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Proclamation 9388 of January 11, 2016

The President

To Take Certain Actions Under the African Growth and Opportunity Act**By the President of the United States of America****A Proclamation**

1. In Proclamation 7350 of October 2, 2000, the President designated the Republic of South Africa (South Africa) as a beneficiary sub-Saharan African country for purposes of section 506A(a)(1) of the Trade Act of 1974 (the “1974 Act”) (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA).

2. Sections 506A(d)(4)(C) (19 U.S.C. 2466a(d)(4)(C)) and 506A(c)(1) (19 U.S.C. 2466a(c)(1)) of the 1974 Act authorize the President to suspend the application of duty-free treatment provided for any article described in section 506A(b)(1) of the 1974 Act (19 U.S.C. 2466a(b)(1)) or 19 U.S.C. 3721 with respect to a beneficiary sub-Saharan African country if he determines that the beneficiary country is not meeting the requirements described in section 506A(a)(1) of the 1974 Act and that suspending such duty-free treatment would be more effective in promoting compliance by the country with those requirements than terminating the designation of the country as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act.

3. Pursuant to section 506A(c)(1) of the 1974 Act, I have determined that South Africa is not meeting the requirements described in section 506A(a)(1) of the 1974 Act and that suspending the application of duty-free treatment to certain goods would be more effective in promoting compliance by South Africa with such requirements than terminating the designation of South Africa as a beneficiary sub-Saharan African country. Accordingly, I have decided to suspend the application of duty-free treatment for all AGOA-eligible goods in the agricultural sector from South Africa for purposes of section 506A of the 1974 Act, effective on March 15, 2016.

4. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 506A(d)(4)(C), 506A(c)(1), and 604 of the 1974 Act, do proclaim that:

(1) The application of duty-free treatment for all AGOA-eligible goods in the agricultural sector from South Africa is suspended for purposes of section 506A of the 1974 Act, effective on March 15, 2016.

(2) In order to reflect in the HTS that beginning on March 15, 2016, the application of duty-free treatment for all AGOA-eligible goods in the agricultural sector from South Africa shall be suspended, the HTS is modified as set forth in the Annex to this proclamation.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of January, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

ANNEX

**TO MODIFY GENERAL NOTE 16 OF THE HARMONIZED
TARIFF SCHEDULE OF THE UNITED STATES**

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 15, 2016, general note 16 to the Harmonized Tariff Schedule of the United States (HTS) is modified as follows:

1. Subdivision (c) of such note is redesignated as subdivision (d); and
2. The following new subdivision (c) is inserted in alphabetical sequence:

“(c) Articles provided for in a provision of chapters 1 through 97, inclusive, for which a rate of duty of “Free” appears in the “Special” subcolumn of rate of duty column 1 followed by the symbol “D*” in parentheses, if imported from a designated beneficiary sub-Saharan African country set out opposite a provision enumerated below, are not eligible for the duty-free treatment provided in subdivision (b) of this note:

