ANSI/AHAM HRF–1–1979, (Revision of ANSI B38.1–1970), (''HRF–1–1979''), *American National Standard, Household Refrigerators, Combination Refrigerator-Freezers and Household Freezers.* This commercial standard is incorporated by reference only into the test procedures of Appendices A1 and B1, which DOE proposes to eliminate.

O. Compliance With Other EPCA Requirements

1. Test Burden

EPCA requires that the test procedures DOE prescribes or amends be reasonably designed to produce test results that measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. These procedures must also not be unduly burdensome to conduct. *See* 42 U.S.C. 6293(b)(3). DOE has concluded that the amendments proposed in today's notice satisfy this requirement.

The test procedures proposed in this notice apply primarily to products currently unregulated by DOE. Most of these products are very similar to refrigerators, refrigerator-freezers, and freezers, and use insulated cabinets and refrigeration systems to keep the interiors cool. The proposed test procedures are based on, and consistent with, test procedures currently required for testing refrigerators, refrigerator-freezers, and freezers and would not represent any greater test burden than DOE's test procedures for these products.

The proposed test procedures for ice makers differ somewhat from the test procedures for refrigerators, refrigerator-freezers, and freezers. However, the test facilities and instrumentation required for testing ice makers would be nearly identical, and the test duration would be very similar and would represent no greater test burden than what is currently required of manufacturers of those refrigeration products that DOE already regulates.

DOE considered whether the proposed test procedures could be modified to further reduce the burdens of its proposal without negatively affecting test accuracy and concluded that there are no such options for modification that would significantly reduce the burden beyond the steps already taken and described above.

2. Changes in Measured Energy Use

Most of the amendments proposed in today's notice establish test procedures for products for which there currently are no DOE test procedures or energy conservation standards: Cooled cabinets, non-compressor refrigeration products, hybrid freezers, and ice makers. Hence, there are no changes in measured energy use associated with these amendments.

DOE had previously issued guidance that addressed hybrid products as well as refrigerator, refrigerator-freezer, and freezer products that have a wine chiller volume that comprises less than 50 percent of that product's interior volume. While this guidance may not have completely clarified whether existing coverage for refrigerators and refrigerator-freezers extends to any of these products, DOE's proposed coverage determination, published October 31, 2013, has since clarified the extent of this coverage and affirmed that products with a wine storage volume less than 50 percent of the total interior volume are currently subject to the standards applicable to refrigerators and refrigerator-freezers, but that hybrid products are not. 78 FR 65223. Hence, for refrigerator, refrigerator-freezer, and freezer products, including refrigerators and refrigerator-freezers that have a wine chiller comprising less than 50 percent of the product's volume, there also are no changes in measured energy use.

This notice also proposes test procedure amendments for a small minority of product types that are currently covered by DOE's regulations, including non-hybrid refrigerators, refrigerator-freezers, and freezers that have cellar compartments comprising less than half of their total refrigerated volume. The test procedure amendments addressing these products for the most part clarify how to conduct the test, rather than impose any new requirements. Further, to the extent DOE is aware, no actual or planned products in this category (*i.e.,* products with cellar compartments whose volumes are insufficient to meet the proposed hybrid refrigeration product definition) would be affected by the proposed amendments. Hence, DOE does not expect at this time that there would be any change in measured energy consumption for such products.

Today's proposal also would modify the definitions for refrigerator, refrigerator-freezer, and freezer, and would introduce general terms such as consumer refrigeration product to denote groups of covered products. The definitional changes for refrigerator, refrigerator-freezer, and freezer would indicate that these products may contain cellar compartments that comprise less than half of their refrigerated volume, and would otherwise rearrange the order of the requirements to make the structure of all the definitions consistent. DOE is not aware of any existing products whose status would be changed by this amendment, nor does DOE believe that the proposal would change any product's energy use measurement.

DOE requests comment on its findings that there would be no affected products for which there would be changes in measured energy use associated with any of the amendments proposed in this notice.

3. Standby and Off Mode Energy Use

EPCA directs DOE to amend its test procedures to include standby mode and off mode energy consumption. It also requires that this energy consumption be integrated into the overall energy consumption descriptor for the product, unless DOE determines that the current test procedures for the product already fully account for and incorporate the standby and off mode energy consumption of the covered product. (42 U.S.C. 6295(gg)(2)(A)(i)).

DOE's proposal involves measuring the energy use of the affected products during extended time periods that include periods when the compressor and other key components are cycled off. All of the energy these products use during the ''off cycles'' would be included in the measurements. A given refrigeration product being tested could include auxiliary features that draw power in a standby or off mode. In such instances, HRF–1–2008, which is incorporated in relevant part into the proposed test procedures, generally instructs manufacturers to set certain auxiliary features to the lowest power position during testing. In this lowest power position, any standby or off mode energy use of such auxiliary features would be included in the energy

measurement. Hence, no separate changes would be needed to account for standby and off mode energy consumption, since the current (and as proposed) procedures address these modes. DOE also notes that it has included an ice storage test for the energy test procedure for ice makers, which effectively addresses standby energy use for these products during times when the ice maker is not actively making ice.

DOE requests comments on its tentative determination that the proposed test procedures would adequately address standby and off mode energy use.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

For manufacturers of consumer refrigeration products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's size standards published on January 31, 1996, as amended, to determine whether any small entities would be required to comply with the rule. 61 FR 3280, 3286, as amended at 67 FR 3041, 3045 (Jan. 23, 2002) and at 69 FR 29192, 29203 (May 21, 2004); see also 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000). The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Miscellaneous refrigeration product manufacturers are classified under NAICS 335222, ''Household Refrigerator and Home Freezer Manufacturing'' and NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for NAICS 335222 and 750 employees or less for NAICS 333415.

In this NOPR, DOE proposes new test procedures for miscellaneous refrigeration products, comprising cooled cabinets (*e.g.,* wine chillers and beverage centers), hybrid refrigeration products, non-compressor refrigerators, and ice makers. As described in section III.O.2, these products are not currently covered by DOE energy conservation standards. The notice also proposes to amend the test procedure for refrigerators, refrigerator-freezers, and freezers that have cellar compartments that have a volume insufficient to be considered hybrid products under today's proposal. The proposed test procedures, when taken as a whole, may impact manufacturers who would be required to test their products in accordance with these proposed requirements. DOE has analyzed these impacts on small businesses and presents its findings below.

DOE examined the potential impacts of the new testing procedures proposed in this rulemaking under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. In using these procedures, DOE conducted a more focused inquiry into small business manufacturers of products that would be covered by this proposal. During its market survey, DOE used all available public information to identify potential small manufacturers. DOE's research involved the review of product databases (*e.g.,* California Energy Commission (CEC), and Natural Resources Canada (NRCan) databases) and individual company Web sites to create a list of companies that manufacture or sell miscellaneous refrigeration products. DOE reviewed these data to determine whether the entities met the SBA's definition of a small business manufacturer of miscellaneous refrigeration products and screened out companies that do not offer products that would be affected by the proposed amendments, do not meet the definition of a ''small business,'' or are foreign-owned and operated.

DOE identified four small business manufacturers of products that would be affected by today's proposal. From its analysis, DOE determined the expected impacts of the proposed rule on affected small businesses and whether DOE could certify that this rulemaking would not have a significant economic impact on a substantial number of small entities.

If adopted, the proposed test procedure would provide new test procedures for manufacturers to use when evaluating the energy efficiency of all cooled cabinets, ice makers, non-compressor refrigerators, and hybrid refrigeration products as they are all defined in today's proposal. Cooled cabinets are currently regulated by the CEC and NRCan as wine chillers. DOE assumes that such products sold in California and/or Canada are the same products sold in the remaining States. Hence, manufacturers have already tested such products in order to report energy use to CEC and/or NRCan. The proposed test procedure would modify the calculation of energy use for these products, but would not require retesting. The cost to manufacturers associated with testing procedures for the remaining products addressed by today's proposal are estimated to average $2,500 per test. This estimate is based on input from third party testing labs for completing tests as specified by DOE's proposed test procedure.

The primary cost for small businesses under this rulemaking would result from the aforementioned testing requirements. The four identified small businesses manufacture cooled cabinets, hybrid refrigeration products, and ice makers. However, assuming that DOE establishes coverage over the products addressed in this proposal, only products for which manufacturers publicly make energy use claims would be required under Federal law to be tested using a DOE test procedure. (At this time, there are no Federal energy conservation standards in place for these products.) Currently, only wine chillers (treated under this proposal as cooled cabinets) are required to make representations of their energy use by virtue of their coverage by the State of California. Moreover, although some of the four identified small businesses also manufacture ice makers, they do not

make any public claims regarding their energy consumption; therefore, these ice makers would not be subject to any testing requirements under this rulemaking. As mentioned above, existing cooled cabinet models that are being sold in the U.S. are assumed to have already been tested, and the proposed test would require only an adjustment of the calculated energy use. Consequently, costs associated with revising the calculations of energy use and revising representations of energy use were applied only to the number of existing basic models of cooled cabinets manufactured by these small businesses, which DOE estimated at 25 cooled cabinet basic models. DOE estimated that revising the energy use representations for these products would require 120 hours of effort for each manufacturer. The average hourly salary for an engineer completing these tasks is estimated at $44.36.[12] Fringe benefits are estimated at 30 percent of total compensation, which brings the hourly costs to employers associated with reviewing and filing of reports to $57.67.[13] Hence, total costs to small businesses to implement the requirements of this rulemaking are estimated at $28,000, or an average of $7,000 per small business.

DOE also considered the additional costs associated with the test procedure requirements of testing and reporting to DOE the energy use of the products other than cooled cabinets that are the subject of this notice. These costs would be incurred if an energy conservation standard were established that imposed efficiency requirements as well as requirements to report energy use for these products. Based on an estimated testing cost of $2,500 per unit, testing of two units per basic model, shipping costs for shipping the units to a test laboratory of $150 per unit, test management and review time of 5 hours per unit, reporting time of 40 hours plus 6 hours per model, and the above hourly rate, the additional costs are estimated at $74,000, or $18,500 per small business.

DOE seeks comment on its estimated additional testing cost from the proposed testing requirements, particularly the impacts of these additional costs on small manufacturers and whether the number of small businesses DOE has identified is accurate.

[12] U.S. Department of Labor, Bureau of Labor Statistics. 2011. National Occupational Employment and Wage Estimates. Washington, DC.

[13] U.S. Department of Labor, Bureau of Labor Statistics. 2010. Employer Costs for Employee Compensation—Management, Professional, and Related Employees. Washington, DC.

DOE also analyzed the testing cost burden relative to the revenues of small manufacturers. Based on this analysis, DOE estimates that the cost burden of the test procedure proposal's requirement for revising representations of cooled cabinets ranges from 0.01 to 0.02 percent of annual revenues, depending on the small entity affected by this test procedure. DOE concludes that these values would be unlikely to represent a significant economic impact for small businesses. The total cost burden, including the cost associated with the additional requirement for testing of the additional products associated with this notice, if energy conservation standards are established, ranges from 0.01 to 0.2 percent of annual revenues. DOE concludes that this also would be unlikely to represent a significant economic impact for small businesses.

Based on the criteria outlined above, DOE has determined that the proposed amendments would not have a ''significant economic impact on a substantial number of small entities,'' and the preparation of a regulatory flexibility analysis is not required. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE seeks comment on its reasoning that the proposed test procedure changes would not have a significant impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

DOE has generally established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). DOE proposed to add coverage for miscellaneous refrigeration products in a notice published on October 31, 2013. 78 FR 65223. All collections of information from the public by a Federal agency must receive prior approval from OMB. DOE is actively pursuing its renewal and expansion for the information collection for all of its covered products, including miscellaneous refrigeration products. As part of that effort, DOE estimated its public reporting burden for a typical manufacturer that is subject to DOE recordkeeping regulations. DOE estimated that it will take each respondent approximately 30 hours total per company per year to comply with the certification and recordkeeping requirements based on 20 hours of technician/technical work and 10 hours clerical work to actually submit the CCMS templates. DOE has proposed certification requirements for miscellaneous refrigeration products (which would only be required if DOE ultimately issues a coverage determination and sets standards for these products). This rulemaking would include recordkeeping requirements on manufacturers that are associated with executing and maintaining the test data for these products. For the purposes of estimating burden, DOE assumed that each respondent will spend 30 hours total per company per year estimate. DOE recognizes that recordkeeping burden may vary substantially based on company preferences and practices. DOE requests comment on this burden estimate and plans to publish a notice once the information approval is approved by OMB should this rulemaking be finalized as proposed.

D. Review Under the National Environmental Policy Act of 1969

DOE is proposing test procedure amendments that will likely be used to develop and implement future energy conservation standards for miscellaneous refrigeration products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to

ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year. Accordingly, these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action proposes to establish test procedures to measure the energy efficiency of miscellaneous refrigeration products, and is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule would require using testing methods contained in the following commercial standards: AHAM HRF–1–2008, ''Energy and Internal Volume of Refrigerating Appliances'', and ANSI–ASHRAE 29–2009, ''Method of Testing Automatic Ice Makers.'' DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov.* Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to the Public Participation section near the end of this notice.

DOE requires visitors with laptop computers and other devices, such as tablets, to be checked upon entry into the building. Any person wishing to bring these devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site, *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=105.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the use of the term ''cooled cabinet'' to denote products such as wine chillers that maintain compartment temperatures that are warmer than 39 °F and on the proposed definition for these products.

2. DOE requests comment on the use of the terms ''non-compressor cooled cabinet'' and ''non-compressor refrigerator'' to denote products that use alternative refrigeration systems. DOE also requests comment on the definitions proposed for these products, and also on DOE's initial market research indicating that non-compressor refrigerator-freezers and non-compressor freezers are not available for sale.

3. DOE requests comment on the definitions for hybrid products, including on the proposed requirement that hybrid status would require that at least 50 percent of the product's refrigerated volume comprise one or more warm compartments such as wine chiller compartments.

4. DOE requests comment on its proposed definition for ice makers. DOE also requests comment on whether it is necessary to further distinguish ice makers from freezers in the proposed ice maker definition. If so, what specific changes would be needed to the definition to ensure clarity between these two terms?

5. DOE requests comment on its proposed definitions for ''refrigerator, refrigerator-freezer, and freezer'', ''miscellaneous refrigeration product'', and ''consumer refrigeration product.''

6. DOE requests comment on the proposed changes to the definitions for refrigerator, refrigerator-freezer, and freezer that would distinguish these products from commercial refrigeration

equipment. Similarly, DOE also seeks general comments on its proposed clarifying amendments to these definitions.

7. DOE requests comment on its proposal to remove provisions for testing externally vented products from the test procedures.

8. DOE requests comment on its proposed sampling plans and certification report requirements for the products covered by this proposed test procedure. DOE also requests comments on its proposal to establish requirements for allowing use of CAD for volume measurements and for regulations associated with verification of certified volumes for miscellaneous refrigeration products.

9. DOE invites comment on its definition for cellar compartment. DOE also requests comment on whether an alternative term may be more appropriate than ''cellar'' to denote this type of compartment.

10. DOE requests comment on its proposal to use 55 °F as the cellar compartment standardized temperature during testing.

11. DOE requests comments on it proposals for measuring cellar compartment temperatures.

12. DOE requests comment on its proposal to require that cellar compartments with their own temperature control within products that are not cooled cabinets or hybrid refrigeration products be treated as special compartments.

13. DOE requests comment on its proposals for incorporating cellar compartment temperature measurements into the test procedure requirements for temperature control settings and the proposed selection of tests to be used to calculate energy use for cooled cabinets and hybrid refrigeration products.

14. DOE requests comments on the proposals for calculating cellar compartment volume and for using a volume adjustment factor of 1.0 for these compartments for cooled cabinets and a volume adjustment factor of 0.69 for these compartments in other refrigeration products.

15. DOE requests comments on its proposed test procedure changes to address compartments that are convertible between the cellar compartment temperature range and fresh food and/or freezer temperature range.

16. DOE requests comment on its proposals for ambient temperatures and usage adjustment factors for both vapor-compression and non-compressor cooled cabinets. DOE requests information regarding field energy use of wine chillers and other cooled cabinets which it could use to confirm or adjust the proposed adjustment factors.

17. DOE requests comment on its proposal, for cooled cabinets equipped with manual light switches, that only one test would be required, with the lighting control set to its lowest energy use position.

18. DOE seeks comment on its proposal to require testing of non-compressor refrigerators in 90 °F ambient temperature conditions, to require that their energy use be calculated with a usage factor equal to 1.0, and to require that certification reports include the fresh food compartment temperature attained in testing (if warmer than 39 °F). DOE also requests comment on its potential consideration of adjustments to the energy conservation standards to be developed for non-compressor refrigerators that would address the reduced stringency of a test in which the compartment temperature is warmer than the standardized temperature.

19. DOE requests comment on its proposal that non-compressor refrigeration system cycling be addressed in the test procedure by indicating that the term ''compressor cycles'' means ''refrigeration system cycles'' for such products.

20. DOE requests comment on its proposal to incorporate into Appendices A and B the extrapolation approach when testing refrigeration products other than non-compressor refrigerators, subject to the requirement that the measured warm-setting compartment temperature(s) must be warmer than the cold-setting compartment temperatures and that the measured energy use must be lower in the warm setting.

21. DOE seeks comments on its proposal to specify that hybrid refrigeration products be tested in 90 °F ambient temperature conditions, and that their energy use be calculated using a 0.85 usage adjustment factor.

22. DOE requests comment on its proposals to incorporate cellar compartment temperatures into the test procedure requirements for setting temperature controls, conducting tests, and calculating product energy consumption.

23. DOE requests comments on the proposed definitions delineating different types of ice makers. DOE also seeks comment on whether the industry uses terminology that would be more technically accurate (and descriptive) when distinguishing cooled-storage from uncooled-storage ice makers.

24. DOE requests comment on its proposed definitions to support the proposed test procedures for ice makers.

25. DOE requests comment on its proposal to establish an energy use metric for ice makers that includes both ice production and ice storage energy use, and whether the proposed metric would sufficiently capture the total energy consumption of both cooled-storage and uncooled-storage ice makers.

26. DOE requests comment on its proposed daily ice consumption rate of 4 lb per day. DOE also seeks access to field or survey data that would yield, if possible, a more representative value for a daily ice consumption rate. DOE also requests comment on whether the daily ice consumption rate used in its proposal should vary based on ice maker harvest rate, and if so, how the rate should vary.

27. DOE requests comment on its proposal to require testing of ice makers in a 72 °F ambient temperature condition and its proposal to otherwise apply to ice makers all of the set-up requirements applicable to ice makers that are currently required for refrigerators, refrigerator-freezers, and freezers. DOE also seeks comment on its assumption that ice makers are not opened as frequently as other refrigeration products.

28. DOE requests comment on whether its proposed water temperature conditions for portable and non-portable ice makers are appropriate: 72 ± 2 °F temperature and 60 ± 15 psig pressure for non-portable ice makers, and 55 ± 2 °F temperature for portable ice makers.

29. DOE requests comment on all aspects of its proposed test conditions and test set-up requirements for ice makers. DOE also requests comment on its proposals for ice maker drain lines and for drain pumps. DOE also requests information regarding the power consumption of such pumps.

30. DOE requests comment on the proposed two-hour stabilization period for the icemaking portion of the test for ice makers.

31. DOE requests comment on its proposal to require that ice be retrieved within two-minutes after the end of the icemaking test period and seeks suggestions and alternative ice collection delay limits. DOE also seeks any supporting data regarding the proposed and alternative limits.

32. DOE seeks comment on its proposed use of a perforated container and the container specifications, the proposed requirements for the scale used to measure the ice weight, the proposed requirement to leave the ice

produced during the stabilization period in the ice storage bin (*i.e.,* the six-hour test period), or any other aspect of the proposed test.

33. DOE requests comment on its proposed methodology for measuring ice storage energy consumption for both cooled-storage and uncooled-storage ice makers. In particular, it requests comment on whether its proposed duration for the uncooled-storage test period is of sufficient length to reduce the variability in test results that might be caused by the inconsistent intervals between ice production and idle periods when the ice maker is operating only to replenish melted ice.

34. DOE requests comment on its proposed adjustment to the icemaking energy use for continuous-type ice makers to account for ice hardness less than 100 percent, and its proposed approach that would allow use of either an ice hardness value measured using calorimetry or a standard ice hardness factor. DOE also requests comment on whether its proposed ice hardness factor of 0.85 is an appropriate value to represent the nugget ice expected to be used in consumer continuous-type ice makers.

35. DOE requests comment on its proposed method for calculating the daily energy consumption of ice makers. In addition, DOE requests comment on whether 0.5 is an appropriate annual usage adjustment factor for portable ice makers and seeks access to field or survey data that could help it develop a more representative assumption.

36. DOE requests comment on its proposal to change the term ''test period'' to ''test'' in sections 6.2.1.1, 6.2.1.2, 6.2.2.1, 6.2.3.1, and 6.2.4.1 of Appendix A and in sections 6.2.1.1 and 6.2.1.2 of Appendix B.

37. DOE requests comment on its proposal to refer to primary compartments as ''primary'' compartments rather than ''first'' compartments in its discussions of separate auxiliary compartments.

38. DOE requests comments on its proposal to replace ''should'' with ''must'' in its definition for variable defrost.

39. DOE requests comment on its proposed extension of the requirements of Appendix A, sections 2.4, 2.5, and 2.11 to the appropriate new products addressed by this notice.

40. DOE requests comment on the proposed clarifications to the refrigerated volume measurements in Appendices A and B, which are consistent with the August 2012 Guidance.

41. DOE requests comments on its proposal to modify the designation for adjusted volume to ''AV'' in Appendices A and B, and its proposal to require that the volumes of freezer, fresh food, and cellar compartments be rounded to the nearest 0.01 cubic foot before calculation of a product's total refrigerated volume or adjusted volume.

42. DOE seeks comment on its reasoning that the proposed test procedure changes would not have a significant impact on a substantial number of small entities.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on November 26, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Amend § 429.14 by:

■ a. Revising the section heading and paragraph (a)(3); and

■ b. Adding paragraphs (c) and (d).

The revision and additions read as follows:

§ 429.14 Consumer refrigerators, refrigerator-freezers and freezers.

(a) * * *

(3) The value of total refrigerated volume of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the total refrigerated volumes measured for each tested unit of the basic model or the total refrigerated volume of the basic model as calculated in accordance with § 429.72(c). The value of adjusted total volume of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the adjusted total volumes measured for each tested unit of the basic model or the adjusted total volume of the basic model as calculated in accordance with § 429.72(c).

* * * * *

(c) *Rounding requirements for representative values, including certified and rated values.*

(1) The represented value of annual energy use must be rounded to the nearest kilowatt hour per year.

(2) The represented value of total refrigerated volume must be rounded to the nearest 0.1 cubic foot.

(3) The represented value of adjusted total volume must be rounded to the nearest 0.1 cubic foot.

(d) *Product category determination.* Each basic model shall be certified according to the appropriate product category as defined in § 430.2 based on compartment volumes and compartment temperatures.

(1) Compartment volumes used to determine product category shall be measured according to the provisions in section 5.3 of appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and section 5.3 of appendix B of subpart B of part 430 of this chapter for freezers; and

(2) Compartment temperatures used to determine product category shall be measured according to the provisions section 5.1 of appendix A of subpart B of part 430 of this chapter for refrigerators and refrigerator-freezers and section 5.1 of appendix B of subpart B of part 430 of this chapter for freezers, except that the compartment temperatures shall be measured with an ambient temperature of 72.0±1.0 degrees Fahrenheit (22.2±0.6 degrees Celsius).

■ 3. Add § 429.61 to read as follows:

§ 429.61 Miscellaneous refrigeration products.

(a) Sampling plan for selection of units for testing.

(1) The requirements of § 429.11 are applicable to miscellaneous refrigeration products; and

(2) For each basic model of miscellaneous refrigeration product, a sample of sufficient size shall be randomly selected and tested to ensure that—

(i) Any represented value of estimated annual operating cost, energy

consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

or

(B) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from appendix A of subpart B of part 430 of this chapter).

and

(ii) Any represented value of the energy factor or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample;

or

(B) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from appendix A of subpart B of part 430 of this chapter).

(3) The value of total refrigerated volume of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the total refrigerated volumes measured for each tested unit of the basic model or the total refrigerated volume of the basic model as calculated in accordance with § 429.72(d). The value of adjusted total volume of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the adjusted total volumes measured for each tested unit of the basic model or the adjusted total volume of the basic model as calculated in accordance with § 429.72(d).

(b) Certification reports.

(1) The requirements of § 429.12 are applicable to miscellaneous refrigeration products; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) For cooled cabinets, hybrid refrigeration products, and non-compressor refrigerators: the annual energy use in kilowatt hours per year (kWh/yr); the total refrigerated volume in cubic feet (cu ft) and the total adjusted volume in cubic feet (cu ft).

(ii) For non-compressor refrigerators and hybrid non-compressor refrigerators, the cold-setting fresh food compartment temperature average calculated for tests used for certification, if this value is greater than 39 °F.

(iii) For ice makers: The annual energy use in kilowatt-hours per year (kWh/yr), the harvest rate in pounds of ice per day (lb/day), and, for continuous-type ice makers, the ice hardness (as defined in section 5 of appendix BB to subpart B of part 430 of this chapter) used to calculate the energy use.

(3) Pursuant to § 429.12(b)(13), a certification report must include the following additional product-specific information for cooled cabinets, hybrid refrigeration products, and non-compressor refrigerators: Whether the basic model has variable defrost control (in which case, manufacturers must also report the values, if any, of CT_L and CT_M (For an example, see section 5.2.1.3 in appendix A to subpart B of part 430 of this chapter.) used in the calculation of energy consumption), whether the basic model has variable anti-sweat heater control (in which case, manufacturers must also report the values of heater Watts at the ten humidity levels 5%, 15%, through 95% used to calculate the variable anti-sweat heater ''Correction Factor''), and whether testing has been conducted with modifications to the standard temperature sensor locations specified by the figures referenced in section 5.1 of appendices A and B to subpart B of part 430 of this chapter.

(c) *Rounding requirements for representative values, including certified and rated values.*

(1) The represented value of annual energy use must be rounded to the nearest kilowatt hour per year.

(2) The represented value of total refrigerated volume must be rounded to the nearest 0.1 cubic foot.

(3) The represented value of adjusted total volume must be rounded to the nearest 0.1 cubic foot.

(4) The represented value of cold-setting fresh food compartment temperature must be rounded to the nearest 0.1 degree Fahrenheit.

(5) The represented value of harvest rate must be rounded to the nearest 0.1 pound of ice per day.

(6) The represented value of ice hardness (as defined in section 5 of appendix BB to subpart B of part 430 of this chapter) must be rounded to the nearest 0.01.

(d) *Product category determination.* Each basic model for miscellaneous refrigeration products other than ice makers shall be certified according to the appropriate product category as defined in § 430.2 based on compartment volumes and compartment temperatures.

(1) Compartment volumes used to determine product category shall be measured according to the provisions in section 5.3 of appendix A to subpart B of part 430 of this chapter; and

(2) Compartment temperatures used to determine product category shall be measured according to the provisions section 5.1 of appendix A to subpart B of part 430 of this chapter, except that the compartment temperatures shall be measured with an ambient temperature of 72.0 ± 1.0 degrees Fahrenheit (22.2 ± 0.6 degrees Celsius).

■ 4. Amend § 429.72 by adding paragraph (d) to read as follows:

§ 429.72 Alternative methods for determining non-energy ratings.

* * * * *

(d) *Miscellaneous refrigeration products.* The total refrigerated volume of a miscellaneous refrigeration product basic model may be determined by performing a calculation of the volume based upon computer-aided design (CAD) models of the basic model in lieu of physical measurements of a production unit of the basic model. Any value of total adjusted volume of a basic model reported to DOE in a certification of compliance in accordance with § 429.61(b)(2) must be calculated using the CAD-derived volume(s) and the applicable provisions in the test procedures in part 430 of this chapter for measuring volume. The calculated value must be within two percent, or 0.5 cubic feet (0.2 cubic feet for products with total refrigerated volume less than

7.75 cubic feet (220 liters)), whichever is greater, of the volume of a production unit of the basic model measured in accordance with the applicable test procedure in part 430 of this chapter.

■ 5. Amend § 429.134 by

■ a. Revising paragraph (b)(1)(ii)(B); and

■ b. Adding paragraph (c).

The addition and revision reads as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) If the certified total refrigerated volume is found to be invalid, the average measured adjusted total volume, rounded to the nearest 0.1 cubic foot, will serve as the basis for calculation of maximum allowed energy use for the tested basic model.

* * * * *

(c) *Miscellaneous refrigeration products—*

(1) *Verification of total refrigerated volume.* For all miscellaneous refrigeration products except ice makers, the total refrigerated volume of the basic model will be measured pursuant to the test requirements of part 430 of this chapter for each unit tested. The results of the measurement(s) will be averaged and compared to the value of total refrigerated volume certified by the manufacturer. The certified total refrigerated volume will be considered valid only if

(i) The measurement is within two percent, or 0.5 cubic feet (0.2 cubic feet for products with total refrigerated volume less than 7.75 cubic feet (220 liters)), whichever is greater, of the certified total refrigerated volume, or

(ii) The measurement is greater than the certified total refrigerated volume.

(A) If the certified total refrigerated volume is found to be valid, the certified adjusted total volume will be used as the basis for calculating the maximum allowed energy use for the tested basic model.

(B) If the certified total refrigerated volume is found to be invalid, the average measured adjusted total volume, rounded to the nearest 0.1 cubic foot, will serve as the basis for calculating the maximum allowed energy use for the tested basic model.

(2) For all miscellaneous refrigeration products except ice makers, test for models with two compartments, each having its own user-operable temperature control. The test described in section 3.3 of the applicable test procedure in appendix A to subpart B part 430 of this chapter shall be used for all units of a tested basic model before DOE makes a determination of noncompliance with respect to the basic model.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 6. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 7. Amend § 430.2 by:

■ a. Adding, in alphabetical order, definitions for ''all-refrigerator,'' ''batch-type ice maker,'' ''consumer refrigeration product,'' ''continuous-type ice maker,'' ''cooled cabinet,'' ''cooled-storage ice maker,'' ''hybrid all-refrigerator,'' ''hybrid freezer,'' ''hybrid non-compressor all-refrigerator,'' ''hybrid non-compressor refrigerator,'' ''hybrid refrigerator,'' ''hybrid refrigerator-freezer,'' ''hybrid refrigeration product,'' ''ice maker,'' ''miscellaneous refrigeration product,'' ''non-compressor all-refrigerator,'' ''non-compressor cooled cabinet,'' ''non-compressor refrigerator,'' ''portable ice maker,'' and ''uncooled-storage ice maker;''

■ b. Revising the definitions for ''freezer,'' ''refrigerator,'' and ''refrigerator-freezer;'' and

■ c. Removing the definitions for ''electric refrigerator'' and ''electric refrigerator-freezer.''

The additions and revisions read as follows:

§ 430.2 Definitions.

* * * * *

All-refrigerator means a refrigerator that does not include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C) as determined according to the provisions in § 429.14(c)(2). It may include a compartment of 0.50 cubic-foot capacity (14.2 liters) or less for the freezing and storage of ice.

* * * * *

Batch-type ice maker means an ice maker that has alternating freezing and harvesting periods.

* * * * *

Consumer refrigeration product means a refrigerator, refrigerator-freezer, freezer, or miscellaneous refrigeration product as defined in this section.

Continuous-type ice maker means an ice maker that continually and simultaneously freezes and harvests ice.

* * * * *

Cooled cabinet means a cabinet that has a source of refrigeration requiring electric energy input only and is capable of maintaining compartment temperatures either (a) no lower than 39 °F (3.9 °C), or (b) in a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C) as determined according to the provisions in § 429.61(c)(2).

Cooled-storage ice maker means an ice maker that maintains ice storage bin temperatures below 32 °F (0 °C).

* * * * *

Freezer means a cabinet that has a source of refrigeration that requires single phase alternating current electric energy input only and is capable of maintaining compartment temperatures of 0 °F (−17.8 °C) or below as determined according to the provisions in § 429.14(c)(2). It does not include any refrigerated cabinet that consists solely of an automatic ice maker and an ice storage bin arranged so that operation of the automatic icemaker fills the bin to its capacity. A freezer may include one or more cellar compartments, as defined in Appendix B of subpart B of this part, whose combined refrigerated volume is less than half the total refrigerated volume of the product. However, the term does not include any product:

(1) With one or more permanently open compartments;

(2) Which does not include a compressor and condenser unit as an integral part of the cabinet assembly; or

(3) That is certified under one or more of the following commercial standards:

(i) ANSI/NSF 7–2009 *International Standard for Food Equipment—Commercial Refrigerators and Freezers;* or

(ii) ANSI/UL 471–2006 *UL Standard for Commercial Refrigerators and Freezers.*

* * * * *

Hybrid all-refrigerator means a hybrid refrigerator that does not include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C) as determined according to the provisions in § 429.61(c)(2). It may include a compartment of 0.50 cubic-foot capacity (14.2 liters) or less for the freezing and storage of ice.

Hybrid freezer means a cabinet that has a source of refrigeration that includes a compressor and condenser unit and requires electric energy input only, and consists of two or more compartments where:

(1) At least half but not all of its refrigerated volume is comprised of one or more cellar compartments, as defined in Appendix A of subpart B of this part, and

(2) The remaining compartment(s) are capable of maintaining compartment temperatures at 0 °F (−17.8 °C) or

below as determined according to the provisions in § 429.61(c)(2).

Hybrid non-compressor all-refrigerator means a hybrid non-compressor refrigerator that does not include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C) as determined according to the provisions in § 429.61(c)(2). It may include a compartment of 0.50 cubic-foot capacity (14.2 liters) or less for the freezing and storage of ice.

Hybrid non-compressor refrigerator means a non-compressor refrigerator with at least half of its refrigerated volume composed of one or more cellar compartments, as defined in Appendix A of subpart B of this part.

Hybrid refrigerator means a cabinet that has a source of refrigeration that includes a compressor and condenser unit and requires electric energy input only, and consists of two or more compartments where:

(1) At least half but not all of its refrigerated volume is comprised of one or more cellar compartments, as defined in Appendix A of subpart B of this part,

(2) At least one of the remaining compartments is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to § 429.61(c)(2),

(3) The cabinet may also include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C) as determined according to § 429.61(c)(2), but

(4) It does not provide a separate low temperature compartment capable of maintaining compartment temperatures below 8 °F (−13.3 °C) as determined according to § 429.61(c)(2).

Hybrid refrigerator-freezer means a cabinet that has a source of refrigeration that includes a compressor and condenser unit and requires electric energy input only, and consists of three or more compartments where:

(1) At least half but not all of its refrigerated volume is comprised of one or more cellar compartments, as defined in Appendix A of subpart B of this part,

(2) At least one of the remaining compartments is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according § 429.61(c)(2), and

(3) At least one other compartment is capable of maintaining compartment temperatures below 8 °F (−13.3 °C) and may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below as determined according to § 429.61(c)(2).

Hybrid refrigeration product means a hybrid refrigerator, hybrid refrigerator-freezer, hybrid freezer, or hybrid non-compressor refrigerator as defined in this section.

Ice maker means a consumer product other than a refrigerator, refrigerator-freezer, freezer, hybrid refrigeration product, non-compressor refrigerator, or cooled cabinet designed to automatically produce and harvest ice, but excluding any basic model that is certified under NSF/ANSI 12–2012 *Automatic Ice Making Equipment.* Such a product may also include a means for storing ice, dispensing ice, or storing and dispensing ice.

* * * * *

Miscellaneous refrigeration product means a consumer refrigeration product other than a refrigerator, refrigerator-freezer, or freezer, which includes hybrid refrigeration products, cooled cabinets, non-compressor refrigerators, and ice makers.

* * * * *

Non-compressor all-refrigerator means a non-compressor refrigerator that is not a hybrid non-compressor refrigerator and that does not include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C) as determined according to § 429.61(c)(2). It may include a compartment of 0.50 cubic-foot capacity (14.2 liters) or less for the freezing and storage of ice.

Non-compressor cooled cabinet means a cooled cabinet that has a source of refrigeration that does not include a compressor and condenser unit.

Non-compressor refrigerator means a cabinet that has a source of refrigeration that does not include a compressor and condenser unit, requires electric energy input only, and is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to § 429.61(c)(2). A non-compressor refrigerator may include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C) as determined according to § 429.61(c)(2). A non-compressor refrigerator also may include one or more cellar compartments, as defined in Appendix A of subpart B of this part, if the combined refrigerated volume of these compartments is less than half the total refrigerated volume of the product.

* * * * *

Portable ice maker means an ice maker that does not require connection to a household water supply for operation and is operable using one or more on-board reservoirs that must be manually supplied with water.

* * * * *

Refrigerator means a cabinet that has a source of refrigeration that requires single phase alternating current electric energy input only and is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to § 429.14(c)(2). A refrigerator may include a compartment capable of maintaining compartment temperatures below 32 °F (0 °C), but does not provide a separate low temperature compartment capable of maintaining compartment temperatures below 8 °F (−13.3 °C) as determined according to § 429.14(c)(2). A refrigerator also may include one or more cellar compartments, as defined in Appendix A of subpart B of this part, if the combined refrigerated volume of the cellar compartment(s) is less than half the total refrigerated volume of the product. However, the term does not include any product:

(1) With one or more permanently open compartments;

(2) Which does not include a compressor and condenser unit as an integral part of the cabinet assembly; or

(3) That is certified under one or more of the following commercial standards:

(i) ANSI/NSF 7–2009 *International Standard for Food Equipment—Commercial Refrigerators and Freezers;* or

(ii) ANSI/UL 471–2006 *UL Standard for Commercial Refrigerators and Freezers.*

Refrigerator-freezer means a cabinet that has a source of refrigeration that requires single phase alternating current electric energy input only and consists of two or more compartments where at least one of the compartments is capable of maintaining compartment temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C) as determined according to § 429.14(c)(2), and at least one other compartment is capable of maintaining compartment temperatures below 8 °F (−13.3 °C) and may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below as determined according to § 429.14(c)(2). A refrigerator-freezer may include one or more cellar compartments, as defined in Appendix A of subpart B of this part, if the total refrigerated volume of the cellar compartment(s) is less than half the total refrigerated volume of the product. However, the term does not include any cabinet:

(1) With one or more permanently open compartments;

(2) Which does not include a compressor and condenser unit as an integral part of the cabinet assembly; or

(3) That is certified under one or more of the following commercial standards:

(i) ANSI/NSF 7–2009 *International Standard for Food Equipment–Commercial Refrigerators and Freezers;* or

(ii) ANSI/UL 471–2006 *UL Standard for Commercial Refrigerators and Freezers.*

* * * * *

Uncooled-storage ice maker means an ice maker that does not maintain ice storage bin temperatures below 32 °F.

■ 8. Amend § 430.3 by:

■ a. Revising introductory paragraph (f) and paragraph (h)(6);

■ b. Removing paragraph (f)(1);

■ c. Redesignating paragraph (f)(2) as (f)(1);

■ d. Adding paragraph (f)(2); and

■ e. Removing and reserving paragraph (h)(5).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(f) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE., Atlanta, GA 30329, (404) 636–8400, *ashrae@ashrae.org, or http://www.ashrae.org.*

* * * * *

(2) ANSI/ASHRAE Standard 29–2009, *Method of Testing Automatic Ice Makers,* (including Errata Sheets issued April 8, 2010 and April 21, 2010), approved January 28, 2009; IBR approved for appendix BB of subpart B.

* * * * *

(h) * * *

(6) AHAM HRF–1–2008, (''HRF–1–2008''), Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009, IBR approved for appendices A, B, and BB to subpart B.

* * * * *

■ 9. Amend § 430.23 by:

■ a. Revising paragraphs (a) and (b); and

■ b. Adding paragraphs (dd) and (ee).

The revisions and additions read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

(a) *Refrigerators and refrigerator-freezers.* (1) The estimated annual operating cost for models without an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(2) The estimated annual operating cost for models with an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(3) The estimated annual operating cost for any other specified cycle type shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to section 6.2 of appendix A of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(4) The energy factor, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For models without an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to section 6.1 of appendix A of this subpart, divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart, the resulting quotient then being rounded off to the second decimal place; and

(ii) For models having an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to section 6.1 of appendix A of this subpart, divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart, the resulting quotient then being rounded off to the second decimal place.

(5) The annual energy use, expressed in kilowatt-hours per year, shall be the following, rounded to the nearest kilowatt-hour per year:

(i) For models without an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart, and

(ii) For models having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart.

(6) Other useful measures of energy consumption shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions which are derived from the application of appendix A of this subpart.

(7) The following principles of interpretation shall be applied to the test procedure. The intent of the energy test procedure is to simulate typical room conditions (72 °F (22.2 °C)) with door openings, by testing at 90 °F (32.2 °C) without door openings. Except for operating characteristics that are affected by ambient temperature (for example, compressor percent run time), the unit, when tested under this test procedure, shall operate in a manner equivalent to the unit's operation while in typical room conditions.

(i) The energy used by the unit shall be calculated when a calculation is provided by the test procedure. Energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not exempted by this test procedure, shall operate in an equivalent manner during energy testing under this test procedure, or be accounted for by all calculations as provided for in the test procedure.

Examples:

(A) Energy saving features that are designed to operate when there are no door openings for long periods of time shall not be functional during the energy test.

(B) The defrost heater shall neither function nor turn off differently during the energy test than it would when in typical room conditions. Also, the product shall not recover differently during the defrost recovery period than it would in typical room conditions.

(C) Electric heaters that would normally operate at typical room conditions with door openings shall also operate during the energy test.

(D) Energy used during adaptive defrost shall continue to be measured and adjusted per the calculation provided for in this test procedure.

(ii) DOE recognizes that there may be situations that the test procedures do not completely address. In such cases, a manufacturer must obtain a waiver in accordance with the relevant provisions of 10 CFR part 430 if:

(A) A product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use; and

(B) Applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data).

(b) *Freezers.* (1) The estimated annual operating cost for freezers without an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to section 6.2 of appendix B of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(2) The estimated annual operating cost for freezers with an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix B of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(3) The estimated annual operating cost for any other specified cycle type for freezers shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to section 6.2 of appendix B of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(4) The energy factor for freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For freezers not having an anti-sweat heater switch, the quotient of:

(A) The adjusted net refrigerated volume in cubic feet, determined according to section 6.1 of appendix B of this subpart, divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of appendix B of this subpart, the resulting quotient then being rounded off to the second decimal place; and

(ii) For freezers having an anti-sweat heater switch, the quotient of:

(A) The adjusted net refrigerated volume in cubic feet, determined according to 6.1 of appendix B of this subpart, divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix B of this subpart, the resulting quotient then being rounded off to the second decimal place.

(5) The annual energy use of all freezers, expressed in kilowatt-hours per year, shall be the following, rounded to the nearest kilowatt-hour per year:

(i) For freezers not having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to section 6.2 of appendix B of this subpart, and

(ii) For freezers having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix B of this subpart.

(6) Other useful measures of energy consumption for freezers shall be those measures the Secretary determines are likely to assist consumers in making purchasing decisions and are derived from the application of appendix B of this subpart.

(7) The following principles of interpretation should be applied to the test procedure. The intent of the energy test procedure is to simulate typical room conditions (72 °F (22.2 °C)) with door openings by testing at 90 °F (32.2 °C) without door openings. Except for operating characteristics that are affected by ambient temperature (for example, compressor percent run time), the unit, when tested under this test procedure, shall operate in a manner equivalent to the unit's operation while in typical room conditions.

(i) The energy used by the unit shall be calculated when a calculation is provided by the test procedure. Energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not exempted by this test procedure, shall operate in an equivalent manner during energy testing under this test procedure, or be accounted for by all calculations as provided for in the test procedure. Examples:

(A) Energy saving features that are designed to operate when there are no door openings for long periods of time shall not be functional during the energy test.

(B) The defrost heater shall neither function nor turn off differently during the energy test than it would when in typical room conditions. Also, the product shall not recover differently during the defrost recovery period than it would in typical room conditions.

(C) Electric heaters that would normally operate at typical room conditions with door openings shall also operate during the energy test.

(D) Energy used during adaptive defrost shall continue to be measured and adjusted per the calculation provided for in this test procedure.

(ii) DOE recognizes that there may be situations that the test procedures do

not completely address. In such cases, a manufacturer must obtain a waiver in accordance with the relevant provisions of 10 CFR part 430 if:

(A) A product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use and

(B) Applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data).

* * * * *

(dd) *Cooled cabinets, non-compressor refrigerators, and hybrid refrigeration products.*

(1) The estimated annual operating cost for models without an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(2) The estimated annual operating cost for models with an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(3) The estimated annual operating cost for any other specified cycle type shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to section 6.2 of appendix A to this subpart; and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(4) The energy factor, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For models without an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to section 6.1 of appendix A of this subpart, divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart, the resulting quotient then being rounded off to the second decimal place; and

(ii) For models having an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to section 6.1 of appendix A of this subpart, divided by —

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart, the resulting quotient then being rounded off to the second decimal place.

(5) The annual energy use, expressed in kilowatt-hours per year, shall be the following, rounded to the nearest kilowatt-hour per year:

(i) For models without an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of appendix A of this subpart, and

(ii) For models having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to section 6.2 of appendix A of this subpart.

(6) Other useful measures of energy consumption shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions which are derived from the application of appendix A of this subpart.

(7) The following principles of interpretation shall be applied to the test procedure. The intent of the energy test procedure is to simulate operation in typical room conditions (72 °F (22.2 °C)) with door openings. For all products that are tested with 90 °F (32.2 °C) ambient temperature without door openings, the higher ambient temperature is intended to represent the heat load associated with door openings. For all products that are tested with 72 °F (22.2 °C) ambient temperature without door openings, an adjustment factor is applied to the test results to account for the heat load associated with door openings. Except for operating characteristics that are affected by ambient temperature (for example, compressor percent run time), the unit, when tested under this test procedure, shall operate in a manner equivalent to the unit's operation while in typical room conditions.

(i) The energy used by the unit shall be calculated when a calculation is provided by the test procedure. Energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not exempted by this test procedure, shall operate in an equivalent manner during energy testing under this test procedure, or be accounted for by all calculations as provided for in the test procedure.

Examples:

(A) Energy saving features that are designed to operate when there are no door openings for long periods of time shall not be functional during the energy test.

(B) The defrost heater shall neither function nor turn off differently during the energy test than it would when in typical room conditions. Also, the product shall not recover differently during the defrost recovery period than it would in typical room conditions.

(C) Electric heaters that would normally operate at typical room conditions with door openings shall also operate during the energy test.

(D) Energy used during adaptive defrost shall continue to be measured and adjusted per the calculation provided for in this test procedure.

(ii) DOE recognizes that there may be situations that the test procedures do not completely address. In such cases, a manufacturer must obtain a waiver in accordance with the relevant provisions of 10 CFR part 430 if:

(A) A product contains energy consuming components that operate differently during the prescribed testing

than they would during representative average consumer use; and

(B) Applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data).

(8) For non-compressor models, ''compressor'' and ''compressor cycles'' as used in appendix A of this subpart shall be interpreted to mean ''refrigeration system'' and ''refrigeration system cycles,'' respectively.

(ee) *Ice makers.* (1) The annual energy use of ice makers, expressed in kilowatt-hours per year, shall be the product of the following two factors, rounded to the nearest kilowatt-hour per year:

(i) 365 days per year; and

(ii) The daily energy consumption in kilowatt-hours per day, determined according to section 6.3 of appendix BB of this subpart.

Appendix A—[Amended]

■ 10. Amend appendix A to subpart B by:

■ a. Revising the heading and removing the introductory note; and

■ b. Revising sections 1. Definitions, 2. Test Conditions, 3. Test Control Settings, 5. Test Measurements, 6. Calculation of Derived Results from Test Measurements and 7. Test Procedure Waivers.

The revisions read as follows:

Appendix A to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products Other Than Ice Makers

1. Definitions

Section 3, *Definitions,* of HRF–1–2008 (incorporated by reference; see § 430.3) applies to this test procedure, except that the term ''wine chiller'' means ''cooled cabinet'' as defined in § 430.2 and the term ''wine chiller compartment'' means ''cellar compartment'' as defined in this appendix.

Anti-sweat heater means a device incorporated into the design of a product to prevent the accumulation of moisture on the exterior or interior surfaces of the cabinet.

Anti-sweat heater switch means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

AS/NZS 4474.1:2007 means Australian/New Zealand Standard 4474.1:2007, Performance of household electrical appliances—Refrigerating appliances, Part 1: Energy consumption and performance. Only sections of AS/NZS 4474.1:2007 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over AS/NZS 4474.1:2007.

Automatic defrost means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of the defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces.

Automatic icemaker means a device that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir located inside the cabinet, that automatically produces, harvests, and stores ice in a storage bin and with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

Cellar compartment means a refrigerated compartment within a consumer refrigeration product that is capable of maintaining compartment temperatures either (a) no lower than 39 °F (3.9 °C), or (b) in a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C) as determined according to § 429.14(c)(2) or § 429.61(c)(2).

Compartment means either:

(a) A space within a refrigeration product cabinet that is enclosed when all product doors are closed and that has no subdividing barriers that divide the space. A subdividing barrier is a solid (non-perforated) barrier that may contain thermal insulation and is sealed around all of its edges or has edge gaps insufficient to allow thermal convection transfer from one side to the other sufficient to equilibrate temperatures on the two sides; or

(b) All of the enclosed spaces within a refrigeration product cabinet that provide the same type of storage, for instance fresh food, freezer, or cellar.

Complete temperature cycle means a time period defined based upon the cycling of compartment temperature that starts when the compartment temperature is at a maximum and ends when the compartment temperature returns to an equivalent maximum (within 0.5 °F of the starting temperature), having in the interim fallen to a minimum and subsequently risen again to reach the second maximum. Alternatively, a complete temperature cycle can be defined to start when the compartment temperature is at a minimum and ends when the compartment temperature returns to an equivalent minimum (within 0.5 °F of the starting temperature), having in the interim risen to a maximum and subsequently fallen again to reach the second minimum.

Cycle means a 24-hour period for which the energy use of a product is calculated based on the consumer-activated compartment temperature controls being set to maintain the standardized temperatures (see section 3.2 of this appendix).

Cycle type means the set of test conditions having the calculated effect of operating a product for a period of 24 hours, with the consumer-activated controls, other than those that control compartment temperatures, set to establish various operating characteristics.

Defrost cycle type means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence, such as the number of defrost heaters energized. Each such variation establishes a separate, distinct defrost cycle type. However, defrost achieved regularly during the compressor off-cycles by warming of the evaporator without active heat addition, although a form of automatic defrost, does not constitute a unique defrost cycle type for the purposes of identifying the test period in accordance with section 4 of this appendix.

HRF–1–2008 means AHAM Standard HRF–1–2008, Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009. Only sections of HRF–1–2008 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–2008.

Ice storage bin means a container in which ice can be stored.

Long-time automatic defrost means an automatic defrost system whose successive defrost cycles are separated by 14 hours or more of compressor operating time.

Multiple compressor product means a consumer refrigeration product with more than one compressor.

Multiple refrigeration system product means a multiple compressor product or a miscellaneous refrigeration product with more than one refrigeration system for which the operation of the systems is not coordinated. For non-compressor multiple refrigeration system products, ''multiple compressor product'' as used in this appendix shall be interpreted to mean ''multiple refrigeration system product.''

Precooling means operating a refrigeration system before initiation of a defrost cycle to reduce one or more compartment temperatures significantly (more than 0.5 °F) below its minimum during stable operation between defrosts.

Recovery means operating a refrigeration system after the conclusion of a defrost cycle to reduce the temperature of one or more compartments to the temperature range that the compartment(s) exhibited during stable operation between defrosts.

Separate auxiliary compartment means a separate freezer, fresh food, or cellar compartment that is not the primary freezer, primary fresh food, or primary cellar compartment. Separate auxiliary compartments may also be convertible (*e.g.,* from fresh food to freezer). Separate auxiliary compartments may not be larger than the primary compartment of their type, but such size restrictions do not apply to separate auxiliary convertible compartments.

Special compartment means any compartment other than a butter conditioner, without doors directly accessible from the exterior, and with a separate temperature control (such as crispers convertible to meat keepers) that is not convertible from the fresh food temperature range to the freezer or cellar temperature ranges.

Stable operation means operation after steady-state conditions have been achieved but excluding any events associated with defrost cycles. During stable operation the average rate of change of compartment temperatures must not exceed 0.042 °F (0.023 °C) per hour for all compartment temperatures. Such a calculation performed for compartment temperatures at any two times, or for any two periods of time comprising complete cycles, during stable operation must meet this requirement.

(a) If compartment temperatures do not cycle, the relevant calculation shall be the difference between the temperatures at two points in time divided by the difference, in hours, between those points in time.

(b) If compartment temperatures cycle as a result of compressor cycling or other cycling operation of any system component (*e.g.,* a damper, fan, heater, etc.), the relevant calculation shall be the difference between compartment temperature averages evaluated for the whole compressor cycles or complete temperature cycles divided by the difference, in hours, between either the starts, ends, or mid-times of the two cycles.

Stabilization period means the total period of time during which steady-state conditions are being attained or evaluated.

Standard cycle means the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy-consuming position.

Through-the-door ice/water dispenser means a device incorporated within the cabinet, but outside the boundary of the refrigerated space, that delivers to the user on demand ice and may also deliver water from within the refrigerated space without opening an exterior door. This definition includes dispensers that are capable of dispensing ice and water or ice only.

Variable anti-sweat heater control means an anti-sweat heater control that varies the average power input of the anti-sweat heater(s) based on operating condition variable(s) and/or ambient condition variable(s).

Variable defrost control means an automatic defrost system in which successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device performing this function. A control scheme that changes the defrost interval from a fixed length to an extended length (without any intermediate steps) is not considered a variable defrost control. A variable defrost control feature predicts the accumulation of frost on the evaporator and react accordingly. Therefore, the times between defrost must vary with different usage patterns and include a continuum of periods between defrosts as inputs vary.

2. Test Conditions

2.1 Ambient Temperature Measurement. Temperature measuring devices shall be shielded so that indicated temperatures are not affected by the operation of the condensing unit or adjacent units.

2.1.1 Ambient Temperature. Measure and record the ambient temperature at points located 3 feet (91.5 cm) above the floor and 10 inches (25.4 cm) from the center of the two sides of the unit under test. For products other than non-compressor cooled cabinets, the ambient temperature shall be 90.0±1 °F (32.2±0.6 °C) during the stabilization period and the test period. For non-compressor cooled cabinets, the ambient temperature shall be 72.0±1.0 °F (22.2±0.6 °C) during the stabilization period and the test period.

2.1.2 Ambient Temperature Gradient. The test room vertical ambient temperature gradient in any foot of vertical distance from 2 inches (5.1 cm) above the floor or supporting platform to a height of 1 foot (30.5 cm) above the top of the unit under test is not to exceed 0.5 °F per foot (0.9 °C per meter). The vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. To demonstrate that this requirement has been met, test data must include measurements taken using temperature sensors at locations 10 inches (25.4 cm) from the center of the two sides of the unit under test at heights of 2 inches (5.1 cm) and 36 inches (91.4 cm) above the floor or supporting platform and at a height of 1 foot (30.5 cm) above the unit under test.

2.1.3 Platform. A platform must be used if the floor temperature is not within 3 °F (1.7 °C) of the measured ambient temperature. If a platform is used, it is to have a solid top with all sides open for air circulation underneath, and its top shall extend at least 1 foot (30.5 cm) beyond each side and front of the unit under test and extend to the wall in the rear.

2.2 Operational Conditions. The unit under test shall be installed and its operating conditions maintained in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), sections 5.3.2 through 5.5.5.5. Exceptions and clarifications to the cited sections of HRF–1–2008 are noted in sections 2.3 through 2.8, and 5.1 of this appendix.

2.2 Operational Conditions. The unit under test shall be installed and its operating conditions maintained in accordance with HRF–1–2008 (incorporated by reference; see § 430.3), sections 5.3.2 through section 5.5.5.5 (excluding section 5.5.5.4). Exceptions and clarifications to the cited sections of HRF–1–2008 are noted in sections 2.3 through 2.8, and 5.1 of this appendix.

2.3 Anti-Sweat Heaters. The anti-sweat heater switch is to be on during one test and off during a second test. In the case of a unit equipped with variable anti-sweat heater control, the standard cycle energy use shall be the result of the calculation described in section 6.2.5 of this appendix.

2.4 Conditions for Automatic Defrost Refrigerator-Freezers, Hybrid Refrigerator-Freezers and Hybrid Freezers. For these products, the freezer compartments shall not be loaded with any frozen food packages during testing. Cylindrical metallic masses of dimensions 1.12±0.25 inches (2.9±0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by low-thermal-conductivity supports in such a manner to ensure that there will be at least 1 inch (2.5 cm) of air space separating the thermal mass from contact with any interior surface or hardware inside the cabinet. In case of interference with hardware at the sensor locations specified in section 5.1 of this appendix, the sensors shall be placed at the nearest adjacent location such that there will be a 1-inch air space separating the sensor mass from the hardware.

2.5 Conditions for All-Refrigerators, Hybrid All-Refrigerators, Non-compressor All-Refrigerators, and Hybrid Non-compressor All-Refrigerators. There shall be no load in the freezer compartment during the test.

2.6 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the test unit shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Connection of water lines and installation of water filters are not required;

(b) Clearance requirements from surfaces of the product shall be as described in section 2.8 of this appendix;

(c) The electric power supply shall be as described in HRF–1–2008 (incorporated by reference; see § 430.3), section 5.5.1;

(d) Temperature control settings for testing shall be as described in section 3 below. Settings for convertible compartments and other temperature-controllable or special compartments shall be as described in section 2.7 of this appendix;

(e) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing;

(f) All the product's chutes and throats required for the delivery of ice shall be free of packing, covers, or other blockages that may be fitted for shipping or when the icemaker is not in use; and

(g) Ice storage bins shall be emptied of ice.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7 of this appendix).

2.7 Compartments that are convertible (*e.g.,* from fresh food to freezer or cellar) shall be operated in the highest energy use position. A compartment may be considered to be convertible to a cellar compartment if it is capable of maintaining compartment temperatures at least as high as 55 °F (12.8 °C) and also capable of operating at storage temperatures less than 37 °F. For the special case of convertible separate auxiliary compartments, this means that the compartment shall be treated as a freezer compartment, a fresh food compartment, or a cellar compartment, depending on which of these represents the highest energy use.

Special compartments shall be tested with controls set to provide the coldest temperature. However, for special compartments in which temperature control is achieved using the addition of heat (including resistive electric heating, refrigeration system waste heat, or heat from any other source, but excluding the transfer of air from another part of the interior of the product) for any part of the controllable

temperature range of that compartment, the product energy use shall be determined by averaging two sets of tests. The first set of tests shall be conducted with such special compartments at their coldest settings, and the second set of tests shall be conducted with such special compartments at their warmest settings. The requirements for the warmest or coldest temperature settings of this section do not apply to features or functions associated with temperature controls (such as fast chill compartments) that are initiated manually and terminated automatically within 168 hours.

Cellar compartments with their own temperature control that are a part of refrigerators, refrigerator-freezers, or non-compressor refrigerators shall be tested according to the requirements for special compartments as described in this section.

Moveable subdividing barriers (see compartment definition (a) in section 1 of this appendix) that separate compartments of different types (*e.g.,* fresh food on one side and cellar on the other side) shall be placed in the median position. If such a subdividing barrier has an even number of positions, the near-median position representing the smallest volume of the warmer compartment(s) shall be used.

2.8 Rear Clearance.

(a) General. The space between the lowest edge of the rear plane of the cabinet and a vertical surface (the test room wall or simulated wall) shall be the minimum distance in accordance with the manufacturer's instructions, unless other provisions of this section apply. The rear plane shall be considered to be the largest flat surface at the rear of the cabinet, excluding features that protrude beyond this surface, such as brackets or compressors.

(b) Maximum clearance. The clearance shall not be greater than 2 inches (51 mm) from the lowest edge of the rear plane to the vertical surface, unless the provisions of paragraph (c) of this section apply.

(c) If permanent rear spacers or other components that protrude beyond the rear plane extend further than the 2 inch (51 mm) distance, or if the highest edge of the rear plane is in contact with the vertical surface when the unit is positioned with the lowest edge of the rear plane at or further than the 2 inch (51 mm) distance from the vertical surface, the appliance shall be located with the spacers or other components protruding beyond the rear plane, or the highest edge of the rear plane, in contact with the vertical surface.

(d) Rear-mounted condensers. If the product has a flat rear-wall-mounted condenser (*i.e.,* a rear-wall-mounted condenser with all refrigerant tube centerlines within 0.25 inches (6.4 mm) of the condenser plane), and the area of the condenser plane represents at least 25% of the total area of the rear wall of the cabinet, then the spacing to the vertical surface may be measured from the lowest edge of the condenser plane.

2.9 Steady-State Condition. Steady-state conditions exist if the temperature measurements in all measured compartments taken at 4-minute intervals or less during a stabilization period are not changing at a rate greater than 0.042 °F (0.023 °C) per hour as determined by the applicable condition of paragraphs (a) or (b), of this section.

(a) The average of the measurements during a 2-hour period if no cycling occurs or during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours is compared to the average over an equivalent time period with 3 hours elapsing between the two measurement periods.

(b) If paragraph (a) of this section cannot be used, the average of the measurements during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours and including the last complete cycle before a defrost period (or if no cycling occurs, the average of the measurements during the last 2 hours before a defrost period) are compared to the same averaging period before the following defrost period.

2.10 Products with Demand-Response Capability. Products that have a communication module for demand-response functions that is located within the cabinet shall be tested with the communication module in the configuration set at the factory just before shipping.

3. Test Control Settings

3.1 Model with No User Operable Temperature Control. A test shall be performed to measure the compartment temperatures and energy use. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously (or to cause the non-compressor refrigeration system to run continuously at maximum capacity).

3.2 Models with User Operable Temperature Control. Testing shall be performed in accordance with the procedure in this section using the following standardized temperatures:

All-refrigerator or non-compressor all-refrigerator: 39 °F (3.9 °C) fresh food compartment temperature;

Hybrid all-refrigerator, or hybrid non-compressor all-refrigerator: 39 °F (3.9 °C) fresh food compartment temperature, and 55 °F (12.8 °C) cellar compartment temperature;

Refrigerator or non-compressor refrigerator: 15 °F (−9.4 °C) freezer compartment temperature and 39 °F (3.9 °C) fresh food compartment temperature;

Hybrid refrigerator or hybrid non-compressor refrigerator: 15 °F (−9.4 °C) freezer compartment temperature, 39 °F (3.9 °C) fresh food compartment temperature, and 55 °F (12.8 °C) cellar compartment temperature;

Refrigerator-freezer: 0 °F (−17.8 °C) freezer compartment temperature and 39 °F (3.9 °C) fresh food compartment temperature;

Hybrid refrigerator-freezer: 0 °F (−17.8 °C) freezer compartment temperature, 39 °F (3.9 °C) fresh food compartment temperature, and 55 °F (12.8 °C) cellar compartment temperature;

Hybrid freezer: 0 °F (−17.8 °C) freezer compartment temperature and 55 °F (12.8 °C) cellar compartment temperature;

Cooled cabinet, including non-compressor models: 55 °F (12.8 °C) cellar compartment temperature.

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 and 3.2.2 of this appendix, the freezer compartment temperature shall be as specified in section 5.1.4 of this appendix, the fresh food compartment temperature shall be as specified in section 5.1.3 of this appendix, and the cellar compartment temperature shall be as specified in section 5.1.5 of this appendix.

3.2.1 *Temperature Control Settings and Tests to Use for Energy Use Calculations.*

3.2.1.1 *Setting Temperature Controls.* For mechanical control systems, (a) knob detents shall be mechanically defeated if necessary to attain a median setting, and (b) the warmest and coldest settings shall correspond to the positions in which the indicator is aligned with control symbols indicating the warmest and coldest settings. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings; if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used.

3.2.1.2 *Test Sequence.* A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest settings. A second test shall be performed with all controls set at their warmest setting or all controls set at their coldest setting (not electrically or mechanically bypassed). For units with a single standardized temperature (*e.g.,* all-refrigerator or cooled cabinet), this setting shall be the appropriate setting that attempts to achieve compartment temperatures measured during the two tests that bound (*i.e.,* one is above and one is below) the standardized temperature. For other units, the second test shall be conducted with all controls at their coldest setting, unless all compartment temperatures measured during the first test are lower than the standardized temperatures, in which case the second test shall be conducted with all controls at their warmest setting.

3.2.1.3 *Tests to Use for Energy Use Calculations.* For non-compressor refrigerators, if any compartment is warmer than its standardized temperature for a test with all controls at their coldest position, the energy calculation shall be based on the cold setting and the average compartment temperature of the cold setting shall be recorded. For all other products covered by this appendix, if any compartment is warmer than its standardized temperature for a test with all controls at their coldest position, the energy use shall be calculated based on tests conducted with the temperature controls in the cold setting for the first test and in the warm setting for the second test, subject to the restriction that, (a) the compartment temperatures must be warmer for the test conducted with the controls set in the warm position than their measurements with the controls set in the cold position, and (b) the measured energy use for the warm position

must be lower than the measured energy for the cold position. If condition (a) or (b) is not met, the manufacturer must submit a petition for a waiver (see section 7 of this appendix).

3.2.1.4 *Temperature Setting Tables.* Refer to Table 1 of this section for products that have only a single refrigerated compartment (*e.g.*, all-refrigerators) or Table 2 of this section for products that have fresh food and freezer compartments (*e.g.*, refrigerators with freezer compartments or refrigerator-freezers) to determine which test results to use in the energy consumption calculation. See Table 3 of this section for a general description of which settings to use and which test results to use in the energy consumption calculation for products with one, two, or three standardized temperatures.

TABLE 1—TEMPERATURE SETTINGS FOR SINGLE-COMPARTMENT PRODUCTS

[*E.g.*, all-refrigerators]

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Mid	Low	Warm	Low	Second Test Only.
			High	First and Second Tests.
	High	Cold	Low	First and Second Tests.
			High	Cold- and Warm-Setting Tests.* **

* If compartment temperature is warmer and energy use is lower for the warm-setting test.
** Except for non-compressor all-refrigerators, for which the energy calculation shall be based on the second test only.

TABLE 2—TEMPERATURE SETTINGS FOR REFRIGERATION PRODUCTS WITH FREEZER COMPARTMENTS AND FRESH FOOD COMPARTMENTS

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Fzr Mid	Fzr Low	Fzr Warm	Fzr Low	Second Test Only.
FF Mid	FF Low	FF Warm	FF Low.	
			Fzr Low	First and Second Tests.
			FF High.	
			Fzr High	First and Second Test.
			FF Low.	
			Fzr High	First and Second Test.
			FF High.	
	Fzr Low	Fzr Cold	Fzr Low	Cold- and Warm-Setting Tests.* **
	FF High	FF Cold	FF High.	
			Fzr Low	First and Second Tests.
			FF Low.	
	Fzr High	Fzr Cold	Fzr High	Cold- and Warm-Setting Tests.* **
	FF Low	FF Cold	FF Low.	
	.....	.....	Fzr Low	First and Second Tests.
			FF Low	
	Fzr High	Fzr Cold	Fzr Low	First and Second Tests.
	FF High	FF Cold	FF Low.	
			Fzr Low	Cold- and Warm-Setting Tests.* **
			FF High.	
			Fzr High	Cold- and Warm-Setting Tests.* **
			FF Low.	
			Fzr High	Cold- and Warm-Setting Tests.* **
			FF High.	

Notes: Fzr = Freezer Compartment, FF = Fresh Food Compartment.
* If compartment temperature is warmer and energy use is lower for the warm-setting test.
** Except for non-compressor refrigerators, for which the energy calculation shall be based on the second test only.

TABLE 3—TEMPERATURE SETTINGS: GENERAL CHART FOR ALL PRODUCTS

First test		Second test		Energy calculation based on:
Setting	Results	Setting	Results	
Mid for all compartments.	All compartments low	Warm for all compartments.	All compartments low	Second Test Only.
			One or more compartments high.	First and Second Test.
	One or more compartments high.	Cold for all compartments.	All compartments low	First and Second Test.
			One or more compartments high.	Cold- and Warm-Setting Tests.* **

* If compartment temperature is warmer and energy use is lower for the warm-setting test.
** Except for non-compressor refrigerators, for which the energy calculation shall be based on the second test only.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If all compartment temperatures are below the appropriate standardized temperatures, then the result of this test alone will be used to determine energy consumption. If this condition is not met, then the unit shall be tested in accordance with 3.2.1 of this appendix.

3.2.3 Temperature Settings for Separate Auxiliary Convertible Compartments. For separate auxiliary convertible compartments tested as freezer compartments, the median setting shall be within 2 °F (1.1 °C) of the standardized freezer compartment temperature, and the warmest setting shall be at least 5 °F (2.8 °C) warmer than the standardized temperature. For separate auxiliary convertible compartments tested as fresh food compartments, the median setting shall be within 2 °F (1.1 °C) of 39 °F (3.9 °C), the coldest setting shall be below 34 °F (1.1 °C), and the warmest setting shall be above 43 °F (6.1 °C). For separate auxiliary convertible compartments tested as cellar compartments, the median setting shall be within 2 °F (1.1 °C) of 55 °F (12.8 °C), and the coldest setting shall be below 50 °F (10.0 °C). For compartments where control settings are not expressed as particular temperatures, the measured temperature of the convertible compartment rather than the settings shall meet the specified criteria.

3.3 Optional Test for Models with Two Compartments and User Operable Controls. As an alternative to section 3.2 of this appendix, perform three tests such that the set of tests meets the ''minimum requirements for interpolation'' of AS/NZS 4474.1:2007 (incorporated by reference; see § 430.3) appendix M, section M3, paragraphs (a) through (c) and as illustrated in Figure M1. The target temperatures t_{xA} and t_{xB} defined in section M4(a)(i) of AS/NZ 4474.1:2007 shall be the standardized temperatures defined in section 3.2 of this appendix.

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5. Test Measurements

5.1 *Temperature Measurements.* (a) Temperature measurements shall be made at the locations prescribed in HRF–1–2008 (incorporated by reference; see § 430.3) Figure 5.1 for cellar and fresh food compartments and Figure 2 for freezer compartments and shall be accurate to within ±0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator, hybrid all-refrigerator, non-compressor all-refrigerator, or hybrid non-compressor all-refrigerator. No cellar compartment temperature measurements need be taken in a refrigerator, refrigerator-freezer, or non-compressor refrigerator.

(b) If the interior arrangements of the unit under test do not conform with those shown in Figures 5.1 or 5.2 of HRF–1–2008, as appropriate, the unit must be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the unit, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.71, and the certification report shall indicate that non-standard sensor locations were used. If any temperature sensor is relocated by any amount from the location prescribed in Figure 5.1 or 5.2 of HRF–1–2008 in order to maintain a minimum 1-inch air space from adjustable shelves or other components that could be relocated by the consumer, except in cases in which the Figures prescribe a temperature sensor location within 1 inch of a shelf or similar feature (*e.g.,* sensor T_3 in Figure 5–1), this constitutes a relocation of temperature sensors that must be recorded in the test data and reported in the certification report as described above.

5.1.1 Measured Temperature. The measured temperature of a compartment is the average of all sensor temperature readings taken in that compartment at a particular point in time. Measurements shall be taken at regular intervals not to exceed 4 minutes. Measurements for multiple refrigeration system products shall be taken at regular intervals not to exceed one minute.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during the test period as defined in section 4 of this appendix. For long-time automatic defrost models, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.1 of this appendix. For models with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.2 of this appendix. For models with automatic defrost that is neither long-time nor variable defrost, the compartment temperature shall be an average of the measured temperatures taken in a compartment during a stable period of compressor operation that

(a) Includes no defrost cycles or events associated with a defrost cycle, such as precooling or recovery,

(b) Is no less than three hours in duration, and

(c) Includes two or more whole compressor cycles. If the compressor does not cycle, the stable period used for the temperature average shall be three hours in duration.

5.1.3 Fresh Food Compartment Temperature. The fresh food compartment temperature shall be calculated as:

$$TR = \frac{\sum_{i=1}^{R}(TR_i) \times (VR_i)}{\sum_{i=1}^{R}(VR_i)}$$

Where:

R is the total number of applicable fresh food compartments, including the primary fresh food compartment and any separate auxiliary fresh food compartments (including separate auxiliary convertible compartments tested as fresh food compartments in accordance with section 2.7 of this appendix), but excluding any cellar compartments;

TR_i is the compartment temperature of fresh food compartment ''i'' determined in accordance with section 5.1.2 of this appendix; and

VR_i is the volume of fresh food compartment ''i.''

5.1.4 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the first freezer compartment and any number of separate auxiliary freezer compartments (including separate auxiliary convertible compartments tested as freezer compartments in accordance with section 2.7 of this appendix);

TF_i is the compartment temperature of freezer compartment ''i'' determined in accordance with section 5.1.2 of this appendix; and

VF_i is the volume of freezer compartment ''i''.

5.1.5 Cellar Compartment Temperature. The cellar compartment temperature shall be calculated with the following equation provided that the model is a hybrid refrigeration product or cooled cabinet:

$$TC = \frac{\sum_{i=1}^{C}(TC_i) \times (VC_i)}{\sum_{i=1}^{C}(VC_i)}$$

Where:

C is the total number of applicable cellar compartments, which include all cellar compartments that are not considered to be part of the fresh food compartment (including separate auxiliary convertible compartments tested as cellar compartments in accordance with section 2.7 of this appendix);

TC_i is the compartment temperature of cellar compartment ''i'' determined in accordance with section 5.1.2 of this appendix; and

VC_i is the volume of cellar compartment ''i.''

5.2 Energy Measurements

5.2.1 Per-Day Energy Consumption. The energy consumption in kilowatt-hours per day, ET, for each test period shall be the energy expended during the test period as specified in section 4 of this appendix adjusted to a 24-hour period. The adjustment shall be determined as follows.

5.2.1.1 Non-Automatic Defrost and Automatic Defrost. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (EP \times 1440 \times K)/T$

Where:

ET = test cycle energy expended in kilowatt-hours per day;

EP = energy expended in kilowatt-hours during the test period;

T = length of time of the test period in minutes; and

1440 = conversion factor to adjust to a 24-hour period in minutes per day.

K = dimensionless correction factor of 1.0 for refrigerators, refrigerator-freezers, and non-compressor refrigerators; 0.55 for cooled cabinets with a compressor and condenser unit as an integral part of the cabinet assembly; 1.20 for non-compressor cooled cabinets; and 0.85 for

hybrid refrigeration products to adjust for average household usage.

5.2.1.2 Long-time Automatic Defrost. If the two-part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times K \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times K \times (12/CT)$

Where:

ET, 1440, and K are defined in section 5.2.1.1 of this appendix;

EP1 = energy expended in kilowatt-hours during the first part of the test;

EP2 = energy expended in kilowatt-hours during the second part of the test;

T1 and T2 = length of time in minutes of the first and second test parts respectively;

CT = defrost timer run time or compressor run time between defrosts in hours required to cause it to go through a complete cycle, rounded to the nearest tenth of an hour; and

12 = factor to adjust for a 50-percent run time of the compressor in hours per day.

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times K \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times K \times (12/CT)$,

Where:

1440 and K are defined in section 5.2.1.1 of this appendix and EP1, EP2, T1, T2, and 12 are defined in section 5.2.1.2 of this appendix;

$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$;

CT_L = the shortest compressor run time between defrosts used in the variable defrost control algorithm (greater than or equal to 6 but less than or equal to 12 hours), or the shortest compressor run time between defrosts observed for the test (if it is shorter than the shortest run time used in the control algorithm and is greater than 6 hours), or 6 hours (if the shortest observed run time is less than 6 hours), in hours rounded to the nearest tenth of an hour;

CT_M = maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 6 and 96 shall be used, respectively.

5.2.1.4 Multiple Compressor Products with Automatic Defrost. For multiple compressor products, the two-part test method in section 4.2.3.4 of this appendix must be used. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times K \times EP1/T1) + \sum_{i=1}^{D}\left[\left(EP2_i - (EP1 \times T2_i/T1)\right) \times K \times (12/CT_i)\right]$$

Where:

1440 and K are defined in section 5.2.1.1 of this appendix and EP1, T1, and 12 are defined in section 5.2.1.2 of this appendix;

i = a variable that can equal 1, 2, or more that identifies each individual compressor system that has automatic defrost;

D = the total number of compressor systems with automatic defrost.

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for compressor system i;

$T2_i$ = length of time in minutes of the second part of the test for compressor system i;

CT_i = the compressor run time between defrosts for compressor system i in hours rounded to the nearest tenth of an hour, for long-time automatic defrost control equal to a fixed time in hours, and for variable defrost control equal to

$(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

Where:

CT_{Li} = for compressor system i, the shortest compressor run time between defrosts used in the variable defrost control algorithm (greater than or equal to 6 but less than or equal to 12 hours), or the shortest compressor run time between defrosts observed for the test (if it is shorter than the shortest run time used in the control algorithm and is greater than 6 hours), or 6 hours (if the shortest observed run time is less than 6 hours), in hours rounded to the nearest tenth of an hour;

CT_{Mi} = for compressor system i, the maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 6 and 96 shall be used, respectively.

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost Cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = \left(1440 \times K \times \frac{EP1}{T1}\right) + \sum_{i=1}^{D}\left[\left(EP2_i - \left(EP1 \times \frac{T2_i}{T1}\right)\right) \times K \times \left(\frac{12}{CT_i}\right)\right]$$

Where:

1440 and K are defined in section 5.2.1.1 of this appendix and EP1, T1, and 12 are defined in section 5.2.1.2 of this appendix;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the product;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to

$(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

5.3 Volume Measurements. (a) The unit's total refrigerated volume, VT, shall be measured in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), section 3.30 and sections 4.2 through 4.3. The measured volume shall include all spaces within the insulated volume of each compartment except for the volumes that must be deducted in accordance with section 4.2.2 of HRF–1–2008, as provided in paragraph (b) of this section, and be calculated equivalent to:

VT = VF + VFF + VC

Where:

VT = total refrigerated volume in cubic feet,
VF = freezer compartment volume in cubic feet,
VFF = fresh food compartment volume in cubic feet, and
VC = cellar compartment volume in cubic feet.

(b) The following component volumes shall not be included in the compartment volume measurements: Icemaker compartment insulation (*e.g.,* insulation isolating the icemaker compartment from the fresh food compartment of a product with a bottom-mounted freezer with through-the-door ice service), fountain recess, dispenser insulation, and ice chute (if there is a plug, cover, or cap over the chute per Figure 4–2 of HRF–1–2008). The following component volumes shall be included in the compartment volume measurements: icemaker auger motor (if housed inside the insulated space of the cabinet), icemaker kit, ice storage bin, and ice chute (up to the dispenser flap, if there is no plug, cover, or cap over the ice chute per Figure 4–3 of HRF–1–2008).

(c) Total refrigerated volume is determined by physical measurement of the test unit. Measurements and calculations used to determine the total refrigerated volume shall be retained as part of the test records underlying the certification of the basic model in accordance with 10 CFR 429.71.

(d) Compartment classification shall be based on subdivision of the refrigerated volume into zones separated from each other by subdividing barriers: No evaluated compartment shall be a zone of a larger compartment unless the zone is separated from the remainder of the larger compartment by subdividing barriers; if there are no such subdividing barriers within the larger compartment, the larger compartment must be evaluated as a single compartment rather than as multiple compartments. If the cabinet contains a moveable subdividing barrier, it must be placed as described in section 2.7 of this appendix.

(e) Freezer, fresh food, and cellar compartment volumes shall be calculated and recorded to the nearest 0.01 cubic feet. Total refrigerated volume shall be calculated and recorded to the nearest 0.1 cubic feet.

6. Calculation of Derived Results From Test Measurements

6.1 Adjusted Total Volume. The adjusted total volume of each tested unit must be determined based upon the volume measured in section 5.3 of this appendix using the following calculations. Where volume measurements for the freezer, fresh food, and cellar compartment are recorded in liters, the measured volume must be converted to cubic feet and rounded to the nearest 0.01 cubic foot prior to calculating the adjusted volume. Adjusted total volume shall be calculated and recorded to the nearest 0.1 cubic feet.

6.1.1 Refrigerators, Hybrid Refrigerators, and Non-compressor Refrigerators. The adjusted total volume, AV, for refrigerators, hybrid refrigerators, or non-compressor refrigerators under test, shall be defined as:

$AV = (VF \times CR) + VFF + (VC \times CC)$

Where:

AV = adjusted total volume in cubic feet;
VF, VFF, and VC are defined in section 5.3 of this appendix;
CR = dimensionless adjustment factor for freezer compartments of 1.00 for all-refrigerators, hybrid all-refrigerators, non-compressor all-refrigerators, and hybrid non-compressor all-refrigerators, or 1.47 for other types of refrigerators, hybrid refrigerators, and non-compressor refrigerators; and
CC = dimensionless adjustment factor of 0.69 for cellar compartments.

6.1.2 Refrigerator-Freezers, Hybrid Refrigerator-freezers, and Hybrid Freezers. The adjusted total volume, AV, for refrigerator-freezers, hybrid refrigerator-freezers, and hybrid freezers under test shall be calculated as follows:

$AV = (VF \times CRF) + VFF + (VC \times CC)$

Where:

VF, VFF, and VC are defined in section 5.3 and AV is defined in section 6.1.1 of this appendix;
CRF = dimensionless adjustment factor for freezer compartments of 1.76; and
CC = dimensionless adjustment factor for cellar compartments of 0.69.

6.1.3 Cooled Cabinets. The adjusted volume, AV, for cooled cabinets under test shall be equal to the cellar compartment volume, VC, which is defined in section 5.3 of this appendix.

6.2 Average Per-Cycle Energy Consumption. The average per-cycle energy consumption for a cycle type, E, is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall be calculated according to the sections below.

6.2.1 All-Refrigerator and Non-compressor All-Refrigerator Models. The average per-cycle energy consumption shall depend upon the temperature attainable in the fresh food compartment as shown below.

6.2.1.1 If the fresh food compartment temperature is always below 39.0 °F (3.9 °C), the average per-cycle energy consumption shall be equivalent to:

E = ET1

Where:

ET is defined in section 5.2.1 of this appendix; and
The number 1 indicates the test during which the highest fresh food compartment temperature is measured.

6.2.1.2 If the product is a non-compressor all-refrigerator and the fresh food compartment temperature is above 39 °F (3.9 °C) for the test conducted using the cold temperature control setting, the average per-cycle energy consumption shall be equivalent to:

E = ET2

Where:

ET is defined in section 5.2.1 of this appendix; and
The number 2 indicates the test conducted for the cold temperature control setting.

6.2.1.3 If the conditions of sections 6.2.1.1 and 6.2.1.2 of this appendix do not apply, the average per-cycle energy consumption shall be equivalent to:

$E = ET1 + ((ET2 - ET1) \times (39.0 - TR1)/(TR2 - TR1))$

Where:

ET is defined in section 5.2.1 of this appendix;
TR = fresh food compartment temperature determined according to section 5.1.3 of this appendix in degrees F;
The numbers 1 and 2 indicate measurements taken during the two tests to be used to calculate energy consumption, as specified in section 3 of this appendix; and
39.0 = standardized fresh food compartment temperature in degrees F.

6.2.2 Cooled Cabinets. The average per-cycle energy consumption shall depend upon the temperature attainable in the cellar compartment as shown below.

6.2.2.1 If the cellar compartment temperature is always below 55.0 °F (12.8 °C), the average per-cycle energy consumption shall be equivalent to:

E = ET1

Where:

ET is defined in section 5.2.1 of this appendix; and
The number 1 indicates the test during which the highest cellar compartment temperature is measured.

6.2.2.2 If the cellar compartment temperature measured for at least one of the tests is greater than 55.0 °F (12.8 °C), the average per-cycle energy consumption shall be equivalent to:

$E = ET1 + ((ET2 - ET1) \times (55.0 - TC1)/(TC2 - TC1))$

Where:

ET is defined in section 5.2.1 of this appendix;
TC = cellar compartment temperature determined according to section 5.1.5 of this appendix in degrees F;
The numbers 1 and 2 indicate measurements taken during the two tests to be used to calculate energy consumption, as specified in section 3 of this appendix; and
55.0 = standardized cellar compartment temperature in degrees F.

6.2.3 Refrigerators, Refrigerator-Freezers, and Non-Compressor Refrigerators. The average per-cycle energy consumption shall be defined in one of the following ways as applicable.

6.2.3.1 If the fresh food compartment temperature is always below 39 °F (3.9 °C) and the freezer compartment temperature is always below 15 °F (−9.4 °C) in both tests of a refrigerator or a non-compressor refrigerator or always below 0 °F (−17.8 °C) in both tests

of a refrigerator-freezer, the average per-cycle energy consumption shall be:

E = ET1 + IET

Where:

ET is defined in section 5.2.1 of this appendix;

IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with an automatic icemaker and otherwise equals 0 (zero); and

The number 1 indicates the test during which the highest freezer compartment temperature was measured.

6.2.3.2 If the product is a non-compressor refrigerator and the fresh food compartment temperature is above 39 °F (3.9 °C) or the freezer compartment temperature is above 15 °F (−9.4 °C) for the test conducted using the cold temperature control setting, the average per-cycle energy consumption shall be equivalent to:

E = ET2

Where:

ET is defined in section 5.2.1 of this appendix; and

The number 2 indicates the test conducted for the cold temperature control setting.

6.2.3.3 If the conditions of sections 6.2.3.1 and 6.2.3.2 of this appendix do not apply, the average per-cycle energy consumption shall be defined by the higher of the two values calculated by the following two formulas:

E = ET1 + ((ET2 − ET1) × (39.0 − TR1)/(TR2 − TR1)) + IET

and

E = ET1 + ((ET2 − ET1) × (k − TF1)/(TF2 − TF1)) + IET

Where:

ET is defined in section 5.2.1 of this appendix;

IET is defined in section 6.2.3.1 of this appendix;

TR and the numbers 1 and 2 are defined in section 6.2.1.3 of this appendix;

TF = freezer compartment temperature determined according to section 5.1.4 of this appendix in degrees F;

39.0 is a specified fresh food compartment temperature in degrees F; and

k is a constant 15.0 for refrigerators and non-compressor refrigerators or 0.0 for refrigerator-freezers, each being standardized freezer compartment temperatures in degrees F.

6.2.4 Hybrid Refrigeration Products. The average per-cycle energy consumption shall be defined in one of the following ways as applicable.

6.2.4.1 If the compartment temperatures are always below their compartments' standardized temperatures as defined in section 3.2 of this appendix (the fresh food compartment temperature is at or below 39 °F (3.9 °C); the cellar compartment temperature is at or below 55 °F (12.8 °C); and the freezer compartment temperature is at or below 15 °F (−9.4 °C) for a hybrid refrigerator or hybrid non-compressor refrigerator, or the freezer compartment temperature is at or below 0 °F (−17.8 °C) for a hybrid refrigerator-freezer or hybrid freezer), the average per-cycle energy consumption shall be:

E = ET1 + IET

Where:

ET is defined in section 5.2.1 of this appendix;

IET is defined in section 6.2.3.1 of this appendix;

The number 1 indicates the test during which the highest freezer compartment temperature is measured. If the product has no freezer compartment, the number 1 indicates the test during which the highest fresh food compartment temperature is measured.

6.2.4.2 If the product is a hybrid non-compressor refrigerator and the fresh food compartment temperature is above 39 °F (3.9 °C) or the freezer compartment temperature is above 15 °F (−9.4 °C) or the cellar compartment temperature is above 55 °F (12.8 °C) for the test conducted using the cold temperature control setting, the average per-cycle energy consumption shall be equivalent to:

E = ET2

Where:

ET is defined in section 5.2.1 of this appendix; and

The number 2 indicates the test conducted for the cold temperature control setting.

6.2.4.3 If the conditions of sections 6.2.4.1 and 6.2.4.2 of this appendix do not apply, the average per-cycle energy consumption shall be defined by the highest of the two or three values calculated by the following three formulas:

E = (ET1 + ((ET2 − ET1) × (39.0 − TR1)/(TR2 − TR1)) + IET if the product has a fresh food compartment;

E = (ET1 + ((ET2 − ET1) × (k − TF1)/(TF2 − TF1)) + IET if the product has a freezer compartment; and

E = (ET1 + ((ET2 − ET1) × (55.0 − TC1)/(TC2 − TC1)) + IET

Where:

ET is defined in section 5.2.1 of this appendix;

IET is defined in section 6.2.3.1 of this appendix;

TR and the numbers 1 and 2 are defined in section 6.2.1.3 of this appendix;

TF is defined in section 6.2.3.2 of this appendix;

TC is defined in section 6.2.2.2 of this appendix;

39.0 is a specified fresh food compartment temperature in degrees F;

k is a constant 15.0 for hybrid refrigerators and hybrid non-compressor refrigerators or 0.0 for hybrid refrigerator-freezers and hybrid freezers, each being standardized freezer compartment temperatures in degrees F; and

55.0 is a specified cellar compartment temperature in degrees F.

6.2.5 Variable Anti-Sweat Heater Models. The standard cycle energy consumption of a model with a variable anti-sweat heater control (E_{std}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{std} = E + (Correction Factor) where E is determined by sections 6.2.1, 6.2.2, 6.2.3, or 6.2.4 of this appendix, whichever is appropriate, with the anti-sweat heater switch in the ''off'' position or, for a product without an anti-sweat heater switch, the anti-sweat heater in its lowest energy use state.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power = 0.034 * (Heater Watts at 5%RH)
+0.211 * (Heater Watts at 15%RH)
+0.204 * (Heater Watts at 25%RH)
+0.166 * (Heater Watts at 35%RH)
+0.126 * (Heater Watts at 45%RH)
+0.119 * (Heater Watts at 55%RH)
+0.069 * (Heater Watts at 65%RH)
+0.047 * (Heater Watts at 75%RH)
+0.008 * (Heater Watts at 85%RH)
+0.015 * (Heater Watts at 95%RH)

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F (22.2 °C) ambient, and DOE reference temperatures of fresh food (FF) average temperature of 39 °F (3.9 °C) and freezer (FZ) average temperature of 0 °F (−17.8 °C).
System-loss Factor = 1.3.

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a basic model, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such basic model. Such instances could, for example, include situations where the test set-up for a particular basic model is not clearly defined by the provisions of section 2 of this appendix. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

Appendix A1—[Removed]

■ 11. Remove Appendix A1 to subpart B.

Appendix B—[Amended]

■ 12. Amend Appendix B to subpart B of part 430 as follows:
■ a. Remove the introductory note.
■ b. Revise section 1. Definitions;
■ c. In section 2. Test Conditions, revise sections 2.3 and 2.5;
■ d. In section 3. Test Control Settings, revise section 3.2.1 and table 1, and add sections 3.2.1.1, 3.2.1.2, and 3.2.1.3;
■ e. In section 5. Test Measurements, revise sections 5.1(b), 5.1.3, and 5.3;
■ f. In section 6. Calculation of Derived Results From Test Measurements, revise sections 6.1, 6.2.1 and 6.2.2;
■ g. Revise section 7. Test Procedure Waivers.

The revisions read as follows:

Appendix B to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

1. Definitions

Section 3, *Definitions,* of HRF–1–2008 (incorporated by reference; see § 430.3)

applies to this test procedure, except that the term ''wine chiller compartment'' means ''cellar compartment'' as defined in this appendix.

Anti-sweat heater means a device incorporated into the design of a freezer to prevent the accumulation of moisture on the exterior or interior surfaces of the cabinet.

Anti-sweat heater switch means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

Automatic defrost means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of the defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces.

Automatic icemaker means a device that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir located inside the cabinet, that automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

Cellar compartment means a refrigerated compartment within a consumer refrigeration product that is capable of maintaining compartment temperatures either (a) no lower than 39 °F (3.9 °C), or (b) in a range that extends no lower than 37 °F (2.8 °C) but at least as high as 60 °F (15.6 °C) as determined according to the provisions in § 429.14(c)(2) or § 429.61(c)(2).

Compartment means either:

(a) A space within a refrigeration product cabinet that is enclosed when all product doors are closed and that has no subdividing barriers that divide the space. A subdividing barrier is a solid (non-perforated) barrier that may contain thermal insulation and is sealed around all of its edges or has edge gaps insufficient to allow thermal convection transfer from one side to the other sufficient to equilibrate temperatures on the two sides; or

(b) All of the enclosed spaces within a refrigeration product cabinet that provide the same type of storage, for instance fresh food, freezer, or cellar.

Complete temperature cycle means a time period defined based upon the cycling of compartment temperature that starts when the compartment temperature is at a maximum and ends when the compartment temperature returns to an equivalent maximum (within 0.5 °F of the starting temperature), having in the interim fallen to a minimum and subsequently risen again to reach the second maximum. Alternatively, a complete temperature cycle can be defined to start when the compartment temperature is at a minimum and ends when the compartment temperature returns to an equivalent minimum (within 0.5 °F of the starting temperature), having in the interim risen to a maximum and subsequently fallen again to reach the second minimum.

Cycle means a 24-hour period for which the energy use of a freezer is calculated based on the consumer activated compartment temperature controls being set to maintain the standardized temperatures (see section 3.2).

Cycle type means the set of test conditions having the calculated effect of operating a freezer for a period of 24 hours, with the consumer-activated controls, other than those that control compartment temperatures, set to establish various operating characteristics.

HRF–1–2008 means AHAM Standard HRF–1–2008, Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009. Only sections of HRF–1–2008 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–2008.

Ice storage bin means a container in which ice can be stored.

Long-time automatic defrost means an automatic defrost system whose successive defrost cycles are separated by 14 hours or more of compressor operating time.

Precooling means operating a refrigeration system before initiation of a defrost cycle to reduce one or more compartment temperatures significantly (more than 0.5 °F) below its minimum during stable operation between defrosts.

Recovery means operating a refrigeration system after the conclusion of a defrost cycle to reduce the temperature of one or more compartments to the temperature range that the compartment(s) exhibited during stable operation between defrosts.

Separate auxiliary compartment means a separate freezer or cellar compartment that is not the primary freezer or primary cellar compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary freezer compartments may not be larger than the primary freezer compartment and separate auxiliary cellar compartments may not be larger than the primary cellar compartment.

Special compartment means any compartment without doors directly accessible from the exterior, and with a separate temperature control that is not convertible from the fresh food temperature range to the freezer or cellar temperature ranges.

Stable operation means operation after steady-state conditions have been achieved but excluding any events associated with defrost cycles. During stable operation the average rate of change of compartment temperatures must not exceed 0.042 °F (0.023 °C) per hour for all compartment temperatures. Such a calculation performed for compartment temperatures at any two times, or for any two periods of time comprising complete cycles, during stable operation must meet this requirement.

(a) If compartment temperatures do not cycle, the relevant calculation shall be the difference between the temperatures at two points in time divided by the difference, in hours, between those points in time.

(b) If compartment temperatures cycle as a result of compressor cycling or other cycling operation of any system component (*e.g.,* a damper, fan, heater, etc.), the relevant calculation shall be the difference between compartment temperature averages evaluated for the whole compressor cycles or complete temperature cycles divided by the difference, in hours, between either the starts, ends, or mid-times of the two cycles.

Stabilization period means the total period of time during which steady-state conditions are being attained or evaluated.

Standard cycle means the cycle type in which the anti-sweat heater switch, when provided, is set in the highest energy-consuming position.

Through-the-door ice/water dispenser means a device incorporated within the cabinet, but outside the boundary of the refrigerated space, that delivers to the user on demand ice and may also deliver water from within the refrigerated space without opening an exterior door. This definition includes dispensers that are capable of dispensing ice and water or ice only.

Variable defrost control means an automatic defrost system in which successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device performing this function. A control scheme that changes the defrost interval from a fixed length to an extended length (without any intermediate steps) is not considered a variable defrost control. A variable defrost control feature predicts the accumulation of frost on the evaporator and react accordingly. Therefore, the times between defrost must vary with different usage patterns and include a continuum of periods between defrosts as inputs vary.

2. Test Conditions

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2.3 Anti-Sweat Heaters. The anti-sweat heater switch is to be on during one test and off during a second test. In the case of a freezer with variable anti-sweat heater control, the standard cycle energy use shall be the result of the calculation described in 6.2.2 of this appendix.

* * * * *

2.5 Special compartments shall be tested with controls set to provide the coldest temperature. However, for special compartments in which temperature control is achieved using the addition of heat (including resistive electric heating, refrigeration system waste heat, or heat from any other source, but excluding the transfer of air from another part of the interior of the product) for any part of the controllable temperature range of that compartment, the product energy use shall be determined by averaging two sets of tests. The first set of tests shall be conducted with such special compartments at their coldest settings, and the second set of tests at their warmest settings. The requirements for the warmest or coldest temperature settings of this section do not apply to features or functions associated with temperature control (such as quick freeze) that are initiated manually and terminated automatically within 168 hours.

Cellar compartments with their own temperature control that are a part of freezers

shall be tested according to the requirements for special compartments as described in this section.

Moveable subdividing barriers (see compartment definition (a) in section 1 of this appendix) that separate compartments of different types (*e.g.,* freezer on one side and cellar on the other side) shall be placed in the median position. If such a subdividing barrier has an even number of positions, the near-median position representing the smallest volume of the warmer compartment(s) shall be used.

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3. Test Control Settings

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3.2.1 *Temperature Control Settings and Tests to Use for Energy Use Calculations.*

3.2.1.1 *Setting Temperature Controls.* For mechanical control systems, (a) knob detents shall be mechanically defeated if necessary to attain a median setting, and (b) the warmest and coldest settings shall correspond to the positions in which the indicator is aligned with control symbols indicating the warmest and coldest settings. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings; if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used.

3.2.1.2 *Test Sequence.* A first test shall be performed with all temperature controls set at their median position midway between their warmest and coldest settings. A second test shall be performed with all controls set at either their warmest or their coldest setting (not electrically or mechanically bypassed), whichever is appropriate, to attempt to achieve compartment temperatures measured during the two tests that bound (*i.e.,* one is above and one is below) the standardized temperature.

3.2.1.3 *Tests to Use for Energy Use Calculations.* If the compartment temperatures measured during these two tests bound the standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest setting is above the standardized temperature, energy use shall be calculated based on tests conducted with the temperature controls in the cold setting for the first test and in the warm setting for the second test, subject to the restriction that (a) the compartment temperature must be warmer for the test conducted with the controls set in the warm position than its measurement with the controls set in the cold position, and (b) the measured energy use for the warm position must be lower than the measured energy for the cold position. If condition (a) or (b) are not met, the manufacturer must submit a petition for a waiver (see section 7 of this appendix). If the compartment temperature measured with all controls set at their warmest setting is below the standardized temperature, then the result of this test alone will be used to determine energy consumption. Also see Table 1 of this appendix, which summarizes these requirements.

TABLE 1—TEMPERATURE SETTINGS FOR FREEZERS

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Mid	Low	Warm	Low	Second Test Only.
			High	First and Second Tests.
	High	Cold	Low	First and Second Tests.
			High	Cold- and Warm-Setting Tests*.

* If compartment temperature is warmer and energy use is lower for the warm-setting test.

* * * * *

5. Test Measurements

5.1 Temperature Measurements.

* * * * *

(b) If the interior arrangements of the unit under test do not conform with those shown in Figure 5.2 of HRF–1–2008, the unit must be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the unit, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer in accordance with 10 CFR 429.71, and the certification report shall indicate that non-standard sensor locations were used. If any temperature sensor is relocated by any amount from the location prescribed in Figure 5.2 of HRF–1–2008 in order to maintain a minimum 1-inch air space from adjustable shelves or other components that could be relocated by the consumer, except in cases in which the Figures prescribe a temperature sensor location within 1 inch of a shelf or similar feature (*e.g.,* sensor T_3 in Figure 5–1), this constitutes a relocation of temperature sensors that must be recorded in the test data and reported in the certification report as described above.

* * * * *

5.1.3 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the primary freezer compartment and any number of separate auxiliary freezer compartments;

TF_i is the compartment temperature of freezer compartment ''i'' determined in accordance with section 5.1.2 of this appendix; and

VF_i is the volume of freezer compartment ''i''.

* * * * *

5.3 Volume Measurements. (a) The unit's total refrigerated volume, VT, shall be measured in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), section 3.30 and sections 4.2 through 4.3. The measured volume shall include all spaces within the insulated volume of each compartment except for the volumes that must be deducted in accordance with section 4.2.2 of HRF–1–2008, as provided in paragraph (b) of this section, and be calculated equivalent to:

VT = VF + VC

Where:

VT = total refrigerated volume in cubic feet;

VF = freezer compartment volume in cubic feet; and

VC = cellar compartment volume in cubic feet, for freezers with cellar compartments.

(b) The following component volumes shall not be included in the compartment volume measurements: Icemaker compartment insulation (*e.g.,* insulation isolating the icemaker compartment from the fresh food compartment of a product with a bottom-mounted freezer with through-the-door ice service), fountain recess, dispenser insulation, and ice chute (if there is a plug, cover, or cap over the chute per Figure 4–2 of HRF–1–2008). The following component volumes shall be included in the compartment volume measurements: Icemaker auger motor (if housed inside the insulated space of the cabinet), icemaker kit, ice storage bin, and ice chute (up to the dispenser flap, if there is no plug, cover, or cap over the ice chute per Figure 4–3 of HRF–1–2008).

(c) Total refrigerated volume is determined by physical measurement of the test unit. Measurements and calculations used to determine the total refrigerated volume shall be retained as part of the test records underlying the certification of the basic model in accordance with 10 CFR 429.71.

(d) Compartment classification shall be based on subdivision of the refrigerated volume into zones separated from each other by subdividing barriers: No evaluated compartment shall be a zone of a larger compartment unless the zone is separated

from the remainder of the larger compartment by subdividing barriers; if there are no such subdividing barriers within the larger compartment, the larger compartment must be evaluated as a single compartment rather than as multiple compartments. If the cabinet contains a moveable subdividing barrier, it must be placed as described in section 2.5 of this appendix.

(e) Freezer and cellar compartment volumes shall be calculated and recorded to the nearest 0.01 cubic feet. Total refrigerated volume shall be calculated and recorded to the nearest 0.1 cubic feet.

6. Calculation of Derived Results From Test Measurements

6.1 Adjusted Total Volume. The adjusted total volume of each tested unit must be determined based upon the volume measured in section 5.3 using the following calculations. Where volume measurements for the freezer and cellar compartment are recorded in liters, the measured volume must be converted to cubic feet and rounded to the nearest 0.01 cubic foot prior to calculating the adjusted volume. Adjusted total volume shall be calculated and recorded to the nearest 0.1 cubic feet. The adjusted total volume, AV, for freezers under test shall be defined as:

$$AV = (VF \times CF) + (VC \times CC)$$

Where:

AV = adjusted total volume in cubic feet;
VF and VC are defined in section 5.3 of this appendix;
CF = dimensionless correction factor of 1.76 for freezer compartments; and
CC = dimensional correction factor of 0.69 for cellar compartments.

* * * * *

6.2.1 If the compartment temperature is always below 0.0 °F (−17.8 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + IET$$

Where:

E = total per-cycle energy consumption in kilowatt-hours per day;
ET is defined in 5.2.1;
The number 1 indicates the test during which the highest compartment temperature is measured; and
IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with an automatic icemaker and otherwise equals 0 (zero).

6.2.2 If one of the compartment temperatures measured for a test is greater than 0.0 °F (17.8 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + ((ET2 - ET1) \times (0.0 - TF1)/(TF2 - TF1)) + IET$$

Where:

E and IET are defined in 6.2.1 and ET is defined in 5.2.1;
TF = freezer compartment temperature determined according to section 5.1.3 of this appendix in degrees F;
The numbers 1 and 2 indicate measurements taken during the two tests to be used to calculate energy consumption, as specified in section 3 of this appendix; and
0.0 = standardized compartment temperature in degrees F.

* * * * *

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a basic model, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such basic model. Such instances could, for example, include situations where the test set-up for a particular basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

Appendix B1—[Removed]

■ 13. Remove appendix B1 to subpart B.

■ 14. Add appendix BB to subpart B to read as follows:

Appendix BB to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Ice Makers

1. Definitions

Harvest means the process of freeing or removing ice pieces from an ice maker icemaking mold or evaporator.

Harvest rate means the amount of ice (at 32 °F (0 °C)) in pounds produced per 24 hours.

HRF–1–2008 means AHAM Standard HRF–1–2008, Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009. Only sections of HRF–1–2008 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–2008.

Ice hardness factor means the latent heat capacity of harvested ice, in British thermal units per pound of ice (Btu/lb), divided by 144 Btu/lb, expressed as a percentage.

Ice storage bin means a container for ice storage that is part of an ice maker.

Icemaking cycle, defined for batch-type ice makers, means the period of time required to produce and harvest one batch of ice. The start and end of consecutive icemaking cycles are defined to occur at the end of harvest, when ice is removed from the ice maker's evaporator or icemaking mold.

Replacement cycle, defined for uncooled-storage ice makers, including portable ice makers, means one or more consecutive icemaking cycles for batch-type ice makers or a continuous period of icemaking for continuous-type ice makers, initiated automatically to refill the ice storage bin after a period of ice meltage and terminated automatically when the bin is full again.

2. Test Conditions and Set-Up.

2.1 Ambient Temperature Measurement. Temperature measuring devices shall be shielded so that indicated temperatures are not affected by the operation of the condensing unit or adjacent units.

2.1.1 Ambient Temperature.

2.1.1.1 The ambient temperature shall be 72 ± 1 °F (22.2 °C) during the stabilization period (see section 2.9 of this appendix) and the test period.

2.1.1.2 For ice makers that are not portable ice makers, the ambient temperature shall be recorded at points located 3 feet (91.5 cm) above the floor and 10 inches (25.4 cm) from the center of the two sides of the unit under test.

2.1.1.3 For portable ice makers, the ambient temperature shall be recorded at points located level with the top of the unit under test and 10 inches (25.4 cm) from the center of the two sides of the unit under test.

2.1.2 Ambient Temperature Gradient. The test room vertical ambient temperature gradient in any foot of vertical distance from 2 inches (5.1 cm) above the floor or supporting platform to a height of 7 feet (2.2 m) or to a height 1 foot (30.5 cm) above the top of the unit under test, whichever is greater, is not to exceed 0.5 °F per foot (0.9 °C per meter). The vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. To demonstrate that this requirement has been met, test data must include measurements taken using temperature sensors at locations 2 inches (5.1 cm) and 36 inches (91.4 cm) above the floor or supporting platform and at a height of 1 foot (30.5 cm) above the unit under test.

2.2 Operational Conditions. The ice maker shall be installed and its operating conditions maintained in accordance with HRF–1–2008 (incorporated by reference; see § 430.3), section 5.3 through section 5.5.5.1 (excluding sections 5.5.2(a), (b), (c), (d), (g), (h), (j), (k), and (m), and section 5.5.3). Exceptions and clarifications to the cited sections of HRF–1–2008 are noted in sections 2.3 through 2.8 of this appendix.

2.3 Set-up. The ice maker shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the ice maker shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Clearance requirements from surfaces of the product shall be as described in section 2.4 of this appendix;

(b) The electric power supply shall be as described in HRF–1–2008 (incorporated by reference; see § 430.3), section 5.5.1;

(c) Temperature control settings for testing shall be as described in section 2.7 of this appendix.

(d) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing; and

(e) If the product dispenses ice, all the product's chutes and throats required for the delivery of ice shall be free of packing, covers, or other blockages that may be fitted for shipping or when the ice maker is not in use.

For cases in which set-up is not clearly defined by this test procedure, manufacturers

must submit a petition for a waiver (see section 7).

2.4 Rear Clearance.

(a) General. The space between the lowest edge of the rear plane of the cabinet and a vertical surface (the test room wall or simulated wall) shall be the minimum distance in accordance with the manufacturer's instructions, unless other provisions of this section apply. The rear plane shall be considered to be the largest flat surface at the rear of the cabinet, excluding features that protrude beyond this surface, such as brackets, the compressor, or compressors.

(b) The clearance shall not be greater than 2 inches (51 mm) from the lowest edge of the rear plane to the vertical surface, unless the provisions of subsection (c) of this section apply.

(c) If permanent rear spacers or other components that protrude beyond the rear plane extend further than the 2-inch (51 mm) distance, or if the highest edge of the rear plane is in contact with the vertical surface when the unit is positioned with the lowest edge of the rear plane at or further than the 2-inch (51 mm) distance from the vertical surface, the appliance shall be located with the spacers or other components protruding beyond the rear plane, or the highest edge of the rear plane in contact with the vertical surface.

(d) Rear-mounted condensers. If the product has a flat rear-wall-mounted condenser (*i.e.,* a rear-wall-mounted condenser with all refrigerant tube centerlines within 0.25 inches (6.4 mm) of the condenser plane), and the area of the condenser plane represents at least 25% of the total area of the rear wall of the cabinet, then the spacing to the vertical surface may be measured from the lowest edge of the condenser plane.

2.5 Inlet Water.

2.5.1 For ice makers that are not portable ice makers, connection of water lines is required. If the product provides for installation of a water filter, a water filter shall be installed as recommended by the printed consumer instructions supplied with the cabinet. Inlet water temperature shall be 72 ± 2 °F. The water supply system shall be designed to assure that inlet water temperature stays within this specified range at all times during the test. Inlet water pressure shall be 60 ± 15 psig while the water is flowing.

2.5.2 For portable ice makers, the water reservoir shall be completely filled prior to the start of the test with water at a temperature of 55 ± 2 °F.

2.6 Ice Piece Size Control. If the ice maker has a control for adjusting the size of ice pieces that is described in the printed consumer instructions supplied with the cabinet as being intended for user adjustment, set this control at the largest ice piece size setting.

2.7 Temperature Control Settings. For products that have user-operable temperature controls, set the temperature controls in the median position for all parts of the test. The ice maker internal temperature shall be measured with a weighted thermocouple as described in HRF–1–2008 (incorporated by reference; see § 430.3) section 5.5.4, located such that the temperature sensor is 1 inch (2.5 cm) above the typical fill level of the ice bin as close to the center of the ice bin as possible without interfering with the falling of ice from the mold or evaporator into the bin.

2.8 Drain Lines. For ice makers with drain outlets, install drain lines using pipe or tubing material as specified in the printed consumer instructions supplied with the product. Unless otherwise required by these consumer instructions, run drain lines downward from the drain outlet. Use of optional pumps for pumping drain water to higher elevations is not permitted. If the ice maker has integrated into its cabinet a pump whose purpose according to the printed consumer instructions supplied with the product is to pump water to higher elevations, and if the installation instructions indicate that this pump must always be connected during use, such a pump shall be utilized during the test. However, if installation instructions indicate that this pump can be switched off or disconnected during use, such a pump shall be switched off or disconnected for the test.

2.9 Steady-State Condition. Steady-state conditions exist if the ice maker internal temperature measurements are not changing at a rate greater than 0.042 °F per hour as determined by comparing the average of the measurements during a two-hour period if no compressor cycling occurs or during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours to the average over an equivalent time period with 3 hours elapsing between the two measurement periods.

2.10 Data Collection. Data collection frequency for temperatures, power, and energy shall be no less than once per minute.

2.11 Icemaking Cycle Indication for Batch-Type Ice Makers. Icemaking cycles shall be determined from collected power input data by identifying the time when (a) the compressor power input level changes after completion of the harvest cycle, or (b) the electric harvest heater is de-energized at the end of the harvest cycle. If icemaking cycles cannot be identified by examining the electric input power data because either the compressor power input does not change sufficiently at the end of a harvest cycle or ice is made using a mold without a mold heater of 50W or greater power input, use one of the following measurement approaches to indicate the start and end of icemaker cycles at a data acquisition frequency interval no less than the data acquisition frequency used for the test. The method used must be recorded in the test data underlying the certification of the basic model that the manufacturer is required to retain in accordance with 10 CFR 429.71.

2.11.1 Mold or Evaporator Temperature. Measure icemaker mold or evaporator temperature during the test with a temperature sensor adhered to the bottom of the icemaker mold or a location on the evaporator. Ensure that the temperature sensor is installed so that the icemaker operation, including operations such as twisting of the icemaker mold and ice dropping into the ice bin, will not be impeded by the temperature sensor and its connecting wire(s), and that neither the temperature sensor nor its connecting wire(s) will be dislodged or damaged by icemaker operation.

2.11.2 Water Supply Temperature. Measure the temperature of the water at any location in the water supply line. If the temperature changes consistently and measurably (within the required tolerance of water supply temperature as specified in section 2.5.1 of this appendix) when the icemaker water supply valve opens, this change may be used to provide an indication of when a new icemaker cycle has started.

2.11.3 Solenoid Valve Activation. Measure power input, voltage, or current supplied to the icemaker water supply solenoid valve to indicate when the valve is energized. Make this measurement at a frequency sufficient to ensure indication of valve activation, or use an event counter to track valve activation events.

3. Icemaking Test

3.1 Special Apparatus.

3.1.1 Perforated Container. The container used to collect the harvested ice shall be shaped and sized as necessary to collect all harvested ice produced by the unit under test between the time of the container's insertion into the ice bin and the termination of the icemaking test period. The container shall be perforated such that the ice produced by the unit under test cannot fall through the perforations and the water hold-up weight is no more than 1.0 percent of the weight of the smallest amount of ice collected and weighed using the container. The water hold-up weight is the maximum weight of water that can be measured as follows: (i) Immerse the container in water oriented as it would be for catching ice, (ii) gently lift the container out of the water and allow to drain for 30 seconds without shaking, (iii) weigh the container and the held-up water, and (iv) subtract the container's dry weight.

3.1.2 Ice Mass Measurement Scale. Use a scale having accuracy and precision no greater than 1 percent of the measured quantity.

3.2 Icemaking Test Procedure.

3.2.1 Batch-Type Ice Makers.

3.2.1.1 Stabilization and Start of Icemaking Test Period. Verify that the ice storage bin is empty and initiate icemaking. After a two-hour stabilization period, wait till the next batch of ice drops into the storage bin. The icemaking test period starts when this ice has dropped.

3.2.1.2 Icemaking Test Period. Within one minute after the batch of ice signaling the end of the stabilization period drops, place a perforated container (as specified in section 3.1.1 of this appendix) in the ice storage bin, oriented so that it will catch all the harvested ice. Each door opening to place the perforated container in the unit or to retrieve it shall have a duration of no more than 15 seconds. The icemaking test period starts as described above and consists of a whole number of icemaking cycles lasting at least 6 hours or until the ice storage bin becomes full and ice production stops. Remove the container and measure the ice mass within two minutes after the last batch of ice

harvested during the test period drops into the ice storage bin. Determine the mass of ice produced, M_{ICE}, expressed in pounds, by weighing the perforated container when it contains the ice made during the test and subtracting the weight of the empty perforated container.

3.2.1.3 Ice Collection with Smaller Container. If a perforated container that can hold all of the ice produced during the specified icemaking test period cannot be placed into the ice storage bin, use a smaller container that can hold the ice produced by at least five icemaking cycles. Retrieve the ice multiple times during the test period, no more frequently than once every five icemaking cycles. During each time the ice is retrieved, weigh and record the weight of the ice and the container, transfer the ice to the ice storage bin, and replace the container in the bin, allowing the ice maker door to be open for a total of no more than 15 seconds for each retrieval and weighing of ice. Determine the mass of ice produced during each retrieval of ice, M_{ICE_i}, expressed in pounds, by subtracting the weight of the empty perforated container from the individual measurement. Determine the mass of ice produced M_{ICE}, expressed in pounds, by summing the individual calculations M_{ICE_i}.

3.2.2 Continuous-type Ice Makers.

3.2.2.1 Stabilization and Start of Icemaking Test Period. Verify that the ice storage bin is empty and initiate icemaking. After a two-hour stabilization period, place a perforated container (as specified in section 3.1.1 of this appendix) in the ice storage bin, oriented so that it will catch all the harvested ice. Record the time of container insertion and correlate it with the collected power input data.