0101.30.00	South Africa	0202.10.05	South Africa	0207.13.00	South Africa
0101.90.40	South Africa	0202.10.10	South Africa	0207.14.00	South Africa
0102.29.40	South Africa	0202.20.02	South Africa	0207.24.00	South Africa
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0406.90.90	South Africa	0711.51.00	South Africa	0809.40.40	South Africa
0406.90.93	South Africa	0711.59.10	South Africa	0810.20.10	South Africa
0406.90.95	South Africa	0712.20.20	South Africa	0811.90.22	South Africa
0406.90.99	South Africa	0712.20.40	South Africa	0811.90.40	South Africa
0408.11.00	South Africa	0712.31.20	South Africa	0812.10.00	South Africa
0408.19.00	South Africa	0712.39.20	South Africa	0812.90.10	South Africa
0408.91.00	South Africa	0712.90.20	South Africa	0812.90.20	South Africa
0408.99.00	South Africa	0712.90.78	South Africa	0812.90.30	South Africa
0409.00.00	South Africa	0714.40.10	South Africa	0812.90.40	South Africa
0601.10.30	South Africa	0714.50.10	South Africa	0812.90.50	South Africa
0601.10.85	South Africa	0714.90.05	South Africa	0812.90.90	South Africa
0601.20.10	South Africa	0714.90.39	South Africa	0813.20.10	South Africa
0602.90.50	South Africa	0714.90.42	South Africa	0813.20.20	South Africa
0603.11.00	South Africa	0802.11.00	South Africa	0813.40.15	South Africa
0701.10.00	South Africa	0802.12.00	South Africa	0813.40.30	South Africa
0701.90.50	South Africa	0802.21.00	South Africa	0813.40.40	South Africa
0702.00.20	South Africa	0802.22.00	South Africa	0813.40.90	South Africa
0702.00.40	South Africa	0802.32.00	South Africa	0813.50.00	South Africa
0703.90.00	South Africa	0802.62.00	South Africa	0814.00.80	South Africa
0704.90.40	South Africa	0802.80.20	South Africa	0901.90.20	South Africa
0706.10.05	South Africa	0802.90.10	South Africa	0904.21.40	South Africa
0706.10.20	South Africa	0802.90.98	South Africa	0904.22.40	South Africa
0706.90.40	South Africa	0804.10.20	South Africa	0910.99.07	South Africa
0707.00.50	South Africa	0804.10.80	South Africa	1001.11.00	South Africa
0708.20.90	South Africa	0804.20.40	South Africa	1001.19.00	South Africa
0708.90.40	South Africa	0804.20.80	South Africa	1001.91.00	South Africa
0709.20.90	South Africa	0804.30.20	South Africa	1001.99.00	South Africa
0709.40.20	South Africa	0804.30.40	South Africa	1003.10.00	South Africa
0709.40.60	South Africa	0804.30.60	South Africa	1003.90.20	South Africa
0709.51.01	South Africa	0804.40.00	South Africa	1003.90.40	South Africa
0709.59.90	South Africa	0805.10.00	South Africa	1006.10.00	South Africa
0709.70.00	South Africa	0805.20.00	South Africa	1006.20.20	South Africa
0709.92.00	South Africa	0805.40.40	South Africa	1006.20.40	South Africa
0709.93.30	South Africa	0805.40.60	South Africa	1006.30.90	South Africa
0709.99.30	South Africa	0805.40.80	South Africa	1006.40.00	South Africa
0709.99.45	South Africa	0805.50.20	South Africa	1008.21.00	South Africa
0709.99.90	South Africa	0806.10.20	South Africa	1008.29.00	South Africa
0710.22.37	South Africa	0806.10.60	South Africa	1008.40.00	South Africa
0710.29.40	South Africa	0806.20.10	South Africa	1008.50.00	South Africa
0710.40.00	South Africa	0806.20.20	South Africa	1008.60.00	South Africa
0710.80.20	South Africa	0806.20.90	South Africa	1008.90.01	South Africa
0710.80.40	South Africa	0807.11.40	South Africa	1101.00.00	South Africa

1102.90.27	South Africa	1514.19.00	South Africa	1901.90.38	South Africa
1103.11.00	South Africa	1514.91.90	South Africa	1901.90.44	South Africa
1103.19.90	South Africa	1514.99.50	South Africa	1901.90.46	South Africa
1104.19.10	South Africa	1514.99.90	South Africa	1901.90.48	South Africa
1104.19.90	South Africa	1515.11.00	South Africa	1901.90.56	South Africa
1104.29.10	South Africa	1515.19.00	South Africa	1901.90.70	South Africa
1105.20.00	South Africa	1515.21.00	South Africa	1903.00.40	South Africa
1107.10.00	South Africa	1515.29.00	South Africa	1904.20.10	South Africa
1107.20.00	South Africa	1516.20.10	South Africa	1904.20.90	South Africa
1108.13.00	South Africa	1516.20.90	South Africa	2001.90.35	South Africa
1202.30.05	South Africa	1517.10.00	South Africa	2001.90.60	South Africa
1202.41.05	South Africa	1517.90.45	South Africa	2002.10.00	South Africa
1202.42.05	South Africa	1517.90.50	South Africa	2002.90.80	South Africa
1204.00.00	South Africa	1517.90.90	South Africa	2003.10.01	South Africa
1205.10.00	South Africa	1518.00.20	South Africa	2003.90.80	South Africa
1205.90.00	South Africa	1522.00.00	South Africa	2004.10.80	South Africa
1207.21.00	South Africa	1602.10.00	South Africa	2004.90.85	South Africa
1207.29.00	South Africa	1602.20.20	South Africa	2005.51.20	South Africa
1208.10.00	South Africa	1602.41.90	South Africa	2005.60.00	South Africa
1208.90.00	South Africa	1602.42.40	South Africa	2005.70.50	South Africa
1209.22.20	South Africa	1602.50.60	South Africa	2005.70.60	South Africa
1209.24.00	South Africa	1603.00.10	South Africa	2005.70.70	South Africa
1209.25.00	South Africa	1702.11.00	South Africa	2005.70.91	South Africa
1209.91.10	South Africa	1702.19.00	South Africa	2005.70.97	South Africa
1209.91.50	South Africa	1702.50.00	South Africa	2005.99.30	South Africa
1212.91.00	South Africa	1704.90.10	South Africa	2005.99.50	South Africa
1212.99.30	South Africa	1704.90.52	South Africa	2005.99.80	South Africa
1214.10.00	South Africa	1704.90.54	South Africa	2006.00.20	South Africa
1302.13.00	South Africa	1704.90.74	South Africa	2006.00.40	South Africa
1302.39.00	South Africa	1704.90.90	South Africa	2006.00.50	South Africa
1401.90.20	South Africa	1806.20.79	South Africa	2006.00.60	South Africa
1404.90.10	South Africa	1806.20.81	South Africa	2007.10.00	South Africa
1404.90.20	South Africa	1806.20.85	South Africa	2007.91.10	South Africa
1501.10.00	South Africa	1806.20.95	South Africa	2007.99.15	South Africa
1501.20.00	South Africa	1806.20.99	South Africa	2007.99.35	South Africa
1501.90.00	South Africa	1901.10.05	South Africa	2007.99.55	South Africa
1502.10.00	South Africa	1901.10.15	South Africa	2007.99.60	South Africa
1502.90.00	South Africa	1901.10.35	South Africa	2007.99.65	South Africa
1503.00.00	South Africa	1901.10.45	South Africa	2007.99.70	South Africa
1507.10.00	South Africa	1901.10.55	South Africa	2008.11.22	South Africa
1507.90.40	South Africa	1901.10.60	South Africa	2008.11.42	South Africa
1508.10.00	South Africa	1901.10.80	South Africa	2008.19.20	South Africa
1508.90.00	South Africa	1901.10.95	South Africa	2008.19.40	South Africa
1512.11.00	South Africa	1901.90.10	South Africa	2008.19.50	South Africa
1512.19.00	South Africa	1901.90.20	South Africa	2008.19.85	South Africa
1512.21.00	South Africa	1901.90.32	South Africa	2008.20.00	South Africa
1512.29.00	South Africa	1901.90.33	South Africa	2008.30.20	South Africa
1514.11.00	South Africa	1901.90.34	South Africa	2008.30.30	South Africa