3.2.2.2 Icemaking Test Period. The icemaking test period lasts 6 hours or until the ice storage bin becomes full and ice production stops. Remove the container and measure the ice mass at the end of the test period or within two minutes after ice production stops. Determine the mass of ice produced, M_{ICE}, expressed in pounds, by weighing the perforated container when it contains the ice made during the test and subtracting the weight of the empty perforated container.

3.2.2.3 Ice Collection with Smaller Container. If a perforated container that can hold all of the ice produced during the specified icemaking test period cannot be placed into the ice storage bin, use a smaller container that can hold the ice produced in at least an hour of ice production. Retrieve the ice multiple times during the test period, no more frequently than once per hour. During each time the ice is retrieved, weigh and record the weight of the ice and the container, transfer the ice to the ice storage bin, and replace the container in the bin, allowing the ice maker door to be open for a total of no more than 15 seconds for each retrieval and weighing of ice. Determine the mass of ice produced during each retrieval of ice, M_{ICE_i}, expressed in pounds, by subtracting the weight of the empty perforated container from the individual measurement. Determine the mass of ice produced M_{ICE}, expressed in pounds, by summing the individual calculations M_{ICE_i}.

4. Ice Storage Test

4.1 Ice Storage Test for Cooled-Storage Ice Makers.

4.1.1 Stabilization. After the icemaking test period ends and the mass of harvested ice has been determined, place the harvested ice back into the ice storage bin. Allow the ice maker to produce ice until the storage bin is full and ice production stops automatically. Wait until steady-state conditions have been confirmed, as defined in section 2.9 of this appendix. The ice storage bin shall not be emptied of ice.

4.1.2 Ice Storage Test Period. The test period shall start when steady-state conditions have been achieved and shall be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. (A compressor cycle is a complete ''on'' and a complete ''off'' period of the motor.) If no ''off'' cycling will occur, the test period shall be 3 hours.

4.2 Ice Storage Test for Uncooled-Storage Ice Makers.

4.2.1 After the icemaking test period ends and the mass of ice has been determined, place the ice back into the ice storage bin. Allow the ice maker to operate until the storage bin is full and ice production stops automatically.

4.2.2 Ice Storage Test Period for Batch-type Uncooled-Storage Ice Makers. The ice storage test period shall start when ice production stops automatically after the measured ice has been placed back into the ice storage bin. If ice production is not occurring after replacement of the ice, the test period shall start at the end of the first replacement cycle. The ice storage bin shall not be emptied of ice. The test period shall be no less than 48 hours in duration and shall end at the end of a replacement cycle.

4.2.3 Ice Storage Test Period for Continuous-type Uncooled-Storage Ice Makers. The ice storage test period shall start when ice production stops automatically after the measured ice has been placed back into the ice storage bin. If ice production is not occurring after replacement of the ice, the test period shall start at the end of the first replacement cycle. The ice storage bin shall not be emptied of ice. The test period shall be no less than 48 hours in duration and shall end at the end of a period of ice production.

5. Ice Hardness (Continuous-Type Ice Makers Only).

For continuous-type ice makers, the ice hardness factor, I_H, shall be set equal to 0.85. Alternatively, the ice hardness factor may be measured according to the procedure in Annex A: Method of Calorimetry in AHSI/ASHRAE 29–2009 (incorporated by reference; see § 430.3).

6. Calculations

6.1 Energy Use per Ice Mass, EIM, expressed in kilowatt-hours per pound, shall be calculated as:

$$EIM = \frac{EI}{M_{ICE}} \times I_{HAF}$$

Where:

EI is the energy in kWh measured for the icemaking test period as described in section 3.2.1 or 3.2.2. of this appendix;

M_{ICE} is the ice mass in pounds, measured for the icemaking test period as described in section 3.2.1 or 3.2.2 of this appendix; and

I_{HAF} is the ice hardness adjustment factor, a dimensionless value which shall be equal to 1.0 for batch-type ice makers and calculated for continuous-type ice makers as:

$$I_{HAF} = \frac{144\frac{Btu}{lb} + 40\frac{Btu}{lb}}{\left(144\frac{Btu}{lb} \times I_H\right) + 40\frac{Btu}{lb}}$$

Where:

I_H is the ice hardness factor, determined as specified in section 5 of this appendix.

6.2 Harvest Rate. Harvest rate, H, expressed in pounds of ice per day, shall be calculated and rounded to the nearest 0.1 pound per day as:

$$H = \frac{1{,}440 \times M_{ICE}}{TI}$$

Where:

M_{ICE} is defined in section 6.1;

TI is the icemaking test period in minutes as described in section 3.2.1 or 3.2.2 of this appendix; and

1,440 is the number of minutes in one day.

6.3 Daily Energy Use.

6.3.1 For ice makers with a harvest rate greater than 4 pounds of ice per day, daily energy use E_T, expressed in kilowatt-hours per day, shall be calculated as:

$$E_T = (4 \times EIM \times K) + \left[\frac{ES}{TS} \times \left(1{,}440 - \frac{4 \times TI}{M_{ICE}}\right) \times K\right]$$

Where:

M_{ICE} is defined in section 6.1 of this appendix;

EIM is calculated as described in section 6.1 of this appendix;

ES is the energy use in kWh for the ice storage test period as described in section 4.1.2, 4.2.2, or 4.2.3 of this appendix;

TS is the ice storage test period in minutes as described in section 4.1.2, 4.2.2 or 4.2.3 of this appendix;
1,440 and TI are defined in section 6.2 of this appendix;
4 is the average daily ice consumption rate in pounds per day; and
K is a dimensionless correction factor equal to 0.5 for portable ice makers and 1.0 for non-portable ice makers to adjust for average household usage.

6.3.2 For ice makers with a harvest rate less than or equal to 4 pounds of ice per day, daily energy use E_T, expressed in kilowatt-hours per day, shall be calculated as:

$E_T = 4 \times EIM \times K$

Where:

4 is defined in section 6.3.1 of this appendix;
EIM is calculated as described in section 6.1 of this appendix; and
K is defined in section 6.3.1 of this appendix.

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of an ice maker, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular ice maker basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

■ 15. Amend section 430.32 by revising paragraph (a) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

(a) *Refrigerators/refrigerator-freezers/freezers.* These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet (1,104 liters) or freezers with total refrigerated volume exceeding 30 cubic feet (850 liters). The energy standards as determined by the equations of the following table(s) shall be rounded off to the nearest kWh per year. If the equation calculation is halfway between the nearest two kWh per year values, the standard shall be rounded up to the higher of these values.

The following standards remain in effect from July 1, 2001 until September 15, 2014:

Product class	Energy standard equations for maximum energy use (kWh/yr)
1. Refrigerators and refrigerator-freezers with manual defrost	8.82AV + 248.4 0.31av + 248.4
2. Refrigerator-freezers—partial automatic defrost	8.82AV + 248.4 0.31av + 248.4
3. Refrigerator-freezers—automatic defrost with top-mounted freezer without through-the-door ice service and all-refrigerator—automatic defrost.	9.80AV + 276.0 0.35av + 276.0
4. Refrigerator-freezers—automatic defrost with side-mounted freezer without through-the-door ice service	4.91AV + 507.5 0.17av + 507.5
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service	4.60AV + 459.0 0.16av + 459.0
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service	10.20AV + 356.0 0.36av + 356.0
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service	10.10AV + 406.0 0.36av + 406.0
8. Upright freezers with manual defrost	7.55AV + 258.3 0.27av + 258.3
9. Upright freezers with automatic defrost	12.43AV + 326.1 0.44av + 326.1
10. Chest freezers and all other freezers except compact freezers	9.88AV + 143.7 0.35av + 143.7
11. Compact refrigerators and refrigerator-freezers with manual defrost	10.70AV + 299.0 0.38av + 299.0
12. Compact refrigerator-freezer—partial automatic defrost	7.00AV + 398.0 0.25av + 398.0
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer and compact all-refrigerator—automatic defrost.	12.70AV + 355.0 0.45av + 355.0
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer	7.60AV + 501.0 0.27av + 501.0
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer	13.10AV + 367.0 0.46av + 367.0
16. Compact upright freezers with manual defrost	9.78AV + 250.8 0.35av + 250.8
17. Compact upright freezers with automatic defrost	11.40AV + 391.0 0.40av + 391.0
18. Compact chest freezers	10.45AV + 152.0 0.37av + 152.0

AV: Adjusted Volume in ft^3; av: Adjusted Volume in liters (L).

The following standards apply to products manufactured starting on September 15, 2014:

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
1. Refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost	7.99AV + 225.0	0.282av + 225.0
1A. All-refrigerators—manual defrost	6.79AV + 193.6	0.240av + 193.6
2. Refrigerator-freezers—partial automatic defrost	7.99AV + 225.0	0.282av + 225.0
3. Refrigerator-freezers—automatic defrost with top-mounted freezer without an automatic icemaker	8.07AV + 233.7	0.285av + 233.7
3–BI. Built-in refrigerator-freezer—automatic defrost with top-mounted freezer without an automatic icemaker.	9.15AV + 264.9	0.323av + 264.9
3I. Refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker without through-the-door ice service.	8.07AV + 317.7	0.285av + 317.7
3I–BI. Built-in refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker without through-the-door ice service.	9.15AV + 348.9	0.323av + 348.9
3A. All-refrigerators—automatic defrost	7.07AV + 201.6	0.250av + 201.6
3A–BI. Built-in All-refrigerators—automatic defrost	8.02AV + 228.5	0.283av + 228.5
4. Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker.	8.51AV + 297.8	0.301av + 297.8
4–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker.	10.22AV + 357.4	0.361av + 357.4
4I. Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker without through-the-door ice service.	8.51AV + 381.8	0.301av + 381.8
4I–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker without through-the-door ice service.	10.22AV + 441.4	0.361av + 441.4
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker.	8.85AV + 317.0	0.312av + 317.0
5–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker.	9.40AV + 336.9	0.332av + 336.9
5I. Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service.	8.85AV + 401.0	0.312av + 401.0
5I–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service.	9.40AV + 420.9	0.332av + 420.9
5A. Refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	9.25AV + 475.4	0.327av + 475.4
5A–BI. Built-in refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	9.83AV + 499.9	0.347av + 499.9
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service.	8.40AV + 385.4	0.297av + 385.4
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service.	8.54AV + 432.8	0.302av + 432.8
7–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service.	10.25AV + 502.6	0.362av + 502.6
8. Upright freezers with manual defrost	5.57AV + 193.7	0.197av + 193.7
9. Upright freezers with automatic defrost without an automatic icemaker	8.62AV + 228.3	0.305av + 228.3
9I. Upright freezers with automatic defrost with an automatic icemaker	8.62AV + 312.3	0.305av + 312.3
9–BI. Built-In Upright freezers with automatic defrost without an automatic icemaker	9.86AV + 260.9	0.348av + 260.9
9I–BI. Built-in upright freezers with automatic defrost with an automatic icemaker	9.86AV + 344.9	0.348av + 344.9
10. Chest freezers and all other freezers except compact freezers	7.29AV + 107.8	0.257av + 107.8
10A. Chest freezers with automatic defrost	10.24AV + 148.1	0.362av + 148.1
11. Compact refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost	9.03AV + 252.3	0.319av + 252.3
11A. Compact all-refrigerators—manual defrost	7.84AV + 219.1	0.277av + 219.1
12. Compact refrigerator-freezers—partial automatic defrost	5.91AV + 335.8	0.209av + 335.8
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer	11.80AV + 339.2	0.417av + 339.2
13I. Compact refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker.	11.80AV + 423.2	0.417av + 423.2
13A. Compact all-refrigerators—automatic defrost	9.17AV + 259.3	0.324av + 259.3
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer	6.82AV + 456.9	0.241av + 456.9
14I. Compact refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker.	6.82AV + 540.9	0.241av + 540.9
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer	11.80AV + 339.2	0.417av + 339.2
15I. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker.	11.80AV + 423.2	0.417av + 423.2
16. Compact upright freezers with manual defrost	8.65AV + 225.7	0.306av + 225.7
17. Compact upright freezers with automatic defrost	10.17AV + 351.9	0.359av + 351.9
18. Compact chest freezers	9.25AV + 136.8	0.327av + 136.8

AV = Total adjusted volume, expressed in ft^3 and rounded to the nearest 0.1 ft^3, as determined in appendices A and B of subpart B of this part.

av = Total adjusted volume, expressed in liters.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Eastern Taiwan Strait Indo-Pacific Humpback Dolphin, Dusky Sea Snake, Banggai Cardinalfish, Harrisson's Dogfish, and Three Corals Under the Endangered Species Act; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 140707555–4999–01]

RIN 0648–XD370

Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Eastern Taiwan Strait Indo-Pacific Humpback Dolphin, Dusky Sea Snake, Banggai Cardinalfish, Harrisson's Dogfish, and Three Corals Under the Endangered Species Act

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

ACTION: Proposed rule; 12-month petition finding; request for comments.

SUMMARY: We, NMFS, have completed comprehensive status reviews under the Endangered Species Act (ESA) for seven foreign marine species in response to a petition to list those species. These seven species are the Eastern Taiwan Strait population of Indo-Pacific humpback dolphin (*Sousa chinensis*), dusky sea snake (*Aipysurus fuscus*), Banggai cardinalfish (*Pterapogon kauderni*), Harrisson's dogfish (*Centrophorus harrissoni*), and the corals *Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana.* We have determined that the Eastern Taiwan Strait Indo-Pacific humpback dolphin is not a distinct population segment and therefore does not warrant listing. We have determined that, based on the best scientific and commercial data available, and after taking into account efforts being made to protect the species, *Pterapogon kauderni,* and *Centrophorus harrissoni* meet the definition of a threatened species; and *Aipysurus fuscus, Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana* meet the definition of an endangered species. Therefore, we propose to list these six species under the ESA. We are not proposing to designate critical habitat for any of the species proposed for listing, because the geographical areas occupied by these species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas that are currently essential to the conservation of any of these species. We are soliciting comments on our proposals to list the six species. We are also proposing related administrative changes to our lists of threatened and endangered species.

DATES: Comments on our proposed rule to list eight species must be received by February 17, 2015. Public hearing requests must be made by January 30, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0083, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0083.* Click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to, Lisa Manning, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

You can obtain the petition, status review reports, the proposed rule, and the list of references electronically on our NMFS Web site at *http://www.nmfs.noaa.gov/pr/species/petition81.htm.*

FOR FURTHER INFORMATION CONTACT: Lisa Manning, NMFS, Office of Protected Resources (OPR), (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species as threatened or endangered under the Endangered Species Act (ESA). This petition included species from many different taxonomic groups, and we prepared our 90-day findings in batches by taxonomic group. We found that the petitioned actions may be warranted for 27 of the 81 species and announced the initiation of status reviews for each of the 27 species (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376, November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). This document addresses the findings for 7 of those 27 species: the Eastern Taiwan Strait population of Indo-Pacific humpback dolphin (*Sousa chinensis*), dusky sea snake (*Aipysurus fuscus*), Banggai cardinalfish (*Pterapogon kauderni*), Harrisson's dogfish (*Centrophorus harrissoni*), and the corals *Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana.* The remaining 20 species will be addressed in subsequent findings.

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we consider first whether a group of organisms constitutes a ''species'' under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a distinct population segment (DPS) of a taxonomic species (the DPS Policy; 61 FR 4722). The DPS Policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As stated in the DPS Policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that

is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

When we consider whether species might qualify as threatened under the ESA, we must consider the meaning of the term ''foreseeable future.'' It is appropriate to interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the reliability to forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years. Discussions of the considerations for each relevant species are in the species-specific sections below.

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following five threat factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts being made by any state or foreign nation to protect the species.

In making a listing determination, we first determine whether a petitioned species meets the ESA definition of a ''species.'' Next, using the best available information gathered during the status review for the species, we complete a status and extinction risk assessment. In assessing extinction risk, we consider the demographic viability factors developed by McElhany *et al.* (2000) and the risk matrix approach developed by Wainwright and Kope (1999) to organize and summarize extinction risk considerations. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews, including for Pacific salmonids, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, scalloped hammerhead sharks, and black abalone (see *http://www.nmfs.noaa.gov/pr/species/* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

We then assess efforts being made to protect the species, to determine if these conservation efforts are adequate to mitigate the existing threats. Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation to protect the species. We also evaluate conservation efforts that have not yet been fully implemented or shown to be effective using the criteria outlined in the joint NMFS/USFWS Policy for Evaluating Conservation Efforts (PECE; 68 FR 15100, March 28, 2003), to determine their certainty of implementation and effectiveness. The PECE is designed to ensure consistent and adequate evaluation of whether any conservation efforts that have been recently adopted or implemented, but not yet demonstrated to be effective, will result in recovering the species to the point at which listing is not warranted or contribute to forming the basis for listing a species as threatened rather than endangered. The two basic criteria established by the PECE are: (1) The certainty that the conservation efforts will be implemented; and (2) the certainty that the efforts will be effective. We consider these criteria in each species-specific section, as applicable, below. Finally, we re-assess the extinction risk of the species in light of the existing conservation efforts.

Status Reviews

Status reviews for the petitioned species addressed in this finding were conducted by NMFS OPR staff. Separate status reviews were done for the Eastern Taiwan Strait Indo-Pacific humpback dolphin (Whittaker, 2014), dusky sea snake (Manning, 2014), Banggai cardinalfish (Conant, 2014), Harrison's dogfish (Miller, 2014), and the three corals (Meadows, 2014). In order to complete the status reviews, we compiled information on the species' biology, ecology, life history, threats, and conservation status from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. We also considered information submitted by the public in response to our petition findings. Draft status review reports were also submitted to independent peer reviewers; comments and information received from peer reviewers were addressed and incorporated as appropriate before finalizing the draft reports.

Each status review report provides a thorough discussion of demographic risks and threats to the particular species. We considered all identified threats, both individually and cumulatively, to determine whether the species responds in a way that causes actual impacts at the species level. The collective condition of individual populations was also considered at the species level, according to the four demographic viability factors discussed above.

The status review reports are available on our Web site (see **ADDRESSES** section). Below we summarize information from those reports and the status of each species.

Eastern Taiwan Strait Population of the Indo-Pacific Humpback Dolphin

The following section describes our analysis of the status of the Eastern Taiwan Strait (ETS) population of the Indo-Pacific Humpback dolphin, *Sousa chinensis.*

Species Description

The Indo-Pacific humpback dolphin, *Sousa chinensis* (Osbeck, 1765), within the genus *Sousa,* family Delphinidae, and order Cetacea, is broadly distributed. The taxonomy of the genus is unresolved and has historically been based on morphology, but genetic analyses have recently been used. Current taxonomic hypotheses identify *Sousa chinensis* as one of two (Jefferson *et al.,* 2001), three (Rice, 1998), or four (Mendez *et al.,* 2013) species within the genus. Each species is associated with a unique geographic range, though the species' defined ranges vary depending on how many species are recognized. Rice (1998) recognizes *Sousa teuzii* in the eastern Atlantic, *Sousa plumbea* in the western Indo-Pacific, and *Sousa chinensis* in the eastern Indo-Pacific. Mendez *et al.* (2013) recently identified an as-yet unnamed potential new species in waters off of northern Australia. Currently, the International Union for Conservation of Nature (IUCN) and International Whaling Commission (IWC) Scientific Committee

recognize only two species, *Sousa chinensis* in the Indo-Pacific, and *Sousa teuzii* in the eastern Atlantic. Here, we follow a similar two-species taxonomy in our consideration of the genus and identification of the species *Sousa chinensis.* Under that taxonomy, *Sousa chinensis'* range includes nearshore tropical and subtropical habitats in southern Africa, the Indian Ocean, North Australia, southern mainland China, Hong Kong, and Taiwan (Jefferson *et al.,* 2001; Mendez *et al.,* 2013). We chose to follow a two-species taxonomy as it provides the clearest genetic, morphological, and geographic delineation of the species and is well supported by the current data available. While growing genetic and phylogeographic evidence suggests that *Sousa chinensis* is associated with further genetic subdivisions, more data are needed to clarify the taxonomy and delineate the geographic boundaries and ranges of these additional genetic units (Cockroft *et al.,* 1997; Jefferson *et al.,* 2004b; Frère *et al.,* 2008; Frère *et al.,* 2011; Lin *et al.,* 2012; Mendez *et al.,* 2013).

The Indo-Pacific humpback dolphin is easy to distinguish from other dolphin species in its range, as it is characterized by a robust body, a long, distinct beak, a short dorsal fin atop a wide dorsal hump, and round-tipped, broad flippers and flukes (Jefferson *et al.,* 2001). The Indo-Pacific humpback dolphin is medium-sized, up to 2.8 m in length, weighing 250–280 kg (Ross *et al.,* 1994). Morphological plasticity exists among populations of the species and is correlated with their geographic distributions (Ross *et al.,* 1994). For example, the Eastern Taiwan Strait population, which occurs at the eastern portion of the species' range, has a short dorsal fin with a wide base; the base of the fin measures 5–10 percent of the body length and slopes gradually into the surface of the body. This differs from individuals in the western portion of the range, which have a larger hump that comprises about 30 percent of body width, and forms the base of an even smaller dorsal fin (Ross *et al.,* 1994). Males and females from the Pearl River Estuary population, and in other populations of Southeast Asia, do not exhibit sexual dimorphism in size, growth patterns, or morphology (Jefferson *et al.,* 2001; Jefferson *et al.,* 2012). In contrast, individuals from South Africa exhibit sexual dimorphism in terms of size and dorsal hump morphology (Ross *et al.,* 1994; Karczmarski *et al.,* 1997).

The species occurs in a range of nearshore habitats, including estuaries, mangroves, seagrass meadows, coastal lagoons, and sandy beaches (Ross *et al.,* 1994). In Thailand, Malaysia, and Indonesia, nearshore ecosystems are associated with tropical seagrass, coral, and mangrove lagoons (Beasley *et al.,* 1997; Smith *et al.,* 2003; Adulyanukosol *et al.,* 2006; Jaroensutasinee *et al.,* 2011; Cherdsukai *et al.,* 2013). In India, the species is associated with nearshore habitat consisting of mangroves, corals, and tidal mudflat, heavily influenced by monsoons that regulate the influx of freshwater to the system (Sutaria *et al.,* 2004). The coast of mainland China is thought to host at least eight populations of the species, primarily occurring in estuarine systems at the mouths of large rivers (Jefferson *et al.,* 2001; Jefferson *et al.,* 2004a). Two coastal Chinese populations, in close proximity to the population in the Eastern Taiwan Strait, are relatively well-studied. These are the Pearl River Estuary/Hong Kong population and the Jiulong River Estuary/Xaimen population, both of which depend upon ecosystem productivity associated with the nutrient output supplied by large rivers (Chen *et al.,* 2008; Chen *et al.,* 2010).

The Eastern Taiwan Strait population of *Sousa chinensis* (henceforth referred to as the ETS humpback dolphin), for which we were petitioned, was first described in 2002 during an exploratory survey of coastal waters off of western Taiwan (Wang *et al.,* 2004). Prior to these coastal surveys, there are few records mentioning the species in this region, save two strandings, a few photographs, and anecdotal reports (Wang, 2004), so their history in the region is unclear. Since the first survey in 2002, researchers have confirmed their year-round presence in the Eastern Taiwan Strait (Wang *et al.,* 2011), inhabiting estuarine and coastal waters of central-western Taiwan.

The ETS humpback dolphin habitat is most similar to that of the populations located off the coast of mainland China. Individuals of the ETS humpback dolphin population are thought to be restricted to water less than 30 meters deep, and most observed sightings have occurred in estuarine habitat with significant freshwater input (Wang *et al.,* 2007b). Across the ETS humpback dolphin habitat, bottom substrate consists of soft-sloping muddy sediment with elevated nutrient inputs, primarily influenced by river deposition (Sheehy, 2010). These nutrient inputs support high primary production, which fuels upper trophic levels, contributing to the dolphin's source of food (Jefferson, 2000).

The Indo-Pacific humpback dolphin is considered a generalist and opportunistic piscivore (Barros *et al.,* 2004). As is common to the species as a whole, the ETS population uses echolocation and passive listening to find its prey. While little is known about the specific diet and feeding of the ETS population, diet can be inferred from that of other humpback dolphin populations (Barros *et al.,* 2004; Chen *et al.,* 2009). In Chinese waters off Hong Kong, the species consumes both bottom-dwelling and pelagic fish species, including croakers (Sciaenidae), mullets (Mugilidae), threadfins (Polynemidae), and herring (Clupeidae) (Barros *et al.,* 2004). Part of the feeding strategy for this population may be to induce shoaling of fish by physically corralling them, allowing individuals to forage and feed successfully, even within murky nearshore waters (Sheehy, 2009). In general, the prey species of the humpback dolphin include small fish which are generally not commercially valuable to local fisheries (Barros *et al.,* 2004; Sheehy, 2009).

Little is known about the life history and reproduction of ETS humpback dolphin. In some cases, comparison of the ETS population with other populations may be appropriate, but one needs to be cautious about making these comparisons, as environmental factors such as food availability and habitat status may affect important rates of reproduction and generation time in different populations. A recent analysis of life history patterns for individuals in the Pearl River Estuary (PRE) population is the best proxy for the ETS population. Like the ETS population, the PRE population inhabits estuarine and freshwater-influenced environments in similar proximity to anthropogenic activity (Jefferson *et al.,* 2012). Maximum longevity for the PRE population is estimated to be greater than 38 years (Jefferson *et al.,* 2012). Evidence from multi-year photo-analysis of the ETS population demonstrated that adult survivorship is high, 0.985, suggesting that this population also has a relatively long lifespan (Wang *et al.,* 2012). In general, it is inferred that the population has long calving intervals, between 3 and 5 years (Jefferson *et al.,* 2012). Gestation lasts 10–12 months (Jefferson *et al.,* 2012). Weaning may take up to 2 years, and strong female-calf association may last 3–4 years (Karczmarski *et al.,* 1997; Karczmarski, 1999). Peak calving activity most likely occurs in the warmer months, but exact peak of calving time may vary geographically (Jefferson *et al.,* 2012). Age at sexual maturity is late, estimated at between 12 and 14 years (Jefferson *et al.,* 2012).

DPS Analysis

The following section provides our analysis, based on the best available science and the DPS Policy, to determine whether the ETS humpback dolphin population qualifies as a DPS of the taxon.

Discreteness

The Services' joint DPS Policy states that a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA (61 FR 4722; February 7, 1996).

Individuals from the ETS population exhibit pigmentation that differs significantly from nearby populations along the mainland coast of China, and evidence suggests that pigmentation varies geographically across the species' range (Jefferson *et al.,* 2001; Jefferson *et al.,* 2004a; Wang *et al.,* 2008). Across the species, pigmentation changes as individuals mature. When young, dolphins appear dark grey with no or few light-colored spots; as they age, they transform to mostly white (appearing pinkish), as dark spots decrease with age. In particular, the developmental transformation of pigment differs significantly between ETS and nearby Chinese humpback dolphin populations; specifically, the spotting intensity (density of spots) on the dorsal fin of the ETS population is significantly greater than that of four mainland Chinese populations, including the other nearby populations in the Pearl River Estuary and Jiulong River estuaries (Wang *et al.,* 2008). Significantly greater spotting intensity on the dorsal fin of the ETS population is consistent, regardless of age (Wang *et al.,* 2008). Further, the ETS humpback dolphin never loses the dark dorsal fin spots completely, as has been observed in older individuals of other humpback dolphin populations (Wang *et al.,* 2008). In contrast, dorsal fins of Chinese populations are strikingly devoid of spots, compared to their bodies, throughout most of their lives, except when they are very young or very old (Wang *et al.,* 2008). These differences in pigmentation can be used to reliably differentiate between the ETS humpback dolphin and nearby Chinese populations (Wang *et al.,* 2008). Thus, we consider these significant differences in pigmentation of the ETS humpback dolphin as evidence of its discreteness.

Several researchers have suggested that the ETS population of the humpback dolphin is physically and geographically isolated from other populations, based on the fact that individuals have not been observed crossing or to have crossed the Strait of Taiwan, despite repeated surveys of Chinese and Taiwanese populations using photo-identification techniques (Wang *et al.,* 2004; Wang *et al.,* 2007b; Chen *et al.,* 2010; Wang *et al.,* 2011; Wang *et al.,* 2012). For instance, a detailed analysis of more than 450 individually-recognizable dolphins catalogued for Taiwanese and Chinese populations revealed no matches among them (Wang *et al.,* 2008). Movement of *Sousa chinensis* is thought to be limited to shallow water and nearshore habitat (Karczmarski *et al.,* 1997; Hung *et al.,* 2004). Water depth and fast-moving currents within the Eastern Taiwan Strait are thought to isolate the ETS population from Chinese populations, despite their relatively close geographic proximity (Wang *et al.,* 2004; Wang *et al.,* 2008; Wang *et al.,* 2011; Wee *et al.,* 2011; Wang *et al.,* 2012). In fact, the ETS population has never been observed in waters greater than 30 meters depth (Wang *et al.,* 2007b). Evidence suggests that the ETS population of the humpback dolphin has a narrow home range, and does not migrate seasonally or mix with Chinese populations (Wang *et al.,* 2011). The population has been shown to inhabit the shallow, narrow habitat on the western coast of Taiwan throughout the year, and exhibits strong site fidelity (Wang *et al.,* 2011).

The evidence for geographic isolation is based on limited survey data collected since 2002, which focused only on nearshore waters at certain times of year and did not survey the Strait waters between mainland China and Western Taiwan (Wang *et al.,* 2004; Wang *et al.,* 2011; Wang *et al.,* 2012). Thus, the possibility for Indo-Pacific humpback dolphin migration or emigration across the Strait cannot be eliminated entirely. However, the best available scientific information indicates that the species is found primarily in shallow nearshore habitat, and the ETS population has never been observed in waters greater than 30 meters, and thus migration or emigration across the deeper Strait is thought to occur rarely, if ever.

The best available data suggest that the ETS humpback dolphin population is discrete from all other populations of the species based on its morphological differences. Although limited, the best available data also suggest that the ETS humpback dolphin population is geographically isolated from other populations. The morphological differences and geographic isolation set this population apart from other populations of the Indo-Pacific humpback dolphin, and thus, we conclude that the ETS humpback dolphin population meets the discreteness criterion of the DPS Policy.

Significance

When the discreteness criterion is met for a potential DPS, as it is for the ETS humpback dolphin population, the second element that must be considered under the DPS Policy is the significance of the DPS to the taxon as a whole. Significance is evaluated in terms of the importance of the population segment to the taxon to which it belongs, in this case the species *Sousa chinensis.* Some of the considerations that can be used under the DPS Policy to determine a discrete population segment's significance to the taxon as a whole include: (1) Persistence of the population segment in an unusual or unique ecological setting; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; and (3) evidence that the population segment differs markedly from other populations of the species in its genetic characteristics.

The ETS humpback dolphin population occurs in an ecological setting similar to populations occurring along the coast of mainland China, and many features of its habitat and ecology are similar to those of populations throughout the range of the species, as discussed above. Throughout its range, the Indo-Pacific humpback dolphin is consistently associated with coastal river output and is found in shallow nearshore waters (Jefferson *et al.,* 2001). It displays no apparent preference for clear or turbid waters (Karczmarski *et al.,* 2000). The habitat and ecosystem use of the species differ in some ways geographically, but evidence suggests that the dolphin is an opportunistic piscivore, and thus does not exhibit unique or restricted feeding ecology across its range (Jefferson *et al.,* 2001).

In Thailand, Malaysia, and Indonesia, the species occurs in tropical seagrass, coral, and mangrove lagoons not present in ETS humpback dolphin habitat (Beasley *et al.,* 1997; Smith *et al.,* 2003; Adulyanukosol *et al.,* 2006; Jaroensutasinee *et al.,* 2011; Chersukjai

et al., 2013). In India, the species is associated with nearshore habitat consisting of mangroves, corals, and tidal mudflat, heavily influenced by monsoons that regulate the influx of freshwater to the system (Sutaria *et al.,* 2004). The ETS humpback dolphin habitat is most similar to that of coastal Chinese populations, with more temperate water, soft muddy substrate, and consistent input from river systems. The ETS humpback dolphin habitat differs from the habitat occupied by mainland Chinese populations in some ways, with nearby rivers generally smaller than those in mainland China, and with warmer waters in the winter due to the influence of the Kuroshio Current, which periodically moves into the Strait of Taiwan (Chern *et al.,* 1990; Jan *et al.,* 2002; Wang *et al.,* 2008). However, feeding ecology, prey availability, and prey preference are thought to be similar in mainland China and Taiwan (Barros *et al.,* 2004; Wang *et al.,* 2007a), so these small differences in habitat do not seem to have significant effects on the species' ecology.

The presumed habitat of the ETS humpback dolphin is narrower in offshore width than that of other studied populations of the taxon. For instance, the ETS population is thought to inhabit a small area of coastal shallow waters within 3 km from the shore (Wang *et al.,* 2007b). In contrast, Chinese populations inhabit a broader shallow area ranging tens of kilometers offshore, where dolphins can range farther from the coastline without moving into deeper water (Hung *et al.,* 2004; Chen *et al.,* 2011). While the ETS population exhibits some behavioral differences, such as increased cooperative calf-rearing and social connectivity, as compared to Chinese populations (Dungan *et al.,* 2011), it is uncertain whether or not these differences are adaptive or facultative, and simply based on the population's low abundance. Thus, insufficient evidence exists to suggest significant differences in the dolphin's ecology or adaptation have derived from the differences in the physical parameters of its environment. Therefore, differences in the habitat and ecological setting of the ETS humpback dolphin do not set it apart from the rest of the taxon, and do not appear to relate to significant selection pressures affecting the population's foraging, behavior, or ecology.

There is no evidence to suggest that loss of the ETS humpback dolphin population would result in a significant gap in the range of the taxon. The ETS humpback dolphin population constitutes a small and peripheral portion of the entire range of the species, and its loss would not inhibit population movement or gene flow among other populations of the species (Lin *et al.,* 2012). The ETS humpback dolphin is distributed throughout only 512 square kilometers of coastal waters off Western Taiwan; this small range is not geographically significant in comparison to the taxon's range throughout the coastal Indo-Pacific and Indian Oceans.

There are no data to show that the genetic characteristics of the ETS humpback dolphin population differ markedly from other populations in a significant way. While pigmentation of the ETS population is significantly different from other populations within the taxon (Wang *et al.,* 2008), whether the pattern is adaptive or has genetic underpinnings is unknown. In other cetacean species, differences in pigmentation have been hypothesized to relate to several adaptive responses, allowing individuals to hide from predators, communicate with conspecifics (promoting group cohesion), and disorient and corral prey (Caro *et al.,* 2011). However, the differences in ETS humpback dolphin pigmentation may be a result of a genetic bottleneck from the small size of this population (less than 100 individuals) and the possibility that it represents a single social and/or family group. Such small populations are more heavily influenced by genetic drift than large populations (Frankham, 1996). Insufficient data exist to determine whether significant differences in ETS humpback dolphin pigmentation relate to the functional divergence of the population, or are simply a product of genetic drift and a genetic bottleneck. The best data available thus lead us to conclude that loss of the ETS humpback dolphin population would not result in significant loss of overall genetic or ecological diversity of the taxon as a whole.

DPS Conclusion and Proposed Determination

According to our analysis, the ETS humpback dolphin population is considered discrete based on its unique pigmentation patterns, which set it apart morphologically from the rest of the taxon, and evidence for its geographic isolation. However, while discrete, the ETS humpback dolphin population does not meet any criteria for significance to the taxon as a whole. The ecological setting it occupies is similar to that of the rest of the species, loss of the population would not constitute a significant gap in the taxon's extensive range, and no genetic or other data have demonstrated that the population makes a significant contribution to the adaptive, ecological, or genetic diversity of the taxon. As such, based on the best available data, we conclude that the ETS humpback dolphin population is not a DPS and thus does not qualify for listing under the ESA. This is a final action, and, therefore, we do not solicit comments on it.

Dusky Sea Snake

The section below presents our analysis of the status of the dusky sea snake, *Aipysurus fuscus.* Further details can be found in Manning (2014).

Species Description

The dusky sea snake, *Aipysurus fuscus,* is a species within the family Elapidae, which is a very diverse family of venomous snakes. The genus *Aipysurus* contains seven species, six of which are restricted to Australasian waters. The dusky sea snake is brown, blackish-brown, or purplish-brown with wide ventral scales and diamond-shaped body scales that are smooth and imbricate (*i.e.,* overlapping). There are generally 19 scale rows around the neck, 19 around the mid-body, and 155 to 180 ventral scales (Rasmussen, 2000). The dusky sea snake is completely aquatic and, like all sea snakes, has a paddle-like tail for swimming. Its maximum total length is about 90 cm (Rasmussen, 2000). Growth rates for the dusky sea snake have not been documented, but reported growth rates for other sea snakes range from 0.07–1.0 mm per day and decline with age (Heatwole, 1997). The maximum lifespan for dusky sea snakes has been assumed to be about 10 years, and age at first maturity has been assumed to be about 3–4 years (Lukoschek *et al.,* 2010). Generation length is thought to be approximately 5 years (Lukoschek *et al.,* 2010).

Despite its aquatic existence, and like all reptiles, the dusky sea snake lacks gills and must surface to breathe air. Dive durations vary by species, but most sea snakes typically stay submerged for about 30 minutes, and some for up to 1.5–2.5 hours (Heatwole and Seymour, 1975). Maximum dive depth for dusky sea snakes is unknown, but co-occurring members of this genus are considered ''shallow'' and ''intermediate'' depth species that dive no deeper than 20 m or 50 m, respectively (Heatwole and Seymour, 1975).

The dusky sea snake is viviparous, meaning embryos develop internally and young undergo live birth. Because this species never ventures on land, mating occurs at sea and young are born alive in the water. Within the genus *Aipysurus,* the number of young per

brood is small, usually less than four, and young are relatively large at birth (Cogger, 1975). Timing and seasonality of the dusky sea snake's breeding cycles are unknown, and very little is known about the juvenile life stage.

The dusky sea snake preys mainly on labrid (*e.g.,* wrasses) and gobiid (*e.g.,* gobies) fishes, and to a lesser extent, fish eggs (McCosker, 1975). Food competition among sympatric sea snakes is thought to be minimal, based on examinations of diet composition for sympatric sea snakes (McCosker, 1975; Voris and Voris, 1983). Feeding behavior of dusky sea snakes has not been thoroughly investigated; however, during surveys at Ashmore Reef, Australia, Guinea and Whiting (2005) commonly saw dusky sea snakes over sand bottom habitat and watched one snake actually force its head and about 15 percent of its body into the sand. However, because it emerged without a prey item (Guinea and Whiting, 2005), it is unclear whether this was foraging or some other behavior. Like their terrestrial relatives, sea snakes swallow their prey whole and therefore must have some strategy for subduing them. McCosker (1975) hypothesized that the highly toxic venom of sea snakes is probably more of a feeding adaptation than a defensive one.

The dusky sea snake is a benthic, coral reef-associated species endemic to several shallow emergent reefs of the Sahul Shelf off the coast of Western Australia in the Timor Sea, between Timor and Australia. These reefs are relatively isolated and lie at the edge of the continental shelf over several hundred kilometers from the mainland. The dusky sea snake has been reported to occur at Ashmore, Scott, Seringapatam, and Hibernia Reefs and Cartier Island; however, individual surveys have not consistently recorded dusky sea snakes at all of these locations. For example, in transect surveys conducted by Minton and Heatwole (1975) over several weeks during December 1972 and January 1973 at Ashmore, Scott, and Hibernia Reefs and Cartier Island, dusky sea snakes were recorded at Scott and Ashmore reefs only. Extensive surveys conducted more recently at Ashmore Reef, where dusky sea snakes were once relatively common, have located no specimens (Guinea, 2013; Lukoschek *et al.,* 2013). Lukoschek *et al.* (2010) estimated that the area of occurrence of dusky sea snakes is probably less than 500 km^2.

During their surveys, Minton and Heatwole (1975) observed dusky sea snakes in shallow water (<10 m) as well as in the 12 to 25 m depth-zone. They were observed in areas of moderate to heavy coral growth, but they were also observed to congregate in sandy-bottomed gullies and channels (Minton and Heatwole, 1975). Home-range size and site fidelity of individual dusky sea snakes has not been evaluated. However, a short-term (6–9 days), telemetry study on the sympatric olive sea snakes (*A. laevis*) and a long-term (8-year), mark-recapture study on the turtle-headed sea snake (*Emydocephalus annulatus*) suggest that home-ranges of sea snakes are small, movement of adults is very limited, and longer-distance dispersal may be due mainly to passive transport, such as by currents and storms (Burns and Heatwole, 1998; Lukoschek and Shine 2012). While it is very plausible that adult *A. fuscus* are similar to these other species, research to evaluate adult and juvenile *A. fuscus* habitat use and movement is needed.

Sea snakes typically have patchy distributions and can be found in very dense aggregations in certain locations within their ranges (Heatwole, 1997). This patchiness complicates efforts to understand habitat use patterns, as seemingly suitable habitat can remain unoccupied. On a smaller spatial scale, distributions of sea snake fauna on Australian reefs appear to be influenced by water depth, substrate type, and feeding strategies (McCosker, 1975; Heatwole, 1975b). Other biotic factors, such as limited juvenile dispersal, may also contribute to the observed patchy distributions (Lukoschek *et al.,* 2007a). Overall, however, causative factors for observed distributions are not completely understood.

Population Abundance, Distribution, and Structure

There are no historical or current population estimates for the dusky sea snake. However, multiple reefs have been surveyed repeatedly, and although survey methodologies have varied, the data provide some indication of population trends for some locations. For Ashmore Reef in particular, the survey data provide a strong indication of severe population decline and possible extirpation. Older surveys dating from 1972 to 2002 by various researchers indicate that the relative abundance of *A. fuscus* was fairly consistent and represented about 10–23 percent of the sea snakes observed (see Table 1, Manning, 2014). A footnote in Smith (1926) also indicates that a sample of 27 dusky sea snakes (out of an ~100-specimen sea snake collection) had recently been collected for him at Ashmore Reef. The dusky sea snake, however, has not been recorded in a single survey conducted at Ashmore Reef after 2005, despite considerable effort (Lukoschek *et al.,* 2013; Table 1, Manning, 2014). Based on reef area data reported in Skewes *et al.* (1999), Ashmore Reef represents about 40 percent of the dusky sea snake's historical reef habitat. Extirpation from this reef would represent a substantial change in the species' distribution and abundance.

A survey in 2005 at Hibernia Reef indicated a relatively low abundance of *A. fuscus,* and the most recent surveys, conducted in 2012 and 2013, have failed to detect any dusky sea snakes despite extensive survey effort (Guinea, 2005; Guinea, 2013). Dusky sea snakes were observed in surveys conducted at Scott Reef in 1972/73, 2006, 2012 and 2013; however, their relative abundance varies across the surveys, and no trends are detectable given the limited data (see Table 1, Manning, 2014). For example, Guinea (2012) visited Scott Reef in February, 2006, and reported that dusky sea snakes, as the third-most abundant species, made up 15 percent of the total sea snake sightings (Guinea, 2013). Portions of Scott Reef were surveyed again in 2012 and 2013, and dusky sea snakes made up only 3.2 percent and 7.4 percent of the total sightings respectively for each year (Guinea, 2013). At Seringapatam Reef and Cartier Island, *A. fuscus* is rare or potentially absent. Overall, while these limited abundance data are very difficult to interpret, they indicate that dusky sea snakes have not been present in high numbers in any recent reef surveys (Table 1, Manning, 2014).

The dusky sea snake has a restricted range, and structure and connectivity of populations is uncertain. Assuming that *A. fuscus* is extirpated from Ashmore Reef, Sanders *et al.* (2014) recently estimated that the dusky sea snake's range is now less than 262 sq km. Although structure and connectivity of reef populations of *A. fuscus* have not been studied directly, some information may be gleaned from several studies on the olive sea snake, *A. laevis,* a sympatric congener that is larger in size, more common, and more widely distributed than *A. fuscus,* but is very closely related to *A. fuscus* (Sanders *et al.,* 2013b). As mentioned above, a short-term (6–9 days) tracking study on *A. laevis* suggests that adults of this species have small home ranges (1,500–1,800 sq m) and undergo limited active dispersal (Burns and Heatwole, 1998). Results of that study are somewhat supported by analyses by Lukoschek *et al.* (2007b) of mitochondrial DNA (mtDNA) from 354 olive sea snakes collected across its range, including some samples from Hibernia, Scott, and

Ashmore reefs and Cartier Island. Based on their results, Lukoschek *et al.* (2007b) concluded that gene flow among the reefs of the Timor Sea is low, and that olive sea snakes at these reefs have been diverging for some time. A subsequent analysis of microsatellite DNA from the same specimens indicates that two of the most distant Timor reef populations of *A. laevis* are significantly diverged (Lukoschek *et al.,* 2008). However, the degrees of divergence of other reef populations were not statistically significant, and there was no clear isolation-by-distance relationship (Lukoschek *et al.,* 2008). Although not conclusive, the available information for the olive sea snake and the fact that dusky sea snakes also lack a dispersive larval phase, suggest connectivity of *A. fuscus* may be limited among some reefs within the region. Limited inter-population exchange would increase the extinction risk and reduce the recovery potential for local populations that have experienced severe declines or have been lost.

Summary of Factors Affecting the Dusky Sea Snake

Available information regarding current, historical, and potential threats to the dusky sea snake was thoroughly reviewed (Manning, 2014). Although causes for observed declines in dusky sea snake have not been conclusively determined, we found that the species is being threatened by hybridization. Other possible threats include vessels, pollution, climate change, and inadequate regulatory mechanisms. We summarize information regarding each of these threats below according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that disease, predation, or overutilization (including bycatch) are operative threats on this species; therefore, we do not discuss those further here. See Manning (2014) for additional discussion of all ESA Section 4(a)(1) threat categories.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Aipysurus fuscus is dependent on coral reefs for prey and shelter, and loss of live coral is a possible mechanism contributing to the decline of *A. fuscus* at locations such as Ashmore Reef. Coral reefs of the Sahul Shelf experienced widespread bleaching in response to El Niño events in 1998 and 2003. Ashmore Reef experienced bleaching in 1998 and again, to an apparently greater extent, in 2003 (Lukoschek *et al.,* 2013). However, because there are no estimates of coral coverage prior to 1998, the extent of coral loss following the 1998 event has not been quantified. Widespread mortality of corals was documented in response to the 2003 bleaching event, and average live coral coverage was reduced to 10 percent (Kospartov *et al.,* 2006; as cited in Lukoschek *et al.,* 2013). Surveys conducted in 2005 and 2009 indicated that recovery of corals at Ashmore Reef was rapid but delayed by about 7 years (Ceccarelli *et al.,* 2011). Overall, there has been an eight-fold increase in hard coral coverage from 1998 to 2009 (Hale and Butcher, 2013), with all of the recorded recovery occurring after 2005. Meanwhile, survey data suggest complete loss of dusky sea snakes at Ashmore Reef after 2005. Existing survey data also show sharp declines in total sea snake abundance and species diversity at Ashmore Reef following both the 1998 and 2003 bleaching events (Lukoschek *et al.,* 2013). These patterns are consistent with a hypothesis that loss of live corals affects reef-associated sea snakes.

The patterns at Ashmore Reef are contrasted, however, by those observed at Scott Reef. Following the 1998 bleaching event, a greater than 80 percent loss of hard and soft coral cover occurred, which translated into a reduction of live coral coverage to a total of roughly 10 percent (Smith *et al.,* 2008). The 1998 El Niño event represents the most extreme temperature anomaly recorded for Scott Reef, and involved a rapid rise in water temperatures that remained above normal for two months (NOAA, 2013). Almost 6 years after the bleaching event (in 2004), the hard corals had partially recovered to 40 percent of their pre-bleaching cover, the soft corals showed no sign of recovery, and community composition of corals remained significantly altered (Smith *et al.,* 2008). Within 12 years after the event (by 2010), coral cover, recruitment, community composition, and generic diversity were similar to pre-bleaching years (Gilmour *et al.,* 2010). Several lesser disturbances, including two cyclones and the 2003 El Niño event, occurred during this time period and may have slowed the rate of recovery to some extent (Gilmour *et al.,* 2013). Available sea snake survey data, spanning 1972–2013, with surveys in 1972–73, 2006, 2012, and 2013, do not appear to indicate a major decline in abundance of dusky sea snakes at Scott Reef, which were relatively common during the surveys conducted by Guinea (2012) in 2006. However, the temporal gaps in these survey data, especially from 1973 to 2006, could conceal shorter-term patterns.

A comprehensive understanding of the relationship between live coral cover and dusky sea snake abundance likely requires more detailed information regarding coral species composition, habitat complexity, and coral and prey fish resiliency relative to both the 1998 and 2003 bleaching events. Such an analysis might offer further insights into the differing response patterns at the two reefs, and an indication of whether sea snake abundance is driven by live coral coverage over timescales relevant to these disturbances. At this time, however, because a clear or consistent pattern does not emerge from the available data regarding dusky sea snake abundances at Ashmore and Scott reefs in relationship to these two bleaching events, we cannot conclude that loss of live coral is contributing to the decline of the dusky sea snake.

The reefs where dusky sea snakes are found lie more than several hundred kilometers offshore and thus enjoy a considerable degree of protection from human activities and land-based sources of pollution. Despite this remoteness, the reefs may experience some degradation as a result of vessel traffic. Anchor damage, pollution from contaminated bilge water, and marine debris are among the potential issues identified at Ashmore Reef, which experiences a relatively high level of traffic from Indonesian fishers, yachts, merchant ships, and illegal entry vessels (Whiting, 2000; Lukoschek *et al.,* 2013). The mechanisms for and extent to which these boat-based habitat threats are impacting dusky or any other sea snake species of the Timor Sea reefs are unknown.

The extensive oil and gas industry activity in this region may also be a possible source of disturbance affecting dusky sea snakes and their habitat. Exploration and extraction activities within the Ashmore Platform began in 1968 (Geoscience Australia, 2012) and are expected to continue for some time, given the significant resources within this region. Ashmore Reef and Cartier Islands lie about 50–80 km west of the main offshore wells in the Timor Sea, and the closest exploration wells are 36 km away (Russell *et al.,* 2004). However, Scott Reef lies directly above a significant portion of the Torosa Reservoir, where drilling for natural gas is expected to start by 2017. The development of the natural gas facility in this area will mean increased vessel traffic and potentially light, sound, and chemical pollution. The area is also expected to experience minor subsidence or compaction as the gas is removed (Woodside Energy LTD, 2013).

Whether, and the degree to which, any of these threats or a combination of these threats will impact dusky sea snakes is not yet known.

Unfortunately, extremely limited information also exists regarding the toxic effects of oil exposure on sea snakes. Oil spills, which occur more frequently as a result of vessel or pipeline incidents rather than exploration and drilling activities (*www.amsa.gov.au*), have also not occurred very often in this region. Some information is available from the August 2009 explosion of the West Atlas oil rig on the Montara Well, which leaked oil and gas uncontrollably into the Timor Sea for 74 days until the well was finally capped in November 2009. Considered one of the worst oil-related spills to have ever occurred in Australia, the Montara leak was analogous in nature to the Deepwater Horizon disaster of April 2010 in the Gulf of Mexico. In an effort to rapidly assess impacts to multiple taxa, Watson *et al.* (2009) conducted ship-based transect surveys in areas around the Atlas drilling platform in September 2009. They did not observe or identify any dusky sea snakes; however, they did observe ''lethargic sea snakes lying in thick oil (*i.e.,* not moving much when approached, unable to dive)'' and collected a dead horned sea snake (*Acalyptophis peronii*) from oil-affected waters for further analysis (Watson *et al.,* 2009). The necropsy report indicated that this snake was in good physical condition, with no visible external or internal pathologies, and no oil was detected in swab samples of the skin (Gagnon and Rawson, 2010). Chemical analysis of tissues clearly indicated that exposure to crude oil occurred through ingestion of prey and not through inhalation (Gagnon and Rawson, 2010). *Acalyptophis peronii* is considered more of a diet specialist than the dusky sea snake and primarily consumes burrowing gobies (McCosker, 1975; Voris and Voris, 1983). Because they saw no physical damage to the gut structure and no contamination of the tissues, Gagnon and Rawson (2010) concluded it was unlikely that oil ingestion was the primary cause of death. Tests for presence of chemical dispersants used during the spill-response were not conducted.

A necropsy was also performed on a dead sea snake landed by a commercial fisherman operating in the vicinity of the West Atlas spill on September 14, 2009 (Gagnon, 2009). This specimen was identified as *Hydrophis elegans,* which is a relatively widespread and abundant species that preys on eels and other fishes (McCosker, 1975; Voris and Voris, 1983). The necropsy indicated that the snake had fed recently and that the stomach contents were contaminated with oil (Gagnon, 2009). Relatively high levels of polycyclic aromatic hydrocarbons were also detected in the lungs, trachea, and muscle tissue (Gagnon, 2009). Neither of two dispersant chemicals used to treat the spill were detected in lung samples (Gagnon, 2009). The necropsy report concluded that the likely cause of death for this specimen was exposure to petroleum hydrocarbons (Gagnon, 2009).

In 2012 and 2013, Guinea (2013) conducted surveys to evaluate the potential impacts of the Montara leak on species of marine reptiles. Potentially impacted areas surveyed included Ashmore Reef, Cartier Island, and Hibernia Reef; Scott and Seringapatam reefs were surveyed as control reefs (Guinea, 2013). Ashmore Reef and Cartier Island are 167 km west-north-west and 108 km west from the Montara well, respectively. Seringapatam and Scott reefs are several hundred km south-east of the Montara well and far from modeled oil trajectories (Guinea, 2013). The extensive survey efforts of Guinea (2013) did not indicate any impact of the hydrocarbon release on marine reptiles (sea turtles and sea snakes) of the potentially affected reefs. Of the reefs surveyed, Hibernia Reef and Cartier Island had the highest sea snake density; however, no sea snakes were observed at Ashmore Reef, where sea snake abundance and diversity had already declined to very low levels prior to the 2009 incident (Guinea, 2013). Overall, these data suggest that while there are likely to be acute impacts to sea snakes in response to major spills, it is unlikely that pollution stemming from oil and gas industry activities has contributed to the observed declines of the dusky sea snake.

Overall, based on the existing information, we conclude that there is a low likelihood that these habitat-related threats have contributed to the observed decline of the dusky sea snake. At this time, there is insufficient information to indicate whether and how the dusky sea snake will be affected by these habitat issues in the future. We do expect that each of the various habitat-related issues summarized above will continue well into the future, and some may worsen. Given that El Niño and its associated warming of equatorial Pacific Ocean waters is a natural and reoccurring climate phenomenon, coral bleaching in response to sufficiently strong El Niño events will continue. Furthermore, because climate warming as a consequence of carbon dioxide emissions is expected to continue (IPCC, 2013), and elevated sea surface temperatures are expected to rise at an accelerated rate (Lough *et al.,* 2012), loss of corals through bleaching events is expected to increase. The expansion of Australia's oil and gas exploration and extraction in the Timor Sea may also result in an increased risk of oil spills and additional habitat threats for dusky sea snakes.

Inadequacy of Existing Regulatory Mechanisms

The dusky sea snake and its habitat receive a significant degree of regulatory protections. The largest potential gap in existing regulatory mechanism may be for threats related to climate change. Oil spills, while rare and unpredictable, and other oil and gas industry activities may also pose threats to the species as a consequence of inadequate management and regulation. We summarize the available information regarding related regulatory protections below; a more in-depth discussion is available in Manning (2014).

Along with all of Australia's other hydrophiine sea snakes, dusky sea snakes are listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The EPBC Act provides a legal framework to protect and manage Australia's nationally and internationally important flora, fauna, ecological communities, and heritage places that are of national environmental significance. Under the EPBC Act, no one may ''kill, injure, take, trade, keep or move a member of a native species'' within any reserve without a permit (Commonwealth of Australia, 2000). The EPBC Act requires that surveys be conducted for listed marine species. The EPBC Act also provides that the Australian Government Minister for the Environment may make or adopt a recovery plan for a listed species, to set out the research and management actions needed to stop the decline of the species and support its recovery. There are no recovery plans in place for any sea snake species, however (*www.environment.gov.au/topics/biodiversity/threatened-species-ecological-communities/recovery-plans*). Thus, while the dusky snake receives substantial protection under the EPBC Act, without a recovery plan, that protection may not be enough to help stabilize and recover the species.

Two of the five main reefs within the dusky sea snake's historical range, Ashmore Reef and Cartier Island, are protected reserves. Ashmore Reef National Nature Reserve was established

in 1983, under the National Parks and Wildlife Conservation Act 1975 (a predecessor to the EPBC Act), and later listed as a Ramsar Site in 2000, under the Ramsar Convention, which is an intergovernmental treaty on sustainable use of wetlands. In Australia, Ramsar Sites receive protection under the EPBC Act: Any action that will have or is likely to have a significant impact on a Ramsar Site requires an environmental assessment and approval. The EPBC Act also sets forth national standards for managing, planning, monitoring, involving the community in, and conducting environmental assessments of Ramsar Sites to insure consistent compliance with the Ramsar Convention. Cartier Island, a former British Air Force bombing range, was designated as a Marine Reserve in 2000. These two reserves cover a combined area of 750 km² and are both assigned to IUCN category Ia—strict nature reserve. IUCN category Ia areas are protected to preserve biodiversity and maintain the areas for the benefit of scientific research. Human access to such areas is tightly controlled and limited. A small section of Ashmore Reserve is managed as IUCN category II—national park. Such areas are managed to protect ecosystems and biodiversity, and while still restricted, human visitation is not as limited as for category Ia areas. No fishing or harvest of any biota is allowed within the reserves, with the limited exception of finfish fishing within the category II area of Ashmore Reef, and then only as long as the fish are used for relatively immediate consumption. Given the lack of clearly identified habitat-related or human-disturbance-related threats to the dusky sea snake, there is no indication that these reserves and area protections are inadequate such that they have contributed to the observed decline of the species.

According to the Australia Department of Sustainability, Environment, Water, Population, and Communities (DSEWPC) 2012 Report Card for marine reptiles listed under the EPBC Act, pollution from offshore oil rigs and operations is a potential concern for sea snakes (DSEWPC, 2012). This report also states that Australia has a strong system for regulating the oil and gas industry and that this system was strengthened further in the wake of the Montara oil spill. Details on how any particular processes or regulations were strengthened are not provided in this report and could not be found. Although oil spills pose a potential threat to the health and status of the dusky sea snake, oil spills are relatively rare, and there is insufficient information to indicate that the existing regulatory mechanisms are inadequate or that they have contributed to the decline of this species.

Potential threats to dusky sea snakes stemming from anthropogenic climate change include elevated sea surface temperature, ocean acidification, and increased coral bleaching events (see below). Impacts of climate change on the marine environment are already being observed in Australia and elsewhere (Melillo *et al.,* 2014; Poloczanska *et al.,* 2012), and the most recent United Nations Intergovernmental Panel on Climate Change (IPCC) assessment provides a high degree of certainty that human sources of greenhouse gases are contributing to global climate change (IPCC, 2013). Ocean temperatures around Australia have increased by 0.68 °C since 1910–1929 (Poloczanska *et al.,* 2012), and carbon dioxide inputs have lowered ocean pH by 0.1 units since 1750 (Howard *et al.,* 2009). Australia and other countries have responded to climate change through various international and national mechanisms. Australia signed on to the Kyoto Protocol in 2007 and has active domestic and international programs to lower greenhouse gas emissions (*www.climatechange.gov.au/*). However, in Australia, there appear to be no specific actions to address potential climate change effects on marine reptiles beyond monitoring (Fuentes *et al.,* 2012). Because climate change related threats have not been clearly or mechanistically linked to decline of dusky sea snakes, the adequacy of existing or developing measures to control climate change threats is not possible to fully assess, nor are sufficient data available to determine what regulatory measures would be needed to adequately protect this species from climate change. While it is not possible to conclude that the current efforts have been inadequate, such that they have contributed to the decline of this species, we consider it likely that dusky sea snakes will be negatively impacted by climate change, given the predictions of widespread and potentially permanent damage to coral reefs in Australia (IPCC, 2013).

Overall, we do not find there is substantial evidence indicating that *A. fuscus* is currently threatened by the lack of adequate regulatory mechanisms. Beyond the direct protection the species receives through its listing under the EPBC Act, the dusky sea snake receives additional direct and indirect protection within the Ashmore Reef and Cartier Island Marine Reserves. Given the predictions of worsening damage to coral reefs in Australia in response to climate change (IPCC, 2013), the largest potential future gap in the existing regulatory mechanisms appears to be related to climate change.

Other Natural or Manmade Factors Affecting Their Continued Existence

Elevated sea surface temperature as a consequence of climate change has been proposed as a possible threat to sea snakes, and we have addressed habitat-related effects above. The IUCN Red List assessment for *A. fuscus,* suggests that climate-induced increases in water temperature may actually exceed the upper lethal limit for *A. fuscus,* and thereby pose a threat to the species (Lukoschek *et al.,* 2010). These authors assumed an upper lethal limit of 36 °C, based on data for the pelagic sea snake, *Pelamis platurus.* Experiments to measure the thermal tolerances of *A. fuscus* have not been conducted.

Sea snakes, like all reptiles, are ectotherms, and thus to a great extent are physiologically affected by temperature. On a large geographic scale, the distribution of sea snakes is considered to be dictated by ocean temperatures: Sea snakes generally do not occur in waters below about 18 °C (Davenport, 2011). Most sea snakes can tolerate temperatures up to a mean of about 39–40 °C, but tolerances may vary with the size of the snake and the rate of temperature change (Heatwole *et al.,* 2012). Also, although sea snakes are able to dive to avoid extreme temperatures of surface waters, they have limited capacity to acclimate and cannot thermoregulate (Heatwole *et al.,* 2012).

Sea surface temperatures vary seasonally within the Timor Sea. The highest recorded oceanic water temperature in the Ashmore region is 31 °C, and the highest recorded lagoon water temperature is 35.4 °C (Commonwealth of Australia, 2002). These temperatures are below the assumed upper lethal temperature limit for dusky sea snakes; but Australia's average ocean temperatures have increased by over half a degree since 1910–1929, and the rate of warming has accelerated since the mid-20th century (Poloczanska *et al.,* 2012). Given the thermal tolerances of other sea snakes and the ocean temperatures currently experienced by *A. fuscus* at present, it is very unlikely that elevated ocean temperature has been a source of mortality. However, it is plausible that a continuation of the observed rate of ocean warming would, in the distant future, result in negative physiological consequences for *A. fuscus.*

Hybridization and introgression have recently been identified by Sanders *et al.* (2014) as a threat to the continued existence of *A. fuscus.* Hybridization, or the production of viable offspring through the crossing of genetically distinct taxa or groups, occurs in the wild for about 10 percent of animal species (Mallet, 2005). Hybridization can lead to introgression, or the integration of foreign genetic material into a genome. The conservation concern in this particular case is that reproductive barriers between the olive sea snake, *A. laevis,* and the dusky sea snake, *A. fuscus,* appear to be breaking down, potentially allowing *A. fuscus* to undergo reverse speciation.

The dusky sea snake co-occurs with the closely-related olive sea snake throughout its range, and the two species are thought to have shared a common ancestor approximately 500,000 years ago (Sanders *et al.,* 2013b). The olive sea snake is a relatively abundant and much more widely distributed species compared to the dusky sea snake. Although similar in appearance, the two species can be distinguished based on body scale rows, body size, and color pattern. Sanders *et al.* (2014) analyzed 11 microsatellite markers for *A. fuscus* and *A. laevis* across four reefs (Ashmore, Hibernia, Scott, and Seringapatam) to assess inter-specific gene flow and introgression. Results of their genetic analyses indicate significant and asymmetric gene flow, with higher rates of introgression from *A. laevis* into the smaller *A. fuscus* population (Sanders *et al.,* 2014). A high frequency of hybrids was also found at each of the four reefs included in the study area. Forty-three percent of the snakes sampled (n=7) at Ashmore, 55 percent of the snakes sampled (n= 42) at Scott Reef, and 42 percent of the snakes sampled (n=12) at Seringapatam Reef were identified as hybrids (Sanders *et al.,* 2014). At Hibernia Reef, 95 percent of the snakes sampled (n=19) were hybrids (Sanders *et al.,* 2014). Phenotypically, the majority of hybrids resembled the olive sea snake (Sanders *et al.,* 2014). Whether the observed hybridization is a purely natural process or has human causes is not yet known. Regardless, the high rates of hybridization of *A. fuscus* with another species across its range may lead to the eventual disappearance of this taxonomic species and is a threat to its survival.

Extinction Risk

Although accurate and precise data for many demographic characteristics of dusky sea snakes are lacking, the best available data provide multiple lines of evidence indicating that this species currently faces a high risk of extinction. The probable extirpation of the dusky sea snake from Ashmore Reef, which constitutes about 40 percent of the historical reef habitat, represents a contraction of an already limited range for this species. Loss of dusky sea snakes from Ashmore Reef and low relative abundances at all other reefs, coupled with high rates of hybridization throughout the range and a presumed low rate of dispersal, suggest that the species is declining and unlikely to recover without intervention. The interaction of the threats of low and declining abundance, limited dispersal, and high rates of hybridization all suggest a high risk of extinction in the near term.

Protective Efforts

As mentioned previously, all of Australia's hydrophiine sea snakes are listed and protected under the EPBC Act, making it illegal to kill, injure, take, trade, or move dusky sea snakes in Commonwealth waters without a permit (DSEWPC, 2012a). The EPBC Act also requires that surveys be conducted for listed marine species.

Sea snakes are also identified as a ''conservation value'' in Australia's North-west Marine Bioregional Plan (DSEWPC, 2012b). Marine bioregional plans are meant to improve the way decisions are made under the EPBC Act, particularly with respect to balancing protection of marine biodiversity with the sustainable use of natural resources. The North-west Plan identifies activities that may affect sea snakes and thus require prior approval. National heritage places are also listed and protected under the EPBC Act. Ashmore, Scott, and Seringapatam reefs are all listed on Australia's Commonwealth Heritage List, and under the EPBC Act, approval must be obtained before any action takes place that could have a significant impact on the national heritage values of these areas.

Also mentioned previously were the various habitat protections currently in place that directly and indirectly protect the coral reefs within the dusky sea snake's range. For example, the Ashmore Commonwealth Marine Reserve, which includes 583 km^2 of sandy islands, coral reefs, and surrounding waters up to 50 m deep (Commonwealth of Australia, 2002), is almost completely closed to the general public. Permits may be issued to authorize visits for tourism or recreation. There are 1–2 visits per year by commercial tourism vessels to view wildlife, and about 15–20 recreational yachts that visit each year (Hale and Butcher, 2013). Indonesians have fished this site for centuries and subsistence fishing is allowed in only the IUCN category II portion of the reserve (Hale and Butcher, 2013). No commercial fishing is allowed in any part of the Reserve. The relatively pristine state of the site makes it attractive for the long-term monitoring and other scientific projects that are conducted there (Hale and Butcher, 2013). Starting in the late 1980's, Environment Australia (EA) contracted a private vessel and crew to undertake on-site management at the Reserve; however, as of 2000, Australian Customs Service took over this responsibility (Whiting, 2000). Enforcement of protections at the Reserve depends largely on the presence of Customs officials, which is not quite continuous (Lukoschek *et al.,* 2013; Whiting, 2000).

The Cartier Island Commonwealth Marine Reserve, designated in 2000 under the EPBC Act, is completely closed to the public. No commercial or recreational fishing is allowed. General access and several specific activities, such as scientific research, photography and tourism, may be allowed with prior approval from the Director of National Parks issued under the EPBC Act (see *http://www.environment.gov.au/topics/marine/marine-reserves/north-west/cartier-activities*).

Since the early 18th century, Indonesian fishers have visited and fished reefs within the Timor Sea, mainly in search of trepang, trochus, turtle, shark fin, and reef fishes (Commonwealth of Australia, 2002). In 1974, a Memorandum of Understanding (MOU) was established between Australia and Indonesia that set out arrangements by which traditional fishers may access resources in Australia's territorial sea. Because of its shape, the area covered by this MOU is often referred to as the MOU Box. The MOU Box, which covers an area of about 50,000 km^2, includes the five main reefs where the dusky sea snake occurs (Skewes *et al.,* 1999). The marine resources within this area are managed by the Australian Government, and traditional fishing by Indonesian fishers is allowed. However, as discussed above, certain restrictions apply within the Marine Reserves. Traditional Indonesian fishers may access parts of the Ashmore Reserve for shelter and freshwater and to visit grave sites, but, as mentioned previously, fishing is prohibited in both the Cartier Island and Ashmore Marine Reserves, with the limited exception for fishing for immediate consumption within the category II area of the Ashmore Reserve. There is no evidence that sea snakes

have been targeted by Indonesian fishers (Hale and Butcher, 201; Lukoschek *et al.,* 2013).

Because sea snakes are listed under the EPBC Act, all Australian fisheries are required to demonstrate that direct and indirect interactions with sea snakes are sustainable (Zhou *et al.,* 2012). Commercial trawls take over a dozen species of sea snakes (Heatwole 1997; Wassenberg *et al.,* 2001; Zhou *et al.,* 2012), and in the absence of bycatch reduction devices (BRDs), an estimated 48.5 percent of all incidentally captured sea snakes will die (Wassenberg *et al.,* 2001). BRDs are required in the prawn trawl fishery to minimize bycatch mortality and help conserve protected species. The only trawl fishery that operates within the range of the dusky sea snake is the North West Slope Trawl Fishery (NWSTF). The Australian Fisheries Management Authority (AFMA) reports that the NWSTF, which targets three scampi species (lobsters), is a low effort fishery with a very low level of bycatch and no documented interactions with threatened, endangered, or protected species (AFMA, 2012). The NWSTF is also a deep-water fishery, and thus unlikely to encounter the reef-associated dusky sea snake (Fry et al., 2001; Lukoschek *et al.,* 2007a; Lukoschek *et al.,* 2013). As discussed here and in further detail in the status review report (Manning, 2014), there is no indication that direct harvest or incidental capture poses a threat to the dusky sea snake.

Sea snake products have been traded internationally since the 1930s (Marsh *et al.,* 1994), but no sea snake species is currently listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Australia's Wildlife Protection Act 1982 restricts the export of sea snake products out of Australia (Marsh *et al.,* 1994). There are no data to suggest that the dusky sea snake is threatened by past, present, or future trade.

Despite their apparent substantiveness, these existing and ongoing conservation efforts seem unlikely to prevent further decline of the dusky sea snake, because they have failed to prevent the decline of the species to date. For example, decades of protections at Ashmore Reef, while maintaining this as a relatively pristine reef (Hale and Butcher, 2013), have not prevented the severe decline and likely extirpation of dusky sea snakes there. Furthermore, the threat posed by hybridization is beyond the scope of existing protections. We are thus not able to conclude that the existing protective efforts alter the extinction risk for the dusky sea snake. We are not aware of any additional, planned or not-yet-implemented conservation measures that would protect this species; thus, we did not conduct an analysis under the PECE. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on our consideration of the best available data, as summarized here and in Manning (2014), and protective efforts being made to protect the species, we conclude that the dusky sea snake, *A. fuscus,* is currently at high risk of extinction throughout its range. We therefore propose to list it as endangered under the ESA.

Banggai Cardinalfish

The following section describes our analysis of the status of the Banggai cardinalfish, *Pterapogon kauderni.* More details can be found in Conant (2014).

Species Description

The Banggai cardinalfish is a species within the family Apogonidae and genus *Pterapogon.* It was discovered in 1920 by Walter Kaudern and described by Koumans (1933). The genus *Pterapogon* contains one other species, *P. mirifica,* from northwestern Australia (Allen and Donaldson, 2007).

The Banggai cardinalfish is a relatively small marine fish. Adults generally do not exceed 55 to 57 mm standard length (Vagelli, 2011). The species is distinguished from all other apogonids by its tasseled first dorsal fin, elongated anal and second dorsal fin rays, and deeply forked caudal fin (Allen, 2000). It is brilliantly colored, with contrasting black and light bars with whitish spots over a silvery body.

The Banggai cardinalfish has an exceptionally restricted natural range (approximately 5,500 km^2) within the Banggai Archipelago, Indonesia. Populations have been introduced in areas of Indonesia outside of the Banggai Archipelago, including Luwuk Harbor (Bernardi and Vagelli, 2004), Palu Bay (Moore and Ndobe, 2007), Lembeh Strait (Erdmann and Vagelli, 2001), Tumbak (Ndobe and Moore, 2005), Kendari Bay (Moore *et al.,* 2011), and north Bali (Lilley, 2008). These introductions are a result of discards from the ornamental live reef aquarium trade and introductions by dive-resort operators to support the tourist industry (Vagelli, 2011). The introduced populations are an artifact of the commercial ornamental live reef trade and are not part of any conservation program to benefit the native populations. Because we interpret the ESA as conserving species and the ecosystems upon which these species depend, we consider the natural range to be biologically and ecologically important to the species' viability to persist in the face of threats. Distances between non-introduced populations range from less than 1 km (Vagelli, 2011) up to 153 km (Vagelli *et al.,* 2009). Distribution of populations is discontinuous, with deep water, strong currents, or coast exposed to severe weather serving as effective ecological barriers to migration (Bernardi and Vagelli, 2004; Ndobe *et al.,* 2012; Ndobe and Moore, 2013). The Banggai cardinalfish exhibits the highest known degree of genetic structure of any marine fish (Bernardi and Vagelli, 2004; Hoffman *et al.,* 2005; Vagelli *et al.,* 2009). Populations occurring on the same reef, separated by only a few kilometers, are genetically isolated from one another (Bernardi and Vagelli, 2004; Hoffman *et al.,* 2005; Vagelli *et al.,* 2009).

The Banggai cardinalfish is generally found in calm waters of sheltered bays or on the leeward side of islands (Allen and Donaldson, 2007). It inhabits a variety of shallow (from about 0.5 to 6 m) habitats including coral reefs, seagrass beds, and less commonly, open areas of low branching coral and rubble. To avoid predators, it associates with microhabitats such as sea urchins and anemones (Vagelli, 2011). Banggai cardinalfish are found in waters ranging from 26–31 °C, but averaging 28 °C (Ndobe *et al.,* 2013).

The Banggai cardinalfish, like many apogonids, exhibits reversed sex roles, where males provide parental care and brood eggs in their mouths. It lacks a planktonic larval stage and extends the brooding of larvae for about 7 days after hatching, which results in the release of fully formed juveniles. Spawning occurs year round but peaks around September through October, which is a period of fewer storms in the region (Ndobe *et al.,* 2013). The Banggai cardinalfish has the lowest fecundity reported for any apogonid (Vagelli, 2011). Generation length (the age at which half of total reproductive output is achieved by an individual) is estimated to be 1.5 years (Vagelli, New Jersey Academy for Aquatic Sciences (NJAAS), personal communication cited in Allen and Donaldson (2007)) to 2 years (Ndobe *et al.,* 2013). Its lifespan in the wild has been estimated at approximately 2.5–3 years (Vagelli, 2011), with a maximum lifespan up to 3–5 years (Ndobe *et al.,* 2013). Based on a conservative estimate, a male could incubate/brood approximately 400 to 640 offspring over his lifespan (Vagelli, personal communication, 2014), of which less

than 5 percent may survive to adulthood (Vagelli 2007 as cited in CITES (2007)). High mortality occurs during the first days after release from the brood pouch due to predation, including parental and non-parental cannibalism (Vagelli, 1999).

Banggai cardinalfish form stable groups. Natural group size is difficult to know because group size decreases with fishing pressure, and most populations are not pristine. However, one bay (oyster pearl farm) in private ownership in the Banggai Islands had, until 2006, never been fished, and group size averaged about 13 fish, but varied from 2–33 fish per group (Lunn and Moreau, 2002). At the same site in 2004, group size varied from 1 to over 200 fish per group (Moore, unpublished data, 2014). Group size is typically less than 25 individuals, although smaller groups are common and vary by age class and habitat type (Vagelli, 2011).

The first scientific surveys of Banggai cardinalfish estimated population abundance and density between 1.7 million, with a mean density of 0.03 fishes per m^2, based on a census at three sites in 2001 (Vagelli, 2002; Vagelli and Erdmann, 2002), and 2.4 million, with a mean density of 0.07 fishes per m^2, based on an expanded census of 34 sites conducted in 2004 (CITES, 2007). In 2007, population the density estimate of the expanded survey sites indicated a mean density of 0.08 fishes per m^2 (Vagelli, 2008); however, overall population abundance was not reported for the 2007 survey. By 2011–2012, Ndobe *et al.* (in press) estimated the population abundance at 1.5–1.7 million, with a mean observed density of 0.05 fishes per m^2, reportedly for the 24 of the 34 sites that were surveyed in 2004 and 2007. The 2011–2012 estimates does not include locations in Toado where the habitat was limited and density was very high (Ndobe *et al.,* in press); thus, the population abundance estimate likely is biased low. However, 7 of the major sites first surveyed in 2004 have declined in abundance and mean density (Ndobe *et al.,* in press), indicating the population has likely decreased from the 2.4 million estimated in 2004. Although the mean observed density estimate of 0.03 fishes per m^2 found in the 2001 survey (Vagelli, 2002; Vagelli and Erdmann, 2002) is less than the 2011–2012 survey, the 2001 survey was based on only three sites, while the 2011–2012 survey was based on 24 sites of the 34 sites. Ndobe (*et al.,* in press) selected the expanded survey sites from 2004 and 2007 for their 2011–2012 survey based on the author's previous work on habitat conditions and to better compare trends, over time, in density and abundance. Ndobe (*et al.,* in press) stated that their 2011–2012 estimate of 1.5–1.7 million represented 62–71 percent of the abundance estimate of 2.4 million from the 2004 survey. A total abundance estimate was not provided for the 2007 survey, however mean observed density decreased approximately 38 percent between 2007 (0.08 fishes per m^2) and 2011–2012 (0.05 fishes per m^2).

Historical data on abundance are lacking, as surveys were done after harvest began in the early to mid-1990s. The private oyster pearl farm mentioned above is thought to represent a proxy for historical abundance by several researchers, though others disagree that the site is representative of historical abundance. The private oyster farm exists within a privately owned bay in Banggai Island, and fishing has been prohibited there since trade began, although illegal poaching in the bay was reported in 2006 (Talbot *et al.,* 2013). The habitat in the bay may be similar to other sites that support the Banggai cardinalfish; thus, several researchers claim this population can be used as a proxy for a baseline of population abundance (Allen and Donaldson, 2007; Vagelli, 2008). In 2001, densities of fish in the private oyster pearl farm averaged 0.63 ± 0.39 fishes per m^2 (1 standard deviation, SD) (range: 0.28 to 1.22 fishes per m^2) (Lunn and Moreau 2002) and 0.58 fishes per m^2 in 2004 (Vagelli 2005). When these densities are compared to the densities found in the 2001 and 2004 survey data discussed above, they indicate that the Banggai cardinalfish abundance has declined up to 90% from historical levels (Allen and Donaldson, 2007; Vagelli, 2008). However, several researchers (Moore, Sekolah Tinggi Perikanan dan Kelautan (STPL), personal communication 2014; Ndobe, Tadulako University, personal communication 2014) caution against the use of this bay as a baseline for population trends. Banggai cardinalfish population distribution is inherently patchy, and density is highly variable between and within sites of the Banggai Archipelago, including this bay (Moore, unpublished data, 2004). The researchers also question whether the habitat in the bay is comparable to other sites. The bay has been protected from degradation because it is privately owned and contains significant amounts of sheltered habitat and good quality microhabitat/habitat, with limited suitable habitat for predators of the cardinalfish, such as groupers and other larger reef fish. We acknowledge the debate regarding the use of the data from the private oyster farm as a baseline for historical abundance. However, even without that data, it is clear that population abundance estimates at sites throughout the Banggai Archipelago declined significantly between 2004 and 2011–2012.

Declines and extirpations of local populations have been observed across years, likely due to directed harvest and, more recently, habitat destruction. In the 2001 survey, Bakakan Island had about 6,000 fish, but by the 2004 census, only 17 fish remained (Vagelli, 2008). In the 2007 survey, 350 individuals were found at Bakakan Island, but this was still well below the 6,000 fish found in the 2001 survey (Vagelli, 2008). In 2014, Moore (personal communication) reported that local fishers characterize the cardinalfish population on Bakakan Island as small and declining. Between the 2001 and 2004 surveys, the population density at Masoni Island doubled from 0.03 to 0.06 fish per m^2 (an increase of approximately 150 fish in 3 years) (Vagelli, 2005). This increase is thought to have occurred in response to a collecting ban that the local people imposed in early 2003. However, in the 2007 survey, the population was found to have declined to 0.008 fish per m^2, with 38 fish recorded over the entire census site (the largest group consisted of 2 individuals). An extensive search around the entire island identified only 150 fish (Vagelli, 2008). A population in southeast Peleng Island had 159 and 207 fish in 2002 and 2004, respectively (Vagelli, 2005). However, by 2007, it had been practically extirpated, with only 27 fish found (Vagelli, 2008). Overharvest of microhabitat, such as *Diadema* sea urchins and sea anemones, and coral mining have resulted in local population depletions on an island off Liang, which was surveyed in 2004, and was extirpated by 2012 (Ndobe *et al.,* 2013). Extirpation of local populations has been documented in areas with increased harvest of microhabitat, combined with fishing pressure on Banggai cardinalfish. Interviews with locals and visits to several sites in 2011 and 2012 indicate populations are declining in the Banggai Archipelago (Ndobe *et al.,* 2013).

Summary of Factors Affecting the Banggai Cardinalfish

Next we consider whether any one or a combination of the five threat factors specified in section 4(a)(1) of the ESA are contributing to the extinction risk of the Banggai cardinalfish. We discuss each of the five factors below, as all factors pose some degree of extinction risk. More details are available in Conant (2014).

Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The illegal use of fish bombs (typically made with fertilizer and phosphorus) and cyanide to catch fish has resulted in significant loss of coral reef habitat within the Banggai cardinalfish range (Allen and Werner, 2002). Damage to coral reefs due to fish bombs is prevalent, even in protected areas (Talbot *et al.,* 2013). Cyanide is used to catch fish for the live reef fish trade, and the practice kills corals (*e.g.,* see Jones and Steven, 1997; Mous *et al.,* 2000). Boats have degraded the coral reefs in the area, and clear-cutting of wooded slopes and mangroves has occurred, increasing sedimentation, which degrades coral reef habitat (Lilley, 2008). Other upland activities, such as agriculture and human population growth, have increased the amount of waste and nitrates in the marine environment, promoting algal blooms (Lilley, 2008), which may destroy coral reefs by outcompeting them for vital resources such as light and oxygen (reviewed by Fabricius, 2005). Significant plastic, styrofoam, and other human-made debris occurs in the area (Lilley, 2008). This information indicates destruction of habitat is occurring within the Banggai cardinalfish's range. Although quantitative data on impacts to cardinalfish populations are lacking, considerable qualitative information exists indicating that where habitat has been degraded (*e.g.,* Tanjung Nggasuang and Toropot surveyed in 2004 and 2012, and Mbuang-Mbuang, on Bokan Island, surveyed in 2012), large and thriving Banggai cardinalfish populations spread over large areas can be reduced to isolated remnants crowded into small remaining patches of habitat with some protective microhabitat (Ndobe, personal communication, 2014).

Coral reef conditions in the Central Sulawesi Province, including the Banggai Archipelago, were examined from 2001 through 2007 in seven Districts in the region (Moore and Ndobe, 2008). Average condition of the reefs was poor, and major impacts included coral mining, sedimentation, fishing, and predation (Moore and Ndobe, 2008). Population explosions of the crown-of-thorns starfish (*Acanthaster planci*), a coral predator, have been observed in the area, indicating an ecological imbalance, likely due to overharvest of natural predators and changes in hydrology and water quality (Moore *et al.,* 2012). Surveys conducted at five sites around Banggai Island from 2004 through 2011 showed coral reef cover declined by more than half, from 25 percent to 11 percent (Moore *et al.,* 2011; 2012). Major causes of the coral reef decline around Banggai Island were attributed to destructive fishing methods and general fishing pressure, coastal development, and the replacement of traditional homes with concrete and breeze-block dwellings, which increases the demand for mined coral and sand. Loss of coral reef cover may increase mortality of Banggai cardinalfish recruits due to cannibalism (Moore, personal communication, 2014; Ndobe *et al.,* in press).

Climate change may also impact Banggai cardinalfish habitat as a result of coral bleaching. Coral bleaching events due to warming temperatures are anticipated to increase by 2040 in areas of the Indian Ocean, including waters of Indonesia (van Hooidonk *et al.,* 2013). Coral bleaching due to elevated water temperatures has not been observed around Banggai Island up through December 2011; however, extensive bleaching was observed in nearby Tomini Bay in 2010 (Moore *et al.,* 2011; 2012). The Banggai cardinalfish is restricted to shallow waters with ambient temperatures ranging from 28 to 31 °C. Thus, warming temperatures may render habitat unsuitable, but specific data on impacts to the Banggai cardinalfish are lacking.

Sea urchins and anemones are experiencing intensive and increasing harvest pressure, which negatively impacts the Banggai cardinalfish (Moore *et al.,* 2012; Ndobe *et al.,* 2012). Sea anemones were once abundant but were drastically reduced from Tinakin Laut, Banggai Island, which resulted in a collapse of the Banggai cardinalfish population in the area (Moore *et al.,* 2012). Heavy harvest of sea anemones at Mamboro, Palu Bay, resulted in a drastic reduction of new recruits and juvenile Banggai cardinalfish (observed since 2006) in 2008 (Moore *et al.,* 2011). Moore *et al.* (2011; 2012) report that intensive harvesting of shallow water invertebrates, including sea anemones and sea urchins, is increasing and is linked to socio-economic trends associated with consumption by local seaweed farmers and use as feed for carnivorous fish destined for the ornamental live reef trade.

In addition, a disease of unknown origin may be damaging hard corals in habitat occupied by the Banggai cardinalfish. The disease affects the top sections of long-branched *Acropora* species as well as species of *Porites,* both of which are important microhabitat for the Banggai cardinalfish (Vagelli, 2011). Data are lacking on the extent of impact the disease poses to Banggai cardinalfish habitat.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Banggai cardinalfish is traded internationally as a live marine ornamental reef fish. It has been collected in the Banggai Islands, Indonesia, since 1995 (Marini and Vagelli, 2007). The United States, Europe, and Asia are the major importers of the Banggai cardinalfish for the aquarium trade (CITES, 2007). The Banggai cardinalfish is the tenth most common ornamental fish imported into the United States (Rhyne *et al.,* 2012). Banggai cardinalfish exports for the ornamental live reef fish trade may be decreasing, although systematic data are lacking. In 2001, up to 118,000 Banggai cardinalfish were sold to trade centers each month, with a total estimate of 700,000–1.4 million fish traded (Lunn and Moreau, 2002, 2004). From 2004 through 2006, around 600,000–700,000 fish were traded yearly (Moore *et al.,* 2011). In 2008 and 2009, 236,373 and 330,416 fish, respectively, were traded at Bone Bone, Toropot, and Bone Baru trade centers (Moore *et al.,* 2011, 2012). However, these numbers do not include trading data from Bone Bone in 2008 and other active centers (*e.g.,* Panapat for 2008 and 2009). These collections centers each reported about 15,000 fish per month in 2007 (Vagelli, 2008; 2011). Vagelli (personal communication, 2014) estimates that 1,000,000 Banggai cardinalfish are currently captured each year for the ornamental live reef trade.

The ornamental live reef fish trade has resulted in decreases in cardinalfish population density and extirpation of local populations. By 2000 (after less than a decade of trade), negative impacts on the Banggai cardinalfish from the trade were observed. The trade results in high mortality of cardinalfish collected. Based on interviews with collectors, Lilley (2008) estimated that only one out of every four to five fish collected makes it to the buyer for export due to high mortality and discard practices. Density and group size of cardinalfish and sea urchins are negatively impacted by the trade (Kolm and Berglund, 2003). Ndobe and Moore (2009) also found that populations were exploited, but observed high population density in areas where collection had been ongoing for some years with rotation between sites, indicating some harvest sustainability. Unfortunately, habitat destruction and collection and destruction of microhabitat (unrelated to the Banggai cardinalfish fishery) have

now greatly reduced cardinalfish populations at sites which had previously sustained periodic collection for more than a decade (Moore, personal communication, 2014). Decreases in population density are also evidenced by significant declines in the catch per unit effort (Vagelli, personal communication, 2014). In Bone Baru, from 1993–2000, fishers were catching an average of 1,000–10,000 fish per day, but by 2003 they only averaged 100–1,000 per day, with most catching between 200–300 fish (EC-Prep Project, 2005). Prior to 2003, collectors from Bone Baru typically required one day to capture approximately 2,000 specimens. In 2007, they reported requiring one week to capture the same number (Vagelli, 2011). Vagelli (2011) reports similar declines for Banggai Island, where between 2000 and 2004, the reported mean catch declined from about 1,000 fish/hour to 25–330 fish/hour.

Information suggests the number of active participants in the trade may have dropped. In 2001, there were 12 villages that collected the Banggai cardinalfish, but only 3 were active in 2011 (Moore *et al.,* 2011, 2012), and at least 5 villages were active in 2014 (Moore, personal communication, 2014). Reported as number of collectors, the data indicate a decline in participation as well, from about 130 in 2001 (Lunn and Moreau, 2004) to about 80 in 2007 (Vagelli, 2011) and 2012 (Vagelli, personal communication, 2014).

In 2012, a large-scale aquaculture facility based in Thailand began to breed Banggai cardinalfish in captivity for export, which may alleviate some of the pressure to collect fish from wild populations (Talbot *et al.,* 2013; Rhyne, Roger Williams University, unpublished data 2014). In 2013, approximately 120,000 Banggai cardinalfish were imported into the United States from the Thailand facility. The volume represents a significant portion of overall United States imports of the cardinalfish and may even exceed the number of wild fish currently imported (Rhyne, unpublished data, 2014). Efforts to captive-breed the species in the United States are also ongoing, which may alleviate dependence on wild-caught cardinalfish. In the United States, the Florida Department of Agriculture and Consumer Services has certified eight aquaculture facilities that are beginning to culture and market farm-raised Banggai cardinalfish (Knickerbocker, Florida Department of Agriculture and Consumer Services, personal communication 2014). In-situ breeding by the fishing communities in the endemic area may also alleviate pressure on the natural population, but the concept requires further research before it can be implemented at a local community level (Ndobe, personal communication, 2014).

Disease or Predation

Predation and cannibalism are high among new recruits (Moore *et al.,* 2012). However, specific data are lacking on whether predation pressure is increasing or impacting the Banggai cardinalfish population growth beyond natural levels.

A virus known as the Banggai cardinalfish iridovirus (genus *Megalocytivirus*) is linked to high mortality of wild-caught fish imported for the ornamental live reef fish trade (Vagelli, 2008; Weber *et al.,* 2009). The virus causes necrosis of spleen and renal tissue, which appears as darkened tissue. Other symptoms are lethargy and lack of appetite. Surveys of wild populations have not reported symptoms of the disease. Necropsies of over 100 fish collected in the wild and at holding facilities showed no indication of the virus (Talbot *et al.,* 2013). Thus, the virus is likely transmitted from other specimens at containment centers, or is carried by the Banggai cardinalfish and is only expressed as a result of stress incurred during the long transport process (Weber *et al.,* 2009; Talbot *et al.,* 2013) and may not be a concern for wild fish.

Inadequacy of Existing Regulatory Mechanisms

Current Indonesian legislation requires that all trade in Banggai cardinalfish go through quarantine procedures before crossing internal administrative borders or prior to export (Moore *et al.,* 2011). Compliance historically has been low, but is improving (Moore, personal communication, 2014; Moore *et al.,* 2011). However, reported collection through the Fish Quarantine Data system, which records fish that go through quarantine procedures, was well below the total reported collection from Bone Baru, Toropot, and Bone Bone for 2008 and 2009. Bone Baru, Toropot, and Bone Bone reported collection of 236,373 fish in 2008 and 330,416 fish in 2009. Whereas in 2008 and 2009, the Fish Quarantine Data reported collection of 83,200 and 215,950 fish, respectively (Moore *et al.,* 2011). Enforcement of the Fish Quarantine procedures is weak, and illegal, unregulated, and unreported capture and trade are still a major problem, especially in remote areas (Ndobe, personal communication, 2014).

Legislation is needed to establish fishing quotas and size limits; however, no legally binding regulations have been passed or implemented (Moore *et al.,* 2011). Indonesia prohibits the use of chemicals or explosives to catch fish (Fisheries Law No. 31/2004, Article 8(1)). However, the practice continues (Vagelli, 2011), and damage to coral reefs due to fish bombs is prevalent, even in protected areas (Talbot *et al.,* 2013).

In 2011, Indonesia had proposed to list the Banggai cardinalfish for restricted protected status under domestic law. But the proposal stalled when the Indonesian Institute for Science argued that the introduced populations meant the species was no longer endemic, and thus did not meet the criteria for protected status (Moore, personal communication, 2014; Ndobe, personal communication, 2014). In 2007, the Banggai cardinalfish was proposed for listing under CITES Appendix II. However, the proposal failed. The species is listed in Annex D of the European Wildlife Trade Regulations, which only requires monitoring of European Union import levels through import notifications.

Based on the weaknesses discussed above, regulatory mechanisms on the commercial harvest industry do not appear adequate to ensure the population will be sustainable.

Other Natural or Manmade Factors Affecting Continued Existence

Global averaged combined land and ocean surface temperatures show a warming of 0.85 °C over the period 1880 to 2012 (IPCC, 2013). As discussed earlier (see Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range), warming temperatures may destroy or modify habitat, but data are lacking on specific direct impacts to the Banggai cardinalfish.

The Banggai Archipelago sits at the junction of three tectonic plates (Eurasian, Indian-Australian, and Pacific-Philippine Sea) and is vulnerable to earthquakes. An earthquake measuring 7.6 on the Richter scale occurred in 2000 and destroyed coral reefs in the region (Vagelli, 2011). Frequent earthquakes within the Banggai Archipelago may have impacted localized Banggai cardinalfish populations (CITES, 2007), but specific data are lacking.

Extinction Risk

The life history characteristics (*i.e.,* low fecundity, high degree of parental care and energetic investment in offspring, high new recruit mortality, no

planktonic dispersal, high site fidelity) of the Banggai cardinalfish render it less resilient and more vulnerable to stochastic events than marine species that are able to disperse over large areas and recolonize sites that have been lost due to these events. Because the Banggai cardinalfish also has an exceptionally restricted natural range (approximately 5,500 km^2), these demographic traits become more important in terms of the extent to which the threats appreciably reduce the fitness of the species. The Banggai cardinalfish lacks dispersal ability and exhibits high site fidelity, and new recruits stay within parental habitat. Thus, recolonization is unlikely once a local population is extirpated. Local populations off Liang and Peleng Island are reported extirpated, and interviews with local fishermen indicate extirpation of small local populations throughout the Banggai Archipelago. The Banggai cardinalfish also exhibits high genetic population substructuring; thus, extirpation of local populations from overharvest and/or loss of habitat can result in loss of genetic diversity and further fragmentation of spatial distribution. In considering the demographic risks to the species, its growth rate/productivity, spatial structure/connectivity, and diversity are assigned to the high risk of extinction category. However, the overall population abundance (estimated at 1.5 to 1.7 million) is assigned to the moderate risk of extinction category, because the abundance may allow some resilience against stochastic events.

In considering the threats, we rely on the best available data to assess how the threats are currently impacting or likely to impact the species in the foreseeable future. The best available data indicate that several threats to the Banggai cardinalfish will continue and increase, with the species responding negatively, but other threats will decrease, with the species responding favorably. Habitat degradation has occurred and is anticipated to continue and increase in the foreseeable future. Although Indonesia prohibits the use of chemicals or explosives to catch fish, historically, compliance has been low, and data indicate compliance is not improving. Data also indicate that by 2007, harvest of microhabitat (sea urchins and sea anemones) had negatively impacted cardinalfish populations, and the harvest had increased by 2011. Moore *et al.* (2011, 2012) concluded that it would be difficult to establish and enforce local regulations for controlling the overharvest of microhabitat. Thus, it is reasonable to expect that microhabitat harvest will continue and increase in the foreseeable future, which negatively impacts the Banggai cardinalfish and its ability to avoid predators. Overutilization from direct harvest for the ornamental live reef fish trade has significantly impacted the Banggai cardinalfish and remains a concern. Trade continues resulting in high mortality, and in areas of heavy overexploitation, populations have been extirpated. However, an increase in compliance with the Fish Quarantine regulations and improved trade practices have occurred in recent years, and we anticipate compliance and trade practices will likely continue to improve in the future, which may mitigate impacts through sustainable trade. Participation in collection of Banggai cardinalfish for the live ornamental reef trade has dropped in recent years. Captive-bred facilities have recently started in the United States and Thailand and are anticipated to decrease the threat of directed harvest of the wild populations in the future. Predation of new recruits is high. Mortality from disease in wild-caught fish imported for the ornamental live reef fish trade and disease affecting the Banggai cardinalfish habitat are both plausible threats. However, data are lacking on how these threats impact the population and what, if any, impacts will occur and at what rate in the future. Climate change within the Banggai cardinalfish range will continue to affect coral reefs in the future, and it is reasonable to expect that future earthquakes that may destroy or modify habitat within the species' range will occur at the current rate.

The Banggai cardinalfish is exposed, and negatively responds to some degree, to the five threat factors discussed above. Although quantitative analyses are lacking, it is reasonable to expect that when these exposures are combined, synergistic effects may occur. For example, the ornamental live reef fish trade likely causes the expression of the iridovirus in the Banggai cardinalfish, which results in increased mortality. The indiscriminate harvest of sea anemones and sea urchins and destruction of coral reefs eliminates important cardinalfish shelter and substrate and increases the likelihood of predation. Interactions among these threats may lead to a higher extinction risk than predicted based on any individual threat.

In sum, based on the life history characteristics of the Banggai cardinalfish, which indicate high vulnerability to demographic risks (due to trends in population growth/productivity, spatial structure and connectivity, and diversity), coupled with ongoing and projected threats to habitat and microhabitat, commercial use, inadequate regulatory mechanisms, disease and predation, and additional natural or manmade factors, we conclude that demographic risks and the combination of threats to the species may contribute to the overall vulnerability and resiliency of the Banggai cardinalfish. The Banggai cardinalfish has experienced a decline in abundance as evidenced by the decrease in mean density at survey sites between 2004 and 2012. Moreover, at least some researchers believe that the population may have experienced a dramatic decline from historical abundance due to overharvest based on comparisons between populations in a private bay and other populations. Most of the species' demographic characteristics put it at a high risk of extinction. However, the threat of overharvest has been and will likely continue to be reduced in the future. Further, the overall population abundance (1.5 to 1.7 million) may allow some resilience against stochastic events; thus, placing the Banggai cardinalfish at an overall moderate risk of extinction.

Protective Efforts

The Banggai cardinalfish is listed as 'endangered' by the World Conservation Union (IUCN; Allen and Donaldson, 2007). Although listing under the IUCN provides no direct conservation benefit, it raises awareness of the species. In addition, the Banggai cardinalfish was one of the first entrants into the Frozen Ark Project, which is a program to save the genetic material of imperiled species (Williams, 2004; Clarke, 2009).

In 2007, Indonesia developed a national multi-stakeholder Banggai cardinalfish action plan (BCF–AP), which focused on conservation, trade, and management issues (Ndobe and Moore, 2009). As part of the BCF–AP, annual stakeholder meetings are held to share data, review progress, and set goals (Moore *et al.,* 2011). The BCF–AP called for biophysical and socio-economic monitoring of trade, population status, and habitat, and several organizations have begun to report on these activities. However, there is no integrated or comprehensive monitoring system, and long-term data sets are lacking (Moore *et al.,* 2011). Several aspects of the BCF–AP appear to have improved the sustainability of the Banggai cardinalfish trade. Fishermen groups have gained legal status (allowing them access to various benefits such as funding or loan support), which has led to socialization of sustainable harvest in Bone Baru. The

legally-established fishermen's group Kelompok BCFLestari, in Bone Baru, implemented collection practices designed to prevent capture of brooding males (Moore *et al.,* 2011). Workshops have been held on improving capture methods and post-harvest care, and several community members have become active in conservation efforts. However, the BCF–AP officially ended in 2012 and so did the funding. Some of the stakeholders are still active and are likely to continue to be so, despite lack of government support (Moore, personal communication, 2014).

As discussed earlier, compliance with the Fish Quarantine regulations has increased, which is largely due to the development and implementation of the BCF–AP (Moore *et al.,* 2011). In 2004, one Banggai cardinalfish trader followed Fish Quarantine procedures. By 2008, there was a marked increase in legal trade, but unreported fishing still occurs (Moore *et al.,* 2011). With the lapse of the BCF–AP, legislation is needed to support and restart the goals described in the BCF–AP, and although efforts have been ongoing to establish fishing quotas and size limits, no legally binding regulations have been passed or implemented (Moore *et al.,* 2011).

In 2007, the Banggai Cardinal Fish Centre (BCFC) was established in the Banggai Laut District to serve as a central point for sharing information and managing the species over a wider community area (Lilley, 2008; Moore *et al.,* 2011). As of 2011, the BCFC had no electricity, no operational budget, and was operated on a voluntary basis (Moore *et al.,* 2011). Further inhibiting the continued operation of the BCFC is that in 2013, the region was split into two Districts by constitutional law (UU No. 5/2013). The BCFC will need to be officially approved under the new District to maintain its legal status (Ndobe, personal communication, 2014).

A marine protected area (MPA) consisting of 10 islands was declared by Indonesia in 2007, with conservation of the Banggai cardinalfish as the primary goal of the Banggai and Togong Lantang Islands (Ndobe *et al.,* 2012). However, Banggai cardinalfish populations are not found at Togong Lantang Island, while for three other islands within the proposed MPA with known populations, Banggai cardinalfish conservation is not included as a conservation goal in the designation (Ndobe *et al.,* 2012). In addition, based on genetic analysis, only 2 of 17 known populations occur within the MPA, which led Ndobe *et al.* (2012) to conclude the MPA design was ill-suited for conserving the Banggai cardinalfish. It is uncertain whether the MPA will be changed in the foreseeable future to better suit the species.

Although no longer active, the Marine Aquarium Council (MAC), an international non-governmental organization, developed a certification system to improve the management of the marine aquarium trade. MAC developed best practices for collectors and exporters, including those in Indonesia. Best practices include improvement of product quality, reduction in mortality rates, safer practices for collectors, and fairer prices paid to collectors. By applying the MAC standards, traders could be certified as meeting these international standards (Lilley, 2008). Building on the MAC efforts, the Yayasan Alam Indonesia Lestari (LINI) has worked in the Banggai Islands to promote a sustainable fishery for the Banggai cardinalfish and to protect habitat (Talbot *et al.,* 2013). LINI focuses on surveys, capacity building, and training of local suppliers and reef restoration (Lilley, 2008). LINI's training and education efforts may raise awareness of needed conservation efforts to benefit the Banggai cardinalfish. For example, more benign collection methods have been implemented at Bone Baru, the species has been adopted as a mascot, and local citizens craft and market items related to the fish. LINI is also trying to set up a mechanism for hobbyists to buy only from distributors who use best practices and are sustainable (Talbot *et al.,* 2013). However, continued funding for the program is a concern (Moore, personal communication, 2014).

In addition to the protective efforts described above, Indonesia has committed to develop a comprehensive management plan for the Banggai cardinalfish under the auspices of Indonesia's national plan of action under the Coral Triangle Initiative on Coral Reefs, Fisheries, and Food Security (CTI–CFF). The CTI–CFF specifies a goal to use an ecosystems-based approach to managing fisheries (EAFM), including a more sustainable trade in live reef fishes. In 2013, World Wide Fund for Nature (WWF), in partnership with STPL, implemented a pilot project in Central Sulawesi Province under the ecosystems-based approach and chose the Banggai cardinalfish as one of five fisheries case studies in Banggai Laut District. The goal is to draft local regulations for an EAFM for two Districts—Banggai Laut District (which encompasses the majority of the endemic Banggai cardinalfish populations) and Banggai Kepulauan District (which includes the Peleng Island Banggai cardinalfish populations). The STPL EAFM Learning Centre team will be implementing this component through January 2015. These efforts are likely to introduce local measures to sustain the Banggai cardinalfish trade (Moore, personal communication, 2014; Ndobe, personal communication, 2014).

Under the PECE, conservation efforts not yet implemented or not yet shown to be effective must have certainty of implementation and effectiveness before being considered as factors decreasing extinction risk. The effort described above does not satisfy the PECE criteria of having a certainty of implementation and effectiveness. Although a pilot project in Central Sulawesi Province under the ecosystems-based approach is underway with the Banggai cardinalfish as one of five fisheries case studies, we lack information on how this effort will yield measures that will be funded, regulated, or regularly practiced to sustain the Banggai cardinalfish trade in the future; thus, this effort cannot be considered to alter the risk of extinction of the Banggai cardinalfish. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on the best available scientific and commercial information discussed above, we find that the Banggai cardinalfish is at a moderate risk of extinction, but the nature of the threats and demographic risks identified do not suggest the species is presently in danger of extinction, and therefore, it does not meet the definition of an endangered species. We do find, however, that both the species' risk of extinction and the best available information on the extent of and trends in the major threats affecting this species (habitat destruction and overutilization) make it likely this species will become an endangered species within the foreseeable future throughout its range. We therefore propose to list it as threatened under the ESA.

Harrisson's Dogfish

The following section describes our analysis of the status of the gulper shark, Harrisson's dogfish (*Centrophorus harrissoni*). More details can be found in Miller (2014).

Species Description

Centrophorus harrissoni, or Harrisson's dogfish, is a shark belonging to the family Centrophoridae (order Squaliformes). The Centrophoridae contain two genera: *Deania* (long-snouted or bird-beak dogfishes) and

Centrophorus, usually referred to as gulper sharks. ''Gulper shark'' is also the common name for the largest species, *C. granulosus* (White *et al.,* 2013).

Harrisson's dogfish is endemic to subtropical and temperate waters off eastern Australia and neighboring seamounts. Specimens identified as *C. harrissoni* have also been collected along the Three Kings, Kermadec, and Norfolk Ridges north of New Zealand, and it has also possibly been identified off New Caledonia (Duffy, 2007). It is a demersal species, primarily found along the upper- to mid-continental and insular slopes off eastern Australia, from north of Evans Head in northern New South Wales (NSW) to Cape Hauy on the island of Tasmania, and on the Tasmantid Seamount Chain off NSW and southern Queensland (hereafter referred to as its ''core range''). It occurs in depths of 180 to 1000 m, with a principal depth range of 200 to 900 m (White *et al.,* 2008; Last and Stevens, 2009; Williams *et al.,* 2013a). However, specimens have been collected in deeper waters from the seamounts and ridges north of New Zealand and off southeastern Australia and in shallower depths off eastern Bass Strait (Daley *et al.,* 2002; Graham and Daley, 2011; Williams *et al.,* 2013a). Gulper sharks, including Harrisson's dogfish, are thought to conduct diel vertical feeding migrations, whereby the sharks ascend the continental slope near dusk to around 200 m depths to feed and then descend before dawn (Williams *et al.,* 2013a), which helps to explain the large depth distribution for the species. Small bathypelagic bony fishes (particularly myctophids, lantern fishes), cephalopods, and crustaceans have been found in the stomachs of *C. harrissoni* (Daley *et al.,* 2002).

Research studies indicate that *C. harrissoni* may also exhibit spatial sexual segregation (Graham and Daley, 2011), based on the evidence that males tend to dominate the sex ratios on survey grounds and assumption that females must be more abundant elsewhere to compensate for the uneven sex ratios. Specifically, sex ratios varied from 1.5:1 to 4.9:1 along the east coast of Australia, illustrating the predominance of males (Graham and Daley, 2011). Two notable sites, however, did show females outnumbering males and were located off northern NSW, from Newcastle to Danger Point, and off Taupo Seamount (Graham and Daley, 2011), providing some support for spatial sexual segregation. Interestingly, Graham and Daley (2011) found no evidence of sexual or age segregation by depth, with males dominating throughout all depth zones sampled (with the exception of the two sites noted above) and juveniles evenly interspersed with adults across all depths.

In terms of mating and reproductive behavior, which could provide some insight into potential spatial structuring, very little information is available. It is known that Harrisson's dogfish is viviparous (*i.e.,* gives birth to live young), with a yolk-sac placenta. Females have litters of one or (more commonly) two pups, with size at birth around 35–40 cm TL (Graham and Daley, 2011). Although the gestation period is unknown, a 2 to 3 year period has been estimated for other *Centrophorus* species, with continuous breeding from maturity to maximum age (Kyne and Simpfendorfer, 2007; Graham and Daley, 2011). Female *C. harrissoni* mature at sizes around 98 cm TL and reach maximum sizes of 112–114 cm TL, while males mature around 75–85 cm TL and reach maximum sizes of 95–99 cm TL (Graham and Daley, 2011). Female age at maturity is estimated between 23 and 36 years of age (Daley *et al.,* 2002; Wilson *et al.,* 2009; Last and Stevens, 2009; Graham and Daley, 2011). Longevity is estimated at over 46 years of age (Wilson *et al.,* 2009). Current breeding sites for Harrisson's dogfish are thought to include waters off eastern Australia, from Port Stephens to 31 Canyon, areas off North Flinders and Cape Barren in southeastern Australia, and waters around Taupo Seamount (Williams *et al.,* 2012). These are areas where mature males, mature females, and juveniles have been recorded, and thus are likely to be areas that support viable populations where mating and pupping occur (Williams *et al.,* 2012). However, more extensive sampling, as well critical information regarding the aspects of the Harrisson's dogfish breeding cycle (including necessary sex ratios for successful reproduction, preferred mating and breeding grounds, and mating and breeding behaviors), is needed to identify and fully comprehend the spatial dynamics of Harrisson's dogfish.

For management purposes, Harrisson's dogfish in Australia have been separated into two stocks that are considered to be ''distinct'' populations: A ''continental slope'' stock that occurs continuously along the Australian eastern continental margin, and a ''seamount stock'' that occurs on the Tasmantid Seamount Chain off NSW and southern Queensland, including the Fraser, Recorder, Queensland, Britannia, Derwent Hunter, Barcoo, and Taupo Seamounts. However, to date, no genetic studies have been conducted to confirm that these two populations are genetically distinct, and tagging studies are limited, with insufficient recapture rates to make any determination regarding the connectivity of the populations. In addition, there are a number of other uncertainties associated with the assumption of two separate Harrisson's dogfish stocks, including necessary sex ratios and other successful reproduction requirements, which are further discussed in Miller (2014). Due to these uncertainties, we do not find conclusive evidence of separate populations of Harrisson's dogfish. Therefore, we consider the available information for these two stocks, including estimates of depletion rates and protection benefits of management measures, together when we determine the status of the entire species throughout its range.

Because species-specific historical and current abundance estimates are not available, Williams *et al.* (2013a) used a variety of methods and analyses to estimate the pre-fishery (pre-1980s) and current abundance (in biomass units) at fishery stock and sub-regional scales (detailed information on the data sources and methods can be found in Williams *et al.* (2013a)). Results from the various analyses revealed that Harrisson's dogfish is currently estimated to be at 21 percent of its pre-fishery population size throughout its core range (with a lower estimate of 11 percent and upper estimate of 31 percent). The authors note that this overall estimate of decline is strongly influenced by the small declines estimated on seamounts (Williams *et al.* 2013a). The continental margin population is estimated to be at 11 percent of its pre-fishery population size (range of 4 to 20 percent; with the estimate influenced by uncertainty surrounding the level of cumulative fishing effort off the northern NSW slope). The seamount population is estimated to be at 75 percent of its pre-fishery population size (range 50 percent to 100 percent).

Summary of Factors Affecting Harrisson's Dogfish

Available information regarding current, historical, and potential threats to Harrisson's dogfish were thoroughly reviewed (Miller, 2014). We find that the main threat to the species is overutilization for commercial purposes, with the species' natural biological vulnerability to overexploitation exacerbating the severity of the threat, and hence also identified as a secondary threat contributing to the species' risk of extinction. We summarize information regarding these threats and their

interactions below, according to the factors specified in section 4(a)(1) of the ESA. Available information does not indicate that habitat destruction, modification, or curtailment, disease, or predation are operative threats on this species; therefore, we do not discuss those further here. Because new regulatory measures were just recently implemented, the adequacy and effectiveness of existing regulatory measures is discussed in the ''Protective Efforts'' section below. See Miller (2014) for full discussion of all threat categories.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, Harrisson's dogfish and other gulper sharks were taken in both Australian Commonwealth-managed commercial trawl fisheries (those that are managed by the Australian Federal Government, in coordination with Australian State fisheries agencies, through the Australian Fisheries Management Authority (AFMA) (Kyne and Simpfendorfer, 2007)) and State-managed commercial trawl fisheries operating on the upper slope off eastern Australia, within the core range of Harrisson's dogfish. Unfortunately, little information is available on the specific catch of these deep-water sharks, primarily due to the historical inaccuracy of data reporting and species identification issues. These Commonwealth and State-managed commercial trawl fisheries developed off NSW in the 1970s and off Victoria and Tasmania in the 1980s. By the early 1980s, more than 100 trawlers were operating off NSW, with around 60 percent regularly fishing on the upper slope. In fact, between 1977 and 1988, catches from these upper-slope trawl operations comprised more than half of the total trawl landings in NSW (Graham *et al.,* 2001). Large numbers of *C. harrissoni* were likely caught and discarded off NSW during this time, due to the absence of a market for deepwater shark carcasses (a result of mercury content regulations and preference for more marketable bony fishes) (Daley *et al.,* 2002; Graham and Daley, 2011). Similarly, trawlers operating on the upper-slope off eastern Victoria reported minimal catches of *Centrophorus* dogfishes, but also likely discarded substantial numbers due to Victorian State restrictions on mercury content in shark flesh (Daley *et al.,* 2002). Graham and Daley (2011) estimate that landings of *Centorphorus* spp. were around several hundred tonnes per year during the 1980s and early 1990s.

Daley *et al.* (2002) note that in the early 1990s significant quantities of *Centrophorus* spp. were also caught off eastern Victoria by fishermen using droplines targeting blue-eye trevalla (*Centrolophus antarctica*) and ling (*Genypterus blacodes*). In addition, some Southern and Eastern Scalefish and Shark Fishery (SESSF) operators off Victoria used deep-set gillnets to target *Centrophorus* species for their livers in the 1990s (Daley *et al.,* 2002). Squalene oil, which is extracted from the liver of deep-sea sharks, is used in a number of cosmetics and health products, and the livers of *Centrophorus* species have the highest squalene oil content (67–89 percent) of any deep-sea shark. Fishermen would keep the livers of the *Centrophorus* spp. and discard the carcasses due to their mercury content. However, by the time the mercury restrictions were eased in 1995 (allowing for carcasses to also be sold), very few *Centrophorus* species were being caught off eastern Victoria, with targeting of these sharks having essentially ceased (Daley *et al.,* 2002). Since 2002, total catch of gulper sharks by Commonwealth licensed vessels has been less than 15 t per year (Woodhams *et al.,* 2013).