2008.30.35	South Africa	2105.00.50	South Africa	2309.90.95	South Africa
2008.30.40	South Africa	2106.90.22	South Africa	2401.10.61	South Africa
2008.30.46	South Africa	2106.90.24	South Africa	2401.10.63	South Africa
2008.30.55	South Africa	2106.90.28	South Africa	2401.20.05	South Africa
2008.30.66	South Africa	2106.90.32	South Africa	2401.20.31	South Africa
2008.30.70	South Africa	2106.90.34	South Africa	2401.20.33	South Africa
2008.30.80	South Africa	2106.90.38	South Africa	2401.20.83	South Africa
2008.30.85	South Africa	2106.90.48	South Africa	2401.20.85	South Africa
2008.40.00	South Africa	2106.90.62	South Africa	2401.30.25	South Africa
2008.60.00	South Africa	2106.90.64	South Africa	2401.30.27	South Africa
2008.70.10	South Africa	2106.90.78	South Africa	2401.30.35	South Africa
2008.80.00	South Africa	2106.90.83	South Africa	2401.30.37	South Africa
2008.97.10	South Africa	2106.90.85	South Africa	2402.10.30	South Africa
2008.99.05	South Africa	2106.90.95	South Africa	2402.10.60	South Africa
2008.99.10	South Africa	2202.90.10	South Africa	2402.20.80	South Africa
2008.99.18	South Africa	2202.90.22	South Africa	2402.90.00	South Africa
2008.99.25	South Africa	2202.90.24	South Africa	2403.11.00	South Africa
2008.99.29	South Africa	2202.90.30	South Africa	2403.19.20	South Africa
2008.99.60	South Africa	2202.90.35	South Africa	2403.19.30	South Africa
2008.99.70	South Africa	2204.21.20	South Africa	2403.19.60	South Africa
2009.11.00	South Africa	2204.21.50	South Africa	2403.91.43	South Africa
2009.12.25	South Africa	2204.29.20	South Africa	2403.91.45	South Africa
2009.12.45	South Africa	2204.29.40	South Africa	2403.99.20	South Africa
2009.19.00	South Africa	2204.29.60	South Africa	2403.99.30	South Africa
2009.21.20	South Africa	2204.29.80	South Africa	2403.99.60	South Africa
2009.21.40	South Africa	2204.30.00	South Africa	3301.13.00	South Africa
2009.29.00	South Africa	2205.90.40	South Africa	3502.11.00	South Africa
2009.31.40	South Africa	2206.00.30	South Africa	3502.19.00	South Africa
2009.31.60	South Africa	2206.00.60	South Africa	3503.00.20	South Africa
2009.39.60	South Africa	2207.10.60	South Africa	3503.00.40	South Africa
2009.41.20	South Africa	2207.20.00	South Africa	3823.13.00	South Africa
2009.41.40	South Africa	2208.40.20	South Africa	3823.19.40	South Africa
2009.49.20	South Africa	2208.40.60	South Africa	3823.70.20	South Africa
2009.49.40	South Africa	2302.50.00	South Africa	3823.70.40	South Africa
2009.61.00	South Africa	2303.10.00	South Africa	3823.70.60	South Africa
2009.69.00	South Africa	2304.00.00	South Africa	4101.20.30	South Africa
2009.89.40	South Africa	2306.10.00	South Africa	4101.50.30	South Africa
2009.90.40	South Africa	2308.00.10	South Africa	4102.10.30	South Africa
2101.30.00	South Africa	2308.00.98	South Africa	4102.29.30	South Africa
2103.20.40	South Africa	2309.90.22	South Africa	4103.30.20	South Africa
2105.00.05	South Africa	2309.90.24	South Africa	4103.90.20	South Africa
2105.00.10	South Africa	2309.90.42	South Africa		
2105.00.25	South Africa	2309.90.44	South Africa		
2105.00.30	South Africa	2309.90.60	South Africa		