In 2001, Graham *et al.* (2001) quantified the effects of the historical trawling on the abundance of gulper sharks off NSW using data from fishery-independent surveys conducted along the upper slope before and after the expansion of the commercial trawl-fishery (Andrews *et al.,* 1997). The initial pre-fishery survey was carried out during 1976 and 1977. There were three trawling survey grounds: (1) Sydney-Newcastle, (2) Ulladulla-Batemans Bay, and (3) Eden-Gabo Island and eight depth zones (covering depths of 200–650 m). The two northern grounds (Sydney and Ulladulla) were surveyed twice in 1976 and twice in 1977; the southern (Eden) ground was surveyed three times in 1977. These surveys were repeated in 1996–1997, (with two surveys conducted off Sydney and Ulladulla and three off Eden) using the same vessel and trawl gear and similar sampling protocols, to examine the changes in relative abundances of the main species (number and kg per trawling hour) after 20 years of trawling (see Andrew *et al.,* 1997; Graham *et al.,* 2001). Results from these surveys show that Harrisson's dogfish were present and, at one time, were caught across all of the survey grounds and depth zones. In 1976, catches of Harrisson's dogfish were combined with southern dogfish (*C. zeehaani*) in the initial two surveys off Sydney and one off Ulladulla. When these species were separated in the later 1976 surveys, and in 1977, southern dogfish comprised around 75 percent and Harrisson's dogfish comprised 25 percent of the combined catch. In 1976–77, Harrisson's and southern dogfishes combined represented around 9 percent, 18 percent, and 32 percent of the total fish catches off Sydney, Ulladulla, and Eden, respectively. The overall mean catch rate (for all grounds and depths) was 126 kg/hour. This is in stark contrast to the 0.4 kg/h catch rate in 1996–1997, when only 14 southern and 8 Harrisson's dogfishes were caught, comprising 0.18 percent of the total fish catch weight (Graham *et al.,* 2001). For the 1976–77 surveys where the two species were separated, the mean catch rate of Harrisson's dogfish was 28.8 kg/hr caught over the course of 173 tows. In 1996–97, the mean catch rate of Harrisson's dogfish was 0.1 kg/hr over the course of 165 tows (Graham *et al.,* 1997; 2001). These decreases in survey catch rates provide compelling evidence of declines of over 99.7 percent in relative abundance of *C. harrissoni* on the upper-slope of NSW, a core part of their range, after 20 years of trawling activity (Graham *et al.,* 2001).

In Australia, the commercial trawl fisheries are still active, as are demersal line fisheries, which also incidentally catch Harrisson's dogfish. In terms of Commonwealth-managed fisheries, Harrisson's dogfish are primarily caught as bycatch by the SESSF, which operates over an extensive area of the Australian Fishing Zone (AFZ) around eastern, southern, and southwestern Australia. The distribution of recent (2006–2010) commercial fishing effort in the SESSF shows that there is still substantial fishing effort on Commonwealth upper-slope grounds using demersal gears, specifically trawl and auto-longline operations (see Miller (2014) for more details). According to Graham (2013), around 30 trawlers and 3 auto-longliners in the SESSF still operate along the upper-slopes. Since auto-longline vessels, which deploy up to 15,000 hooks per vessel per day, can operate on the steep and rough ground that would potentially be a refuge for *C. harrissoni* from trawling (R. Daley, Commonwealth Scientific and Industrial Research Organization (CSIRO), personal communication, 2014), the combined operation of both the trawl and auto-longline fisheries within the range of Harrisson's dogfish significantly increases the likelihood of incidental catch of the species. Catch rates of Harrisson's dogfish in the SESSF have been minimal in recent years, likely due to their low abundance

on the continental margin; however, the combined operation of these demersal gears on the upper-slope grounds may further decrease abundance of the remaining population. For the 2012–2013 season, reported gulper shark (*C. harrissoni, C. moluccensis, C. zeehaani*) landings (in trunk weight) were 0.9 t with discards of 1.2 t (Woodhams *et al.,* 2013). This is a decrease from the previous year, which reported landings of 3.8 t. Given the evidence of substantial depletion of both Harrisson's and southern dogfishes in Australian waters over the years, high risk of overfishing in the SESSF, with no current indication of recovery (based on 2012–2013 season data), the Australian Government Department of Agriculture classified the above three gulper sharks as ''overfished'' in 2012, with the current level of fishing mortality noted as ''uncertain'' (Woodhams *et al.,* 2013). In fact, upper-slope gulper sharks have been classified as overfished since they were first included in Australia's Fishery Status Reports in 2005 (Woodhams *et al.,* 2011). In February 2013, a zero retention limit was implemented for Harrisson's dogfish (Woodhams *et al.,* 2013), along with other management measures detailed in AFMA's Upper-Slope Dogfish Management Strategy (AFMA, 2012) and evaluated in the ''Protective Efforts'' section below.

In terms of state-managed fisheries, the range of Harrisson's dogfish extends within NSW, Victoria, and Tasmania jurisdictions. In both Victorian and Tasmanian fisheries, catch records of Harrisson's dogfish are rare and interactions with these fisheries are considered to be unlikely, based on their respective fishing operations (Threatened Species Scientific Committee (TSSC), 2013). In NSW commercial fisheries, Harrisson's dogfish may be caught by the Ocean Trap and Line Fishery and the Ocean Trawl Fishery. According to Graham (2013), there are up to five trawlers in the Ocean Trawl Fishery that fish seasonally between Newcastle and Sydney and may incidentally catch Harrisson's dogfish, and only minimal line fishing effort on the upper-slope (K. Graham, Australian Museum, personal communication, 2014). In 2013, a zero retention limit was implemented for Harrisson's dogfish (unless for scientific purposes as agreed by Fisheries NSW) (NSW DPI, 2013).

Because of their low productivity, sustainable harvest rates of gulper sharks are estimated to be less than five percent of their virgin biomass, and maybe even as low as one percent (reflecting the proportion of total population that can be caught and still maintain sustainability of the population; Forrest and Walters, 2009). However, these harvest levels can only be sustained by a population in a significantly less depleted state (Woodhams *et al.,* 2011). In the case of Harrison's dogfish, Woodhams *et al.* (2013) notes that even low levels of mortality can pose a risk because of its significantly depleted state. Although total fishing mortality on gulper sharks is unknown, the level of catch and observed discards in recent years was deemed likely to result in further population declines (Woodhams *et al.* 2011; 2012; 2013). In the 2012–13 fishing season, discards actually outnumbered landings (1.2 t compared to 0.9 t; Woodhams *et al.,* 2013). Thus, even with the prohibition on retention of the species, there is still a potential for discards based on the significant overlap of current fishing effort within the core range of the species (Woodhams *et al.,* 2013). This is a concern because Harrisson's dogfish suffers from high at-vessel mortality in trawl gear and potentially high at-vessel mortality in auto-longline gear (Williams *et al.,* 2013a). Therefore, the continued fishing effort on the upper-slope and potential for incidental capture of Harrisson's dogfish in the trawl and line fisheries described above, which will likely result in mortality of the species, is considered a threat that is currently contributing to the overutilization of the species and its risk of extinction.

In the areas off New Zealand where *C. harrissoni* have been observed (Three Kings Ridge, Norfolk Ridge, and Kermadec Ridge), there is limited fishing effort (Graham, 2013). The fishing activities include trawling on the West Norfolk Ridge, drop-lining for large bony fishes on the Three Kings Rise, West Norfolk Ridge, and Wanganella Bank, and minimal longlining and close to no trawling on the Kermadec Ridge. No bycatch of gulper sharks has been reported from these fishing activities (based on a personal communication from C. Duffy in Graham (2013)). Given the uncertainty surrounding the *C. harrissoni* abundance in this area, it is currently unknown if these fishing activities are impacting Harrisson's dogfish populations or significantly contributing to its extinction risk (Graham, 2013).

Other Natural or Manmade Factors Affecting the Continued Existence of Harrisson's Dogfish

Many sharks are biologically vulnerable to overexploitation due to their life history parameters. Species with slow population growth rates, late age at maturity, long gestation times, low fecundity, and higher longevity are especially sensitive to elevated fishing mortality (Musick, 1999; García *et al.,* 2008; Hutchings *et al.,* 2012). These life history traits increase the species' susceptibility to depletion by decreasing the species' ability to rapidly recover from exploitation. Harrisson's dogfish exhibits these same life history traits, with late maturity, long gestation times, small litter sizes, and high longevity. These life history traits have exacerbated the overall impact of the historical overutilization of the species on its extinction risk, leading to the substantial decline in Harrisson's dogfish abundance, and will continue to place the species at increased risk of demographic stochasticity.

Extinction Risk

It is clear that the species faces current demographic risks that greatly increase its susceptibility to extinction. Due to the significant decline, the species is no longer found in approximately 19 percent of its Australian range and, furthermore, throughout the rest of its core range, is estimated to be at 21 percent of its total virgin population size (with separate estimates of 11 percent for the continental margin population and 75 percent for the seamount population) (Williams *et al.,* 2013a). Although the population on the seamounts may be less depleted, it also likely comprises a significantly smaller portion of the entire Harrisson's dogfish population, based on the amount of available habitat and corresponding carrying capacity. In fact, the continental margin habitat, where the population is estimated to be at only 11 percent of its total virgin population size, represents 86 percent of Harrisson's dogfish's estimated extent of occurrence and 84 percent of its estimated area of occupancy (TSSC, 2013), indicating significant depletion throughout most of the species' range. In addition, the existing Harrisson's dogfish populations along the continental margin and off the seamounts in Australia and New Zealand are small and fragmented, with only three identified remnant populations that are thought to be viable (due to presence of mature males, females, and/or juveniles within the same area). Two of these populations are located off the continental margin and the third is off Taupo Seamount. It is unclear the extent to which these populations can help recover Harrisson's dogfish, as breeding behavior, stock structure, inter-

population exchange, and general movement of individuals is currently unknown. Due to their size and isolation, these populations may be at an increased risk of random genetic drift and could experience the fixing of recessive detrimental alleles that could further contribute to the species' extinction risk (Musick, 2011). In addition, the patchy distribution of these populations throughout the species' entire range increases susceptibility to local extirpations from environmental and anthropogenic perturbations or catastrophic events. Given the apparent spatial structuring of the species and dominance of males in the sex ratios at many locations, a further reduction in the numbers of females at any given site may decrease reproductive success and prevent population replacement. The species has extremely low fecundity (2–3 year gestation period resulting in 1 to 2 pups), slow growth rates, and late maturity, all of which contribute to a long population doubling time. In a severely depleted state, these traits may contribute to increasing the species' extinction risk, especially if the species is still subject to threats that further reduce its abundance. Thus, although the species' biological characteristics have allowed it to successfully thrive in the past, under the current conditions of severely fragmented populations and low abundance throughout its range, questionable population viability, and risk of incidental mortality from fisheries, the species' natural life history traits are presently threatening its continued existence. Specific information is lacking on interactions among threats.

Without considering the effectiveness of the recently implemented management measures in reducing the threat of overutilization and improving the status of Harrisson's dogfish in Australian waters (discussed in the ''Protective Efforts'' section below), Miller (2014) concluded that Harrisson's dogfish is presently at a high risk of extinction due to threats of overutilization exacerbated by its natural biological vulnerability to depletion, the interaction of which has resulted in significant demographic risks to the species. We agree with this analysis and find that the species is presently in danger of extinction throughout its range. Below we evaluate formalized conservation efforts that have yet to be implemented or to show effectiveness to determine whether these efforts contribute to making listing the species as endangered unnecessary. We evaluate these conservation efforts using the criteria outlined in PECE.

Protective Efforts

The EPBC Act, the Australian Government's central piece of environmental legislation, applies to any group or individual whose actions may have a significant impact on a ''matter of national environmental significance.'' Any proposed action that meets this standard must then be assessed to determine its environmental impact. Species listed as ''vulnerable,'' ''endangered,'' and ''critically endangered'' under the EPBC Act are considered to be matters of national environmental significance and receive these provisions.

In 2009, Harrisson's dogfish was nominated for listing under the EPBC Act. Its status was reviewed by the Threatened Species Scientific Committee (TSSC), a committee established under the EPBC Act to advise the Australian Minister for the Environment on the amendment and updating of lists of threatened species, threatened ecological communities, and key threatening processes, and with the making or adoption of recovery plans and threat abatement plans. In 2013, the TSSC concluded that Harrisson's dogfish was eligible for listing as endangered under the EPBC Act because the species had suffered a severe reduction in numbers, with a suspected population decline of between 74 and 82 percent (TSSC, 2013). However, the TSSC concluded that the species was also eligible for listing as a conservation dependent species under the EPBC Act because it is the ''focus of a plan of management [the Strategy] that provides for managed actions necessary to stop the decline of, and support the recovery of, the species so that its chances of long term survival in nature are maximized'' (TSSC, 2013). In May 2013, based on the TSSC recommendation, the Minister of the Environment officially listed Harrisson's dogfish as a conservation dependent species under the EPBC Act. This listing means that the species is not considered a matter of national environmental significance in the context of the EPBC Act, and, as such, Harrisson's dogfish are exempt from the EPBC Act protective provisions.

In 2012, AFMA published the Upper-Slope Dogfish Management Strategy (the ''Strategy''; see AFMA, 2012) to satisfy the aforementioned management requirements for a conservation dependent listing of Harrisson's Dogfish and Southern Dogfish under Australia's EPBC Act. The Strategy, which we evaluate below according to the guidelines in the PECE (68 FR 15100; March 28, 2003), includes regulatory management measures designed to rebuild the Harrisson's dogfish population above a limit reference point of 25 percent of its unfished biomass (B_{25}). Setting a recovery time frame was deemed not feasible until further research on the species is completed; however, an interim time frame to reach this reference point was estimated based solely on the biological characteristics of the species (three generation times) and equal to 85.5 years (SWG, 2012).

The outcomes and the effectiveness of the Strategy are expected to be measured on a biennial basis, as detailed in AFMA's ''Upper-Slope Dogfish Research and Monitoring Workplan.'' The workplan for the period of 2014–2016 (Workplan 1) focuses on the development of a cost-effective method for measuring baseline relative abundance of gulper sharks and recovery over time (AFMA, 2014). This output will be assessed as part of the Research and Monitoring Workplan 2014–16 review (proposed time frame of July 2014-Dec 2016). Once the methodology has been developed, the next output (Workplan 2) is expected to produce baseline relative abundance estimates for Southern and Harrisson's dogfish (proposed time frame for output: Jan 2017–Dec 2019). Subsequent workplans will provide estimates of rebuilding over time and will be periodically assessed to ensure that the actions within the workplans are achieving the desired outputs. Hence, it appears it will be a number of years before the effectiveness of the Strategy will be able to be quantified. As outlined in the PECE, we must evaluate these conservation efforts that have not yet demonstrated effectiveness at the time of listing to determine whether these efforts are likely to be effective at reducing or eliminating threats and improving the status of Harrisson's dogfish. Below are the regulatory measures from the Strategy that have already been implemented by AFMA for the conservation of the species (under the legal authority of section 41A of the Australian Fisheries Management Act 1991 and implemented under ''SESSF Fishery Closures Direction No. 1 2013;'' satisfying the first criteria of the PECE) and our subsequent evaluation of their likely effectiveness at improving the status of Harrisson's dogfish (the second criteria of the PECE). The figures and tables referenced below can be found in the PECE supplement (Miller, 2014b).

Prohibition on the Commercial Retention of Gulper Sharks

The Strategy implements a complete prohibition on the commercial retention

of all gulper sharks. However, even before the prohibition, reported catch rates of Harrisson's dogfish in the SESSF have been minimal in recent years, likely due to the low abundance of the species on the continental margin where the fisheries operate. Harrisson's dogfish are not a targeted species, but rather taken as incidental catch. Although this prohibition will decrease the numbers of sharks being landed, it is worth noting that discards have outnumbered landings in recent years and at a rate that was deemed likely to result in further declines of the species (Woodhams *et al.,* 2011). Additionally, in the latest Fishery Status Report for Commonwealth-managed fish stocks, it states: ''[t]here is potential for unreported or underestimated discards (based on the large degree of overlap of current fishing effort with the core range of the species [Harrisson's dogfish]), and low levels of mortality can pose a risk for such depleted populations'' (Woodhams *et al.,* 2013). Based on the above discarding trends, the fact that it is the Commonwealth Trawl Sector of the SESSF which is the main fishery operating within the species' core continental margin range, and the evidence that Harrisson's dogfish are not expected to survive after incidental capture in trawl gear (Rowling *et al.,* 2010), the new retention prohibition may only have a minor impact on decreasing current fisheries-related mortality.

Network of Spatial/Area Closures

Prior to the Strategy, a number of closures were implemented across the SESSF operational area (AFMA, 2012); however, there were concerns that these closures were too small in relation to the historical distribution of the species to prevent further declines or recover the species (Musick, 2011; Woodhams *et al.,* 2011). Musick (2011) estimated that the closures protected Harrisson's dogfish from all forms of industrial fishing in only 9.8 percent of its habitat. In response to these concerns, AFMA evaluated options for closures in the Strategy and created a new network of spatial/area closures in 2013, taking into account the species' distribution and habitat potential, which would protect the species from various forms of fishing and prevent further declines.

Regulations that are the most effective in protecting the species from threats of overutilization (*i.e.,* incidental catch) are those that prohibit all types of fishing methods. An analysis of already implemented conservation efforts from the Strategy estimates that 26.3 percent of the core Harrisson's dogfish seamount habitat (weighted by carrying capacity—the habitat area's ability to support dogfish populations) and 5.5 percent of the continental margin habitat are closed to all types of fishing (see Table 1; Figures 1 and 4 in Miller, 2014b). In terms of the areas that support Harrisson's dogfish populations, this coverage translates to protection for 26.3 percent of the current biomass of the seamount population (provided by the new Derwent Hunter closure) and 19.1 percent of the biomass of the continental margin population. Contributing to the protection of the continental margin population are the Strategy's extension of the Flinders Research Zone closure and revision to the Harrisson's Gulper closure that prohibits fishing in the depth range of Harrisson's dogfish. The fact that these closures encompass areas critical to population viability further increases the effectiveness of this regulation in improving the status of the species. For example, the Extended Flinders Research Zone (see Figures 2a and 2b in PECE supplement) protects the only known potentially reproducing population of Harrisson's dogfish found south of Sydney. Specifically, this closure protects the mature male population found around Babel Island, the mature female population found around Cape Barren, and the likely migration route between these two populations that is thought to support mating activities (Middle Ground). Prior to this closure, only the Babel and Cape Barren grounds were protected, leaving the closely adjacent Trawl Corridor and Middle Ground open to fishing activities (and the potential for incidental catch). Now, this closure has been extended and prohibits all fishing methods from 200 to 1000 m deep, covering the entire depth range of Harrisson's dogfish.

If we also consider closures that prohibit all high-risk fishing methods (permitting only power hand-line), the protection coverage increases to 24 percent of Harrisson's dogfish's entire core habitat (see Table 1; Figures 1–4 in Miller, 2014b). The effectiveness of these regulations in improving the status of Harrisson's dogfish partly depends on the handling of the species in fishing gear and subsequent post-release mortality rates of the shark. In other words, these regulations are only likely to be effective in decreasing threats if they reduce incidental catch altogether or reduce mortality rates of Harrisson's dogfish when incidentally caught. As these closures prohibit all fishing with the exception of power-handline methods, we need to consider the selectivity and post-release mortality of power-handline methods on Harrisson's dogfish in order to evaluate the effectiveness of these closures. Based on findings from Graham (2011) and Williams *et al.* (2013b), there is a high selectivity rate for target species (and consequently low bycatch) when using the power handline technique. For example, in one of the experiments designed to replicate normal power-handline fishing operations for harvesting blue-eye trevalla (the target species for power-handline fishing), results showed that Harrisson's dogfish could be successfully avoided. Out of a total of 1,435 individual line drops, 25,509 hooks, and over 10 fishing trips, no Harrisson's dogfish were taken as bycatch. This is in contrast to the 6,819 blue-eye trevalla that were caught using the power-handline method (Williams *et al.,* 2013b). Likely contributing to this high degree of selectivity using the power handline method and avoidance of Harrisson's dogfish is the fact that fishing for blue-eye trevalla is normally conducted during daylight hours, in depths of 280–550 m. Based on Harrisson's dogfish's diel-migration patterns, the species is normally found in depths greater than 550 m during daylight hours, deeper than the normal power handline operating depths.

Insight into post-release mortality was also provided from the Williams *et al.* (2013b) study, as exploratory fishing for Harrisson's dogfish was conducted to determine the occurrence of the species on the seamounts. A total of 105 Harrisson's dogfish were captured during this exploratory component of the survey and Williams *et al.* (2013b) observed that many of these sharks, when brought to the surface, were in good physical condition. All but one shark were released back into the water alive and actively swam away. Williams *et al.* (2013b) attribute this potentially low post-release mortality to the short soak times associated with power-handline fishing. In addition, this type of fishing method consists of a high degree of spatial targeting and small gear size, which also likely contribute to a high survival rate of Harrisson's dogfish when caught on lines (Williams *et al.,* 2013b). Based on these findings, we consider closures that prohibit all high-risk fishing methods (permitting only power hand-line), as effectively decreasing the threat of overutilization (*i.e.,* mortality from incidental catch) of Harrisson's dogfish (see Table 1; Figures 1–4 in Miller, 2014b). The coverage of these closures, when broken out by continental margin and seamount proportions and weighted by carrying capacity, translates to protection for

Harrisson's dogfish over 18.4 percent of its core continental margin habitat and 77.6 percent of its seamount habitat (see Table 1 in Miller, 2014b). Contributing to the protection of the continental margin population is the Strategy's extension of the Endeavour closure, and for the seamount population, the newly created Queensland and Britannia seamount closures.

If we look at the closures that prohibit trawling operations next, it is estimated that 29.5 percent of the species' core habitat range is protected from trawling activities (see Table 1 in Miller, 2014b). With these regulations, almost all of the Harrisson's dogfish's core seamount habitat would be protected. As Harrisson's dogfish are not expected to survive when caught in trawl gear, these closures are likely to be effective in decreasing mortality rates from incidental catch in trawls. In fact, there is already evidence of rebuilding in areas that were extensively trawled but have seen significantly less activity recently. Graham and Daley (2011) note the presence of a high numbers of juveniles (<80 cm TL, including neonates) that were caught during a 2009 long-line survey at sites off Port Stephens NSW. This area had been extensively trawled during the first 20 years of the upper-slope fishery, but over the last 10 years has seen significantly less trawling activity (Graham *et al.,* 2001; Graham and Daley, 2011). The authors of the study attribute the increase in juvenile sightings as potentially a re-establishment of the population in this area.

NSW closures and regulations may also offer additional protection to the species (TSSC, 2013). Specifically, the NSW ''North of Sydney closure'' (see Figure 3 in Miller, 2014b) prohibits all fishing methods except for power-handline, but allows trawling in depths over 650 m (which overlaps with the Harrisson's dogfish depth range). The NSW trawl restriction areas 4 and 6 (see Figure 5 in Miller, 2014b) also provide some protection by prohibiting trawling, but are open to line methods. Overall, these additional regulations protect 2.4 percent of the core habitat (and 3 percent of the core continental margin habitat), mainly from trawling, except at the shallowest depths (TSSC, 2013).

Many uncertainties surround these estimates. We currently do not know the locations of important foraging grounds or nursery areas that are critical for population viability. In addition, we have no information regarding the movement of Harrisson's dogfish in and out of these protective closures, or the connectivity between the seamounts and continental margin populations. However, preliminary tagging studies of a closely related species, *C. zeehaani,* inside a fishery closure off southern Australia suggest that the home ranges of deep-water dogfish sharks may be small, with evidence of resident female populations that can be effectively protected by fishery closures (Daley *et al.,* 2014). Furthermore, as new information becomes available that improves the understanding of Harrisson's dogfish biology and stock structure, the management arrangements in the Strategy can be adapted as necessary to ensure the effectiveness of the Strategy over time.

Compliance and Enforcement

In addition to the actual spatial extent of the closure network, the certainty of effectiveness of these regulatory measures in decreasing threats to the species also depends on the compliance and enforcement of these closures. For the Commonwealth fisheries, AFMA has created a compliance team to assist with issues such as quota evasion and balancing, Vessel Monitoring System (VMS) requirements, and compliance with fisheries closures and interactions with protected species. In terms of VMS requirements (a key monitoring provision in the Strategy), compliance rates have significantly increased over the years, thanks to outreach material to vessel operators. Compliance rates for the requirement for vessels to have an operational VMS averaged around 97 percent for the 2012–2013 year (AFMA, 2013a).

Another key to the successful and effective conservation of the Harrisson's dogfish population so that it may rebuild in the future is compliance with fishing prohibitions inside closures. In 2010–2011, AFMA identified the activity of fishing boats entering and/or fishing inside closures as an occasional but significant risk. To combat this, they developed a ''show cause'' program whereby breaches inside closures were identified from VMS, and the operators of these vessels were sent a letter asking them to explain or ''show cause'' for their activity. Within a year of running the program, the incidence of fishing or navigating inside fishery closures had decreased from an average of 11 breaches per month to less than 2 breaches per month (AFMA, 2013b).

Conclusion

After consideration of the evaluation criteria for certainty of effectiveness under the PECE, we find that these existing regulatory measures are likely to be effective in improving the present status of the species. The network of implemented closures addresses the threat of overutilization by prohibiting high-risk fishing methods, which decreases fishery-related mortality from bycatch. Based on a prior review by Musick (2011), it was recommended that closures include at least 20 to 35 percent of important Harrisson's dogfish habitat in order to prevent further decline of the species and potentially support recovery. Overall, the closures evaluated above appear to provide the species with effective protection from high-risk fishing methods over 24 percent of its core habitat range (see Table 1 in Miller, 2014b). Specifically, the core habitat of the much-less-depleted seamount population is significantly protected from high-risk fishing methods and almost entirely protected (98.2 percent) from trawling activities (see Table 1 in Miller, 2014b). In fact, 77.6 percent of the seamount population biomass is protected from all high-risk fishing methods by the new closures created by the Strategy. These conservation efforts are likely to effectively improve and protect the status of this population so that it is no longer presently in danger of extinction. In terms of the continental margin population, the new network of spatial closures provides protection from high-risk fishing methods over 18.4 percent of the core margin habitat. The closures protect 32.4 percent of the current biomass, including the only known viable population found south of Sydney, from all fishing activities, which will be critical for improving the status of the population (see Table 1; Figure 1 in Miller, 2014b). Although incidental fishing mortality may occur outside of these closures, based on the best available information, we consider the current network of closures effective in adequately decreasing the present threat of overutilization throughout the species' range to the point where the species is not currently in danger of extinction.

As mentioned previously, these conservation efforts have been designed with the explicit objective to stop the decline of Harrisson's dogfish and rebuild the population above 25 percent of its unfished biomass. AFMA's ''Upper-Slope Dogfish Research and Monitoring Workplan'' details the provisions for monitoring and reporting progress on the objective and effectiveness (based on evaluation of quantifiable parameters and using principles of adaptive management) of the implemented conservation efforts. Specifically, the outcomes and the effectiveness of the Strategy are expected to be measured on a biennial basis. However, as noted below,

certainty that the above conservation efforts will remain in place after 5 years cannot be predicted at this time. As it stands, the Strategy, and conservation efforts therein, are only a force under Australian law if AFMA continues to implement the closures under section 41A of the Fisheries Management Act 1991. These closures are implemented under ''Directions'' (for example, the current fishery closures to protect Harrisson's dogfish have been implemented under ''SESSF Fishery Closures Direction No. 1 2013''). These legal instruments are only in effect for 5 years, after which AFMA may choose to extend the closures by creating a new Direction. If AFMA does not take action after 5 years, these closures will expire.

Although the Upper-Slope Dogfish Research and Monitoring Workplan details AFMA's commitment to stop the decline of Harrisson's dogfish and work to rebuild the population, the protection of the species is not required under the EPBC Act since the species was listed as conservation dependent instead of endangered. In addition, in the case where any part of this Strategy ceases to exist or changes, the species would not automatically be listed as endangered under the EPBC Act. Rather, the TSSC would be convened and asked to evaluate how the changes impact the status of the species and provide recommendations on listing eligibility to the Minister for the Environment, with the ultimate decision on whether to list the species in a given category made by the Minister.

While we conclude that the present conservation efforts are currently effective in preventing the extinction of the species, we have no certainty that they will remain in place after 5 years. Taking into account the present state and life history of the species, we do not consider 5 years to be sufficient time for the status of the species to improve to where it is no longer in danger of extinction without the continued implementation of these efforts. In other words, the removal of these conservation efforts after 5 years will once again subject the species to the threats described previously, and based on the information from the extinction risk analysis (*e.g.,* substantial depletion, fragmented populations, extremely low productivity, sensitivity to low levels of mortality), we find that the species will likely become in danger of extinction at that time.

In conclusion, after consideration of the evaluation criteria under the PECE, we are sufficiently certain that the implemented conservation efforts will effectively decrease the threat of overutilization by fisheries in the near term to the point where the species is no longer presently in danger of extinction. However, given that the implementation of these conservation efforts is only certain for 5 years, a time frame that is insufficient to increase the species' chances of survival when faced again with prior threats, we conclude that the species will likely be in danger of extinction in the foreseeable future. We specifically seek additional information from the public comment process on these conservation efforts and their certainty of implementation and effectiveness (see below).

Proposed Determination

We assessed the ESA section 4(a)(1) factors and conclude that the species faces ongoing threats from overutilization, with the species' natural biological vulnerability to overexploitation exacerbating the severity of the threats. The species faces demographic risks, such as small and fragmented populations with low productivity, which make it likely to be influenced by stochastic or depensatory processes throughout its range and place the species in danger of extinction from the aforementioned threats. We deem ongoing conservation efforts as currently effective in decreasing the main threat of overutilization to the point where the species is no longer presently in danger of extinction. However, the time frame over which these conservation efforts will certainly be in place is insufficient to increase the species' chances of survival or prevent its extinction through the foreseeable future. Therefore, based on the best available scientific and commercial information as presented in the status report and this finding, we find that *C. harrissoni* is not currently in danger of extinction throughout its range, but is likely to become so in the foreseeable future. We propose to list Harrisson's dogfish as a threatened species under the ESA.

Corals

The three coral species considered herein are all marine invertebrates in the phylum Cnidaria. The phylum is called Cnidaria because member species use cnidae (capsules containing stinging nematocysts) for prey capture and defense. All are tropical, shallow water, scleractinian (''stony'') corals that secrete a calcium carbonate skeleton. Two of the three have the typical stony coral symbiosis with zooxanthellae (photosynthetic) algae that reside in gastrodermal cells of the coral tissue. All are non-reef building corals that live in small colonies or as solitary individuals. The following section describes our analysis of the status of the three species. Information on many of the species is sparse, so we cannot provide complete descriptions of their natural history. More details can be found in Meadows (2014).

Species Description of Cantharellus noumeae

Cantharellus noumeae is a fungiid or mushroom coral that was the first described species of its genus, in 1984 (Hoeksema and Best, 1984). It received its own new genus name because, unlike most other fungiid corals, it is stalked and not free-living as an adult. Other species in the genus have since been discovered and named, so the genus is no longer monotypic. Polyps are relatively small for a fungiid coral, ranging from 25 to 65 mm in diameter (Hoeksema and Best, 1984). The polyps are cup-shaped when fully developed and have wavy margins (AIMS, 2013a). The primary septa are thin. The species may be solitary or colonial; colonies consist of a few contorted polyps. Their typical color is mottled brown.

Cantharellus noumeae was thought to occur only in a restricted area of less than 225 km^2 on reefs in sheltered bays in New Caledonia, on the southern tip of the main island of Grand Terre (Hoeksema *et al.,* 2008). Recent research by the French Institut de Recherche pour le Développement (IRD) has found that the species also occurs on fringing reefs farther up the southeast coast at Noumea and at Balabaio in the northeastern part of New Caledonia (*www.lagplon.ird.nc;* Antoine Gilbert, Ginger Soproner, personal communication, 2013). It is found in waters 10 to 35 m deep, close to soft sediment habitats that are in sheltered bays and lagoons (Hoeksema and Best, 1984). There are records of it in western, northern, and eastern parts of the island of New Guinea that includes Papua New Guinea and West Papua, Indonesia, with details likely to be published soon on a new Web site (*http://coralsoftheworld.com;* Charlie Veron, personal communication). There are also reports of it from Papua New Guinea in the International Union for Conservation of Nature (IUCN) assessment, but the assessment questions the validity of this record (Hoeksema *et al.,* 2008). The IUCN assessment and the researcher whose published record is in question (Doug Fenner) suggest further confirmation is necessary (Hoeksema *et al.,* 2008; Fenner, personal communication). Fossil records from over 5 million years ago indicate that this species was at one time found as far west as East Kalimantan, on the island of Borneo,

Indonesia (Hoeksema, 1989; Hoeksema, 1993).

Scleractinian corals have diverse reproductive strategies, including both asexual and sexual modes of reproduction (see Brainard *et al.,* 2011). Individual reproductive modes for these three species have not been studied. *Cantharellus noumeae* may be a sequential sex-changing species like other members of its family. Because of their relationship with symbiotic zooxanthellae, *C. noumeae* needs to live in shallow water to be exposed to light the symbiotic algae use to photsynthetically fix carbon.

There is no quantitative species-specific population or trend information available for *C. noumeae* (Hoeksema *et al.,* 2008; Gilbert, personal communication). The current and continuing presence of the species in New Caledonia was confirmed by Bert Hoeksema (personal communication) in 2012 and in one murky location in Prony Bay on the southern tip of Grand Terre in 2013 (Andrew Bruckner, personal communication). In addition, Antoine Gilbert (personal communication) notes that from surveys he has done over the past 4 years, the species is ''uncommon and usually found in fringing reefs where sedimentation is quite intense.'' He also noted that the species is ''usually found in low density, [but] it was observed in relative[ly] high density on the slope of artificial shores (embankment) in the biggest (commercial and industrial) harbour of New Caledonia: la Grande Rade.'' We found no information on abundance or trends on New Guinea. Its presence at one site in Milne Bay (Fenner, 2003) is uncertain; Charlie Veron may publish information from New Guinea on his Web site soon (see above).

Species Description of Siderastrea glynni

Siderastrea glynni was described in 1994 (Budd and Guzmán, 1994). It occurs in non-reef-forming spherical colonies that are 70 to 100 mm in diameter (AIMS, 2013b). They have polygonal corallites that are 2.5 to 3.5 mm in diameter (Budd and Guzmán, 1994). The species is a light reddish-brown in color and occurs on coarse sand-rubble substrates. Recent genetic work by Forsman *et al.* (2005) has shown that *S. glynni* is genetically very similar to the Caribbean species *S. siderea,* though there are differences between the species. Their study could not differentiate between two possible explanations of the species' evolution: (1) that *S. siderea* and *S. glynni* are the same species and that *S. glynni* may have recently passed through or been carried across the Panama Canal to the Pacific Ocean side; or (2) the alternate possibility that *S. glynni* evolved from *S. siderea,* likely about 2 to 2.3 million years ago during a period of high sea level, when the Isthmus of Panama may have been breached, allowing inter-basin transfer of the species' ancestors. Because the available information to reclassify the species is inconclusive, we determine that *S. glynni* is a valid and unique species.

The range of *S. glynni* is a small area of the Pacific Ocean near the small island of Uraba in Panama Bay, a few kilometers from the opening of the Panama Canal (Guzmán and Edgar, 2008). Identified colonies of *S. glynni* were reported to be unattached and occur ''along the upper sand-coral rubble reef slope at a depth of 7 to 8.5 meters'' (Budd and Guzmán, 1994). All the islands around the site, as well as another set of islands to the south, were searched several times without finding any additional colonies (Fenner, 2001).

The reproductive mode for this species has also not been studied. Because of their relationship with symbiotic zooxanthellae, *S. glynni* need to live in shallow water to be exposed to light the symbiotic algae use to photsynthetically fix carbon.

Only five colonies of *S. glynni* have ever been found. All were found by Budd and Guzmán (1994) when they discovered the species in 1992. All five colonies occurred within a small area of less than 10 m^2, with each colony within 1 m of another (Budd and Guzmán, 1994). Each colony was no more than 20 cm^2 in size. One colony was sacrificed in order to provide material for the species' description. During the 1997–98 El Niño event, the four surviving colonies started to deteriorate, displaying signs of bleaching and tissue loss. Due to their unhealthy state, the four colonies were moved to Smithsonian Tropical Research Institute (STRI) aquaria in Panama City, Panama, where they remain to this day (Guzmán and Edgar, 2008; Hector Guzmán, STRI, personal communication, 2013). According to Guzmán (personal communication, 2013) the colonies were fragmented to increase the number of specimens, but their growth rate has been very slow, and some fragments did not survive. From the original colonies, only one survives, with less than 4 cm^2 of living tissue. Nine of the fragmented colonies also survive in the lab and all are less than 9 cm^2 in area (Guzmán, personal communication, 2013). No known colonies exist in the wild; however, there is a possibility that it still exists elsewhere in the wild and is yet undiscovered (Guzmán and Edgar, 2008). There are no plans to re-introduce the species, as existing colonies are too small to survive, though three of the fragments are being considered for cryopreservation, which would further reduce the population size (Guzmán, personal communication, 2013).

Species Description of Tubastraea floreana

Tubastraea floreana was first described by Wells (1982). It is an azooxanthellate species, which means it lacks the symbiotic photosynthetic zooxanthellae that most scleractinians have. It has a bright pink color while alive, but turns deep red-black when dead out of water. Corallites in the species are closely spaced (Cairns, 1991) and about 4–6 mm in size (Wells, 1983).

Tubastraea floreana is endemic to a few sites on a number of islands in the Galapagos Islands chain. It is mostly found in cryptic habitats, including on the ceilings of caves, and on ledges and rock overhangs (Hickman *et al.,* 2007). It has been reported to occur at depths of 2 to 46 m (Hickman *et al.,* 2007).

The reproductive mode of this species has not been studied, but other *Tubastraea* species reproduce asexually. Other *Tubastraea* species are invasive and productive (Riul *et al.*, 2013), so *T. floreana* is also likely to be moderately productive.

According to Hickman *et al.* (2007), prior to the 1982–83 El Niño Southern Oscillation (ENSO) this species was known from six sites on four islands in the Galapagos. Since the 1982–83 ENSO, specimens have only been observed at two sites. At one of these two sites, the species has not been seen since 2001, leaving only a single confirmed site with living specimens (Hickman *et al.,* 2007). Recent reports indicate the species is still present in at least one site (Stuart Banks, Charles Darwin Foundation, personal communication, 2013). We know of no other published information on distribution or abundance for this species.

Summary of Factors Affecting the Three Species of Coral

Next we consider whether any one or a combination of the threat factors specified in section 4(a)(1) of the ESA are contributing to the extinction risk of these three corals. Available information does not indicate that overutilization is an operative threat for these species; therefore, we do not discuss this factor further here. We discuss each of the remaining four factors and their

interaction in turn below, with species-specific information following a general discussion relevant to all of the species. A full review of all of the ESA section 4(a)(1) threat factors can be found in Meadows (2014b) and our final rule listing 20 corals (20-coral listing rule) under the ESA (79 FR 53851; September 10, 2014), which provides a general global summary of threats facing corals. Our 20-coral listing rule identified ocean warming, ocean acidification, sea-level rise, disease, sedimentation, nutrient enrichment, and fishing as the major global threats to coral reefs. The information about these threats and the species' responses to these threats is described in the 20-coral listing rule and incorporated herein by reference. Species-specific information regarding applicability of these threats to the three species considered here is discussed below, where available. The extent to which the risks discussed in the 20-coral listing rule are similar to the risks to these three corals is discussed for each species.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat modification from climate change is a potential threat to all three species of corals (79 FR 53851; September 10, 2014). Coral bleaching occurs when the photosynthetic zooxanthellae symbionts of corals are damaged by light at higher than normal temperatures. The resulting damage leads to the expulsion of these important organisms from the coral host, depriving the host of the nutrients and energy provided by the zooxanthellae. While corals can survive mild to moderate bleaching, repeated, severe, or prolonged bleaching can lead to colony mortality. Bleaching events have been increasing both in intensity and geographic extent due to worldwide anthropogenic climate change (Hoegh-Guldberg, 2006; Eakin *et al.,* 2009). Certain genera and growth forms, particularly branched species, are more sensitive to bleaching than others (Wooldridge, 2013). Many corals are physiologically optimized to their local long-term seasonal variations in temperatures and an increase of only 1–2 °C above the normal local seasonal maximum can induce bleaching (Brainard *et al.,* 2011; Logan *et al.,* 2013). The United States NOAA Coral Reef Watch satellite bleaching database shows that the range of all three species occurs in areas that frequently have bleaching alerts, with alerts being more frequent and severe in the ranges of *S. glynni* and *T. floreana,* than in the range of *C. noumeae.*

Ocean acidification threatens to slow or halt coral growth and reef building entirely if the pH of the ocean becomes too low for corals to form their calcite skeletons, but tolerance appears to vary by species for those that have been studied (see Brainard *et al.,* 2011). In addition, bioerosion of reefs is likely to accelerate as coral skeletons become more fragile as a result of the effects of acidification, but effects are highly species-specific. Since the petitioned species are not reef-building, this effect is likely to be less significant.

Sea-level is also likely to rise as a result of climate change, but effects on corals are highly uncertain, owing to uncertainty in both the likely rate and extent of sea-level rise as well as the ability of corals generally (or the petitioned species specifically) to keep pace with the rise in sea level (Brainard *et al.,* 2011; 79 FR 53851; September 10, 2014).

While climate change effects are likely to be serious for many corals, Brainard *et al.* (2011) and our final rule listing 20 corals under the ESA (79 FR 53851; September 10, 2014) show that adaptation and acclimatization of corals to increased ocean temperatures are possible, that there is intra-genus and inter-species variation in susceptibility to bleaching, ocean acidification, and sedimentation, that at least some species have already expanded their range in response to climate change, and that not all species are seriously affected by ocean acidification. In addition, a more recent paper by Logan *et al.* (2013) examined the potential for coral adaptation and acclimatization to climate change and found that these processes can reduce the frequency of mass bleaching events in the future. Their modeling results suggest some adaptation or acclimatization may even have already occurred. A study by Wooldridge (2014) provides support that a suite of morphological and physiological traits relate to bleaching vulnerability. These include symbionts' type, metabolic rate, colony tissue thickness, skeletal growth form, mucus production rates, fluorescent pigment concentrations, and heterotrophic feeding capacity. According to Wooldridge (2014), these traits tend to correlate with the ends of the dichotomy of branching and plate corals with thin tissue layers versus massive and encrusting corals with thick tissue layers. The species under consideration here are not necessarily the most vulnerable, based on those traits (see below). Therefore, while climate change is generally considered a potential threat to these candidate corals, the likelihood and magnitude of threats from climate change are largely species-specific and must be examined on that basis to fully assess extinction risk (79 FR 53851; September 10, 2014).

In addition to the general global threats identified in our status review of 82 corals and final rule listing 20 corals under the ESA (Brainard *et al.,* 2011; 79 FR 53851; September 10, 2014), there are some species-specific threats for which we have detailed information at the scale of these species' ranges that are discussed below.

Cantharellus noumeae

Cantharellus noumeae is exposed to deforestation, urbanization, and mining activity that causes sedimentation and water pollution throughout its range in New Caledonia (Hoeksema *et al.,* 2008; David *et al.,* 2010; McKenna *et al.,* 2011). The mining activity is a result of nickel and smaller amounts of other metal mining (cobalt and chromium especially) on land throughout the main island of Grand Terre (McKenna *et al.,* 2011; Hoeksema, personal communication). Grand Terre holds 25 percent of the world's known nickel deposits (McKenna *et al.,* 2011). Nickel mining started there in the 1870s. Currently, most mining is done by open-cast strip mining, which has caused deforestation and increased erosion and runoff of sediments leading to varying degrees of sedimentation and light attenuation throughout the lagoon of Grand Terre, including in areas in and adjacent to the species' range (Ouillon *et al.,* 2010). Labrosse *et al.* (2000) estimate that 300 million m^3 of soil has been displaced since the beginning of mining activities. Mines are located across the country, including the large new Goro complex, which includes mines, processing facilities, and a port. The complex began production in late 2010 and is very near the most abundant population of *C. noumeae.* The Goro complex has already had three incidents affecting the environment, involving spills or releases of sulfuric acid solutions used in the processing of the nickel ore (Sulfuric Acid on the Web, 2013). Runoff of heavy metals from the mining operations has greatly increased concentrations of those metals in the marine environment (Fichez *et al.,* 2010). Nickel has been shown to affect fertilization success of four reef coral species in the families Acroporidae and Faviidae (Reichelt-Brushett and Harrison, 2005) and to affect settlement and cause mortality of larvae in the coral *Pocillopora damicornis* (Goh, 1991). Gilbert (personal communication, 2013) reports that the species is common in areas of high sedimentation and in the largest harbor, so it may be

tolerant to environmental stressors like sedimentation. The species may have the ability to actively remove sediments, as has been shown in some other fungiid corals (Bongaerts *et al.,* 2012), but this is uncertain. Mitigation measures for mining operations are required by legislation and include reef monitoring requirements (UNESCO, 2011; Gilbert, personal communication, 2013), but this monitoring is not at the species level (Gilbert, personal communication, 2013). It is unclear how effective the mitigation methods are, as sedimentation and pollution remain concerns (David *et al.,* 2010).

Despite the frequency of bleaching alerts, heat-related bleaching is apparently not a significant current threat in the range of *C. noumeae* in New Caledonia, as water temperatures there are relatively low (Hoeksema, Naturalis Biodiversity Center, personal communication, 2013) and the ReefBase coral bleaching database only reports events with low bleaching severity as the worst past events to ever occur there. We have found no species-specific information on the susceptibility of this species to bleaching or ocean acidification; however, its growth form suggests it is not among the most susceptible species (Wooldridge, 2014).

Anthropogenic eutrophication occurs in the range of the species near the capital of Noumea and is attributed mostly to inadequately treated sewage (Fichez *et al.,* 2010), although 19 aquaculture farms on the west coast and island-wide agriculture may also play roles (David *et al.,* 2010). Storm events and flooding have also recently occurred in the range of the species (EMR, 2013), and there is concern that climate change may make such events more frequent in New Caledonia (Gilbert, personal communication, 2013).

The biggest threats to New Guinea's coral reef resources include sedimentation and pollution from inland sources (*e.g.,* forest clearance, sewage, and erosion), climate change, and dynamite fishing (Burke et al., 2011; PNG, 2009; PNG, 2012). There is little specific data on these threats in New Guinea in the above references.

Siderastrea glynni

Should *S. glynni* ever be restored to the wild, it faces considerable habitat degradation threats from coastal development, oil production, sedimentation, eutrophication and other pollution, and increased transportation activities in the Panama City area, the Gulf of Panama, and the enlarged Panama Canal, which is due to open in 2016 (Mate, 2003; Guzmán and Edgar, 2008). Almost continuous dredging and release of oil-based compounds (bunker oil, diesel, gasoline, etc.) that are spilled from nearby port facilities and commercial vessels anchored near the species' natural range are other reasons why it was decided to transfer and then keep in captivity the remaining known colonies (Guzman, personal communication, 2013). ''During the 1997–98 ENSO event, the four known colonies of *S. glynni* began to deteriorate, displaying bleaching and tissue loss'' (Guzmán and Edgar, 2008). This suggests this species is vulnerable to increased ocean temperatures, though there is no specific research on this point. As discussed above, the area of the species' range is subject to a high frequency of bleaching warnings. We have found no species-specific information on the susceptibility of this species to ocean acidification.

Tubastraea floreana

For *T. floreana,* there is a lack of information on thermal tolerances, but ''the dramatic reduction in its distribution immediately after the 1982–83 [ENSO] event suggests that this mortality resulted from the event'' (Hickman *et al.,* 2007). This is true despite the fact that this species is azooxanthellate, suggesting that other mechanisms besides loss of calorie subsidy from symbionts are involved. Edgar *et al.* (2010) document a series of drastic ecosystem changes in the Galapagos following the 1982–83 ENSO event, including dramatic declines in dissolved nutrients and phytoplankton productivity, leading to declines across the food chain and resulting in heavily grazed reefs with crustose coralline algae (''urchin barrens'') replacing former macroalgal and coral habitats. A total of 95–99 percent of reef coral cover was lost from the Galapagos between 1983 and 1985 (Edgar *et al.,* 2010). All known coral reefs based on calcareous frameworks died and subsequently disintegrated to rubble and sand (Glynn, 1994). These changes led to large decreases in biodiversity. The urchin *Eucidaris galapagensis* now appears to be present in sufficient numbers to prevent re-establishment of coral and macroalgal habitat, thereby facilitating a regime shift in local benthic habitats (Edgar *et al.,* 2010). Moreover, the Galapagos Islands sit near the center of the most intense El Niño events in the region (Glynn and Ault, 2000) and are regularly included in bleaching threat warnings issued by NOAA (see above). Therefore, future ENSO events and inhibition of recruitment are likely to remain threats to *T. floreana.* We have found no species-specific information on the susceptibility of this species to ocean acidification.

Disease and Predation

Coral disease has been linked to the effects of climate change (see Brainard *et al.,* 2011), especially indirectly as a synergistic effect, as climate change and other threats potentially increase stress on corals, making them more susceptible to disease. Coral diseases also appear to be increasing worldwide (Roessig *et al.,* 2004). Nevertheless, susceptibility of coral species to disease is highly species-specific and no generalizations can be made. We found no species-specific information on disease in *C. noumeae* or *T. floreana.* Black-band, dark spot, and white plague diseases in the Caribbean occur in *S. siderea,* which is closely related to *S. glynni* (Sekar *et al.,* 2008; Brandt and McManus, 2009; Cardenas *et al.,* 2012), suggesting *S. glynni* may be susceptible to similar coral diseases, but we have no solid information.

With respect to predation, we found no information on predation threats to *S. glynni* or *T. floreana.* For *C. noumeae,* one potential predation threat is *Acanthaster planci* (crown-of-thorns starfish). *Acanthaster planci* does not appear to be a major cause of coral mortality in New Caledonia (Adjeroud, 2012), but several remote reefs surveyed during the Global Reef Expedition in November 2013 on the outer-slope of Guilbert's atolls showed evidence of past outbreaks (LOF, 2013).

Inadequacy of Existing Regulatory Mechanisms

The petitioners discussed regulation of trade in corals under CITES as a threat to these species. All of the species considered in this petition were listed in Appendix II of CITES in 1989, when all scleractinian corals were listed. While only some scleractinians were in trade at the time, the 1989 listing rationale for including all scleractinians in Appendix II was because of identification difficulties where non-traded species resemble species in trade. According to Article II of CITES, species listed on Appendix II are those that are ''not necessarily now threatened with extinction but may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.'' Based on the CITES definitions and standards for listing species on Appendix II, the species' listing on Appendix II is not itself an inherent indication that these species may now warrant threatened or endangered status under the ESA. The

significance of any threat from international trade would depend on the amount of international trade relative to the population size of the species, as well as any other factors related to the trade, such as habitat damage caused in the collecting process, or synergistic effects of other threats. We have no information any of these three species is traded internationally.

Because each of the species considered herein exists in small ranges that do not overlap with each other, and they are not otherwise managed or regulated under any other common international regimes, additional discussion of this factor is left for the species-specific entries for this section, below.

Cantharellus noumeae

Since the Organic Law (No. 99–209) on March 19, 1999, New Caledonia has been recognized as an ''Overseas Country'' of France. This status gives New Caledonia extensive autonomy with respect to France. In particular, the national laws in force within France are no longer applicable to New Caledonia, and New Caledonia now manages the ocean resources of its Exclusive Economic Zone. The territorial sea and the maritime public domain (coastal terrestrial and nearshore aquatic zone originating under French colonial law) depend on management from New Caledonia's three provinces (David *et al.,* 2010). In the two provinces where *C. noumeae* occurs, collection of live corals (and other marine resources) is restricted to scientists and licensed fishers who can only collect for a domestic market.

The range of *C. noumeae* is included in the United Nations Education, Scientific and Cultural Organization (UNESCO) World Heritage Site designation for the ''Lagoons of New Caledonia'' site, specifically within the South Grand Lagoon area. The World Heritage Site implementation is supported by specific legislation on fisheries, land and water use planning, urban development, and mining (Morris and Mackay, 2008). A wide monitoring program of the heritage site all around New Caledonia was created (Andréfouët 2008), but this suffers from a lack of sampling at a species level (Gilbert, personal communication, 2013). In 2011, the World Heritage Committee of UNESCO (the organizing body for World Heritage Sites) issued Decision 35Com 7B.22, which expressed concern regarding permits granted to the mining company GEOVIC to explore for cobalt in mineral sands in areas adjacent to the site and near the range of *C. noumeae.* The committee requested that New Caledonia submit Environmental Impact Assessments for the proposed exploration and possible exploitation of cobalt sands to the World Heritage Centre. We have no evidence this has occurred. The New Caledonian Mining Code prescribes mitigation measures to mitigate the impacts of mining activities (see above), and abandoned mines are being restored using indigenous plant species (UNESCO, 2011).

In Papua New Guinea, there is a variety of legislation to protect biodiversity and habitat, including a mandate to ensure marine resource sustainability, and a plan of action directed at coral reef conservation (PNG, 2009). However, as noted above, threats remain. Resources and capacity may not be adequate to ensure full implementation of the laws and plan (PNG, 2009; PNG, 2012).

Overall, we do not believe that the threat to *C. noumeae* from habitat modification, destruction, and pollution is adequately addressed or mitigated by existing regulatory mechanisms.

Siderastrea glynni

A national law in Panama prohibits coral extraction or mining (Guzmán, 2003), but enforcement is weak and the law may not fully protect rare species (Guzmán, personal communication, 2013). The range of *S. glynni* is adjacent to the Bay of Panama, which is designated an internationally important wetland under the Ramsar Convention and contains extensive mangrove beds that are critical nursery grounds for many marine species. The Bay is a protected Wildlife Refuge under Panamanian law. However, developers seek to open the area for tourism, and Panamanian authorities have requested a reduction of the Ramsar area of the bay (AIDA, 2013). We were not able to find any other species-specific information on this threat. Based on the available information, it is not clear that existing regulatory mechanisms would be adequate to protect *S. glynni,* should it be reintroduced into the wild or found in additional locations.

Tubastraea floreana

The Galápagos Marine Reserve was established in 1986 and expanded to its current size around all the islands in 1998. The reserve has a zoning plan with both limited and multiple use zones. Rules prohibit removing or disturbing any plant, animal, or remains of such, or other natural objects. *Tubastraea floreana* also occurs inside the Galapagos Island World Heritage Site (expanded to include Galapagos Marine Reserve areas in 2001) and the Galápagos Island Man and Biosphere Reserve (1984), both designations of UNESCO. The area was also designated a Galápagos Archipelago Particularly Sensitive Area in 2005. This is a designation by the International Maritime Organization (IMO) that recognizes the area as having ecological, socio-economic, or scientific attributes that make the area vulnerable to damage by international shipping activities. Based on this designation, the IMO instituted special navigation rules in the area. In addition, Ecuador's ''Ley de Gestion Ambiental'' (Law of Environmental Management) establishes principles and directives for environmental management, land-use planning, zoning, sustainable use, and natural heritage conservation. Ecuador's fisheries law states that no harm may be caused to areas that are declared protected, with corals included under those protections (MCA Toolkit, 2013). While the above laws and protected area designations provide a great deal of protection for resources in the area in principal, in practice, illegal activities and incomplete and difficult enforcement, as discussed in the status review report (Meadows, 2014), could threaten *T. floreana.* Moreover, the threats from climate change and ENSO events are outside the scope of these protections.

Other Natural or Manmade Factors Affecting Their Continued Existence

The range of *C. noumeae* in New Caledonia is exposed to eight tropical storms per year on average (David *et al.,* 2010). Specific effects of storms on this species are not documented, but the petitioner submitted an undated Web page that claims Cyclone Erica destroyed between 10 and 80 percent of live coral in New Caledonia in 2003 (EDGE, Undated; Guillemot *et al.,* 2010). We were not able to find any other species-specific information available regarding this threat category for *C. noumeae.* Based on this information, we consider tropical storms an additional potential natural threat to the species, for which we seek additional information (see below).

For *S. glynni* and *T. floreana,* both species have such a small number of colonies, they are susceptible to all of the problems of species with low genetic diversity and population size, including inbreeding depression, population bottlenecks, Allee effects, and density-independent mortality, among others.

Extinction Risk

The extinction risk analyses of Meadows (2014) found all three species to be at either a moderately high or high

risk of extinction. The extinction risk for *C. noumeae* was found to be moderately high, based on the species' small, restricted range, likely low growth rate and genetic diversity, and potential threats from development, water pollution, possibly sedimentation at some level, and potential illegal activities, mitigated by consideration of potential resilience to sedimentation threats and uncertainty regarding sensitivity to heavy metals. Based on the current information, this is the case whether or not the species' range includes New Guinea. The extinction risk for *S. glynni* was found to be high, due to the lack of known populations in the wild, a small captive population in a single location, likely low growth rates and genetic diversity, and potential increased threats from El Niño, climate change, disease, and other development and habitat degradation, should the species be reintroduced to Panama. The extinction risk for *T. floreana* was found to be high, based on its small, restricted range, documented declines, likely low levels of genetic diversity, and threats from El Niño, climate change, development, and illegal activities, mitigated by potential for moderate productivity.

After reviewing the best available scientific data and the extinction risk evaluations of the three species of coral, we concur with Meadows (2014) and conclude that the risk of extinction for all three species is currently high.

Protective Efforts

We evaluated conservation efforts we are aware of to protect and recover coral that are either underway but not yet shown to be effective, or are only planned. We were not able to find any information on conservation efforts specific to *C. noumeae* or *T. floreana,* or their habitat, that are not yet implemented or shown to be effective and that would potentially alter the extinction risk for the species. For *S. glynni,* we are aware that Dr. Hector Guzmán, who maintains the only surviving colonies of this species in captivity at the STRI laboratories, is planning to cryopreserve some specimens to provide an additional means to recover the species and preserve its genetic information. The certainty that this effort will be implemented is unclear. Further, the effectiveness of a cryopreservation effort for species recovery is largely unknown, and thus it is impossible to determine whether this effort will be effective in conserving or improving the status of this species. We are thus not able to conclude that any current conservation efforts would alter the extinction risk for any of these three species. We seek additional information on other conservation efforts in our public comment process (see below).

Proposed Determination

Based on the best available scientific and commercial information as presented in the status report and this finding, we find that all three species of coral are in danger of extinction throughout all of their ranges. We assessed the ESA section 4(a)(1) factors and conclude that *Cantharellus noumeae, Siderastrea glynni,* and *Tubastraea floreana* all face ongoing threats from habitat alteration, small ranges and/or population sizes, and the inadequacy of existing regulatory mechanisms throughout their ranges. *C. noumeae* also faces risks from pollution and *S. glynni* may be at risk from disease. We therefore propose to list all three species as endangered.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)); concurrent designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); Federal agency requirements to consult with NMFS under section 7 of the ESA to ensure their actions do not jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); and prohibitions on taking (16 U.S.C. 1538). Recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals. The main effects of the proposed endangered listings are prohibitions on take, including export and import.

Identifying Section 7 Conference and Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Section 7(a)(4) (16 U.S.C. 1536(a)(4)) of the ESA and NMFS/USFWS regulations also require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing, or that result in the destruction or adverse modification of proposed critical habitat of those species. It is unlikely that the listing of these species under the ESA will increase the number of section 7 consultations, because these species occur outside of the United States and are unlikely to be affected by Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12 (h)).

The best available scientific and commercial data as discussed above identify the geographical areas occupied by *Aipysurus fuscus, Cantharellus noumeae, Centrophorus harrissoni, Pterapogon kauderni, Siderastrea glynni,* and *Tubastraea floreana* as being entirely outside U.S. jurisdiction, so we cannot designate critical habitat for these species.

We can designate critical habitat in areas in the United States currently unoccupied by the species, if the area(s) are determined by the Secretary to be essential for the conservation of the species. Regulations at 50 CFR 424.12(e) specify that we shall designate as critical habitat areas outside the geographical range presently occupied by the species only when the designation limited to its present range would be inadequate to ensure the conservation of the species. The best available scientific and commercial information on these species does not indicate that U.S. waters provide any specific essential biological function for any of the species proposed for listing. Based on the best available information, we have not identified unoccupied area(s) in U.S. water that are currently essential to the conservation of any of the corals proposed for listing. Therefore, based on the available

information, we do not intend to designate critical habitat for *Aipysurus fuscus, Cantharellus noumeae, Centrophorus harrissoni, Pterapogon kauderni,* Siderastrea *glynni,* and *Tubastraea floreana.*

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA.

Because we are proposing to list all three corals and the dusky sea snake as endangered, all of the prohibitions of section 9(a)(1) of the ESA will apply to these species. These include prohibitions against the import, export, use in foreign commerce, or ''take'' of the species. These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. Take is defined as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species' range. Activities that we believe could result in a violation of section 9 prohibitions for these species include, but are not limited to, the following:

(1) Possessing, delivering, transporting, or shipping any individual or part (dead or alive) taken in violation of section 9(a)(1);

(2) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any individual or part, in the course of a commercial activity;

(3) Selling or offering for sale in interstate commerce any part, except antique articles at least 100 years old;

(4) Importing or exporting;

(5) Releasing captive animals into the wild without a permit issued under section 10(a)(1)(A). Although animals held non-commercially in captivity at the time of listing are exempt from the prohibitions of import and export, the individual animals are considered listed and afforded most of the protections of the ESA, including most importantly, the prohibition against injuring or killing. Release of a captive animal has the potential to injure or kill the animal. Of an even greater conservation concern, the release of a captive animal has the potential to affect wild populations through introduction of diseases or inappropriate genetic mixing;

(6) Harming captive animals by, among other things, injuring or killing a captive animal, through experimental or potentially injurious care or conducting research or sexual breeding activities on captive animals, outside the bounds of normal animal husbandry practices. Captive sexual breeding of corals is considered potentially injurious. Furthermore, the production of coral progeny has conservation implications (both positive and negative) for wild populations. Experimental or potentially injurious care or procedures and research or sexual breeding activities of corals or dusky sea snakes may, depending on the circumstances, be authorized under an ESA 10(a)(1)(A) permit for scientific research or the enhancement of the propagation or survival of the species.

Identification of Those Activities That Would Not Constitute a Violation of Section 9 of the ESA

We will identify, to the extent known at the time of the final rule, specific activities that will not be considered likely to result in a violation of section 9 of the ESA. Although not binding, we are considering the following actions, depending on the circumstances, as not being prohibited by ESA section 9:

(1) Take authorized by, and carried out in accordance with the terms and conditions of, an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species;

(2) Continued possession of parts that were in possession at the time of listing. Such parts may be non-commercially exported or imported; however the importer or exporter must be able to provide evidence to show that the parts meet the criteria of ESA section 9(b)(1) (*i.e.,* held in a controlled environment at the time of listing, in a non-commercial activity);

(3) Continued possession of live corals or sea snakes that were in captivity or in a controlled environment (*e.g.,* in aquaria) at the time of this listing, so long as the prohibitions under ESA section 9(a)(1) are not violated. Facilities must provide evidence that the animals were in captivity or in a controlled environment prior to listing. We suggest such facilities submit information to us on the animals in their possession (*e.g.,* size, age, description of animals, and the source and date of acquisition) to establish their claim of possession (see **FOR FURTHER INFORMATION CONTACT**);

(4) Provision of care for live corals or sea snakes that were in captivity at the time of listing. These individuals are still protected under the ESA and may not be killed or injured, or otherwise harmed, and, therefore, must receive proper care. Normal care of captive animals necessarily entails handling or other manipulation of the animals, and we do not consider such activities to constitute take or harassment of the animals so long as adequate care, including veterinary care, when such practices, procedures, or provisions are not likely to result in injury, is provided; and

(5) Any interstate and foreign commerce trade of animals already in captivity. Section 11(f) of the ESA gives NMFS authority to promulgate regulations that may be appropriate to enforce the ESA. NMFS may promulgate future regulations to regulate trade or holding of these species (if any), if necessary. NMFS will provide the public with the opportunity to comment on future proposed regulations.

Protective Regulations Under Section 4(d) of the ESA

We are proposing to list *Pterapogon kauderni,* and *Centrophorus harrissoni* as threatened species. In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether, and to what extent, to extend the section 9(a) ''take'' prohibitions to the species, and authorizes us to issue regulations necessary and advisable for the conservation of the species. Thus, we have flexibility under section 4(d) to tailor protective regulations, taking into account the effectiveness of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. We will consider potential protective regulations pursuant to section 4(d) for the proposed threatened species. For example, we may consider future regulations on trade of wild-caught Banggai cardinalfish (see number 7 below). We seek public comment on potential 4(d) protective regulations (see below).

Public Comments Solicited

To ensure that any final action resulting from this proposed rule to list six species will be as accurate and effective as possible, we are soliciting comments and information from the public, other concerned governmental

agencies, the scientific community, industry, and any other interested parties on information in the status review and proposed rule. Comments are encouraged on these proposals (See **DATES** and **ADDRESSES**). We must base our final determination on the best available scientific and commercial information when making listing determinations. We cannot, for example, consider the economic effects of a listing determination. Final promulgation of any regulation(s) on these species' listing proposals will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal or result in a withdrawal of this listing proposal. We particularly seek:

(1) Information concerning the threats to any of the six species proposed for listing;

(2) Taxonomic information on any of these species;

(3) Biological information (life history, genetics, population connectivity, etc.) on any of these species;

(4) Efforts being made to protect any of these species throughout their current ranges;

(5) Information on the commercial trade of any of these species;

(6) Historical and current distribution and abundance and trends for any of these species; and

(7) Information relevant to potential ESA section 4(d) protective regulations for any of the proposed threatened species, especially the application, if any, of the ESA section 9 prohibitions on import, take, possession, receipt, and sale of the Banggai cardinalfish which is currently in international trade.

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.

Role of Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing a minimum peer review standard. Similarly, a joint NMFS/FWS policy (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from qualified specialists, concurrent with the public comment period. The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. We solicited peer review comments on each of the status review reports, including from: four scientists with expertise on sea snakes or the dusky sea snake specifically, five familiar with the Banggai cardinalfish, five familiar with Harrisson's dogfish, and ten scientists familiar with corals. For these species, we received comments from the scientists, and their comments are incorporated into the draft status review reports for each species and this 12-month finding.

Proposed Revisions to the NMFS Lists

We propose to revise and add table subheadings to accommodate the proposed listings in our lists of threatened and endangered species at 50 CFR 223.102 and 50 CFR 224.101, respectively. We propose to revise the subheading of ''Sea Turtles'' in both tables by changing the subheading to ''Reptiles.'' This new subheading will encompass all currently listed sea turtles as well as other marine reptiles like the dusky sea snake. In addition, we propose to add the subheading ''Corals'' to our table at 50 CFR 224.101. This subheading has already been added to our table at 50 CFR 223.102 in a previous rulemaking (79 FR 20802; April 14, 2014). These revisions and additions are not substantive changes, but having these headings will help the public identify and locate species of interest in a more efficient manner.

References

A complete list of the references used in this proposed rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA) (See NOAA Administrative Order 216–6).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, this proposed rule will be given to the relevant governmental agencies in the countries in which the species occurs, and they will be invited to comment. We will confer with the U.S. Department of State to ensure appropriate notice is given to foreign nations within the range of all three species. As the process continues, we intend to continue engaging in informal and formal contacts with the U.S. State Department, giving careful consideration to all written and oral comments received.

List of Subjects in 50 CFR Parts 223 and 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Dated: December 8, 2014.

Samuel D. Rauch, III.

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

For the reasons set out in the preamble, 50 CFR parts 223 and 224 are proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by:

■ A. Revising the table subheading of ''Sea Turtles [2]'' to ''Reptiles [2]''; and

■ B. Adding new entries for two species in alphabetical order under the ''Fishes'' table subheading to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) The threatened species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
REPTILES [2]					
*	*	*	*	*	*
FISHES					
Cardinalfish, Banggai	*Pterapogon kauderni*	Entire species	*Insert **Federal Register** citation and date when published as a final rule*].	NA	NA
*	*	*	*	*	*
Shark, Harrisson's dogfish	*Centrophorus harrissoni*	Entire species	*Insert **Federal Register** citation and date when published as a final rule*].	NA	NA

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).
[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. In § 224.101, paragraph (h), amend the table by:

■ A. Revising the table subheading of ''Sea Turtles [2]'' to ''Reptiles [2]'';
■ B. Adding an entry for the dusky sea snake in alphabetical order under the new ''Reptiles [2]'' table subheading;
■ C. Adding a ''Corals'' table subheading to follow the ''Molluscs'' table subheading; and
■ D. Adding entries for three species of coral in alphabetical order by scientific name under the ''Corals'' table subheading to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
REPTILES [2]					
Sea snake, dusky	*Aipysurus fuscus*	Entire species	*Insert **Federal Register** citation and date when published as a final rule*].	NA	NA
*	*	*	*	*	*
MOLLUSCS					
*	*	*	*	*	*
CORALS					
Coral, [no common name]	*Cantharellus noumeae*	Entire species	*Insert **Federal Register** citation and date when published as a final rule*].	NA	NA
Coral, [no common name]	*Siderastrea glynni*	Entire species	*Insert **Federal Register** citation and date when published as a final rule*].	NA	NA
Coral, [no common name]	*Tubastraea floreana*	Entire species	*Insert **Federal Register** citation and date when published as a final rule*].	NA	NA

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).
[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

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[FR Doc. 2014–29203 Filed 12–15–14; 8:45 am]

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Part V

Agency for International Development

48 CFR Parts 701, 702, 703, et al.
Incorporate Various Administrative Changes and Internal Policies in to the USAID Acquisition Regulation (AIDAR); Final Rule

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 702, 703, 704, 705, 706, 707, 709, 711, 713, 714, 715, 716, 717, 719, 722, 725, 726, 727, 728, 731, 732, 733, 736, 742, 745, 747, 750 and 752

RIN 0412–AA76

Incorporate Various Administrative Changes and Internal Policies in to the USAID Acquisition Regulation (AIDAR)

AGENCY: U.S. Agency for International Development.

ACTION: Direct final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is amending its Agency for International Development Acquisition Regulation (AIDAR) to maintain consistency with the Federal Acquisition Regulation (FAR), incorporate long-standing USAID internal policy into the regulation, remove obsolete material and make editorial amendments to better clarify the regulation.

DATES: This rule is effective March 16, 2015 without further action, unless adverse comments are received by January 15, 2015. If adverse comments are received, USAID will publish a timely withdrawal of those portion(s) of the rule in the **Federal Register**. Submit comments on or before January 15, 2015.

ADDRESSES: Address all comments concerning this notice to Marcelle J. Wijesinghe, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867, SA–44, Washington, DC 20523–2052. Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Email: Submit electronic comments to both *mwijesinghe@usaid.gov* and *lbond@usaid.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

Mail: USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867, SA–44, Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–567–4753 or Email: *lbond@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the **ADDRESSES** section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Comments submitted by email must be included in the text of the email or attached as a PDF file. Please avoid using special characters and any form of encryption. Please note, however, that because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal.

All comments will be made available for public review without change, including any personal information provided, from three workdays after receipt to finalization of action at *http://www.regulations.gov.* Do not submit information that you consider to be Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID is publishing this revision as a direct final rule as the Agency views this as a conforming and administrative amendment and does not anticipate any adverse comments. This rule will be effective on the date specified in the **DATES** section above without further notice unless adverse comment(s) are received by the date specified in the **DATES** section above.

USAID will only address comments that explain why the rule would be inappropriate, ineffective or unacceptable without a change. Comments that are insubstantial or outside the scope of the rule will not be considered.

If adverse comments are received on the direct final rule, USAID will publish a timely partial withdrawal in the **Federal Register** informing the public what sections of the rule will not take effect. Any portions of the final rule for which no adverse or critical comment is received will become final after the designated period.

Additionally, USAID is publishing a separate document in the ''Proposed Rules'' section of this **Federal Register** that will serve as the proposal to approve these AIDAR revisions if adverse comments are received. USAID will address all public comments in a subsequent final rule based on the proposed rule. USAID will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

B. Background

This final rule is part of the AIDAR rewrite initiative, in which all parts of the regulation are being reviewed and updated to: Align with the new statutes and legislation, include previously implemented policy, update titles and acronyms and delete outdated information and obsolete forms. This rule incorporates updates to the entire AIDAR.

The following changes are implemented by this final rule:

- Parenthetical reference (48 CFR) is added to (48 CFR) FAR and (48 CFR) AIDAR citations.
- The term ''cognizant technical officer(s)'' and acronym ''CTO(s)'' are replaced with ''contracting officer's representative(s)'' and ''COR(s)'' throughout AIDAR to align with the FAR definitions under FAR 2.101(b).
- The following nomenclature changes include office name and acronym changes throughout (48 CFR) AIDAR, reflecting Agency reorganizations over the recent years:

a. ''Office of Administrative Services'' is renamed to ''The Bureau for Management, Office of Management Services (M/MS)'';

b. ''Director, Office of Acquisition and Assistance (M/OAA Director)'' is replaced with ''Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director);

c. ''Office of Acquisition and Assistance, Policy Division (M/OAA/POL)'' or ''Office of Acquisition and Assistance, Policy Division (M/OAA/P)'' is replaced with ''Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P);

d. ''Director, the Office of U.S. Foreign Disaster Assistance'' is renamed to ''Director, Bureau for Democracy, Conflict and Humanitarian Assistance, Office of U.S. Foreign Disaster Assistance (DCHA/OFDA)'';

e. Director, Center for Human Capacity Development (G/HCD) is renamed to ''Director, Bureau for Economic Growth, Education and Environment, Office of Education (E3/ED)'';

f. The acronym ''SDB'' for the Office of Small and Disadvantaged Business Utilization is replaced with ''OSDBU'';

g. ''Overhead and Special Cost and Contract Close-Out Branch, Office of Acquisition and Assistance'' is renamed to ''Bureau for Management, Office of Acquisition and Assistance, Cost Audit Support Division, Overhead and Special Cost and Contract Close-Out Branch (M/OAA/CAS/OCC)'';

h. ''Financial Management Office, Cash Management and Payment Division'' and its acronym ''FM/CMP'' are replaced with ''Bureau for Management, Office of the Chief Financial Officer, Cash Management

and Payment Division'' and ''M/CFO/CMP'' ;

i. ''Office of Acquisition and Assistance, Evaluation Division (M/OAA/E)'' is renamed to ''Bureau for Management, Office of Acquisition and Assistance, Evaluation Division (M/OAA/E)'';

j. ''Office of Acquisition and Assistance, Transportation Division (M/OAA/T)'' is renamed to ''Bureau for Management, Office of Acquisition and Assistance, Transportation Division (M/OAA/T);

k. The Acronym ''M/OP director'' is replaced with ''M/OAA Director'';

• The following sections are revised to correct reference to their legal citation or a FAR/AIDAR subpart: 701.601, 703.104–10.1, 706.302–70(a)(1), 706.302–70(c)(4), 714.406–3, 714.406–4, 715.370–1(d)(4), 722.805–70(a) and (b), 747.507, 750.7109–2, 750.7109–3,752.242–70 and 752.245–71;

• The following sections are redesignated to maintain consistency with the FAR: 701.105, 703.104–5, 703.104–10.1, 713.101, 714.406–3, 714.406–4, 717.700, 733.270–1, 745.106.

• Numerous errors and omissions have been identified in chapter 7 as published and are corrected in this rule, specifically in sections 701.601, 704.7004–2, 715.370–2, 715.602, 719–271–3, 733.103–73, 752.7003;

• Several sections are revised for clarity: 701.470, 701.602–1, 706.302–70, 715.305, 752.219–8;

• Specific references to sections within ADS chapters are replaced with ADS chapter numbers to avoid a future need to revise the AIDAR when these ADS chapters are updated;

• Office of Management and Budget approval of the information collections in the AIDAR, under the Paperwork Reduction Act is published in 701.106. The information requested by USAID, as listed in this section, is necessary to allow USAID to prudently administer public funds.

• Section 701.601(c)(3) is revised to include an increase in the contracting authority delegated to Mission Directors to sign personal services contracts in an amount not to exceed $1,000,000 and other contracts up to the simplified acquisition threshold, as defined in (48 CFR) FAR 2.101. This policy, first announced by an Agency General Policy Notice in 2005 and later implemented on an interim basis through the Acquisition and Assistance Policy Directive (AAPD) 11–02, is now incorporated into this rule without changes;

• For ease of use, all section numbers of the definitions in part 702 are deleted and the definitions are republished in alphabetical order. The following definitions are updated: Automated Directives System (ADS), contracting activity, head of agency, head of contracting activity, Third Country National (TCN). The definition of procuring activity was moved from 706.003 to 702.170;

• The USAID Consultant Registry Information System (ACRIS) was superseded by the Central Contractor Registration (CCR), pursuant to FAC 2001–16, October 1, 2003. Multiple references to the former system are being removed;

• Statutory authorities specific to USAID for contracting with disadvantaged enterprises, as contained in numerous appropriation acts between 1984 and 1995, have expired; and the provisions for use of these authorities in sections 705.202, 705.207, 706.302–5, 706.302–71, 719.272, 752.226–1, 752.226–2, 752.226–3 and subpart 726.70 are being removed and reserved upon the expiration of the contracts funded by said authorities;

• Section 706.303–1 is removed pursuant to the removal of its counterpart (48 CFR) FAR 6.303–1 requirement by FAC 2001–27, December 28, 2004.

• Section 706.501 is revised to reflect changes in the designation of the competition advocate resulting from the Agency's reorganization over the recent years.

• Information on USAID Automated Directive System Chapter 300, which covers Agency policies, required procedures, and internal guidance on planning of USAID direct acquisition awards is added to subpart 707.1;

• The authorities to suspend or debar a contractor, previously delegated to the Agency Procurement Executive have been re-delegated to the Senior Deputy Assistant Administrator, Bureau for Management.

• Outdated reference to NIH Contractor Performance System in sections 715.305 and 742.1502 is removed.

• Subpart 715.6 on unsolicited proposals is revised for clarity and conformity with the requirements in the FAR 15.406. The Agency point of contact information was also updated.

• With the addition of a new FAR subpart, 17.7 (77 FR 69722, Nov. 20, 2012), section 717.700 is redesignated.

• Section 52.219–8, Utilization of Small Business Concerns is provided with the necessary prescriptive language in the appropriate sections of the AIDAR and revised for clarity;

• Revisions to part 725, AIDAR clause at 752.225–70 and removal of clause at 752.225–71 reflect changes in 22 CFR part 228, Rules for Procurement of Commodities and Services Financed by USAID dated January 10, 2012;

• The payment clause at 752.232–7, prescribed in paragraph (b) of 732.111, was removed by AIDAC 2007–02, but its prescription in subpart 732.1 was inadvertently overlooked and is now removed;

• Subpart 732.4 is revised to reflect procedural changes due to the transfer of the LOC process to DHHS;

• Designation of the Civilian Board of Contract Appeals (CBCA) to hear and determine appeals under USAID contracts in part 733, Protests, Disputes and Appeals was mandated by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163. Subpart 733.27 is revised to reflect this change;

• The term ''strategic objective agreement'' wherever found is replaced by ''Development Objective Agreement (DOAG)'', pursuant to its revision in the Automated Directives System Chapter 200;

• Subpart 752.1 is added to allow contracting officers to incorporate (48 CFR) FAR and (48 CFR) AIDAR provisions and clauses by reference;

• The following Agency-specific clauses are re-organized to follow the clause format used throughout chapter 7 (clause #, title, prescription, clause title and date, clause text):

a. 752.204–2 Security Requirements;

b. 752.228–3 Worker's Compensation Insurance (Defense Base Act);

c. 752.228–7 Insurance—liability to Third Persons;

d. 752.228–9 Cargo Insurance;

e. 752.245–70 Government Property—USAID Reporting Requirements.

• New contract clause entitled ''Access to USAID Facilities and USAID's Information Systems'', previously called ''Personal Identity Verification of Contractor Personnel'' was implemented on an interim basis through ADS 302 Mandatory Reference, Special Provisions for Acquisition and is hereby formally implemented in the AIDAR without revision at 752.204–72. The clause supplements the FAR clause 52.204–9(a) and is mandatory for awards requiring contractor's routine physical access to USAID-controlled facilities or logical access to USAID's information systems. The clause describes policies and procedures for obtaining such access. The Agency believes that the transfer of the policy from the internal Agency policy into the AIDAR will have no impact on contractors;

• Contract clause 752.216–70, Award fee, is revised to remove reference to the disputes clause to conform to the

revision of (48 CFR) FAR 16.405–2(a), with respect to award fee determinations, as specified by FAC 97–15, December 27, 1999;

• Following the requirements in 731.205–71, contract clause 752.231–71 is revised to require contractors to include the substance of this clause in subcontracts that may entail salary supplement payments to host government employees;

• New contract clauses entitled ''Patent Reporting Procedures'' and ''Standards for Accessibility for the Disabled in USAID Construction Contracts'' were implemented on an interim basis through the Agency's *Contract Information Bulletin (CIB) 99–19*, Patent Rights and Reporting and ADS 302 Mandatory Reference, Special Provisions for Acquisition. The ''Patent Reporting Procedures'' clause supplements the FAR clause at 52.227–11, Patent Rights—Ownership by the Contractor, and requires contractors to report all inventions to the National Institutes of Health (NIH) EDISON Patent Reporting and Tracking system. The clause entitled ''Standards for Accessibility for the Disabled in USAID Construction Contracts'' is required for all USAID-funded contracts for construction or renovation and mandates that any new or renovation construction project funded by USAID provide access to people with disabilities. Both clauses are hereby formally implemented in the AIDAR with minor editorial revisions at 752.227–70 and 752.236–70 respectively. The Agency believes that the transfer of the clauses from the internal agency policy into the AIDAR will have no impact on contractors;

• Contract clauses 752.247–70, 752.7002, and 752.7015 are revised to conform to section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205), E.O. 12770, and ADS chapter 323, which implement the congressional designation of the metric system of measurement as the preferred system of weights and measures for United States trade and commerce;

• Pursuant to the revision of (48 CFR) FAR clause 52.047–64 (FAC 2001–13, dated March 18, 2003) Alternate 1 to the AIDAR clause 752.247–70 has been rendered redundant and is therefore removed;

• The contract clause 752.7005 is retitled ''Submission Requirements to the Development Clearinghouse'' and revised to bring it into conformity with the requirements of the Privacy Act of 1974 and Section 508 of the Rehabilitation Act of 1973. With the launch of the updated DEC Web site, contractors are directed to obtain detailed submission instructions from the Web site;

• Revisions to the AIDAR sections 731.205–46 and 752.7032 have been implemented on an interim basis through the Acquisition and Assistance Policy Directive (AAPD) 14–01 in April 2014 and are now incorporated into the AIDAR. The changes will allow contracting officers to delegate to the contracting officer's representative (COR) international travel approvals for all travel directly and identifiably funded by USAID under the contract;

• New contract clause entitled ''USAID Disability Policy'' was implemented on an interim basis through Acquisition and Assistance Policy Directive (AAPD) 04–17 and later incorporated into Agency policy at ADS 302 Mandatory Reference, Special Provisions for Acquisition. The clause requires that the contractors do not discriminate against people with disabilities and is hereby formally implemented in the AIDAR without revisions at 752.222–70. The Agency believes that the transfer of the clause from the internal policy into the AIDAR will have no impact on contractors.

C. Regulatory Planning and Review

This rule has been determined to be ''nonsignificant'' under the Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, is not subject to review. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The U.S. Agency for International Development certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions of this rule will not impose any costs on either small or large businesses; therefore, an Initial Regulatory Flexibility Analysis has not been performed.

List of Subjects in 48 CFR Chapter 7, Parts 701, 702, 703, 704, 705, 706, 707, 709, 711, 713, 714, 715, 716, 717, 719, 722, 725, 726, 727, 728, 731, 732, 733, 736, 742, 745, 747, 750 and 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR chapter 7 as set forth below:

Parts 701, 702, 703, 704, 705, 706, 707, 709, 711, 713, 714, 715, 716, 717, 719, 722, 725, 726, 727, 728, 731, 732, 733, 736, 742, 745, 747, 750 and 752

■ 1. The authority citation for 48 CFR chapter 7 parts 701, 702, 703, 704, 705, 706, 707, 709, 711, 713, 714, 715, 716, 717, 719, 722, 725, 726, 727, 728, 731, 732, 733, 736, 742, 745, 747, 750 and 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

CHAPTER 7—[AMENDED]

■ 2. Amend (48 CFR) chapter 7 as follows:

■ a. Remove the word ''FAR'' and add, in its place, the words ''(48 CFR) FAR'' each time it appears in the following sections:

i. 701.704;
ii. 704.7004–1;
iii. 702.270–1;
iv. 704.7004–3(a);
v. 706.302–70(c)(2) and (3);
vi. 709.503;
vii. 711.002–70 (a);
viii. 715.303–70(b)(3);
ix. 715.370–1(d)(3);
x. 715.370–2(d)(4);
xi. 716.303(c);
xii. 719.270(c)(2);
xiii. 719.271–1;
xiv. 719.273–3 (a), (b), and(c);
xv. 722.103–4;
xvi. 722.805–70(c)(1) and (3);
xvii. 725.170;
xviii. 725.403;
xix. 728.105–1(a);
xx. 728.307–2(c);
xxi. 728.309(a);
xxii. 728.313(a);
xxiii. 731.773;
xxiv. 733.101(a) and (b);
xxv. 733.103–70;
xxvi. 733.103–71(b);
xxvii. 733.103–72(b);
xxviii. 736.602–3(b)(9);
xxix. 736.602–5;
xxx. 750.7102;
xxxi. 752.202–1;
xxxii. 752.204–70(c);
xxxiii. 752.204–71(h) and 752.204–71 Alt I (h)(1);
xxxiv. 752.216–71(i) and 752.216–71 Alt 1 (i)(1);
xxxv. 752.229–70;
xxxvi. 752.242–70(a);
xxxvii. 752.245–70;
xxxviii. 752.7000; and
xxxix. 752.7018

■ b. Remove the word ''AIDAR'' and add, in its place, the words ''(48 CFR) AIDAR'' each time it appears in the following sections:

i. 704.7004–1(c);
ii. 706.302–70(b)(4) and (c)(3);
iii. 709.503;
iv. 715.370–1(a);
v. 719.271–6(a)(3);
vi. 719.273–11(a) and (b);
vii. 728.307–2(c);
viii. 728.309(a);

ix. 728.313(a);
x. 731.205–6(b) and (m);
xi. 731.371(b)(1) and (3);
xii. 731.372;
xiii. 731.373;
xiv. 731.772;
xv. 731.774;
xvi. 742.1502(b);
xvii. 747.507;
xviii. 752.200;
xix. 752.204–70(a) and (b)(2);
xx. 752.219–71 introductory text;
xxi. 752.228–3(b); and
xxii. 752.7000.

■ c. Remove the words ''Cognizant technical officer'' and add, in their place, the words ''contracting officer's representative'' each time they appear in the following sections:
i. 719.271–5;
ii. 722.805–70(f);
iii. 742.1170–1;
iv. 742.1170–3(b) and (c);
v. 742.1170–4(b);
vi. 752.7003(a); and
vii. 752.7035.

■ d. Remove the words ''Cognizant technical officers'' and add, in their place, the words ''Contracting officer's representatives'' each time they appear in the following sections:
i. 719.270(c)(1);
ii. 719.271–4; and
iii. 719.271–5 section heading.

■ e. Remove the words ''Contracting Officer'' and add, in their place, the words ''contracting officer'' each time they appear in the following sections:
i. 701.707;
ii. 715.303–70(b)(3);
iii. 719.273–11(a) and (b);
iv. 722.805–70(c)(1);
v. 731.205–71(c);
vi. 733.103–71(a);
vii. 733.103–72(b);
viii. 733.103–73(c);
ix. 736.602–2(c);
x. 752.204–70(b)(2);
xi. 752.209.71(a) and (b);
xii. 752.216–70(b);
xiii. 752.227–14(d)(2) and (3);
xiv. 752.228–70(a) and (b);
xv. 752.231–71(b);
xvi. 752.245–71(c)(2);
xvii. 752.7001;
xviii. 752.7002;
xix. 752.7003;
xx. 752.7007(b);
xxi. 752.7008(a) and (b);
xxii. 752.7009(d);
xxiii. 752.7011(c);
xxiv. 752.7025;
xxv. 752.7027(a)(1), (a)(2), and (f)(1)(iv);
xxvi. 752.7031(a)(3), (c), and (e);
xxvii. 752.7033 (b)(1) and (b)(2)(iii); and
xxviii. 752.7035.

■ f. Remove the word ''government'' and add, in its place, the word ''Government'' each time it appears in the following sections:
i. 701.106(b);
ii. 706.302–70(b)(5);
iii. 715.370–1(d)(2) and (3);
iv. 719.273–4(b)(3);
v. 727.404(g);
vi. 733.103–71(c); and
vii. 752.227–14(d)(3).

SUBCHAPTER A—GENERAL

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.1—Purpose, Authority, Issuance

■ 3. Redesignate 701.105 as 701.106 and amend newly redesignated 701.106 by:
■ a. Revising paragraph (a); and
■ b. Removing the last sentence of paragraph (c).

The revisions read as follows:

701.106 OMB approval under the Paperwork Reduction Act.

(a) The following information collection and record keeping requirements established by USAID have been approved by OMB and assigned an OMB control number as specified below:

(48 CFR) AIDAR segment	OMB control No.
752.219–8	0412–0520
752.245–70	0412–0520
752.245–71(c)(2)	0412–0520
752.247–70(c)	0412–0520
752.7001	0412–0520
752.7002(j)	0412–0520
752.7003	0412–0520
752.7004	0412–0520
752.7032	0412–0520

* * * * *

Subpart 701.3—U.S. Agency for International Development Acquisition Regulation

701.301 [Amended]

■ 4. Amend 701.301 by:
■ a. In the introductory sentence of paragraph (a), removing the words ''Director, Office of Acquisition and Assistance (''M/OAA Director'')'' and adding, in their place, the words ''Director, Bureau for Management, Office of Acquisition and Assistance (''M/OAA Director'');
■ b. In paragraph (a)(4), removing the words ''General counsel'' and adding, in their place, the words ''Office of the General Counsel''; and
■ c. In the second sentence of paragraph (b)(2), removing the words ''The Office of Administrative Services'' and adding, in their place, the words ''The Bureau for Management, Office of Management Services (M/MS)''.

■ 5. Amend 701.303 by:
■ a. In paragraph (b), removing the words ''FAR 1.1'' and add, in their place, the words ''FAR subpart 1.1''; and
■ b. Revising paragraph (c).

The revisions read as follows:

701.303 Publication and codification.

* * * * *

(c) Only the M/OAA Director has the authority to issue internal Agency guidance applicable to all Agency contracts. The heads of the various Agency contracting activities (see Subparts 701.6 and 702.170) may issue operating instructions and procedures consistent with the FAR, AIDAR, and other Agency regulations, policies, and procedures for application within their organizations. One copy of each such issuance must be forwarded to the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P). Insofar as possible, such material must be numerically keyed to the AIDAR.

Subpart 701.4—Deviations from the FAR or AIDAR

■ 6. Revise 701.402 to read as follows:

701.402 Policy.

It is USAID policy to approve deviations from the mandatory requirements of the FAR and AIDAR only if it is essential to effect necessary procurement actions and when special and exceptional circumstances make such deviation clearly in the best interest of the Government.

■ 7. Amend 701.470 by:
■ a. In paragraph (a)(3), removing the words ''Office of General Counsel'' and adding, in their place, the words ''Office of the General Counsel''; and
■ b. Revising paragraphs (a)(2), (b)(2), (b)(3)(i), (d), and (f)(1).

The revisions read as follows:

701.470 Procedures.

(a) * * *

(2) Requests for such deviations may be initiated by the responsible USAID contracting officer who must obtain clearance and approvals as may be required by the head of the contracting activity. Prior to submission of the deviation request to the head of the contracting activity for approval, the contracting officer must obtain written comments from the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), hereinafter referred to as ''M/OAA/P''. M/OAA/P will normally be allowed 10 working days prior to the submission of the deviation request to the head of the contracting activity to review the

request and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with M/OAA/P for a shorter review period. In addition to a copy of the deviation request, M/OAA/P must be furnished any background or historical data that will contribute to a more complete understanding of the deviation. The comments of M/OAA/P must be made a part of the deviation request file, which is forwarded to the head of the contracting activity.

* * * * *

(b) * * *

(2) Class deviations from the FAR will be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) (FAR 1.404) unless, in the judgment of the head of the contracting activity, after due consideration of the objective of uniformity, circumstances preclude such consultation. The head of the contracting activity must certify on the face of the deviation the reason for not coordinating with the C/CAAC. In such cases, M/OAA/P will be responsible for notifying the C/CAAC of the class deviation.

(3) * * *

(i) The request must be processed in the same manner as paragraph (a) of this section, except that M/OAA/P will be allowed 15 working days, prior to the submission of the deviation request to the head of the contracting activity, to effect the necessary coordination with the C/CAAC and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with M/OAA/P for a shorter review and coordination period. The comments of C/CAAC and M/OAA/P must be forwarded to the head of the contracting activity along with the deviation request and made a part of the deviation request file.

* * * * *

(d) *Register of deviations.* Separate registers must be maintained by the procuring activities of the deviations granted from the FAR and AIDAR. Each deviation must be recorded in its appropriate register and be assigned a control number as follows: For USAID Washington deviations the symbol of the procuring activity, or for overseas mission deviations the relevant geographic code; the abbreviation ''DEV''; the fiscal year; the type of deviation (from the FAR or AIDAR); the serial number [issued in consecutive order during each fiscal year] assigned to the particular deviation; and the suffix ''c'' if it is a class deviation (*e.g.,* M/OAA–DEV–FAR–14–1, M/OAA–DEV–FAR–14–2c, 123–DEV–AIDAR–14–1). The control number must be embodied in the document authorizing the deviation and must be cited in all references to the deviation.

* * * * *

(f) *Semiannual report of class deviations.* (1) USAID contracting officers must submit a semiannual report to M/OAA/P of all contract actions effected under class deviations to the FAR and AIDAR, which have been approved pursuant to paragraph (b) of this section.

* * * * *

Subpart 701.6—Career Development, Contracting Authority and Responsibilities

■ 8. Amend 701.601 by:

■ a. Revising the section heading;

■ b. In paragraph (b), removing the word ''government-wide'' and adding, in its place, the word ''Government-wide'';

■ c. In the last sentence of paragraph (b), removing the reference ''701–376–4'' and adding, in its place, the reference ''(48 CFR) AIDAR 701.601''; and

■ d. Revising paragraph (a)(1), the introductory text of paragraph (a)(2), the heading of paragraph (c)(1), and paragraphs (c)(2) and (3)

The revisions read as follows:

701.601 General.

(a)(1) Pursuant to the delegations in USAID's Automated Directives System (ADS) Chapter 103, the M/OAA Director is authorized to act as the head of the agency for all purposes described in the Federal Acquisition Regulation (FAR, 48 CFR chapter 1), except for the authority in (48 CFR) FAR 6.302–7(a)(2), 6.302–7(c)(1), 17.602(a), 19.201(c), 27.306(a), 27.306(b), and 30.201–5, or where the ''head of the agency'' authority is expressly not delegable under the FAR or AIDAR. Further, the M/OAA Director is responsible for implementing the procurement related aspects of the Foreign Assistance Act, Executive Order 11223, the Office of Federal Procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to USAID operations, including those authorities and responsibilities delegated to the Senior Procurement Executive as specified in USAID's internal delegations found in the ADS.

(2) The M/OAA Director has specific authority to:

* * * * *

(c) * * *

(1) *Director, the Bureau of Democracy, Conflict and Humanitarian Assistance, the Office of U.S. Foreign Disaster Assistance (DCHA/OFDA).* * * *

(2) *Director, Bureau for Economic Growth, Education and Environment, Office of Education (E3/ED).* Authority to execute simplified acquisitions up to $10,000. Unlimited authority for procuring participant training based on published catalog prices. May issue warrants for simplified acquisitions up to $10,000 to qualified individuals on his or her staff.

(3) *Overseas heads of contracting activities.* Authority to sign contracts where the cumulative amount of the contract, as amended, does not exceed $1,000,000 (or local currency equivalent) for personal services contracts; or the simplified acquisition threshold as defined in (48 CFR) FAR 2.101 (or local currency equivalent) for all other contracts. May issue warrants for simplified acquisitions up to $50,000 to qualified individuals on his or her staff.

■ 9. Revise 701.602–1 to read as follows:

701.602–1 Authority of contracting officers in resolving audit recommendations.

With the exception of termination settlements subject to part 749 of this chapter, Termination of Contracts, contracting officers have the authority to negotiate and enter into settlements with contractors for costs questioned under audit reports, or to issue a contracting officer's final decision pursuant to applicable dispute resolution procedures (in the event that questioned costs are not settled by negotiated agreement) in accordance with USAID's internal policy found in ADS Chapter 591. The negotiated settlement or final decision will be final, subject only to a contractor's appeal under the provisions of the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), or other procedures as applicable. Policies and procedures for resolving audit recommendations are in accordance with USAID's internal policies found in ADS Chapters 591 and 592.

■ 10. Revise the section heading for 701.603 to read as follows:

701.603 Selection, appointment, and termination of appointment of contracting officers.

* * * * *

■ 11. Revise the last sentence in 701.603–70 to read as follows:

701.603–70 Designation of contracting officers.

* * * In order to ensure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, USAID contracting officers must be U.S. citizen

direct-hire employees of the U.S. Government.

PART 702—DEFINITIONS OF WORDS AND TERMS

■ 12. Subpart 702.170 is revised to read as follows:

Subpart 702.170—Definitions

Sec.
702.170–1 Definitions.

Subpart 702.170—Definitions

702.170–1 Definitions.

A word or term, defined in this section, has the same meaning throughout the AIDAR.

Administrator means the Administrator or Deputy Administrator of the U.S. Agency for International Development.

Automated Directives System (ADS) sets forth the Agency's policies and essential procedures, as well as supplementary informational references. It contains six functional series, valid USAID Handbook chapters, a resource library, and a glossary. References to ''ADS'' throughout 48 CFR chapter 7 are references to the Automated Directives System. The entire ADS is accessible to the general public at the following USAID Internet address: *http://www.usaid.gov/policy/ads/.*

Contracting activities also referred to as ''procuring activities'' within USAID are:

(1) *The USAID/Washington activities.* The contracting activities located in Washington, DC are: The Bureau for Management, Office of Acquisition and Assistance (M/OAA); the Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Foreign Disaster Assistance (DCHA/OFDA); and the Bureau for Economic Growth, Education and Environment, Office of Education (E3/ED). Subject to the limitations in 701.601 of this chapter, the latter two contracting activities are responsible for procurements related to programs and activities for their areas. M/OAA is responsible for procurements that do not fall within the responsibility of other contracting activities, or that are otherwise assigned to it.

(2) *The overseas field contracting activities.* Each USAID Mission or post overseas is a contracting activity responsible for procurements related to its programs and activities, subject to the limitations in 701.601 of this chapter.

Cooperating country means a foreign country in which there is a program or activity administered by USAID.

Cooperating country national (CCN) means an individual who is a cooperating country citizen or a non-cooperating country citizen lawfully admitted for permanent residence in the cooperating country.

Executive agency includes the U.S. Agency for International Development (USAID) and its predecessor agencies, including the International Cooperation Administration.

Foreign Assistance Act means the Foreign Assistance Act of 1961, as amended (22 U.S.C., Chapter 32).

Government, Federal, State, local and political subdivisions, as used in the FAR and AIDAR, do not refer to foreign entities except as otherwise stated.

Head of agency means, for USAID, the Administrator, the Deputy Administrator, and in accordance with the responsibilities and limitations set forth in (48 CFR) AIDAR 701.601(a)(1), the M/OAA Director.

Head of the contracting activity:

(1) The heads of USAID contracting activities are listed below. The limits of their contracting authority are set forth in 701.601 of this chapter.

(i) USAID/Washington Heads of Contracting Activities:

(A) Director, Bureau for Management, Office of Acquisition and Assistance;

(B) Director, the Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Foreign Disaster Assistance (DCHA/OFDA); and

(C) Director, Bureau for Economic Growth, Education and Environment, Office of Education (E3/ED).

(ii) Overseas Heads of Contracting Activities: Each Mission Director or principal USAID officer at post (*e.g.* USAID Representative, USAID Affairs Officer, etc.).

(2) Individuals serving in the positions listed in paragraphs (1)(i) and (ii) of this definition in an ''Acting'' capacity may exercise the authority delegated to that position.

Mission means the USAID mission or the principal USAID office or representative (including an embassy designated to so act) in a foreign country in which there is a program or activity administered by USAID.

Overseas means outside the United States, its possessions, and Puerto Rico.

Procurement Executive is synonymous with ''Senior Procurement Executive'' as defined in FAR 2.101 and means the USAID official who is responsible for the management direction of USAID's assistance and acquisition (''A&A'') system, as so delegated and more fully described in USAID's internal delegations found in the ADS.

Procuring activity means ''contracting activity'', as defined in this subpart.

Third country national (TCN) means an individual who is neither a cooperating country national nor a U.S. national, but is a citizen or lawful permanent resident (or equivalent immigration status) of any country other than the countries which are prohibited sources. (See 22 CFR 228.15).

USAID means the U.S. Agency for International Development and its predecessor agencies, including the International Cooperation Administration (ICA).

U.S. national (USN) means an individual who is a U.S. citizen or a non-U.S. citizen lawfully admitted for permanent residence in the United States.

PART 703—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 703.1—Safeguards

■ 13. Redesignate 703.104–5 as 703.104–4 and revise newly redesignated 703.104–4 to read as follows:

703.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

A contracting officer may authorize the release of proprietary and/or source selection information outside the Government for evaluation purposes pursuant to (48 CFR) FAR 15.305(c) and (48 CFR) AIDAR 715.305(c).

■ 14. Redesignate 703.104–10.1 as 703.104–7 and revise newly redesignated 703.104–7 to read as follows:

703.104–7 Violations or possible violations.

Requests for concurrence under paragraph (a)(1) of (48 CFR) FAR 3.104–7 must be forwarded to one level above the contracting officer.

PART 704—ADMINISTRATIVE MATTERS

Subpart 704.4—Safeguarding Classified Information Within Industry

■ 15. Revise 704.404 to read as follows:

704.404 Contract clauses.

(a) When the contract includes a requirement for the contractor to access classified (''Confidential'', ''Secret'', or ''Top Secret''), or administratively controlled (''Sensitive But Unclassified'') information, the contracting officer must insert (48 CFR) FAR clause 52.204–2, Security Requirements and (48 CFR) AIDAR clause 752.204–2, Security Requirements, in the solicitation and award.

(b) If the contract requires the contractor (or contractor employees) to have routine physical access to USAID-controlled facilities in the U.S. (*i.e.,* will need an ID for regular entry to USAID space), or have logical access to USAID's information systems (*i.e.,* access to AIDNet, Phoenix, the Global Acquisition and Assistance System (GLAAS,) etc.,) and the solicitation and contract contains (48 CFR) FAR 52.204–9(a), the contracting officer must also insert (48 CFR) AIDAR 752.204–72, Access to USAID Facilities and USAID's Information Systems. Only U.S citizen employees or consultants of a U.S.-based company may request routine physical access to USAID-controlled facilities or logical access to USAID's information systems.

704.7004–2 [Amended]

■ 16. Amend 704.7004–2(a) by removing the word ''agency'' and adding, in its place, the word ''Agency''.

704.7005 [Amended]

■ 17. Amend 704.7005(c) by removing the words ''(48 CFR) subpart 716.5'' and add, in their place, the words ''(48 CFR) AIDAR subpart 716.5''.

SUBCHAPTER B—ACQUISITION PLANNING

PART 705—PUBLICIZING CONTRACT ACTIONS

705.002 [Removed and Reserved]

■ 18. Remove and reserve 705.002.

Subpart 705.2—Synopsis of Proposed Contract Actions

705.202 [Amended]

■ 19. Amend 705.202 by:

■ a. In paragraph (b), removing the words ''Administrator for Federal Procurement Policy '' and adding, in their place, the words ''Administrator of the Office of Management and Budget's Office of Federal Procurement Policy ''; and

■ b. Remove and reserve paragraph (c).

705.207 [Removed and Reserved]

■ 20. Remove and reserve 705.207.

■ 21. Add subpart heading 705.5 before 705.502 to read as follows:

Subpart 705.5—Paid Advertisement

* * * * *

PART 706—COMPETITION REQUIREMENTS

706.003 [Removed]

■ 22. Remove 706.003.

Subpart 706.3—Other than Full and Open Competition

706.302–5 [Removed and Reserved]

■ 23. Remove and reserve 706.302–5.

■ 24. Amend 706.302–70 by:

■ a. Removing the reference ''40 U.S.C. 474'' in paragraph (a)(1) and adding, in its place, the reference ''40 U.S.C. 113'';

■ b. Revising paragraph (c)(1); and

■ c. Removing the reference ''FAR 6.303–2(a)(12)'' in paragraph (c)(4) and adding, in its place, the reference ''(48 CFR) FAR 6.303–2 (b)(12)''.

The revision reads as follows:

706.302–70 Impairment of foreign aid programs.

* * * * *

(c) * * *

(1) Proposals must be requested from as many potential offerors as is practicable under the circumstances. Additionally, as required in (48 CFR) FAR 5.201, the contracting officer must publicize the intended award when using the exceptions above, including when using the authority at 706.302–70(b)(5) where the contracting officer has determined that the incumbent contractor is the only practicable, potential offeror.

* * * * *

706.302–71 [Removed and Reserved]

■ 25. Remove and reserve 706.302–71.

706.303–1 [Removed]

■ 26. Remove 706.303–1.

Subpart 706.5—Competition Advocates

■ 27. Revise 706.501 to read as follows:

706.501 Requirement.

The USAID Administrator delegated the authority to designate the Agency Competition Advocate and a competition advocate for each agency procuring activity (see 702.170 of this chapter) to the M/OAA Director. The M/OAA Director, under the Administrator's delegation, has designated the M/OAA Deputy Director for Accountability, Compliance, Transparency, and Support as the Agency Competition Advocate and the deputy head of each contracting activity as the competition advocate for each activity. The competition advocate for USAID/W is the Deputy Director for M/OAA Operations. If there is no deputy, the head of the contracting activity is designated the competition advocate for that activity. The competition advocate's duties may not be redelegated, but can be exercised by persons serving as acting deputy (or acting head) of the contracting activity. For definitions of contracting activity and head of the contracting activity, see 702.170 of this chapter.

PART 707—ACQUISITION PLANING

■ 28. Add subpart 707.1 to read as follows:

Subpart 707.1—Acquisition Plans

Sec.

707.104 General procedures.

Subpart 707.1—Acquisition Plans

707.104 General procedures.

Policies, procedures, and internal guidance for acquisition planning are found in ADS 300.

PART 709—CONTRACTOR QUALIFICATIONS

Subpart 709.4—Debarment, Suspension, and Ineligibility

■ 29. Revise 709.403 to read as follows:

709.403 Definitions.

Debarring official in USAID is the Senior Deputy Assistant Administrator, Bureau for Management.

Suspending official in USAID is the Senior Deputy Assistant Administrator, Bureau for Management.

Subpart 709.5—Organizational Conflicts of Interest

709.503 [Amended]

■ 30. In 709.503:

■ a. Remove the reference ''702.170–10'' and add, in its place, the reference ''702–170''; and

■ b. Remove the words ''Agency head'' and add, in their place, the words ''agency head''.

PART 711—DESCRIBING AGENCY NEEDS

711.002–70 [Amended]

■ 31. Amend 711.002–70 by:

■ a. In paragraph (b)(1), removing the words ''ADS chapter 323'' and adding, in their place, the words ''ADS Chapter 323''; and

■ b. In paragraph (b)(3), removing the acronym ''SDB'' and adding, in its place, the acronym ''OSDBU'';

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 713—SIMPLIFIED ACQUISITION PROCEDURES

■ 32. Revise the heading for subpart 713.1 to read as follows:

Subpart 713.1—Procedures.

* * * * *

713.101 [Redesignated as 713.001]

■ 33. Redesignate 713.101 as 713.001.

PART 714—SEALED BIDDING

Subpart 714.4—Opening of Bids and Award of Contract

714.406–3 [Redesignated as 714.407–3 and Amended]

■ 34. Redesignate 714.406–3 as 714.407–3 and amend newly redesignated 714.407–3 by removing the reference ''FAR 14.406–3'' and adding, in its place, the reference ''(48 CFR) FAR 14.407–3''.

■ 35. Redesignate 714.406–4 as 714.407–4 and amend newly redesignated 714.407–4 by:

■ a. Revising the section heading; and

■ b. Removing the reference ''FAR 14.406–4'' and adding, in its place, the reference ''(48 CFR) FAR 14.407–4''.

The revision reads as follows:

714.407–4 Mistakes after award.

* * * * *

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.3—Source Selection

■ 36. Amend 715.305 by removing and reserving paragraph (a) and revising paragraphs (b) and (c) to read as follows:

715.305 Proposal evaluation.

* * * * *

(b) A justification must be written by the contracting officer and placed in the official file to support the decision to reject all proposals and to cancel the procurement.

(c) The contracting officer may authorize release of proposals outside the Government for evaluation—

(1) When an Evaluation Assistance Contract (EAC) is required to provide technical advisory or other services relating to the evaluation of proposals; or

(2) When an individual other than a Government employee, known as a Non-Government Evaluator (NGE), is selected to serve as a member of a USAID technical evaluation committee.

(3) Prior to releasing the proposals outside the Government, the contracting officer must obtain a signed and dated agreement from each NGE and EAC employee that they will safeguard the proposals and information in the proposals and that they perceive no actual or potential conflict of interests. (An example of such agreement is provided in the ADS).

715.370–1 [Amended]

■ 37. Amend 715.370–1 by:

■ a. In paragraph (d)(2)(iv), removing the abbreviation ''PIO/T'' and adding, in its place, the word ''requisition''.

■ b. In paragraph (d)(4), remove the phrase ''715.608 of this subpart'' and adding, in its place, the reference ''715.303–70''.

715.370–2 [Amended]

■ 38. In paragraphs (b) and (d)(4) of 715.370–2, remove the references ''AIDR appendix F'' and ''AIDAR appendix F'' and add, in their place, the reference ''(48 CFR) AIDAR appendix F''.

Subpart 715.6—Unsolicited Proposals

■ 39. Amend 715.602 by:

■ a. In paragraph (a), removing the word ''Futher'' and add, in its place, the word ''Further''; and

■ b. Revising paragraph (c).

The revision reads as follows:

715.602 Policy.

* * * * *

(c) For detailed information on unsolicited proposals including point of contact information see (48 CFR) AIDAR 715.604.

■ 40. Revise 715.604 to read as follows:

715.604 Agency points of contact.

(a) Information on USAID's policies for unsolicited proposals is available from the U.S. Agency for International Development, Bureau for Management, Office of Acquisition and Assistance, Evaluation Division (M/OAA/E), SA–44, Room 858–E, 1300 Pennsylvania Ave. NW., Washington, DC 20523 or by email to *UnsolicitedProposals@usaid.gov.* Initial inquiries and subsequent unsolicited proposals must be submitted to the address specified above.

(b) The information available includes:

(1) Contact points within USAID;

(2) Definitions;

(3) Information source on USAID objectives and areas of potential interest;

(4) Characteristics of a suitable proposal;

(5) Determination of contractor responsibility;

(6) Organizational conflicts of interest;

(7) Cost sharing; and

(8) Procedures for submission and evaluation of proposals;

(9) Guidance on preferred methods for submitting ideas/concepts to the Government;

(10) Instructions for identifying and marking proprietary information so that it is projected and restrictive legends conform to (48 CFR) FAR 15.609.

PART 716—TYPES OF CONTRACTS

Subpart 716.3—Cost Reimbursement Contracts

716.406 [Amended]

■ 41. In 716.406, remove the words ''Contracting Officer shall include'' and add, in their place, the words ''contracting officer must insert''.

■ 42. Revise the section heading for 716.505–70 to read as follows:

716.505–70 Partner vetting—orders under indefinite delivery contracts.

* * * * *

PART 717—SPECIAL CONTRACTING METHODS

717.700 [Redesignated as 717.770]

■ 43. Redesignate 717.700 as 717.770.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 719—SMALL BUSINESS PROGRAMS

719.270, 719.271–2, 719.271–3, 719.271–4, 719.271–5, 719.271–6, and 719.271–7 [Amended]

■ 44. In 719.270, 719.271–2, 719.271–3, 719.271–4, 719.271–5, 719.271–6, and 719.271–7, remove the acronym ''SDB'' and add, in its place, the acronym ''OSDBU'' each time it appears.

Subpart 719.2—Policies

719.270 [Amended]

■ 45. Amend 719.270 by:

■ a. In paragraph (a), removing the words ''United States small business'' and adding, in their place, the words ''U.S. small businesses''; and

■ b. In paragraph (e), removing the phrase ''subsection 702.170–10'' and adding, in its place, the reference ''702–170''.

719.271–1 [Amended]

■ 46. Amend 719.271–1 by removing the words ''Small Business concerns'' each time they appear and add, in their place, the words ''Small business concerns''.

719.271–2 [Amended]

■ 47. Amend 719.271–2 by:

■ a. In paragraph (b), removing the words ''Director SDB'' and adding, in their place, the words ''Director, OSDBU''; and

■ b. Removing and reserving paragraph (b)(4).

719.271–3 [Amended]

■ 48. Amend 719.271–3 by:

■ a. In the introductory text, removing the word ''jurisidiction'' and adding, in its place, the word ''jurisdiction''; and

■ b. In paragraphs (a) and (n), removing the words ''part 19 of the FAR'' and adding, in their place, the words ''part 19 of the (48 CFR) FAR''.

719.271–4 [Amended]

■ 49. Amend 719.271–4 by:

■ a. In the introductory text, removing the word ''agency'' and adding, in its place, the word ''Agency''; and

■ b. In paragraph (c), removing the words ''cognizant technical officers'' and adding, in their place, the words ''contracting officer's representatives''.

719.272 [Removed and Reserved]

■ 50. Remove and reserve 719.272

■ 51. Add subpart 719–7 after subpart 719.273 to read as follows:

Subpart 719–7—The Small Business Subcontracting Program

Sec.
719.708 Contract clause.

Subpart 719–7—The Small Business Subcontracting Program

719.708 Contract clause.

The Foreign Assistance Act calls for USAID to give U.S. Small Businesses an opportunity to provide supplies and services for foreign assistance projects. To help USAID meet this obligation, the contracting officer must insert the clause at (48 CFR) AIDAR 752.219–8 in all solicitations and contracts that contain the (48 CFR) FAR clause at 52.219–8, Utilization of Small Business Concerns.

PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 722.1—Basic Labor Policies

■ 52. In 722.170, revise the first sentence of paragraph (a) to read as follows:

722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN'S).

(a) * * * It is USAID policy that cooperating country nationals (CCNs) and third country nationals (TCNs), who are hired abroad for work in a cooperating country under USAID-direct contracts, generally be extended the same benefits, and be subject to the same restrictions as TCNs and CCNs employed by the USAID Mission. * * *
* * * * *

Subpart 722.8—Equal Employment Opportunity

■ 53. Amend 722.805–70 by:

■ a. In the first sentence of paragraph (a), removing the reference ''(48 CFR) FAR 22.804–2'' and adding, in its place, the reference ''(48 CFR) FAR 22.804–1''; and

■ b. Revising paragraph (b).

The revision reads as follows:

722.805–70 Procedures.

* * * * *

(b) *Representations and certifications.* The first step in ensuring compliance with these requirements is to obtain all necessary representations and certifications (Reps and Certs) as required by (48 CFR) FAR 22.810 and FAR 4.1202. When applicable, the contracting officer must review the Reps and Certs to determine whether they have been completed and signed as required, and are acceptable.

* * * * *

■ 54. Add 722.810 to read as follows:

722.810 Solicitation provisions and contract clauses.

The contracting officer must insert the clause at 752.222–70, USAID Disability Policy, in section H of all solicitations and resulting contracts.

PART 725—FOREIGN ACQUISITIONS

■ 55. Revise subpart 725.70 to read as follows:

Subpart 725.70—Source and Nationality

Sec.
725.701 General.
725.702 Designation of authorized geographic code.
725.703 Source and Nationality requirements—Contract clause.
725.704 Geographic Code waivers.

Subpart 725.70—Source and Nationality

725.701 General.

USAID's source and nationality requirements for program-funded contracts and subcontracts are set forth in 22 CFR part 228, Rules on Procurement of Commodities and Services Financed by USAID. 22 CFR part 228 is supplemented by the policies and procedures in ADS Chapters 310 and 312.

725.702 Designation of authorized geographic code.

(a) Unless another geographic code is specified in the Schedule of the contract, in accordance with 22 CFR part 228, the authorized code for all Agency contracts is Geographic Code 937, which is the U.S., the cooperating/recipient country, and developing countries other than advanced developing countries, and excluding prohibited sources.

(b) The list of developing countries is available in ADS Chapter 310.

725.703 Source and Nationality requirements—Contract clause.

Insert the clause at 752.225–70, Source and Nationality Requirements in all USAID program-funded solicitations and contracts for goods or services, unless source and nationality requirements do not apply as set forth at 22 CFR 228.02.

725.704 Geographic Code waivers.

(a) Authority to approve waivers of source, nationality, and transportation services requirements, pursuant to 22 CFR part 228, subpart D, is set forth in ADS Chapters 103 and 310.

(b) If a Geographic Code other than Code 937 is authorized by a waiver, the contracting officer must insert the authorized geographic code approved in the waiver, in the Schedule of the contract as required in 725.702. In addition, the contracting officer must place a copy of the approved geographic code waiver in the official contract file.

PART 726—OTHER SOCIOECONOMIC PROGRAMS

Subpart 726.70—[Removed and Reserved]

■ 56. Remove and reserve subpart 726.70.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 727—PATENTS, DATA, AND COPYRIGHTS

■ 57. Add subpart 727.3 to read as follows:

Subpart 727.3—Patent Rights under Government Contracts

Sec.
727.303 Contract clause.

Subpart 727.3—Patent Rights under Government Contracts

727.303 Contract clause.

Contracting officers must insert the clause at 752.227–70, Patent Reporting Procedures, in all solicitations and contracts that contain the clause at (48 CFR) FAR 52.227–11, Patent Rights—Ownership by the Contractor.

Subpart 727.4—Rights in Data and Copyrights

727.404 [Amended]

■ 58. In paragraph (g) of 727.404, remove the words ''shall incorporate''

and add in their place, the words ''must insert''.

727.409 [Amended]

■ 59. Amend 727.409(a) by:
■ a. Removing the word ''incorporates'' and adding, in its place, the word ''inserts''; and
■ b. Removing the words ''(48 CFR) 752.227–14'' and adding, in their place, the words ''(48 CFR) AIDAR 752.227–14''.

PART 728—BONDS AND INSURANCE

Subpart 728.1—Bonds

■ 60. Revise 728.105–1(b) to read as follows:

728.105–1 Advance payment bonds.

* * * * *

(b) Whenever a contracting officer considers that an advance payment bond is necessary, the contracting officer will:

(1) Establish a bond penalty that will adequately protect interests of the Government;

(2) Use the USAID Advance Payment Bond format;

(3) Place bond with a surety currently approved by the U.S. Treasury Department according to the latest Treasury Department Circular 570; and

(4) Stipulate that the cost of the bond shall not exceed a rate of $7.50 per $1,000 per annum based on the penalty of the bond, without the prior written approval of the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P).

* * * * *

Subpart 728.3—Insurance

728.307–70 [Amended]

■ 61. In 728.307–70, remove the words ''Contracting Officer shall insert'' and add, in their place, the words ''contracting officer must insert''.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

731.109 [Amended]

■ 62. In 731.109, remove the words ''Overhead and Special Cost and Contract Close-Out Branch, Office of Acquisition and Assistance'' and add, in their place, the words ''Bureau for Management, Office of Acquisition and Assistance, Cost Audit Support Division, Overhead and Special Cost and Contract Close-Out Branch (M/OAA/CAS/OCC)''.
■ 63. Revise 731.205–46 to read as follows:

731.205–46 Travel costs.

It is USAID policy to require prior written approval of international travel by the contracting officer, or the contracting officer's representative (COR) if delegated in the Contracting Officer's Representative Designation Letter. See (48 CFR) AIDAR 752.7032 for specific requirements and procedures.

731.205–71 [Amended]

■ 64. Revise 731.205–71 by:
■ a. In paragraph (c), removing ''(on ADS–CD under USAID Handbooks, Handbook 1)'' and adding, in their place, ''in ADS Chapter 302'';
■ b. In paragraph (d), removing the words ''Contracting Officer'' and adding, in their place, the words ''Contracting officer''.

Subpart 731.7—Contracts with Nonprofit Organizations

731.770 [Amended]

■ 65. Revise 731.770(a) by:
■ a. Removing the words ''Director, Office of Acquisition and Assistance'' and adding, in their place, the words ''Director, Bureau for Management, Office of Acquisition and Assistance'';
■ b. Removing the words ''Overhead and Special Cost and Contract Close-Out Branch, Office of Acquisition and Assistance (OCC)'' and adding, in their place, the words ''Bureau for Management, Office of Acquisition and Assistance, Cost Audit Support Division, Overhead and Special Cost and Contract Close-Out Branch (M/OAA/CAS/OCC)''; and
■ c. Removing the abbreviation ''OCC'' and adding, in its place, the abbreviation ''M/OAA/CAS/OCC''.

PART 732—CONTRACT FINANCING

Subpart 732.1 [Removed]

■ 66. Remove subpart 732.1.
■ 67. Revise the heading for subpart 732.4 to read as follows:

Subpart 732.4—Advance Payments for Non-Commercial Items

* * * * *

■ 68. Revise 732.402 to read as follows:

732.402 General.

(a)–(d) [Reserved]

(e)(1) U.S. Dollar advances to for-profit organizations for any award, including advances for disbursement to grantees, must be processed and approved in accordance with ADS Chapter 636.

(2) All local currency advances to for-profit organizations for any award require the approval of the head of the contracting activity, with concurrence of the Mission Controller.

■ 69. Revise 732.406–71, 732.406–72, 732.406–73, and 732.406–74 to read as follows:

732.406–71 Applicability for use of a Letter of Credit (LOC).

An LOC must be used when:

(a) The contracting officer has determined that an advance payment is necessary and appropriate in accordance with this subpart and the requirements found in (48 CFR) FAR 32.4;

(b) USAID has, or expects to have, a continuing relationship of at least one year with the organization, and the annual amount required for advance financing will be at least $50,000; and

(c) The advance payment is approved in accordance with (48 CFR) AIDAR 732.402(e). Additionally, the advance payments made by LOC under for fee or profit contracts, must be approved by the Procurement Executive.

732.406–72 Establishing an LOC.

(a) While the contract will provide for the use of an LOC when it is applicable under 732.406–71, the LOC is a separate agreement between the contractor and USAID. The terms and conditions of the LOC are contained in the LOC instructions issued by USAID and the general operating requirements are those imposed by the USAID LOC servicing agent. LOCs for both USAID/Washington and Mission-executed awards are established by the Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payment Division (M/CFO/CMP) through the Agency LOC servicing agent.

(b) To establish a new LOC account, the contractor must submit to USAID the documentation specified in (48 CFR) AIDAR Clause 752.232–70(b).

732.406–73 LOC contract clause.

(a) If payment is to be provided by LOC, the contract must contain the clause in 752.232–70.

(b) Contracting officers must ensure that an appropriate (48 CFR) FAR payment clause is also inserted in the contract, in the event that the LOC is revoked pursuant to 732.406–74.

732.406–74 Revocation of the LOC.

If during the term of the contract M/CFO/CMP believes that the LOC should be revoked, M/CFO/CMP may, after consultation with the cognizant contracting officer(s) and GC, revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be

provided to the cognizant contracting officer(s).

PART 733—PROTESTS, DISPUTES AND APPEALS

Subpart 733.1—Protests

733.103–72 [Amended]

■ 70. Amend 733.103–72(a) by removing the words ''Assistant General Counsel for Litigations and Enforcement (GC/LE)'' and adding, in their place, the words ''Office of the General Counsel's Division for Litigation and Enforcement (GC/LE)''.

■ 71. Amend 733.103–73 by:

■ a. Revising the section heading; and

■ b. In paragraph (d), removing the words ''General Accounting Office (GAO)'' and adding, in their place, the words ''Government Accountability Office (GAO)''.

The revision reads as follows:

733.103–73 Protests excluded from Agency consideration.

* * * * *

Subpart 733.27—USAID Procedures for Disputes and Appeals

■ 72. Redesignate 733.270–1 as 733.270 and revise newly redesignated 733.270 to read as follows:

733.270 Designation of Civilian Board of Contract Appeals (CBCA) to hear and determine appeals under USAID contracts.

(a) The Civilian Board of Contract Appeals (CBCA) was established by section 847 of the National Defense Authorization Act for Fiscal Year 2006 to hear and decide contract disputes between Government contractors and executive civilian agencies under the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 7101–7109, and regulations and rules issued under that statute. The CBCA is USAID's board for hearing and deciding appeals to contracting officer decisions.

(b) USAID must follow CBCA Rules of Procedure (see *www.cbca.gsa.gov*).

(c) The Office of the General Counsel's Division of Litigation and Enforcement (GC/LE) will assure representation of the interests of the Government in proceedings before the CBCA.

(d) All officers and employees of USAID must cooperate with the CBCA and GC/LE in the processing of appeals so as to assure their speedy and just determination.

733.270–2 [Removed]

■ 73. Remove 733.270–2.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 736—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

■ 74. Add subpart 736.5 to read as follows:

Subpart 736.5—Contract Clauses

Sec.

736.570 Disability Standards in Construction Contracts.

Subpart 736.5—Contract Clauses

736.570 Disability Standards in Construction Contracts.

Contracting officers must insert the clause at 752.236–70, Standards for Accessibility for the Disabled in USAID Construction Contracts, in all solicitations and contracts for construction or renovations made using program funds.

Subpart 736.6—Architect-Engineer Services

736.603 [Removed and Reserved]

■ 75. Remove and reserve 736.603.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 742—CONTRACT ADMINISTRATION

Subpart 742.11—Production, Surveillance, and Reporting

742.1170–2 [Amended]

■ 76. Revise 742.1170–2 by:

■ a. In paragraph (b), removing the words ''FAR 48 CFR'' each time they appear and adding, in their place, the words ''(48 CFR) FAR''.

■ b. In paragraph (c), removing the words ''FAR 48 CFR'' and adding, in their place, the words ''(48 CFR) FAR''.

Subpart 742.15—Contractor Performance Information

742.1502 [Amended]

■ 77. Amend 742.1502 by:

■ a. Removing and reserving paragraph (a); and

■ b. In paragraph (b), removing the words ''FAR subpart 42.15'' and adding, in their place, the words ''(48 CFR) FAR subpart 42.15''.

742.1503 [Amended]

■ 78. Amend 742.1503(b) by removing the words ''FAR 42.1503(b)'' and adding, in their place, the words ''(48 CFR) FAR 42.1503''.

PART 745—GOVERNMENT PROPERTY

Subpart 745.1—General

■ 79. Redesignate 745.106 as 745.107 and revise newly redesignated 745.107 to read as follows:

745.107 Contract clauses.

(a) The contracting officer must insert the clause at (48 CFR) AIDAR 752.245–71 in all contracts under which the contractor will acquire property for use overseas and the contract funds were obligated under a Development Objective Agreement (DOAG) (or similar bilateral obligating agreement) with the cooperating country.

(b) The contracting officer must insert the applicable clause as required in (48 CFR) FAR 45.107 and (48 CFR) AIDAR 752.245–70 in all contracts under which the contractor will acquire property with funds not already obligated under a DOAG (or similar bilateral obligating agreement) with the cooperating country.

PART 747—TRANSPORTATION

Subpart 747.5—Ocean Transportation by U.S.-Flag Vessels

747.507 [Amended]

■ 80. Amend 747.507 by:

■ a. Removing the reference ''FAR 27.507(a)'' and adding, in its place, the reference ''FAR 47.507(a)''; and

■ b. Removing the words ''Contracting Officer shall'' and ''Contracting officer shall'' and adding, in their place, the words ''Contracting officer must''.

PART 750—Extraordinary Contractual Actions

Subpart 750.71—Extraordinary Contractual Actions to Protect Foreign Policy Interests of the United States

750.7109–1 [Amended]

■ 81. In 750.7109–1, remove the words ''Office of Acquisition and Assistance, Evaluation Division (M/OAA/E)'' and add, in their place, the words ''Bureau for Management, Office of Acquisition and Assistance, Evaluation Division (M/OAA/E)''.

750.7109–2 [Amended]

■ 82. In 750.1109–2, remove the reference ''FAR 50.303'' add, in its place, the reference ''(48 CFR) FAR 50.103–3''.

750.7109–3 [Amended]

■ 83. In 750.1109–3, remove the references ''FAR 50.304'' and add, in its place, the reference ''(48 CFR) FAR 50.103–4''.

750.7110–1 [Amended]

■ 84. In 750.7110–1, remove the words ''Evaluation Division of the Office of Acquisition and Assistance (M/OAA/E)'' and add, in their place, the words ''Bureau for Management, Office of Acquisition and Assistance, Evaluation Division (M/OAA/E)''.

750.7110–3 [Amended]

■ 85. Amend the section heading for 750.1110–3 by removing the acronym ''M/OP Director'' and adding, in its place, the acronym ''M/OAA Director''.

SUBCHAPTER H—CLAUSES AND FORMS

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 86. Add subpart 752.1 to read as follows:

Subpart 752.1—Instructions for Using Provisions and Clauses

Sec.

752.102 Incorporating provisions and clauses.
752.107 AIDAR provisions and clauses prescribed in this subpart.

Subpart 752.1—Instructions for Using Provisions and Clauses

752.102 Incorporating provisions and clauses.

(a) As authorized by FAR 52.102, FAR and AIDAR provisions and clauses should be incorporated by reference in solicitations and contracts to the maximum practical extent, except as provided in paragraph (b) of this section. For provisions that require fill-ins or input by the contracting officer, the paragraph that contains the fill-in information must be included directly below the title of the provision or clause.

(b) If applicable, the following AIDAR provisions and clauses must be incorporated in full text in all solicitations and awards:

No. AIDAR (48 CFR chapter 7)	Title	Date
752.225–4	Buy American Act—Trade Agreements	July 1997.
752.232–70	Letter of Credit Advance Payment	Mar 2015.
752.245–70	Government property—USAID reporting requirements	July 1997.
752.7003	Documentation for payment	Nov 1998.

(c) Contracting activities may choose to incorporate provisions in full text, when:

(1) A new clause or significant revisions to an existing clause is issued less than six months prior to issuance of a solicitation or a contract award;

(2) Listing a clause in full text will ensure compliance with the contract terms and conditions;

(3) Inclusion of clauses in full text is more practical under the local conditions (*e.g.,* situations where doing so will assist small local entities, the prospective contractors may have limited Internet access, etc.).

(d) If a solicitation or contract contains one or more FAR provisions or clauses incorporated by reference, the contracting officer must insert the following Internet address: *http://www.acquisition.gov/comp/far/index.html* in FAR clause 52.252–1, Solicitation Provisions Incorporated by Reference or 52.252–2, Clauses Incorporated by Reference.

752.107 AIDAR provisions and clauses prescribed in this subpart.

(a) The contracting officer must insert the provision at 752.252–1, Solicitation Provisions Incorporated by Reference, in solicitations in order to incorporate AIDAR provisions by reference.

(b) The contracting officer must insert the clause at 752.252–2, AIDAR Clauses Incorporated by Reference, in solicitations and contracts in order incorporate AIDAR clauses by reference.

(c) The contracting officer must insert the provision at 752.252–70, Provisions and Clauses to be Completed by the Offeror, in full text in solicitations or contract containing FAR or AIDAR provision(s) or clause(s) that must be completed by offerors or prospective contractors and submitted with the quotation or offer.

Subpart 752.2—Texts of Provisions and Clauses

■ 87. Amend 752.202–1 by:

■ a. In paragraph (c), revising the clause heading and paragraph (b) of the clause; and

■ b. In paragraph (d), revising the clause heading and paragraphs (b) and (g) of the clause.

The revisions read as follows:

752.202–1 Definitions.

* * * * *

(c) *Alternate 71.* * * *

USAID DEFINITIONS CLAUSE—SUPPLEMENT FOR CONTRACTS WITH AN EDUCATIONAL INSTITUTION FOR PARTICIPANT TRAINING (MAY 2011)

* * * * *

(b) *Director* shall mean the individual who fills the USAID position of Director, Bureau for Economic Growth, Education and Environment, Office of Education (E3/ED), or authorized representative acting within the limits of the individual's authority.

* * * * *

(d) *Alternate 72.* * * *

USAID Definitions Clause—Supplement for USAID Contracts Involving Performance Overseas (JUNE 2009)

* * * * *

(b) *Cooperating Country National (CCN) employee* means an individual who meets the citizenship requirements of the CCN definition in (48 CFR) AIDAR 702.170 and is hired while residing outside the United States for work in a cooperating country.

* * * * *

(g) *Third Country National (TCN) employee* means an individual who meets the citizenship requirements of the TCN definition in (48 CFR) AIDAR 702.170 and is hired while residing outside the United States for work in a Cooperating Country.

■ 88. Revise 752.204–2 to read as follows:

752.204–2 Security Requirements.

As prescribed in (48 CFR) AIDAR 704.404(a), when the clause in (48 CFR) FAR 52.204–2 is used in USAID contracts, paragraph (a) of the clause is revised as follows:

Security Requirements (FEB 1999)

Pursuant to the Foreign Affairs Manual, 12 FAM 540 (*http://www.state.gov/documents/organization/88404.pdf*), USAID applies the safeguards applicable to ''Confidential'' information to administratively controlled information designated as ''Sensitive But Unclassified''. Therefore, when the clause in (48 CFR) FAR 52.204–2 is used in USAID contracts, pursuant to 704.404(a), paragraph (a) of the clause is revised as follows:

(a) This clause applies to the extent that this contract involves access to classified ('Confidential', 'Secret', or 'Top Secret'), or

administratively controlled ('Sensitive But Unclassified') information.

■ 89. Add 752.204–72 to read as follows:

752.204–72 Access to USAID Facilities and USAID's Information Systems.

As prescribed in (48 CFR) AIDAR 704.404(b), insert the following clause in all solicitations and contracts that contain the provision at (48 CFR) FAR 52.204–9(a):

Access to USAID Facilities and USAID's Information Systems (AUG 2013)

(a) A U.S. citizen or resident alien engaged in the performance of this award as an employee, consultant, or volunteer of a U.S firm may obtain access to USAID facilities or logical access to USAID's information systems only when and to the extent necessary to carry out this award and in accordance with this clause. The contractor's employees, consultants, or volunteers who are not U.S. citizen as well as employees, consultants, or volunteers of non-U.S. firms, irrespective of their citizenship, will not be granted logical access to U.S. Government information technology systems (such as Phoenix, GLAAS, etc.) and must be escorted to use U.S. Government facilities (such as office space).

(b) Before a contractor (or a contractor employee, consultant, or volunteer) or subcontractor at any tier may obtain a USAID ID (new or replacement) authorizing the individual routine access to USAID facilities in the United States, or logical access to USAID's information systems, the individual must provide two forms of identity source documents in original form to the Enrollment Office personnel when undergoing processing. One identity source document must be a valid Federal or State Government-issued picture ID. Contractors may contact the USAID Security Office to obtain the list of acceptable forms of documentation. Submission of these documents, to include documentation of security background investigations, are mandatory in order for the contractor to receive a PIV/FAC card and be granted access to any of USAID's information systems. All such individuals must physically present these two source documents for identity proofing at their enrollment.

(c) The contractor or its Facilities Security Officer must return any issued building access ID and remote authentication token to the contracting officer's representative (COR) upon termination of the individual's employment with the contractor or completion of the contract, whichever occurs first.

(d) Individuals engaged in the performance of this award as employees, consultants, or volunteers of the contractor must comply with all applicable Homeland Security Presidential Directive–12 (HSPD–12) and Personal Identity Verification (PIV) procedures, as described above, and any subsequent USAID or Government-wide HSPD–12 and PIV procedures/policies.

(e) The contractor is required to insert this clause in any subcontracts that require the subcontractor, subcontractor employee, or consultant to have routine physical access to USAID space or logical access to USAID's information systems.

752.209–71 [Amended]

■ 90. In the introductory text of 752.209–71, remove the word ''include'' and add, in its place, the word ''insert''.

752.216–70 [Amended]

■ 91. Amend 752.216–70 by removing paragraph (c) of the contract clause.

■ 92. Revise 752.219–8 to read as follows:

752.219–8 Utilization of small business concerns and small disadvantaged business concerns.

As prescribed in (48 CFR) AIDAR 719.708, insert the following clause in solicitations and contracts that contain the clause at 52.219–8, Utilization of Small Business Concerns:

Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (MAR 2015)

In addition to the FAR clause at 52.219–8, Utilization of Small Business Concerns, the contractor must comply with the following USAID small business provision: To permit USAID, in accordance with the small business provisions of the Foreign Assistance Act, to give small business firms an opportunity to participate in supplying equipment supplies and services financed under this contract, the contractor must, to the maximum extent possible, provide the following information to the U.S. Agency for International Development(USAID), Office of Small and Disadvantaged Business Utilization (OSDBU), 1300 Pennsylvania Ave. NW., SA–44, Room 848, Washington, DC 20523, at least 45 days prior to placing any order in excess of the simplified acquisition threshold except where a shorter time is requested of, and granted by OSDBU:

(1) Brief general description and quantity of commodities or services;

(2) Closing date for receiving quotations or bids; and

(3) Address where invitations or specifications may be obtained.

752.219–70 [Amended]

■ 93. In 752.219–70, remove the words ''USAID Mentor-Protégé Program (July 13, 2007)'' and add, in their place, the words ''USAID Mentor-Protégé Program (July 2007)''.

752.219–71 [Amended]

■ 94. In 752.219–71, remove the words ''Mentor Requirements and Evaluation (July 13, 2007)'' and add, in their place, the words ''Mentor Requirements and Evaluation (July 2007)''.

■ 95. Add 752.222–70 to read as follows:

752.222–70 USAID Disability Policy.

As prescribed in 722.810, the contracting officer must insert the following clause in Section H of all solicitations and resulting awards.

USAID Disability Policy (DEC 2004)

(a) The objectives of the USAID Disability Policy are:

(1) To enhance the attainment of United States foreign assistance program goals by promoting the participation and equalization of opportunities of individuals with disabilities in USAID policy, country and sector strategies, activity designs and implementation;

(2) To increase awareness of issues of people with disabilities both within USAID programs and in host countries;

(3) To engage other U.S. Government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities; and

(4) To support international advocacy for people with disabilities. The full text of USAID's policy can be found at the following Web site: *http://pdf.usaid.gov/pdf_docs/PDABQ631.pdf*.

(b) USAID therefore requires that the contractor not discriminate against people with disabilities in the implementation of USAID programs and that it make every effort to comply with the objectives of the USAID Disability Policy in performing this contract. To that end and within the scope of the contract, the contractor's actions must demonstrate a comprehensive and consistent approach for including men, women, and children with disabilities.

■ 96. Revise 752.225–70 to read as follows:

752.225–70 Source and nationality requirements.

As prescribed in 725.704, insert the following clause:

Source and Nationality Requirements (FEB 2012)

(a) Except as may be specifically approved by the contracting officer, the contractor must procure all commodities (*e.g.,* equipment, materials, vehicles, supplies) and services (including commodity transportation services) in accordance with the requirements at 22 CFR part 228 ''Rules on Procurement of Commodities and Services Financed by USAID.'' The authorized source for procurement is Geographic Code 937 unless otherwise specified in the schedule of this contract. Guidance on eligibility of specific goods or services may be obtained from the contracting officer.

(b) *Ineligible goods and services.* The contractor must not procure any of the following goods or services under this contract:

(1) Military equipment;

(2) Surveillance equipment;

(3) Commodities and services for support of police and other law enforcement activities;

(4) Abortion equipment and services;
(5) Luxury goods and gambling equipment; or
(6) Weather modification equipment.
(c) *Restricted goods.* The contractor must obtain prior written approval of the contracting officer or comply with required procedures under an applicable waiver as provided by the contracting officer when procuring any of the following goods or services:
(1) Agricultural commodities;
(2) Motor vehicles;
(3) Pharmaceuticals and contraceptive items;
(4) Pesticides;
(5) Fertilizer;
(6) Used equipment; or
(7) U.S. Government-owned excess property.
If USAID determines that the contractor has procured any of these specific restricted goods under this contract without the prior written authorization of the contracting officer or fails to comply with required procedures under an applicable waiver as provided by the contracting officer, and has received payment for such purposes, the contracting officer may require the contractor to refund the entire amount of the purchase.

752.225–71 [Removed]

■ 97. Remove 752.225–71.

752.226–1, 752.226–2, 752.226–3 [Removed and Reserved]

■ 98. Remove and reserve 752.226–1, 752.226–2, and 752.226–3.

■ 99. Add 752.227–70 to read as follows:

752.227–70 Patent reporting procedures.

As prescribed in (48 CFR) AIDAR 727.303, insert the following clause in all solicitations and contracts that contain the clause at (48 CFR) FAR 52.227–11.

Patent Reporting Procedures (AUG 1999)

(a) *Reporting inventions.* In accordance with 37 CFR part 401, each USAID-funded research recipient must disclose each subject invention to USAID as required in (48 CFR) FAR 52.227–11(c). Such reports must be made via the National Institutes of Health (NIH) EDISON Patent Reporting and Tracking system. NIH created EDISON to help assist research recipients to comply with the Bayh-Dole Act and report in a timely manner all patentable inventions arising out of Federally-sponsored research programs. The EDISON system uses Web technology to allow research recipients to report and monitor their invention reports, with the assurance that proprietary data is securely stored. The Web site for EDISON (*http://www.iedison.gov*) provides users with an invention reporting test site, as well as applicable instructions for complying with Government regulations, and increases the potential for successful commercialization of the inventions by helping to ensure that all reporting requirements are met and that ownership rights are clearly established.

(b) Reports on utilization of subject inventions as required under (48 CFR) FAR 52.227–11(f) must be provided to the USAID contracting officer's technical representative annually, and the last report under an agreement must be provided within 90 days of the expiration of the agreement.

■ 100. In 752.228–3, revise the introductory text and add a clause heading and introductory text before paragraph (a) of the clause to read as follows:

752.228–3 Worker's Compensation Insurance (Defense Base Act).

As prescribed in 728.309, the following supplemental coverage must be added to the clause specified in (48 CFR) FAR 52.228–3 by the USAID contracting officer.

Worker's Compensation Insurance (Defense Base Act) (DEC 1991)

In addition to the requirements specified in (48 CFR) FAR 52.228–3, the contractor agrees to the following:

* * * * *

■ 101. Amend 752.228–7 by:
■ a. Revising the introductory text;
■ b. Adding a clause heading and introductory text before the clause; and
■ c. In the text of the clause, removing the words ''minimum coverages or such other minimum coverages'' and adding, in their place, the words ''minimum coverage or such other minimum coverage''.
The addition reads as follows:

752.228–7 Insurance—liability to third persons.

As prescribed in 728.307–2(c), the following paragraph must be added to the clause specified in (48 CFR) FAR 52.228–7 as either paragraph (h) (if (48 CFR) FAR 52.228–7 *Alternate I* is not used) or (i) (if (48 CFR) FAR 52.228–7 Alternate I is used):

Insurance—Liability to Third Persons (JULY 1997)

The following paragraph is added to the clause specified in (48 CFR) FAR 52.228–7:

* * * * *

■ 102. In 752.228–9, revise the introductory text and add a clause heading immediately following the introductory text to read as follows:

752.228–9 Cargo insurance.

As prescribed in 728.313(a), the following preface is to be used preceding the text of the clause at (48 CFR) FAR 52.228–9:

Cargo Insurance (DEC 1998)

* * * * *

752.228–70 [Amended]

■ 103. In the first sentence of 752.228–70(a), remove the word ''Contractor'' and add, in its place, the words ''The contractor''.

■ 104. In 752.231–71, revise the date in the clause heading and add paragraph (c) to read as follows:

752.231–71 Salary supplements for Host Government employees.

As prescribed in 731.205–71, for use in all contracts with a possible need or services of a HG employee. The clause should also be inserted in all subsequent sub-contracts.

Salary Supplements for Host Government Employees (MAR 2015)

* * * * *

(c) The Contractor must insert a clause containing all the terms of this clause, including the requirement to obtain the written approval of the contracting officer for all salary supplements, in all subcontracts under this contract that may entail HG employee salary supplements.

■ 105. Revise 752.232–70 to read as follows:

752.232–70 Letter of Credit Advance Payment.

As required by 732.406–73, insert the following clause in contracts being paid by Letter of Credit.

Letter of Credit Advance Payment (MAR 2015)

(a) Payment under this contract must be by means of a Letter of Credit (LOC) in accordance with the terms and conditions of the LOC and any instructions issued by the USAID, Bureau for Management, Office of the Chief Financial Officer, Cash Management and Payment Division (M/CFO/CMP).
(b) Immediately upon award, or as soon as the Letter of Credit payment method is approved by the contracting officer, contractors without an established LOC account must submit the following forms with original signatures, to the address specified below:
Forms:
(1) A signed original SF–1199A (Direct Deposit Sign-Up Form); and
(2) ''Division of Payment Management Payment Management System Access Form'' found at the Department of State and Human Services (DHHS) Web site.
Address: ATTN: James DuBois, U.S. Agency for International Development, M/CFO/CMP—LOC Unit, 1300 Pennsylvania Ave. NW., SA–44, Room 430–J, Washington, DC 20523–7700.
Contractors must also submit the forms specified above electronically to *loc@usaid.gov.*
(c) As long as the LOC is in effect, the terms and conditions of the LOC and any instructions issued by M/CFO/CMP constitute the payment conditions of this contract, superseding and taking precedence over any other clause of this contract concerning payment.
(d) If the LOC is revoked, payment may be made on a cost-reimbursement basis, in accordance with the other clauses of this contract concerning payment.

(e) Revocation of the LOC is at the discretion of M/CFO/CMP after consultation with the contracting officer. Notification to the contractor of revocation must be in writing and must specify the reasons for such action. The contractor may appeal any such revocation to the contracting officer, in accordance with the Disputes clause of this contract. Pending final decision, payments under the contract will be in accordance with paragraph (d) of this clause.

■ 106. Add 752.236–70 to read as follows:

752.236–70 Standards for Accessibility for the Disabled in USAID Construction Contracts.

As prescribed in 736.570, for contracts for construction or renovation using program funds, insert the following clause.

Standards for Accessibility for the Disabled in USAID Construction Contracts (July 2007)

(a) One of the objectives of the USAID Disability Policy is to engage other U.S. Government agencies, host country counterparts, governments, implementing organizations and other donors in fostering a climate of nondiscrimination against people with disabilities. As part of this policy USAID has established standards for any new or renovation construction project funded by USAID to allow access by people with disabilities (PWDs). The full text of the policy paper can be found at the following Web site: *http://www.usaid.gov/about_usaid/disability/.*

(b) USAID requires the contractor to comply with standards of accessibility for people with disabilities in all structures, buildings or facilities resulting from new or renovation construction or alterations of an existing structure.

(c) The contractor must comply with the host country or regional standards for accessibility in construction when such standards result in at least substantially equivalent accessibility and usability as the standard provided in the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) Accessibility Guidelines of July 2004. Where there are no host country or regional standards for universal access or where the host country or regional standards fail to meet the ADA/ABA threshold, the standard prescribed in the ADA and the ABA must be used.

(d) *New Construction.* All new construction must comply with the above standards for accessibility.

(e) *Alterations.* Changes to an existing structure that affect, or could affect, the usability of the structure must comply with the above standards for accessibility unless the contractor obtains the contracting officer's advance approval that compliance is technically infeasible or constitutes an undue burden or both. Compliance is technically infeasible where structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements of the standard. Compliance is an undue burden where it entails either a significant difficulty or expense or both.

(f) *Exceptions.* The following construction related activities are excepted from the requirements of paragraphs (a) through (d) of this section:

(1) Normal maintenance, re-roofing, painting or wallpapering, or changes to mechanical or electrical systems are not alterations and the above standards do not apply unless they affect the accessibility of the building or facility; and

(2) emergency construction (which may entail the provision of plastic sheeting or tents, minor repair and upgrading of existing structures, rebuilding of part of existing structures, or provision of temporary structures) intended to be temporary in nature. A portion of emergency construction assistance may be provided to people with disabilities as part of the process of identifying disaster- and crisis-affected people as ''most vulnerable.''

752.242–70 [Amended]

■ 107. In 752.242–70, remove the reference ''742.1170–3(c)'' in the introductory text, and add, in its place, the reference ''(48 CFR) AIDAR 742.1170–4(c)''.

■ 108. Amend 752.245–70 by:

■ a. Removing the reference ''FAR 45.106'' in the introductory text, and adding, in its place, the reference ''(48 CFR) FAR 45.107'';

■ b. Adding a clause heading immediately following the Preface sentence;

■ c. Removing the words ''government property'' and add, in their place, the words ''Government property'';

■ d. Removing the words ''government-furnished'' and ''Government furnished'' and adding, in their place, the words ''Government-furnished''; and

■ e. Revising the annual report.

The addition and revision read as follows:

752.245–70 Government Property—USAID Reporting Requirements.

* * * * *

Preface: * * *

Government Property—USAID Reporting Requirements (July 1997)

* * * * *

ANNUAL REPORT OF GOVERNMENT PROPERTY IN CONTRACTOR'S CUSTODY

[Name of contractor as of (end of contract year), 20XX]

	Motor vehicles	Furniture and furnishings—		Other nonexpendable property
		Office	Living quarters	
A. Value of property as of last report.				
B. Transactions during this reporting period.				
1. Acquisitions (add):.				
a. Purchased by contractor [1].				
b. Transferred from USAID [2].				
c. Transferred from others, without reimbursement [3].				
2. Disposals (deduct):.				
a. Returned to USAID.				
b. Transferred to USAID—contractor purchased.				
c. Transferred to other Government agencies [3].				
d. Other disposals [3].				
C. Value of property as of reporting date.				
D. Estimated average age of contractor held property.				
	Years	Years	Years	Years

[1] Property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500.

[2] Government furnished property listed in this Contract as nonexpendable.

[3] Explain if transactions were not processed through or otherwise authorized by USAID.

* * * * *

■ 109. Amend 752.245–71 by revising the introductory text to read as follows:

752.245–71 Title to and Care of Property.

As prescribed in paragraph (a) of (48 CFR) AIDAR 745.107, the following clause must be inserted in all contracts when the contractor will acquire property under the contract for use overseas and the contract funds were obligated under a Development Objective Agreement (DOAG) (or similar bilateral obligating agreement) with the cooperating country.

* * * * *

■ 110. Amend 752.247–70 by:
■ a. In paragraph (b), removing the last sentence;
■ b. Revising paragraphs (c)(1) and (c)(2)(viii); and
■ c. Removing Alternate 1, consisting of paragraphs (d) and (e).

752.247–70 Preference for Privately Owned U.S.-Flag Commercial Vessels.

* * * * *

(c)(1) The contractor must submit one legible copy of a rated on-board ocean bill of lading for each shipment to both the Division of National Cargo, Office of Cargo Preference, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, and the U.S. Agency for International Development (USAID), Bureau for Management, Office of Acquisition and Assistance, 1300 Pennsylvania Ave. NW., SA–44, Room 859, Washington, DC 20523 as follows:

(i) for PL 480 (Food aid shipments) scanned copies must be sent to: *freightedbills@usaid.gov.*

(ii) For all Non P.L. 480 (Non Food Aid Shipments) scanned copies must be sent to: *Oceantransportation@USAID.gov.*

(2) * * * * *

(viii) Gross weight in kilograms/pounds and volume in liters/cubic feet, if available.

* * * * *

■ 111. Add 752.252–1 to read as follows:

752.252–1 AIDAR Solicitation Provisions Incorporated by Reference

In accordance with 752.107(a), insert the following clause.

AIDAR Solicitation Provisions Incorporated By Reference (MAR 2015)

This solicitation incorporates one or more provisions by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of all AIDAR solicitation provisions is contained in the Code of Federal Regulations (CFR) located at 48 CFR chapter 7.

■ 112. Add 752.252–2 to read as follows:

752.252–2 AIDAR Clauses Incorporated by Reference

In accordance with 752.107(b), insert the following clause.

AIDAR Clauses Incorporated By Reference (MAR 2015)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available. Also, the full text of all AIDAR solicitation provisions and contract clause is contained in the Code of Federal Regulations (CFR) located at 48 CFR chapter 7.

■ 113. Add 752.252–70 to read as follows:

752.252–70 Provisions and clauses to be completed by the offeror.

In accordance with 752.107(c), insert the following clause.

Provisions and Clauses To Be Completed by the Offeror (MAR 2015)

The following FAR and AIDAR provisions or clauses incorporated by reference in this solicitation or contract must be completed by the offeror or prospective contactor and submitted with the quotation or offer:

NUMBER TITLE DATE

AIDAR (48 CFR chapter 7)

[The contracting officer must list all FAR and AIDAR provisions or clauses incorporated by reference that must be completed by the offeror or prospective contactor and submitted with the quotation or offer.]

Subpart 752.70—Texts of USAID Contract Clauses

752.7001 [Amended]

■ 114. In the clause prescription of 752.7001, remove the word ''included'' and add, in its place, the word ''inserted''.

■ 115. Amend 752.7002 by revising the fifth and sixth sentences of paragraph (b), the third sentence of paragraph (k), and paragraph (p)(1)(i) to read as follows:

752.7002 Travel and transportation.

* * * * *

(b) *International travel.* * * * When travel is by economy class accommodations, the Contractor will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of kilograms/pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers must not be in excess of the rates authorized in the Department of State Standardized Regulations—hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. * * *

* * * * *

(k) *Home leave travel.* * * * When travel is by economy class accommodations, the Contractor will be reimbursed for the cost of transporting up to 10 kilograms/22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of kilograms/pounds of baggage does not exceed that regularly allowed for first class travelers. * * *

* * * * *

(p)* * *

(1)* * *

(i) Transportation of goods. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor must contact the U.S. Agency for International Development (USAID), Bureau for Management, Office of Acquisition and Assistance, Transportation Division (M/OAA/T) for required guidance and may obtain a release from this requirement from M/OAA/T. The contact email address for these matters is *Oceantransportation@USAID.gov.*

* * * * *

752.7003 [Amended]

■ 116. In 752.7003, remove the word ''responsiblity'' and add, in its place, the word ''responsibility'';

752.7004 [Amended]

■ 117. In the clause prescription of 752.7004, remove the word ''included'' and add, in its place, the word ''inserted''.

■ 118. Revise 752.7005 to read as follows:

752.7005 Submission Requirements for Development Experience Documents.

The following clause must be inserted in all USAID professional/technical contracts in which development experience documents are likely to be produced.

Submission Requirements for Development Experience Documents (Sept 2013)

(a) Contract Reports and Information/Intellectual Products.

(1) Within thirty (30) calendar days of obtaining the contracting officer representative's approval, the contractor must submit to USAID's Development Experience Clearinghouse (DEC) one copy

each of reports and information products which describe, communicate or organize program/project development assistance activities, methods, technologies, management, research, results and experience. These reports include: Assessments, evaluations, studies, technical and periodic reports, annual and final reports, and development experience documents (defined as documents that:

(i) Describe the planning, design, implementation, evaluation, and results of development assistance; and

(ii) Are generated during the life cycle of development assistance programs or activities.) The contractor must also submit copies of information products including training materials, publications, videos and other intellectual deliverable materials required under the Contract Schedule. The following information is not to be submitted:

(A) Time-sensitive materials such as newsletters, brochures or bulletins.

(B) The contractor's information that is incidental to award administration, such as financial, administrative, cost or pricing, or management information.

(2) Within thirty (30) calendar days after completion of the contract, the contractor must submit to the DEC any reports that have not been previously submitted and an index of all reports and information/intellectual products referenced in paragraph (a)(1) of this clause.

(b) Submission requirements. The contractor must review the DEC Web site for the most up-to-date submission instructions, including the DEC address for paper submissions, the document formatting and the types of documents to be submitted. The submission instructions can be found at: *https://dec.usaid.gov.*

(1) *Standards.* (i) Material must not include financially sensitive information or personally identifiable information (PII) such as social security numbers, home addresses and dates of birth. Such information must be removed prior to submission.

(ii) All submissions must conform to current USAID branding requirements.

(iii) Contract reports and information/intellectual products can be submitted in either electronic (preferred) or paper form. Electronic documentation must comply with Section 508 of the Rehabilitation Act of 1973.

(iv) The electronic submissions must consist of only one electronic file, which comprises the complete and final equivalent of the paper copy. In the case of databases and computer software the submissions must also include necessary descriptive information, *e.g.,* special backup or data compression routines, software used for storing/retrieving submitted data, or program installation instructions.

(v) Electronic documents must be in one of the National Archives and Records Administration (NARA)-approved formats as described in NARA guidelines related to the transfer of permanent E-records. (See *http://www.archives.gov/records-mgmt/initiatives/transfer-to-nara.html*).

(2) Essential bibliographic information. Descriptive information is required for all contractor products submitted. The title page of all reports and information products must include the contract number(s), contractor name(s), name of the USAID contracting officer's representative, the publication or issuance date of the document, document title, (if non-English, provide an English translation of the title), author name(s), and development objective or activity title (if non-English, provide a translation) and associated number, and language of the document (if non-English). In addition, all hard copy materials submitted in accordance with this clause must have, attached as a separate cover sheet, the name, organization, address, telephone number, fax number, and internet address of the submitting party.

752.7006 [Amended]

■ 119. Amend 752.7006 by removing the words ''cognizant Contracting Officer'' and adding, in their place, the words ''cognizant contracting officer''.

■ 120. Amend 752.7014 by:

■ a. In paragraph (a), removing the words ''the Standardized Regulations (Government Civilians, Foreign Areas), the Uniform State/USAID/USIA Foreign Service Travel Regulations'' and adding, in their place, the words ''the Department of State Standardized Regulations, Foreign Service Travel Regulations''; and

■ b. Revising paragraphs (b) and (c).

The revisions read as follows:

752.7014 Notice of Changes in Travel Regulations.

* * * * *

(b) (1) Department of State Standardized Regulations are available at: *http://aoprals.state.gov/content.asp?content_id=231&menu_id=92.*

(2)Foreign Service Travel Regulations are available at: 14 FAM 500: *http://www.state.gov/m/a/dir/regs/fam/14fam/500/index.htm.*

(3) Federal Travel Regulations are available at: *http://www.gsa.gov/portal/content/104790?utm_source=OGP&utm_medium=print-radio&utm_term=ftr&utm_campaign=shortcut.*

(c) Information regarding these regulations as referenced in the ''Travel and Transportation'' clause of this contract may be obtained from the contracting officer.

■ 121. Amend 752.7015 by revising paragraphs (a)(1) and (2) to read as follows:

752.7015 Use of Pouch Facilities.

* * * * *

(a) * * *

(1) Contractors and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of 0.9 kilogram/2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen employees of U.S. contractors are authorized use of the pouch for personal mail up to a maximum of 0.5 kilogram/one pound per shipment (but see paragraph (a)(3) of this section).

* * * * *

752.7018 [Amended]

■ 122. Amend 752.7018 by:

■ a. In paragraph (a), removing the words ''Automated Directive System (ADS) 253.5.6b'' and adding, in their place, the words ''Automated Directive System (ADS) 253''; and

■ b. In paragraph (b), removing the words ''Global Center for Human Capacity Development (G/HCD)'' and adding, in their place, the words ''Director, Bureau for Economic Growth, Education and Environment, Office of Education (E3/ED)''.

752.7019 [Amended]

■ 123. Amend 752.7019 by:

■ a. In paragraph (b), removing the words ''The current version of Chapter 253 may be obtained directly from the USAID Web site at *http://www.info.usaid.gov/pubs/ads/200''* and adding, in their place, the words ''The entire ADS is accessible to the general public at the following USAID Internet address: *http://www.usaid.gov/policy/ads/'';* and

■ b. In paragraph (c), removing the words ''ADS 253.5.5'' and adding, in their place, the words ''ADS 253''.

752.7028 [Amended]

■ 124. Amend 752.7028(e) by removing the word ''allownce'' and adding, in its place, the word ''allowance'';

■ 125. Revise 752.7032 to read as follows:

752.7032 International Travel Approval and Notification Requirements (APR 2014).

For use in any USAID contract requiring international travel.

International Travel Approval and Notification Requirements (APR 2014)

Prior written approval by the contracting officer, or the contracting officer's representative (COR) if delegated in the Contracting Officer's Representative Designation Letter, is required for all international travel directly and identifiably funded by USAID under this contract. The Contractor must therefore present to the contracting officer or the contracting officer's representative, an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advanced of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The contracting officer's or

contracting officer's representative's (if delegated by the contracting officer) prior written approval may be in the form of a letter or telegram or similar device or may be specifically incorporated into the schedule of the contract. At least one week prior to commencement of approved international travel, the Contractor must notify the cognizant Mission, with a copy to the contracting officer or contracting officer's representative, of planned travel, identifying the travelers and the dates and times of arrival.

752.7033 [Amended]

■ 126. In 752.7033(b)(1) remove the second sentence.

753.107 [Amended]

■ 127. In 753.107, remove the words ''congnizant Contracting Officer'' and add, in their place, the words ''cognizant contracting officer''.

Dated: October 7, 2014.

Aman S. Djahanbani,

Chief Acquisition Officer.

[FR Doc. 2014–26051 Filed 12–15–14; 8:45 am]

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Part VI

Department of Agriculture

Agicultural Marketing Service

7 CFR Parts 900, 1150, 1160, et al.
Exemption of Organic Products from Assessment Under a Commodity Promotion Law; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 900, 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280

[Document Number AMS–FV–14–0032]

Exemption of Organic Products From Assessment Under a Commodity Promotion Law

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would modify the organic assessment exemption regulations under 23 Federal marketing orders and 22 research and promotion programs. The current regulations would be amended to allow persons that produce, handle, market, or import certified organic products to be exempt from paying assessments associated with commodity promotion activities, including paid advertising, conducted under a commodity promotion program administered by the Agricultural Marketing Service (AMS). The exemption would cover all ''organic'' and ''100 percent organic'' products certified under the National Organic Program regardless of whether the person requesting the exemption also produces, handles, markets, or imports conventional or nonorganic products. Currently, only persons that exclusively produce and market products certified as 100 percent organic are eligible for an exemption from assessments under commodity promotion programs. The authority for this proposal is in section 10004 of the Agricultural Act of 2014.

DATES: Comments must be received by January 15, 2015.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments will be included in the record and made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Michelle Sharrow, Branch Chief, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938; or email: *Barry.Broadbent@ams.usda.gov,* or *Michelle.Sharrow@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The authority for this proposed rule is specified in section 10004 of the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113–79). On February 7, 2014, the 2014 Farm Bill amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (7 U.S.C. 7401), which established certain provisions for generic commodity promotion programs created under the various commodity promotion laws. Section 501 of the FAIR Act was previously amended in May 2002, by Section 10607 of the Farm Security and Rural Investment Act (2002 Farm Bill) (Pub. L. 107–171) to exempt persons that produced and marketed solely 100 percent organic products, and who did not otherwise produce or market any conventional or nonorganic products, from the payment of an assessment for commodity promotion activities under a commodity promotion law.

Section 10004 of the 2014 Farm Bill subsequently expanded the organic assessment exemption to apply to any agricultural commodity that is certified as ''organic'' or ''100 percent organic'' as defined by the National Organic Program (NOP) (7 CFR part 205). The amendment further requires the Secretary of Agriculture to promulgate regulations concerning the eligibility and compliance procedures necessary to implement the exemption. Consistent with that provision of the 2014 Farm Bill, the proposed exemption covers all certified ''organic'' or ''100 percent organic'' products of a producer, handler, first handler, marketer, or importer regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, or imported by a person that also produces, handles, markets, or imports conventional or nonorganic agricultural products, including conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed.

Executive Order 12866, Executive Order 13563, and Executive Order 13175

The Department of Agriculture (USDA) is issuing this proposed rule with regard to marketing orders in conformance with Executive Orders 12866, 13563, and 13175.

With regard to research and promotion programs, Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a ''non-significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

Additionally, with regard to research and promotion programs, this action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

Agricultural Marketing Agreement Act of 1937

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Beef Promotion and Research Act of 1985

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Beef Promotion and Research Act of 1985 (7 U.S.C. 2910) provides that it shall not preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State.

Commodity Promotion, Research, and Information Act of 1996

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Commodity Promotion, Research,

and Information Act of 1996 (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Cotton Research and Promotion Act of 1966

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect.

Dairy Production Stabilization Act of 1983

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect. Section 1221 of the Dairy Production Stabilization Act of 1983 provides that nothing in this Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

Egg Research and Consumer Information Act of 1974

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect.

Fluid Milk Promotion Act of 1990

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect.

Hass Avocado Promotion, Research and Information Act of 2000

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212(c) of the Hass Avocado Promotion, Research and Information Act of 2000 (7 U.S.C. 7811) provides that nothing in this Act may be construed to preempt or supersede any program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a State.

Mushroom Promotion, Research, and Consumer Information Act of 1990

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6109) provides that nothing in this Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information or industry information organized and operated under the laws of the United States or any State.

Popcorn Promotion, Research, and Consumer Information Act of 1996

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 580 of the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7489) provides that nothing in this Act preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

Potato Research and Promotion Act of 1971

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Pork Promotion, Research and Consumer Information Act of 1985

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1628 of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4817) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers. The regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Pork Act may not be imposed by a State.

Soybean Promotion, Research, and Consumer Information Act

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Additionally, section 1974 of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6309) provides, with certain exceptions, that nothing in the Soybean Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Soybean Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that, to ensure adequate funding of the operations of QSSBs under the Soybean Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Soybean Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Watermelon Research and Promotion Act

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

This proposal is issued under the 23 marketing orders and the 22 research and promotion programs established under the following acts: Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) (AMAA); Beef Promotion and Research Act of 1985 (7 U.S.C. 2901–2911); Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101–2118); Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501–4514); Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); Hass Avocado Promotion, Research, and Information Act of 2000 (7 U.S.C. 7801–7813); Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); Popcorn Promotion, Research, and Consumer Information Act of 1996 (7 U.S.C. 7481–7491); Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611–2627); Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311); and Watermelon Research and Promotion Act (7 U.S.C. 4901–4916). These acts are collectively referred to as ''commodity promotion laws.''

The preceding acts provide that administrative proceedings must be exhausted before parties may file suit in court. Under those acts, any person subject to an order may file a petition with the Secretary of Agriculture stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an

inhabitant, or has his principal place of business, has the jurisdiction to review the Secretary's rule, provided a complaint is filed within 20 days from the date of the entry of the ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provision of the Beef Promotion and Research Act of 1985.

Proposed Rule

USDA is proposing revisions to the general regulations affecting the 23 marketing order programs established under the AMAA. In addition, USDA is proposing similar amendments to the orders and/or rules and regulations of the 22 research and promotion programs. USDA is proposing the termination of existing provisions in § 1209.52 of the mushroom research and promotion order that are not consistent with proposed amendments to the order's organic assessment exemption provisions contained in § 1209.252. The proposed termination of § 1209.52(a)(2) and (a)(3) is authorized by § 1209.71(a) of the order. While the existing organic exemption provisions would terminate in § 1209.52 of the order, a revised organic exemption provision is proposed in section § 1209.252(a)(2) of the regulations.

Consistent with the provisions of the 2014 Farm Bill, the proposed modifications would amend current regulatory provisions that exempt organic producers, handlers, first handlers, marketers, and importers from the payment of promotion program assessments used to fund commodity promotion activities, including paid advertising, under a commodity promotion law.

Marketing Order Programs

The FAIR Act organic exemption amendment, as enacted by the 2014 Farm Bill, covers 23 marketing order programs established under the AMAA (Florida citrus—7 CFR part 905; Texas citrus—7 CFR part 906; Florida avocados—7 CFR part 915; Washington apricots—7 CFR part 922; Washington sweet cherries—7 CFR part 923; Southeastern California grapes—7 CFR part 925; Oregon/Washington pears—7 CFR part 927; Cranberries grown in the States of Massachusetts, *et al.*—7 CFR part 929; Tart cherries grown in the States of Michigan, *et al.*—7 CFR part 930; California olives—7 CFR part 932; Colorado potatoes—7 CFR part 948; Georgia Vidalia onions—7 CFR part 955; Washington/Oregon Walla Walla onions—7 CFR part 956; Idaho-Eastern Oregon onions—7 CFR part 958; Texas onions—7 CFR part 959; Florida tomatoes—7 CFR part 966; California almonds—7 CFR part 981; Oregon-Washington hazelnuts—7 CFR part 982; California walnuts—7 CFR part 984; Far West spearmint oil—7 CFR part 985; California dates—7 CFR part 987; California raisins—7 CFR part 989; and California dried prunes—7 CFR part 993).

Federal marketing orders are locally administered by committees made up of producers and/or handlers, and often members of the public. Marketing order regulations, initiated by industry and enforced by USDA, bind the entire industry in the geographical area regulated once they are approved by the Secretary of Agriculture. Marketing orders employ one or more of the following authorities: (1) Maintain the high quality of produce available to the market; (2) standardize packages and containers; (3) regulate the flow of product to market; (4) establish reserve pools for storable commodities; and (5) authorize production research, marketing research and development, and advertising. Each unique marketing order helps to promote orderly marketing for the specific commodity and region covered by the regulation.

The 23 specific marketing order programs listed above allow for market promotion activities designed to assist, improve, or promote the marketing, distribution, or consumption of the commodity covered under each specific marketing order. Some of these programs also authorize market promotion in the form of paid advertising. Promotion activities, including paid advertising, are paid for by assessments levied on handlers regulated under the various marketing orders.

Rules of practice and regulations governing all marketing orders established under the AMAA are contained in 7 CFR part 900 General Regulations. Section 900.700 specifies the criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion activities, including paid advertising; procedures for persons to apply for an exemption; procedures for calculating the assessment exemption; and other procedural details pertaining to the 23 marketing order programs that currently engage in, or have the authority for, marketing promotion, including paid advertising.

Currently under those provisions, only handlers that exclusively handle or market products that are eligible to be labeled ''100 percent organic'' are exempt from the portion of a marketing order assessment applicable to an order's marketing promotion activities, including paid advertising. As such, organic handlers who handle or market any quantity of conventional or nonorganic products in addition to their organic products are not currently able to claim an assessment exemption on any of the products they handle. The 2014 Farm Bill expanded the organic exemption in the FAIR Act to allow all organic handlers to apply for an exemption from assessments on products certified as ''organic'' or ''100 percent organic,'' regardless of whether the handler also handles or markets conventional or nonorganic products (hereafter referred to as a ''split operation'').

This proposal would modify the organic assessment exemption eligibility criteria contained in § 900.700. The requirements contained in that section would be revised to allow organic operations that are split operations to apply for and receive an assessment exemption on their organic products, whereas such types of operations are explicitly precluded from the organic assessment exemption under the current language. More specifically, the eligibility provisions contained in § 900.700(b) would be modified to include certified organic handlers that maintain split operations. The section would also be amended to provide that exempt handlers must continue to pay assessments associated with any agricultural products that do not qualify for an exemption under that section.

Handlers who wish to claim the assessment exemption on their organic products would continue to be required to submit an application to the marketing order board or committee, and subsequently be approved by that body, to qualify for the organic exemption. However, as a result of the revised eligibility requirements as proposed herein, some of the information collection previously necessary for the board or committee to administer the organic assessment exemption would no longer be required moving forward. As such, § 900.700(c) would be modified to require less documentation from the handler with regards to the type and scope of their operation when they apply for an organic assessment exemption.

Research and Promotion Programs

The FAIR Act organic exemption amendment contained in the 2014 Farm Bill also covers 22 research and promotion programs established under either freestanding legislation (beef, cotton, dairy, eggs, fluid milk, Hass avocados, mushrooms, popcorn, pork, potatoes, soybeans, and watermelons) or the Commodity Promotion, Research, and Information Act of 1996

(blueberries, Christmas trees, honey, lamb, mangoes, paper and paper-based products, peanuts, processed raspberries, softwood lumber, and sorghum).

Wholly funded and operated by industry, the research and promotion programs are charged with creating, maintaining, and expanding markets for the agricultural commodities they represent. While these programs are overseen by AMS, including review of all financial budgets, marketing plans, and research projects, they are governed by boards and councils made up of industry participants. Producers, handlers, processors, importers, and/or others in the marketing chain pay assessments to the representative boards and councils to fund each program's activities. Industries voluntarily request the formation of these programs, which allows them to establish, finance, and execute coordinated programs of research, producer and consumer education, and generic commodity promotion to improve, maintain, and develop markets for their respective commodities.

Under this proposal, the eligibility criteria for obtaining an organic assessment exemption, as contained in each of the research and promotion orders, plans, and/or regulations, would be revised. The requirements for such an exemption would be modified to allow split organic operations to apply for and receive an assessment exemption on their organic products, whereas such types of operations are explicitly precluded from the assessment exemption under the current provisions in each program. In addition, language would be added to provide that exempt producers, handlers, marketers, or importers must continue to pay any assessments associated with any agricultural products that do not qualify for an exemption. Persons who wish to claim the assessment exemption on their organic products would continue to be required to submit an application to the board or council, and subsequently be approved, to qualify for the organic exemption. However, as a result of the revised eligibility requirements proposed herein, some of the information collection that is currently necessary for the board or council to administer the organic assessment exemption would no longer be required moving forward. As such, the section of each order, plan, or regulation that specifies the information collection requirements for the organic assessment exemption would be modified to require less documentation from the applicant with regards to the type and scope of their operation.

Who is eligible for exemption under a marketing order?

This proposed rule would modify the eligibility requirements for organic assessment exemptions that are currently in place for marketing order programs. Under this proposed action, persons who are subject to an assessment under a designated marketing order, who maintain a valid organic certificate, and who handle any assessable agricultural commodities that are certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) would be eligible for the organic assessment exemption under amended requirements in part 900.

All of the 23 marketing orders impacted by this proposed rule assess only handlers (*i.e.,* persons that handle the regulated commodity) to fund the operations of the respective programs. Under the current organic assessment exemption regulation, which was promulgated as a result of the provisions in the 2002 Farm Bill that amended the FAIR Act, to qualify for an exemption from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must ''produce and market'' solely 100 percent organic products, and must not also produce or market any conventional or nonorganic products. For the purpose of that regulation, ''produce'' was defined as to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing. USDA determined that handlers, processors and producers acting as handlers, and importers were also eligible for exemption if any of their activities met the definition of ''produce'' as outlined above. Additionally, the regulation only provided for granting organic assessment exemptions to persons that handle domestic commodities regulated under marketing orders and not importers, as importers regulated under section 608e of the AMAA (7 U.S.C. 608e–1)(section 8e) do not pay assessments. Therefore, importers are not eligible for an organic assessment exemption under part 900.

The 2002 Farm Bill amended the FAIR Act to make organic assessment exemptions available to any person that ''produces and markets'' organic products, should they also conform to certain other criteria. This proposed rule would incorporate the broadened eligibility criteria established by the 2014 Farm Bill amendment to the FAIR Act into the regulations. Importers of commodities covered by section 8e of the Agricultural Marketing Agreement Act of 1937 would remain ineligible for an exemption as importers do not pay assessments under marketing order programs.

In addition, the FAIR Act amendment also expanded eligibility to cover split organic operations. The requirement that operations be ''solely'' 100 percent organic was replaced with the requirement that operations maintain a ''valid organic certificate'' issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP. Handlers who handle certified ''organic'' and/or ''100 percent organic'' products would qualify for an organic assessment exemption regardless of whether the commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same commodity as that for which the exemption is claimed.

Examples

For all examples, assume that the person that handles or markets a commodity regulated under a marketing order is otherwise obligated to pay assessments under that order and that 60 percent of the marketing order's budgeted expenses are attributed to market promotion activities, including paid advertising:

- A handler who handles all of their volume as certified ''organic'' or ''100 percent organic'' product (received from certified organic producers), and maintains a valid organic certificate under the NOP, would be eligible for an organic assessment exemption. The handler would be exempt from 100 percent of the portion of the marketing order assessment attributed to marketing promotion activities (60 percent). The handler would be obligated to pay 40 percent of the assessment rate on 100 percent of the product handled. The assessment calculation would be: Quantity handled × 40 percent of the assessment rate.
- A handler who handles 20 percent of their volume as certified ''organic'' or ''100 percent organic'' product (received from certified organic producers) and maintains a valid organic certificate under the NOP would be eligible for an organic assessment exemption. The handler would be exempt from the portion of the marketing order assessment attributed to marketing promotion activities (60 percent) on the quantity of the products handled that are organic (20 percent). Conversely, the handler would be obligated to pay 40 percent of the assessment rate on 20

percent of the product handled and 100 percent of the assessment rate on 80 percent of the product handled. The assessment calculation would be: (Quantity handled × 20 percent × 40 percent of the assessment rate) + (quantity handled × 80 percent × assessment rate).

- A handler who handles 20 percent of their volume as ''organic'' or ''100 percent organic'' received from certified organic producers, but does NOT maintain a valid organic certificate under the NOP, would NOT be eligible for any exemption of their marketing order assessments as they do not have proper certification. The handler would be obligated to pay 100 percent of the assessment associated with the quantity of product handled.
- An importer who imports a commodity that is subject to import regulation under section 8e would NOT be eligible for an exemption from marketing order assessments as importers are not obligated to pay assessments under a marketing order or the import regulations.

Who is eligible for exemption under a research and promotion program?

Just as for marketing orders, this proposed rule would modify the eligibility requirements for organic assessment exemptions that are currently in place for research and promotion programs. Under this proposed action, persons who are subject to an assessment under a designated research and promotion program, who maintain a valid organic certificate, and who handle any assessable agricultural commodities that are certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) would be eligible for an organic assessment exemption under amended requirements contained in each of the programs' respective orders, plans, or regulations. Persons who are importing organic products in compliance with a U.S. equivalency arrangement established by NOP pursuant to OFPA and the NOP regulations would also be eligible for an organic assessment exemption.

For the 22 research and promotion programs currently enacted, 16 assess producers, 2 assess handlers, 2 assess manufacturers, and 2 assess processors. Under the provisions for each of the respective programs, many also assess other entities, in addition to the named classes, including importers, exporters, feeders, and seed stock producers. Any of the entities obligated to pay assessments under one of the aforementioned programs is eligible for an organic assessment exemption.

Under the current regulation, organic assessment exemptions are available to any person who ''produces or markets solely 100 percent organic products'' and conforms to certain requirements. As mentioned previously, the recent amendment to the FAIR Act expands the organic assessment exemption eligibility to any person that ''produces, handles, markets, or imports'' organic products under a ''valid organic certificate'' issued under the OFPA and the NOP. This proposed rule would remove the ''solely 100 percent organic'' requirement currently in the regulations and allow split operations to request an organic assessment exemption for all products that qualify as certified ''organic'' and ''100 percent organic.'' Also, just as for marketing orders, ''person'' will continue to mean any individual, group of individuals, corporation, association, cooperative, or other business entity engaged in any of the aforementioned activities.

Examples

For all examples, assume that the person produces, handles, processes, or imports a commodity regulated under a research and promotion program and is otherwise obligated to pay assessments under that order:

- A producer who maintains a valid organic certificate under the NOP and markets 100 percent of the products they produce as certified ''organic'' or ''100 percent organic'' would be eligible for an organic exemption on 100 percent of the quantity produced.
- A handler who maintains a valid organic certificate under the NOP and handles 20 percent of the products they handle as certified ''organic'' or ''100 percent organic'' products would be eligible for an organic exemption on 20 percent of the total quantity they handle. Conversely, the handler would continue to be obligated to pay the full assessment on the 80 percent of the total quantity they handle that is not ''organic'' or ''100 percent organic.'' The assessment calculation would be: quantity produced × 80 percent × assessment rate.
- A processor who processes 20 percent of their volume as ''organic'' or ''100 percent organic'' products received from certified organic producers, but does NOT maintain a valid organic certificate under the NOP, would NOT be eligible for any exemption of their assessment obligation as they are NOT a certified handling operation. The processor would be obligated to pay 100 percent of the assessment associated with the quantity of product they processed and marketed.
- An importer who maintains a valid organic certificate under the NOP and markets the products that they import as organic products, but the producers of the products are NOT certified under the NOP, would be eligible for an organic assessment exemption if the product is certified as ''organic'' or ''100 percent organic'' under a U.S. equivalency arrangement established under the NOP.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis.

Analysis of Marketing Order Programs

Marketing orders issued pursuant to the AMAA, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Assessments under marketing order programs are paid by the handlers regulated under each of the marketing orders. There are approximately 950 handlers regulated under the 23 Federal marketing orders with market promotion authority (there are 28 marketing orders total—5 do not have authority for market promotion activities). Currently, only 10 entities handle or market solely 100 percent organic products and claim exemptions from paying assessments for market promotion activities, including paid advertising, under the assessment exemption regulations contained in § 900.700. USDA believes that as many as 20 percent of the entities handling agricultural products under the various marketing orders (approximately 190 firms) may handle some quantity of organic products, but do not qualify for an assessment exemption under the current regulations.

Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201). All of the entities currently approved for an organic assessment exemption under the marketing order programs would be

classified by SBA as small agricultural service firms. In addition, although the exact number of potential applicants is unknown, USDA believes that many of the entities that would become eligible for an organic assessment exemption as a result of this proposed action may also be classified as small firms under the SBA classification.

As previously mentioned, Section 501 of the FAIR Act was amended by the 2002 Farm Bill to exempt persons that produced and marketed solely 100 percent organic products, and were not split operations, from the payment of an assessment for commodity promotion activities under a commodity promotion law. The amendment required the Secretary to promulgate regulations with regard to the eligibility and compliance of such organic assessment exemptions. AMS subsequently added § 900.700 to the General Regulations (7 CFR part 900) governing marketing orders to establish the criteria and procedure for obtaining an organic assessment exemption.

On February 7, 2014, the FAIR Act was again amended by the 2014 Farm Bill to broaden the eligibility criteria for receiving an organic assessment exemption under a commodity promotion program. Specifically, the 2014 Farm Bill amendment to the FAIR Act exempts persons that produce, handle, market, or import products certified as ''organic'' or ''100 percent organic'' from payment of assessments under a commodity promotion program. The exemption applies regardless of whether a producer, handler, marketer, or importer also produces, handles, markets, or imports conventional or nonorganic products. The statute further requires the Secretary to promulgate regulations under each of the commodity promotion programs to implement the amendment.

As required, USDA is proposing amendments to the general regulations that would affect 23 of the 28 Federal marketing orders that have authority for market promotion, including paid advertising. These amendments would modify the current provisions and broaden the eligibility for organic handling operations to become exempt from paying assessments on the certified ''organic'' and ''100 percent organic'' products that they handle, regardless of whether the handler is a split operation.

The 23 marketing order programs affected by this proposed rule allow for promotion activities designed to assist, improve, and promote the marketing, distribution, or consumption of the commodities covered under the marketing orders. Some of the orders also include authority for paid advertising. Expenses necessary to administer the programs are paid for by assessments levied on handlers regulated under the various marketing orders. Market promotion activities, including paid advertising, are only one component of each marketing order's regulatory scheme. The assessment exemption for organic products, as currently implemented and as proposed going forward, only applies to the portion of a marketing order assessment that is associated with market promotion activities, including paid advertising. All handlers subject to regulation under a marketing order are obligated to pay the portion of the assessment that is not directly related to market promotion, including paid advertising. This includes handlers who are granted an organic assessment exemption.

Under this proposal, § 900.700 would be amended to broaden the criteria for persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising; streamline the procedure for applying for an exemption; modify the procedure for calculating the assessment exemption; and revise other procedural details necessary to effectuate the 2014 Farm Bill amendment. These changes would allow more handlers to qualify for an organic assessment exemption than are presently eligible under the current regulations.

Regarding the impact on affected entities under a marketing order, this proposed rule would impose minimal costs incurred in filing the exemption application and in maintaining records needed to verify the applicant's exemption status during the period that the entity is exempt. Under the proposed revisions, applicants would still be required to submit an application for exemption on Form FV–649 and receive approval from the applicable board or committee to obtain the assessment exemption. However, the eligibility criteria would be broadened and the amount of documentation required of an applicant would be reduced, thus reducing the burden on entities who wish to participate. Applicants would continue to submit one application annually. The annual burden associated with requests for organic assessment exemptions for all of the marketing order industries is estimated to total 47.5 hours (190 applicants × 15 minutes) (see the Paperwork Reduction Act section below for greater explanation of the information collection and recordkeeping burden).

The total estimated cost burden associated with the information collection is estimated to be $712, or $3.75 per applicant. The total cost was estimated by multiplying the expected burden hours associated with the organic exemption application (47.5 hours) by $15.00 per hour, a sum deemed reasonable should an applicant be compensated for their time.

During the 2012–2013 marketing season, assessments for all marketing orders totaled approximately $89,700,000. Of that amount, about $58,300,000 (or 65 percent) was made available for marketing promotion activities, including paid advertising. While there is not enough information to generate a reasonable estimate, USDA believes about two percent, on average, of the total assessments are for commodities that are certified organic. Thus, assessments on organic commodities might have totaled as much as $1,794,000 (2 percent of $89,700,000). That total might be reduced moving forward by $1,166,000 (65 percent of $1,794,000—the portion of the assessments made available for marketing activities) if all of the approximately 190 handlers that USDA believes may be eligible were to apply to the respective board or committee and be approved for an organic assessment exemption under the proposed regulations.

There are approximately 10 handlers that are approved for organic assessment exemptions under the current regulation, with a total exempted amount of approximately $135,000. The current exemption averages approximately $13,500 per handler. Based on the estimate that 190 handlers might be exempt from assessments under the proposed criteria, and an estimated $1,166,000 of potential exemptions, USDA estimates that exempted organic handlers may average $6,136 in decreased assessments. This amount is less than half of the current average. However, the revised eligibility requirements, as proposed herein, would be expected to attract more handlers than under the current regulations. Many of those handlers may be small entities or may only handle a small percentage of organic products relative to the total amount of product handled.

There is some variation among the 23 marketing orders on the percent of assessments used for market promotion activities, including paid advertising. Thus, the actual reduction in assessments would differ among the various marketing orders. In fact, the amounts allocated for marketing promotion activities as a percentage of the total marketing order budgets range from less than 5 percent to almost 95

percent. As such, the financial impact of this proposal to each handler individually, and to each of the 23 distinct marketing order programs collectively, cannot be accurately estimated. However, several of the affected marketing order programs do expect to see large reductions in assessment revenue moving forward. The Oregon-Washington Fresh Pear Committee anticipates a $362,718 reduction is assessments, the California Almond Board expects a reduction of $298,000, and the California Raisin Administrative Committee expects a reduction of $180,000 as a result of the expanded eligibility for organic assessment exemptions. Should this rule be implemented, these boards and committees would have to adjust programs and reduce budgeted expenses accordingly.

Since this proposed action has the potential to exempt agricultural handling entities from assessments, AMS believes that this rule would have a net beneficial economic impact on exempted firms. The additional burden associated with the additional information collection would be more than offset by reduced assessment obligations. The benefits for this proposed rule are not expected to be disproportionately greater or less for smaller entities than for larger entities regulated under any of the 23 marketing order programs.

Analysis of Research and Promotion Programs

Research and promotion programs established under the various commodity promotion acts, and the rules and regulations issued thereunder, are like marketing orders in that they are uniquely brought about through group action of essentially small entities acting on their own behalf.

Producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers pay assessments to the national boards and councils that administer the various commodity research and promotion programs, or in some cases to other parties designated by a board or council to collect assessments. The number of entities paying assessments under each of the research and promotion programs varies considerably. For example, the mango program receives assessments from approximately 198 handlers and importers, while the beef program receives assessments from nearly 1 million producers.

As mentioned previously, small agricultural service firms are defined by the SBA as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Many of the handlers, importers, exporters, feeders, and seed stock producers currently approved for organic assessment exemptions under the research and promotion programs would be classified by SBA as small agricultural service firms. In addition, most of the producers currently approved for exemptions would also be classified as small agricultural producers. The exact number and size of the potential applicants that would be eligible for an assessment exemption as a result of this proposal is not known. The current and estimated number of respondents filing exemption claims appears later in this discussion; however, USDA believes that many of the entities that would become eligible for an organic assessment exemption under the proposed changes may also be classified as small firms and/or small producers under the SBA classification.

This proposed rule was initiated as a result of amendments to the FAIR Act contained in the 2014 Farm Bill. This rule would modify the current organic assessment exemption regulations under each of the 22 research and promotion programs to revise the eligibility criteria for obtaining an organic assessment exemption. As proposed, entities that produce, handle, market, or import organic products may be exempt from the payment of an assessment under a commodity promotion law with respect to any agricultural commodity that is certified as ''organic'' or ''100 percent organic'' under the NOP. The exemption would apply to the certified ''organic'' or ''100 percent organic'' products regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, or imported by a person that also produces, handles, or markets conventional or nonorganic agricultural products. This is a change from the current regulations, which only allow organic assessment exemptions for organic operations that produce and market solely products that are ''100 percent organic'' as defined under the OFPA and are not split operations.

Under the current regulations, eligible producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers that wish to be exempted from assessment on their certified organic products must submit a request for exemption to the appropriate board or council on Form AMS–15. This provision would not change as a result of this proposed rule. However, the proposed action would reduce the information collection requirements for requesting an organic assessment exemption to reflect the revised eligibility criteria and would necessitate modifying Form AMS–15 to reflect the proposed changes. The modified form would continue to be required under the proposed revisions to assist the board or council in the effective administration of the exemption and to ensure compliance with the exemption requirements.

In preparing this initial regulatory flexibility analysis, AMS has attempted to identify the entities that would be affected by the proposed rule and examine the potential impact on such entities. AMS has determined that this proposed rule would have very little negative impact on entities regulated under research and promotion programs. Further, the proposed changes would only impose minimal costs incurred in the filing of the exemption request and in maintaining records needed to verify the applicant's exemption status during the period that the entity is exempt. Under the proposed revisions, the required information collection burden would be reduced for entities who wish to initiate or perpetuate an organic assessment exemption. Applicants would continue to be required to submit one application annually.

All of the entities paying assessments to the research and promotion programs are eligible to take advantage of the proposed rule changes contained herein, provided the parties elect to apply and otherwise comply with the exemption requirements as specified under each of the individual orders.

Approximately 1,493 entities are currently approved for organic assessment exemptions under the 22 research and promotion programs. Organic assessment exemptions for the past year were approximately $1,400,000 for all of the programs in aggregate. In 2013, it is estimated that the dairy products program had the largest number of exemptions, with 1,150 producers exempt, and the highest dollar amount, with nearly 1 million dollars of assessment exemptions. Participation in the other programs varied. Ten of the 22 research and promotion programs currently do not have any entities approved for organic assessment exemptions.

The estimated number of respondents filing exemption claims with the boards or councils after implementation of the proposed changes to the regulations is anticipated as follows:

	Current	Estimated
Beef	30	2,966
Blueberries	8	204

	Current	Estimated
Christmas trees	0	0
Cotton	0	[1]
Dairy	1,150	1,823
Eggs	0	20
Fluid milk	0	11
Hass avocados	230	771
Honey	2	327
Lamb	3	7
Mangos	3	75
Mushrooms	7	246
Paper and Paper-based Packaging	0	0
Peanuts	0	85
Popcorn	0	170
Pork	5	18
Potatoes	6	904
Raspberries	0	232
Softwood lumber	0	0
Sorghum	10	10
Soybeans	39	1,930
Watermelons	0	412
Totals	1,493	10,211

[1] No estimate.

No respondents are expected from among Christmas tree, paper and paper-based packaging, or softwood lumber entities, given the nature of their industries. In addition, several of the programs exempt smaller entities from assessment—fluid milk processors processing less than 3 million pounds; egg producers owning 75,000 or fewer hens; raspberry producers producing less than 20,000 pounds; mushroom producers producing less than 500,000 pounds; honey first handlers handling less than 250,000 pounds; popcorn processors processing less than 4 million pounds; blueberry producers producing less than 2,000 pounds; and sorghum importers importing less than 1,000 bushels of grain or 5,000 tons of silage. More new respondents would have been expected under those programs if the smaller entities were not already exempt based on minimum quantities.

Under the proposed regulations, the annual burden related to submitting requests for organic assessment exemptions for all of the entities covered under the 22 research and promotion programs is estimated to total 2,552.75 hours (10,211 entities × 15 minutes) (see the Paperwork Reduction Act section for more detail). The total financial burden associated with the information collection for all industries covered by the programs is estimated to be $38,291.25, or $3.75 per applicant. The total cost was estimated by multiplying the expected burden hours associated with the exemption application (2,552.75 hours) by $15.00 per hour, a sum deemed reasonable should an applicant be compensated for their time.

This proposed rule would allow eligible producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers to request an exemption from paying assessments on products certified as ''organic'' or ''100 percent organic.'' The proposed changes would revise the organic exemption eligibility criteria under each of the research and promotion programs, thereby making the exemption available to more entities. The revised eligibility criteria are expected to increase the total number of participants as well as the total amount of organic assessment exemptions under each of the programs. The estimated total in organic assessment exemption amounts expected to result from revising the eligibility requirements are as follows:

Beef	$2,400,000
Blueberries	[1]
Christmas trees	0
Cotton	[1]
Dairy	4,190,000
Eggs	742,500
Fluid milk	4,530,000
Hass avocados	850,000
Honey	[1]
Lamb	114,000
Mangos	[1]
Mushrooms	132,655
Paper and Paper-based packaging	0
Peanuts	6,517
Popcorn	[1]
Pork	111,000
Potatoes	[1]
Raspberries	[1]
Softwood lumber	0
Sorghum	122,500
Soybeans	427,800
Watermelons	[1]
Total	13,626,972

[1] No estimate.

There are no estimated assessment exemption amounts for the Christmas tree, paper and paper-based-packaging, or softwood lumber programs given the nature of these industries. Some boards and councils were able to estimate the number of organic production and marketing operations within their industries; however, based upon current data, there is not enough information to generate a reasonable estimate of the potential dollar amount of organic assessment exemptions reported as ''no estimate.'' The boards and councils that reported ''no estimate'' generally represent programs that estimated small percentages of participation amongst their industries. Should this rule be implemented, these boards and committees would have to adjust programs and reduce budgeted expenses accordingly.

Since this proposed action has the potential to exempt agricultural production, handling, and marketing entities from assessments, AMS believes that this rule would have a net beneficial economic impact on exempted firms. The additional burden associated with the additional information collection would be more than offset by reduced assessment obligations. The benefits for this proposed rule are not expected to be disproportionately greater or less for small producers, handlers, or marketers than for larger entities regulated under any of the 22 research and promotion programs.

To ensure that AMS is able to thoroughly assess the potential impact of this proposed rule on affected entities, interested parties are invited to submit comments, views, and opinions on the probable regulatory and informational impacts of this action on small entities. Comments may indicate the size, number, and type of entities that would be affected by this proposal, explain the potential effects of the proposed amendments on those entities, and provide any pertinent information and data.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements have been previously approved by the Office of Management and Budget (OMB) under 23 Federal marketing order programs (7 CFR parts 905, 906, 915, 922, 923, 925, 927, 929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, and 993) and 22 research and promotion programs (7 CFR parts 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280). Upon publication of the final rule, AMS will submit a Justification for Change to OMB for the AMS–15 Exemption Application Form for Research and Promotion Programs, OMB No. 0581–0093 National Research, Promotion and Consumer Information Programs. AMS will also submit a Justification for Change to OMB for the FV–649 Exemption Application Form for Marketing Orders, OMB No. 0581–0216 Fruit and Vegetable Marketing Orders Certified Organic Handler Marketing Promotion Assessment Exemption under 23 Federal Marketing Orders. The Justification for Change will request approval for an increase in number of respondents, reduction in per response time, and an increase in burden hours for these two forms.

While this proposed rule has not received the approval of USDA, it has been determined that it is consistent

with and would effectuate the purposes of the Commodity Promotion, Research, and Information Act of 1996, for the programs for which the Act is applicable.

A 30-day comment period for the proposed rule is provided to allow interested persons to submit written comments on the proposed changes to the criteria for identifying persons eligible to obtain an assessment exemption for organic products and the procedural details for obtaining an exemption under the various commodity promotion programs. Thirty days is deemed appropriate because this action was mandated by Congress under the 2014 Farm Bill and is intended to provide a broader exemption to certified producers, handlers, marketers, feeders, seed stock producers, producers, exporters and importers of ''organic'' and ''100 percent organic'' products. All comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1150

Administrative practice and procedure, Dairy products, Reporting and recordkeeping requirements, Research.

7 CFR Part 1160

Administrative practice and procedure, Fluid milk products, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1205

Administrative practice and procedure, Advertising, Agricultural research, Cotton, Reporting and recordkeeping requirements.

7 CFR Part 1206

Administrative practice and procedure, Advertising, Agricultural research, Mango, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1207

Advertising, Agricultural Research, Imports, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Imports, Mushrooms, Reporting and recordkeeping requirements.

7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer education, Honey and honey products, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1214

Administrative practice and procedure, Advertising, Christmas trees promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 1215

Administrative practice and procedures, Advertising, Agricultural research, Popcorn, Reporting and recordkeeping requirements.

7 CFR Part 1216

Administrative practice and procedure, Advertising, Agricultural research, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Promotion, Reporting and recordkeeping requirements, Softwood lumber.

7 CFR Part 1218

Administrative practice and procedure, Advertising, Agricultural Research, Blueberries, Reporting and recordkeeping requirements.

7 CFR Part 1219

Administrative practice and procedure, Advertising, Agricultural research, Hass avocados, Reporting and recordkeeping requirements.

7 CFR Part 1220

Administrative practice and procedure, Agricultural research, Reporting and recordkeeping requirements, Soybeans and soybean products.

7 CFR Part 1221

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Sorghum and sorghum product.

7 CFR Part 1222

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and paper-based-packaging promotion, Reporting and recordkeeping requirements.

7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Pork and pork products, Reporting and recordkeeping requirements.

7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

7 CFR Part 1280

Administrative practice and procedure, Advertising, Lamb and lamb products, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 900, 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280 are proposed to be amended as follows:

PART 900—GENERAL REGULATIONS

■ 1. The authority citation for 7 CFR part 900 continues to read as follows:

Authority: 7 U.S.C. 601–674 and 7 U.S.C. 7401.

■ 2. Revise § 900.700 to read as follows:

§ 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an exemption from the portion of the assessment used to fund marketing promotion activities under a marketing order and the procedures for applying for such an exemption under 7 CFR parts 905, 906, 915, 922, 923, 925, 927,

929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, 993, and such other parts (included in 7 CFR parts 905 through 998) covering marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion. For the purposes of this section, the term ''assessment period'' means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term ''marketing promotion'' means marketing research and development projects or marketing promotion, including paid advertising designed to assist, improve, or promote the marketing, distribution, or consumption of the applicable commodity.

(b) A handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan and is subject to assessments under a part or parts specified in paragraph (a) of this section may be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising, provided that:

(1) Only agricultural commodities certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205);

(4) Any handler so exempted shall continue to be obligated to pay assessments under such part or parts specified that are associated with any agricultural products that do not qualify for an exemption under this section; and

(5) For exempted products, any handler so exempted shall be obligated to pay the portion of the assessment associated with the other authorized activities under such part or parts other than marketing promotion, including paid advertising.

(c) *Assessment Exemption Application.* (1) To be exempt from paying assessments for these purposes under a part or parts listed in paragraph (a) of this section, the handler shall submit an application to the committee or board established under the applicable part or parts prior to or during the assessment period. This application, Form FV–649, ''Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders,'' shall include:

(i) The date, applicable committee or board, and Federal marketing order number;

(ii) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(iii) Certification that the applicant maintains a valid certificate of organic operation under the OFPA and the NOP;

(iv) Certification that the applicant handles or markets organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(v) Certification that the applicant is otherwise subject to assessments under the Federal marketing order program for which the exemption is requested;

(vi) The number of organic certified producers for whom they handle or market product (including the applicant);

(vii) A requirement that the applicant attach a copy of their certificate of organic operation and all applicable producer certificates of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(viii) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(ix) Such other information as the committee or board may require, with the approval of the Secretary.

(2) The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter, as long as the handler continues to be eligible for the exemption. If the person complies with the requirements of this section and is eligible for an assessment exemption, the committee or board will approve the exemption request and provide written notification of such to the applicant within 30 days. If the application is disapproved, the committee or board will provide written notification of the reason(s) for such disapproval within the same timeframe.

(3) The exemption will apply at the beginning of the next assessable period following notification of approval of the assessment exemption, in writing, by the committee or board.

(d) *Assessment Exemption Calculation.* (1) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee's or board's estimated non-marketing promotion expenditures by the committee's or board's estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The modified assessment rate shall then be applied to the quantity of certified ''organic'' or ''100 percent organic'' products handled under an approved organic assessment exemption as provided in paragraph (c)(2) of this section. Products handled not subject to an approved organic assessment exemption shall be assessed at the assessment rate applicable to all persons for the assessment period. The committee's or board's estimated non-marketing promotion expenditures shall exclude the direct costs of marketing promotion and the portion of committee's or board's administrative and overhead costs (*e.g.,* salaries, supplies, printing, equipment, rent, contractual expenses, and other applicable costs) to support and administer the marketing promotion activities.

(2) If a committee or board does not plan to conduct any market promotion activities in a fiscal year, the committee or board may submit a certification to that effect to the Secretary, and as long as no assessments for such fiscal year are used for marketing promotion projects, or the administration of projects are funded by a previous fiscal period's assessments, the committee or board may assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period.

(3) For each assessment period, the Secretary shall review the portion of the assessment rate applicable to marketing promotion for persons eligible for an exemption and, if appropriate, approve the assessment rate.

(4) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

(5) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the portion of the assessment rate for market promotion applicable to exempt handlers, and authorize adjustments for

any overpayments or collection of underpayments.

PART 1150—DAIRY PROMOTION PROGRAM

■ 3. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 4. In § 1150.157, revise paragraphs (a), (b), (c), (d), (e), (g), (i), and (j) to read as follows:

§ 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a)(1) and (2) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments *provided that:*

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of the producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer subject to assessments pursuant to § 1150.152(a)(1) and (2) shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152(a).

* * * * *

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' dairy products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before July 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the CBP entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' dairy products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(j) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified ''organic'' or ''100 percent organic'' dairy products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1160—FLUID MILK PROMOTION PROGRAM

■ 5. The authority citation for 7 CFR part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417 and 7 U.S.C. 7401.

■ 6. In § 1160.215, revise paragraphs (b) through (e) to read as follows:

§ 1160.215 Assessment exemption.

* * * * *

(b) A fluid milk processor described in § 1160.211(a) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a fluid milk processor regardless of whether the agricultural commodity subject to the exemption is processed by a person that also processes conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The fluid milk processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations

issued under OFPA (7 CFR part 205); and

(4) Any fluid milk processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211(a) shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the processor continues to be eligible for the exemption.

(d) A fluid milk processor request for exemption shall include the following information:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant processes organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(e) If a fluid milk processor complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the processor within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

PART 1205—COTTON RESEARCH AND PROMOTION

■ 7. The authority citation for 7 CFR part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

■ 8. In § 1205.519, revise paragraphs (a), (b), (c), (d), (e), (f), and (h) and add paragraph (i) to read as follows:

§ 1205.519 Organic exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, an eligible cotton producer shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the crop year, as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces and/or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' cotton and cotton products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' cotton and cotton products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(i) An importer who is exempt from payment of assessments under

paragraph (f) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' cotton and cotton products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

■ 9. The authority citation for 7 CFR part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 10. In § 1206.202, revise paragraphs (a), (b), (c), (d), and (e) and add paragraph (g) to read as follows:

§ 1206.202 Exemption for organic mangos.

(a) A first handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products handled by the first handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible first handler shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the first handler continues to be eligible for the exemption.

(c) A first handler request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant handles organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a first handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the first handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' mangos on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for exemption. This documentation shall include the same information required of first handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(g) An importer who is exempt from payment of assessments under paragraph (e) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified ''organic'' or ''100 percent organic'' mangos and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 11. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

■ 12. In § 1207.514, revise paragraphs (a), (b), (c), (d), (e), (f), and (h) to read as follows:

§ 1207.514 Exemption for organic potatoes.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) The producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells potatoes. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' potatoes, potato products, and seed potatoes on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before July 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 13. The authority citation for 7 CFR part 1208 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 14. In § 1208.53, revise paragraph (d) to read as follows:

§ 1208.53 Exemption and reimbursement procedures.

* * * * *

(d) *Organic exemption.* (1) A producer of raspberries for processing who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the beginning of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation provided by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Council, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Council and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' processed raspberries on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and

annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (d)(3) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

■ 15. The authority citation for 7 CFR part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

■ 16. In § 1209.52, revise paragraph (a) to read as follows:

§ 1209.52 Exemption from assessment.

(a) The following persons shall be exempt from assessments under this part:

(1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually shall be exempt from assessments under this part.

(2) [Reserved]

(3) [Reserved]

* * * * *

■ 17. In § 1209.252, redesignate paragraph (a)(2) as paragraph (a)(4), add paragraphs (a)(2) and (3), and revise newly redesignated paragraph (a)(4) to read as follows:

§ 1209.252 Exemptions and exemption procedures.

(a) * * *

(2) In addition to the exemption provided for in § 1209.52, a producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) system plan; produces products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP;

(3) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP (7 CFR part 205);

(4) To apply for an exemption for organic mushrooms:

(i) An eligible mushroom producer shall submit a request for exemption to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the producer continues to be eligible for the exemption.

(ii) A producer request for exemption shall include the following:

(A) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(B) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(C) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Council, with the approval of the Secretary.

(iii) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible mushroom importer shall submit a request for exemption from assessment on imported certified ''organic'' or ''100 percent organic'' mushrooms on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (a)(4)(ii) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(v) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

* * * * *

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

■ 18. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

■ 19. In § 1210.516, revise paragraphs (a), (b), (c), (d), (f), and (h) to read as follows:

§ 1210.516 Exemption for organic watermelons.

(a) A producer or handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or handler regardless of whether the agricultural commodity subject to the exemption is produced or handled by a person that

also produces or handles conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer or handler so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible producer or handler shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or handler continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or handles organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer or handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' watermelons on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 20. The authority citation for 7 CFR part 1212 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 21. In § 1212.53, revise paragraphs (b), (e), and (g) to read as follows:

§ 1212.53 Exemption from assessment.

* * * * *

(b) A first handler or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a first handler or importer regardless of whether the agricultural commodity subject to the exemption is handled or imported by a person that also handles or imports conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(5) Persons eligible for an organic assessment exemption as provided this section may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the first handler or importer continues to be eligible for the exemption.

(i) A first handler or importer request for exemption shall include the following:

(A) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(B) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(C) Certification that the applicant handles or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Board, with the approval of the Secretary.

(ii) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the first handler or importer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe. It is the responsibility of the first handler or importer to retain a copy of the certificate of exemption.

* * * * *

(e) Exempt importers shall be eligible for reimbursement of assessments collected by Customs.

(1) Importers exempt under paragraph (a) of this section must apply to the Board for reimbursement of any assessment paid. No interest will be paid on the assessment collected by Customs. Requests for reimbursement must be submitted to the Board within 90 days of the last day of the calendar year the honey or honey products were imported.

(2) If Customs collects the assessment on exempt product under paragraph (b) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

* * * * *

(g) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board for a certificate of exemption.

* * * * *

PART 1214—CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 22. The authority citation for 7 CFR part 1214 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 23. In § 1214.53, revise paragraph (c) to read as follows:

§ 1214.53 Exemption from and refunds of assessments.

* * * * *

(c) *Organic.* (1) A producer who domestically produces Christmas trees under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports Christmas trees that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' Christmas trees on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal period, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a producer in paragraph (c)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (c)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of the Certificate of Exemption.

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 24. The authority citation for 7 CFR part 1215 continues to read as follows:

Authority: 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

■ 25. In § 1215.52, revise paragraph (b) to read as follows:

§ 1215.52 Exemption from assessment.

* * * * *

(b) Persons that operate under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a processor regardless of whether the agricultural commodity subject to the exemption is processed by a person that also processes conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

* * * * *

■ 26. In § 1215.300:

■ a. Revise paragraph (b);

■ b. Redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively;

■ c. Add paragraph (c); and

■ d. Revise newly redesignated paragraph (d).

The revisions and addition read as follows:

§ 1215.300 Exemption procedures.

* * * * *

(b) Persons eligible for an organic assessment exemption as provided in § 1215.52(b) may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the processor continues to be eligible for the exemption.

(c) A processor request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant processes organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the processor within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 27. The authority citation for 7 CFR part 1216 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 28. In § 1216.56, revise paragraphs (a), (b), (c), (d), and (g) to read as follows:

§ 1216.56 Exemption for organic peanuts.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OPFA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) In order to apply for this exemption, an eligible peanut producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before August 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 29. The authority citation for 7 CFR part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 30. In § 1217.53, revise paragraph (d) to read as follows:

§ 1217.53 Exemption from assessment.

* * * * *

(d) *Organic.* (1) A domestic manufacturer of softwood lumber products who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal year, for as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports softwood lumber that is eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' softwood lumber on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (d)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (d)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of a Certificate of Exemption.

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 31. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 32. In § 1218.53:

■ a. Revise paragraphs (c) and (d);

■ b. Redesignate paragraphs (e) through (k) as paragraphs (g) through (m), respectively;

■ c. Add paragraphs (e) and (f); and

■ d. Revise newly redesignated paragraphs (g), (i), and (k).

The revisions and addition read as follows:

§ 1218.53 Exemption procedures.

* * * * *

(c) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(d) To apply for exemption under this section, a producer shall submit a request to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(e) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Council, with the approval of the Secretary.

(f) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Council and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' blueberries on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (e) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. If Customs and Border Protection (Customs) collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

* * * * *

(k) Importers who are exempt from payment of assessments shall be eligible for reimbursement of assessments collected by Customs and may apply to the Council for a reimbursement of such assessments paid. No interest will be paid on assessments collected by Customs. Requests for reimbursement shall be submitted to the Council within 90 days of the last day of the year the blueberries were actually imported.

* * * * *

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

■ 33. The authority citation for 7 CFR part 1219 continues to read as follows:

Authority: 7 U.S.C. 7801–7813 and 7 U.S.C. 7401.

■ 34. In § 1219.202, revise paragraphs (a), (b), (c), (d), (f), and (h) to read as follows:

§ 1219.202 Exemption for organic Hass avocados.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible Hass avocado producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before November 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(f) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' Hass avocados on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before November 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a

Certificate of Exemption to the importer. If Customs collects the assessment on exempt product that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 35. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 36. In § 1220.302, revise paragraphs (a), (b), (c), (d), and (g) to read as follows:

§ 1220.302 Exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 37. The authority citation for 7 CFR part 1221 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 38. In § 1221.117, revise paragraphs (g), (h), (i), (j), and (m) to read as follows:

§ 1221.117 Exemptions.

* * * * *

(g) A producer or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer or importer regardless of whether the agricultural commodity subject to the exemption is produced or imported by a person that also produces or imports conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(h) To apply for an exemption under this section, the applicant shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or importer continues to be eligible for the exemption.

(i) A producer or importer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and

fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or imports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(j) If the applicant complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or importer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(m) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER

■ 39. The authority citation for 7 CFR part 1222 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 40. In § 1222.53, revise paragraph (b) to read as follows:

§ 1222.53 Exemption from assessment.

* * * * *

(b) *Organic.* (1) A manufacturer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal year, as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports paper and paper-based packaging that is eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' paper and paper-based packaging on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (b)(3) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (b)(5) of this section that is identified as ''organic'' by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

(7) The exemption will apply immediately following the issuance of a Certificate of Exemption.

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 41. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

■ 42. In § 1230.102, revise paragraphs (a), (b), (c), (d), (g), and (i) and add paragraph (j) to read as follows:

§ 1230.102 Exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the

payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' porcine animals or pork and pork products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' porcine animals or pork and pork products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(j) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' porcine animals or pork and pork products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PART 1250—EGG RESEARCH AND PROMOTION

■ 43. The authority citation for 7 CFR part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

■ 44. In § 1250.530, revise paragraph (b) to read as follows:

§ 1250.530 Certification of exempt producers.

* * * * *

(b) *Organic Production.* (1) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(i) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(ii) Certification that the applicant maintains a valid certificate of organic

operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells eggs. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(6) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(7) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

* * * * *

PART 1260—BEEF PROMOTION AND RESEARCH

■ 45. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 46. In § 1260.302, revise paragraphs (a), (b), (c), (d), (g), and (i) and add paragraph (j) to read as follows:

§ 1260.302 Organic exemption.

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board or QSBC on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board or QSBC will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board or QSBC will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(g) An importer who imports products that are eligible to be labeled as ''organic'' or ''100 percent organic'' under the NOP may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified ''organic'' or ''100 percent organic'' cattle or beef and beef products on an *Organic Exemption Request Form* (Form AMS–15) at any time initially, and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of ''organic'' or ''100 percent organic'' cattle or beef and beef products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

* * * * *

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(j) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by Customs on certified ''organic'' or ''100 percent organic'' cattle or beef and beef products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to

the Secretary that the importer paid the assessment on exempt organic products.

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 47. The authority citation for 7 CFR part 1280 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 48. In § 1280.406, revise paragraphs (a), (b), (c), (d), and (h) to read as follows:

§ 1280.406 Exemption.

(a) A producer, seed stock producer, feeder, handler, or exporter who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part provided that:

(1) Only agricultural products certified as ''organic'' or ''100 percent organic'' (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified ''organic'' or ''100 percent organic'' (as defined in the NOP) products of a producer, handler, or exporter regardless of whether the agricultural commodity subject to the exemption is produced, handled, or exported by a person that also produces, handles, or exports conventional or non-organic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer, handler, or exporter maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any person so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the person shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address (optional);

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces, handles, or exports organic products eligible to be labeled ''organic'' or ''100 percent organic'' under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a person complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the applicant within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

* * * * *

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

Dated: December 10, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–29280 Filed 12–15–14; 8:45 am]

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Part VII

Environmental Protection Agency

40 CFR Parts 52 and 81
Approval and Promulgation of Air Quality Implementation Plans; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0387; FRL–9920–41–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation Request and Associated Maintenance Plan for the Baltimore, Maryland Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Maryland's request to redesignate to attainment the Baltimore, Maryland Nonattainment Area (Baltimore Area or Area) for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). EPA has determined that the Baltimore Area attained the standard and that it continues to attain the standard. In addition, EPA is approving, as a revision to the Maryland State Implementation Plan (SIP), the Baltimore Area maintenance plan to show maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2025 for the Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS, which EPA is approving for transportation conformity purposes. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on December 16, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0387. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (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 through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers at (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2013, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a request to redesignate the Baltimore Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. Concurrently, MDE submitted a maintenance plan for the Baltimore Area as a SIP revision to ensure continued attainment throughout the Area over the next 10 years. In addition, the maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs used for transportation conformity purposes for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS.

On October 3, 2014 (79 FR 59703), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of Maryland's redesignation request for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS. EPA also proposed approval of the associated maintenance plan as a SIP revision for the 1997 annual $PM_{2.5}$ NAAQS, which includes the 2017 and 2025 for $PM_{2.5}$ and NO_X MVEBs for the 1997 annual $PM_{2.5}$ NAAQS for purposes of transportation conformity.

In the October 3, 2014 NPR, EPA explains that the redesignation of the Baltimore Area does not rely on either the Clean Air Interstate Rule (CAIR) or the Cross State Air Pollution Rule (CSAPR) for maintenance. However, EPA notes here the changed status of CSAPR since the publication of the NPR on October 3, 2014. As discussed in the NPR, on April 29, 2014, the Supreme Court vacated and reversed the D.C. Circuit Court's decision regarding CSAPR and remanded that decision to the D.C. Circuit Court to resolve remaining issues in accordance with its ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). In light of the April 29, 2014 Supreme Court decision, on June 26, 2014, EPA moved to have the D.C. Circuit Court's December 30, 2011 stay of CSAPR lifted. *EME Homer City Generation, L.P.* v. *EPA,* Case No. 11–1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). On October 23, 2014, the D.C. Circuit Court granted EPA's motion and lifted the stay of CSAPR which was imposed on December 30, 2011. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3.

The details of Maryland's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is taking final actions on the redesignation request and SIP revision submitted by the State of Maryland on December 12, 2013, for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS. First, EPA is approving Maryland's redesignation request for the 1997 annual $PM_{2.5}$ NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for this standard. Second, EPA is finding that the Baltimore Area is attaining and will continue to attain the 1997 annual $PM_{2.5}$ NAAQS. Third, EPA is approving the associated maintenance plan for the Baltimore Area as a revision to the Maryland SIP for the 1997 annual $PM_{2.5}$ NAAQS because it meets the requirements of section 175A of the CAA. EPA is also approving the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs submitted by Maryland for Baltimore Area for transportation conformity purposes. Approval of this redesignation request will change the official designation of the Baltimore Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to

prepare before the rule takes effect. Rather, today's rule relieves the State of Maryland of the obligation to comply with nonattainment-related planning requirements for the Area pursuant to Part D of the CAA and approves certain emissions inventories and MVEBs for the Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 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 CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2015. 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, approving the redesignation request and maintenance plan for the Baltimore Area for the 1997 annual $PM_{2.5}$ NAAQS may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 3, 2014.

William C. Early,

Acting, Regional Administrator, Region III.

40 CFR parts 52 and 81 are 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 V– Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for the 1997 Annual $PM_{2.5}$ Maintenance Plan for the Baltimore Area at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
1997 Annual fine particulate ($PM_{2.5}$) Maintenance Plan for the Baltimore, MD Area.	Baltimore, MD 1997 annual $PM_{2.5}$ nonattainment area.	12/12/13	12/16/14 *[Insert **Federal Register** Citation]*.	See § 52.2526(k) and § 52.2531(h).

■ 3. Section 52.1081 is amended by adding paragraph (e) to read as follows:

§ 52.1081 Control strategy: Particulate matter.

* * * * *

(e) *Maintenance Plan and Transportation Conformity Budgets.* EPA approves the maintenance plan for the Baltimore, MD nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS submitted by the State of Maryland on December 12, 2013. The maintenance plan includes motor vehicle emission budgets (MVEBs) to be applied to all future transportation conformity determinations and analyses for the Baltimore, MD Area for the 1997 $PM_{2.5}$ NAAQS.

BALTIMORE, MD AREA'S MOTOR VEHICLE EMISSIONS BUDGETS FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS, (TPY)

Type of control strategy SIP	Year	NO_X	$PM_{2.5}$	Effective date of SIP approval
Maintenance Plan	2017	29,892.01	1,218.60	12/16/14
	2025	21,594.96	1,051.39	

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.321 the table entitled ''Maryland–1997 Annual $PM_{2.5}$ NAAQS, [Primary and secondary]'' is amended by revising the entry for the Baltimore, MD Area to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND–1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
Baltimore, MD:				
Anne Arundel County	12/16/14	Attainment	.....	.....
Baltimore County	12/16/14	Attainment	.....	.....
Carroll County	12/16/14	Attainment	.....	.....
Harford County	12/16/14	Attainment	.....	.....
Howard County	12/16/14	Attainment	.....	.....
City of Baltimore	12/16/14	Attainment	.....	.....
* * * *	*	*	*	

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2014–29324 Filed 12–15–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2014–0281; FRL–9920–42–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Redesignation Request and Associated Maintenance Plan for the Maryland Portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State of Maryland's request to redesignate to attainment the Maryland portion of the Martinsburg-Hagerstown, WV-MD Nonattainment Area (Martinsburg Area or Area) for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The Maryland portion of the Martinsburg Area is comprised of Washington County, Maryland. EPA has found that the Martinsburg Area attained the standard and continues to attain the standard. In addition, EPA is approving, as a revision to the Maryland State Implementation Plan (SIP), the Washington County maintenance plan to show maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2025 for the Maryland portion of the Area. The maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and nitrogen oxides (NO_X) mobile vehicle emissions budgets (MVEBs) for Washington County, Maryland for the 1997 annual $PM_{2.5}$ NAAQS, which EPA is proposing to approve for transportation conformity purposes. These actions are being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on December 16, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0281. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (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 through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers at (215) 814–2308, or by email at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2013, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a request to redesignate the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. Concurrently, MDE submitted a maintenance plan for Washington County as a SIP revision to ensure continued attainment throughout the Maryland portion of the Area over the next 10 years. In addition, the maintenance plan includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs used for transportation conformity purposes for Washington County, Maryland for the 1997 annual $PM_{2.5}$ standard.

On August 21, 2014 (79 FR 49474), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. In the NPR, EPA proposed approval of Maryland's redesignation request for its portion of the Martinsburg Area for the 1997 annual $PM_{2.5}$ NAAQS. EPA also proposed approval of the associated maintenance plan as a SIP revision for the 1997 annual $PM_{2.5}$ NAAQS, which includes the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs for the 1997 annual $PM_{2.5}$ NAAQS for purposes of transportation conformity.

In the August 21, 2014 NPR, EPA explains that the redesignation of this Area does not rely on either the Clean Air Interstate Rule (CAIR) or the Cross State Air Pollution Rule (CSAPR) for maintenance. However, EPA notes here the changed status of CSAPR since the publication of the NPR on August 21, 2014. As discussed in the NPR, on April 29, 2014, the Supreme Court vacated and reversed the D.C. Circuit Court's decision regarding CSAPR and remanded that decision to the D.C. Circuit Court to resolve remaining issues in accordance with its ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). In light of the April 29, 2014 Supreme Court decision, on June 26, 2014, EPA moved to have the D.C. Circuit Court's December 30, 2011 stay of CSAPR lifted. *EME Homer City Generation, L.P.* v. *EPA,* Case No. 11–1302, Document No. 1499505 (D.C. Cir. filed June 26, 2014). On October 23, 2014, the D.C. Circuit Court granted EPA's motion and lifted the stay of CSAPR which was imposed on December 30, 2011. *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. Oct. 23, 2014), Order at 3.

The details of Maryland's submittal and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. EPA received one adverse comment from Mr. Robert Ukeiley, representing the Law Office of Robert Ukeiley.

Comment: Mr. Ukeiley contends that EPA cannot approve the redesignation request until $PM_{2.5}$ increments are fully approved into Maryland's SIP—approved Prevention of Significant Deterioration (PSD) program, and that without these increments, Maryland does not have a fully approved relevant SIP and does not have an adequate maintenance plan.

Response: EPA disagrees with the commenter that EPA's pending action on Maryland's $PM_{2.5}$ PSD increments presents an obstacle to redesignating the Maryland portion of the Martinsburg nonattainment area. The commenter has not specified which provisions of the Clean Air Act he thinks are not being met in this redesignation action, but states only that ''without the increments, Maryland does not have a fully approved relevant SIP.'' EPA assumes that the commenter is referring to the requirements of Clean Air Act sections 107(d)(3)(E)(ii) and (v), which require that the Administrator has fully approved the applicable implementation plan for the area under section 110(k), and that the state containing the nonattainment area has met all requirements applicable to the area under CAA section 110 and part D. As stated in the NPR, EPA has long interpreted the term ''applicable'' in these two provisions to mean only those requirements that are linked to a particular nonattainment area's designation and classification. *See* 79 FR 49482 (August 21, 2014). As is the case with other requirements which remain applicable to an area after redesignation, the requirements of a PSD program, which apply only to attainment areas, need not be fully approved in order for a nonattainment area to be redesignated to attainment under sections 107(d)(3)(E)(ii) and (v) because they are not applicable requirements for purposes of those provisions.

EPA also disagrees that pending action on Maryland's PSD increments into its approved PSD program means that Maryland does not have an adequate maintenance plan under CAA section 175A. Maryland has an EPA-approved PSD program that includes $PM_{2.5}$ as a regulated new source review (NSR) pollutant. Therefore, any increase in direct $PM_{2.5}$ emissions or emissions of its precursors (sulfur dioxide (SO_2) and NO_X) planned by a new source or from a modified source will trigger the requirements to obtain a PSD permit; to perform an air quality analysis that demonstrates that the proposed source or modification will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS; and to apply best available control technology (BACT) for $PM_{2.5}$. The commenter is correct that EPA has not yet taken action on Maryland's August 22, 2013 submission of proposed $PM_{2.5}$ increments for approval into the Maryland SIP. EPA is currently in the process of taking action on this submission. However, the absence of $PM_{2.5}$ increments from Maryland's PSD program does not prevent the program from addressing and helping to assure maintenance of the $PM_{2.5}$ standard in accordance with CAA section 175A. A PSD increment is the maximum increase in concentration that is allowed to occur above a baseline concentration for a pollutant, but the level of the increment can never exceed the NAAQS. Therefore, even in the absence of an approved PSD increment, Maryland's PSD program prohibits air quality from deteriorating beyond the concentration allowed by the applicable NAAQS. *See* COMAR 26.11.06.14—General Emissions Standards, Prohibitions, and Restrictions—Control of PSD Sources. Thus, Maryland's PSD program is adequate for purposes of assuring maintenance of the 1997 annual $PM_{2.5}$ standard as required by section 175A.

For the reasons explained above, EPA concludes that the features of the PSD program in Maryland's SIP do not detract from the program's adequacy for purposes of maintenance of the standard and redesignation of the Area. It is, therefore, sufficient for the purposes of maintaining the 1997 annual $PM_{2.5}$ NAAQS in the Maryland portion of the Martinsburg Area.

II. Final Action

EPA is taking final action on the redesignation request and SIP revision submitted by the State of Maryland, on December 12, 2013, for the Maryland portion of the Martinsburg Area for the 1997 annual $PM_{2.5}$ NAAQS. EPA is approving Maryland's redesignation request for the 1997 annual $PM_{2.5}$ NAAQS, because EPA has determined that the request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for this standard. EPA is approving the associated maintenance plan for the Maryland portion of the Area as a revision to the Maryland SIP for the 1997 annual $PM_{2.5}$ NAAQS because it meets the requirements of section 175A of the CAA. EPA is also approving the 2017 and 2025 $PM_{2.5}$ and NO_X MVEBs submitted by Maryland for Washington County for transportation conformity purposes. Approval of this redesignation request will change the official designation of the Maryland portion of the Martinsburg Area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. A delayed effective date is unnecessary due to the nature of a redesignation to attainment, which eliminates CAA obligations that would otherwise apply. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the State of Maryland of the obligation to comply with nonattainment-related planning requirements for the Maryland portion of the Area pursuant to Part D of the CAA and approves certain emissions inventories and MVEBs for the Maryland portion of the Area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d) for this action to become effective on the date of publication of this notice.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 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 CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 2015. 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, approving the redesignation request and maintenance plan for the Maryland portion of the Martinsburg Area for the 1997 annual $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 3, 2014.

William C. Early,

Acting, Regional Administrator, Region III.

40 CFR parts 52 and 81 are 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for the 1997 Annual $PM_{2.5}$ Maintenance Plan, Maryland portion of the Martinsburg, WV-MD Area to the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
1997 Annual fine particulate ($PM_{2.5}$) Maintenance Plan for the Maryland portion of the Martinsburg WV-Hagerstown, MD Area.	Washington County	12/12/13	12/16/14 *[Insert **Federal Register** Citation].*	See § 52.2526(k) and § 52.2531(h).

■ 3. Section 52.1081 is amended by adding paragraph (f) to read as follows:

§ 52.1081 Control strategy: Particular matter.

* * * * *

(f) *Maintenance Plan and Transportation Conformity Budgets.* EPA approves the maintenance plan for the Maryland portion of the Martinsburg, WV-Hagerstown, MD nonattainment area for the 1997 annual $PM_{2.5}$ NAAQS submitted by the State of Maryland on December 12, 2013. The maintenance plan includes motor vehicle emission budgets (MVEBs) to be applied to all future transportation conformity determinations and analyses for the Maryland portion of the Martinsburg, WV-Hagerstown, MD Area for the 1997 $PM_{2.5}$ NAAQS.

MARYLAND PORTION OF THE MARTINSBURG, WV-HAGERSTOWN, MD AREA'S MOTOR VEHICLE EMISSIONS BUDGETS FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS, (TPY)

Type of control strategy SIP	Year	NO_X	$PM_{2.5}$	Effective date of SIP approval
Maintenance Plan	2017	4,057.00	149.63	12/16/14
	2025	2,774.63	93.35	

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for Part 81 continues to read as follows:

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

■ 5. In § 81.321 the table ''Maryland—1997 Annual $PM_{2.5}$ NAAQS'' is amended by revising the entry for the Martinsburg, WV-Hagerstown, MD Area to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation[a]		Classification	
	Date[1]	Type	Date[2]	Type
* * * *	*	*		*
Martinsburg, WV-Hagerstown, MD:				
Washington County	12/16/14	Attainment		
* * * *	*	*		*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2014–29336 Filed 12–15–14; 8:45 am]

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FEDERAL REGISTER

Vol. 79 Tuesday,
No. 241 December 16, 2014

Part VIII

The President

Executive Order 13683—Amendments to Executive Orders 11030, 13653, and 13673

Federal Register
Vol. 79, No. 241
Tuesday, December 16, 2014

Presidential Documents

Title 3—

The President

Executive Order 13683 of December 11, 2014

Amendments to Executive Orders 11030, 13653, and 13673

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Executive Order 11030 of June 19, 1962, as amended (Preparation, Presentation, Filing, and Publication of Executive Orders and Proclamations), is further amended as follows:

(a) in section 1(f), by striking ''inches'' where it appears after the phrase ''approximately 1'' and inserting ''inch'';

(b) in section 4, to read as follows:

''**Sec. 4**. *Proclamations calling for the observance of special days or events.* Except as may be otherwise provided by law, responsibility for the preparation and presentation of proposed proclamations calling for the observance of special days, or other periods of time, or events shall be assigned by the Director of the Office of Management and Budget to such agencies or offices as the Director may consider appropriate. Such proposed proclamations shall be submitted to the Director, or to an office within the Executive Office of the President designated by the Director, at least sixty days before the date of the specified observance. Notwithstanding the provisions of Section 2, the Director or the head of such designated office, as appropriate, shall transmit any approved commemorative proclamations to the President.'';

(c) by inserting a new section 5 to read as follows:

''**Sec. 5**. *Trade Proclamations.* (a) Proclamations to be issued under the Trade Act of 1974 or other trade law (''trade proclamations'') shall be prepared by the United States Trade Representative and submitted to the Attorney General for consideration as to both form and legality. Section 2 of this order does not apply to trade proclamations.

(b) If the proposed trade proclamation is disapproved by the Attorney General, it shall not thereafter be presented to the President unless it is accompanied by a statement of the reasons for such disapproval.''; and

(d) by renumbering current sections 5, 6, and 7 as 6, 7, and 8, respectively.

Sec. 2. Executive Order 13653 of November 1, 2013 (Preparing the United States for the Impacts of Climate Change), is amended as follows:

(a) in section 6(b):

(i) by inserting '', and the Director of OMB'' after the phrase ''the Assistant to the President for Homeland Security and Counterterrorism'';

(ii) by striking the ''and'' preceding ''the Assistant to the President for Homeland Security and Counterterrorism'';

(iii) by striking ''(xxviii) the Office of Management and Budget;''; and

(iv) by renumbering current subsections (xxix), (xxx), and (xxxi) as (xxviii), (xxix), and (xxx), respectively; and

(b) in section 6(d), to read as follows: ''(d) Council Structure. The Co-Chairs may designate a subset of members of the Council to serve on a Steering Committee to help determine priorities and strategic direction for the Council. The Co-Chairs and Steering Committee may establish working groups as needed, and may recharter working groups of the Interagency Climate Change Adaptation Task Force, as appropriate.''.

Sec. 3. Section 2(a)(i)(I) of Executive Order 13673 of July 31, 2014 (Fair Pay and Safe Workplaces), is amended to read as follows: ''(I) the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974;''.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 11, 2014.

[FR Doc. 2014–29625
Filed 12–15–14; 11:15 am]
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