3. For each of the subheadings of the HTS enumerated below, the symbol "D" in the parentheses following the rate of duty of "Free" in the "Special" subcolumn of column 1 is deleted and the symbol "D*" is inserted in lieu thereof:

0101.30.00	0204.22.20	0401.50.05	0404.10.50	0406.20.89
0101.90.40	0204.22.40	0401.50.42	0404.90.28	0406.20.95
0102.29.40	0204.23.20	0401.50.50	0404.90.30	0406.30.12
0102.39.00	0204.23.40	0402.10.05	0404.90.70	0406.30.14
0102.90.00	0204.30.00	0402.10.10	0405.10.05	0406.30.22
0104.20.00	0204.41.00	0402.21.02	0405.10.10	0406.30.24
0105.11.00	0204.42.20	0402.21.05	0405.20.10	0406.30.32
0105.12.00	0204.42.40	0402.21.27	0405.20.20	0406.30.34
0105.13.00	0204.43.20	0402.21.30	0405.20.40	0406.30.42
0105.14.00	0204.43.40	0402.21.73	0405.20.50	0406.30.44
0105.15.00	0207.11.00	0402.21.75	0405.20.60	0406.30.49
0105.94.00	0207.12.00	0402.29.05	0405.90.05	0406.30.51
0105.99.00	0207.13.00	0402.29.10	0405.90.10	0406.30.55
0106.19.30	0207.14.00	0402.91.03	0406.10.12	0406.30.56
0201.10.05	0207.24.00	0402.91.06	0406.10.14	0406.30.57
0201.10.10	0207.25.20	0402.91.10	0406.10.24	0406.30.61
0201.20.02	0207.25.40	0402.91.30	0406.10.34	0406.30.65
0201.20.04	0207.26.00	0402.99.03	0406.10.44	0406.30.69
0201.20.06	0207.27.00	0402.99.06	0406.10.54	0406.30.73
0201.20.10	0207.41.00	0402.99.10	0406.10.64	0406.30.77
0201.20.30	0207.43.00	0402.99.30	0406.10.74	0406.30.81
0201.20.50	0207.44.00	0402.99.68	0406.10.84	0406.30.85
0201.30.02	0207.45.00	0402.99.70	0406.10.95	0406.30.89
0201.30.04	0207.51.00	0403.10.05	0406.20.10	0406.30.95
0201.30.06	0207.53.00	0403.10.10	0406.20.22	0406.40.20
0201.30.10	0207.54.00	0403.10.90	0406.20.24	0406.40.40
0201.30.30	0207.55.00	0403.90.02	0406.20.29	0406.40.51
0201.30.50	0207.60.10	0403.90.04	0406.20.31	0406.40.52
0202.10.05	0207.60.30	0403.90.20	0406.20.34	0406.40.54
0202.10.10	0207.60.40	0403.90.37	0406.20.36	0406.40.58
0202.20.02	0207.60.60	0403.90.41	0406.20.43	0406.90.05
0202.20.04	0208.10.00	0403.90.47	0406.20.44	0406.90.06
0202.20.06	0208.30.00	0403.90.51	0406.20.49	0406.90.08
0202.20.10	0208.40.01	0403.90.57	0406.20.54	0406.90.14
0202.20.30	0208.50.00	0403.90.61	0406.20.55	0406.90.16
0202.20.50	0208.60.00	0403.90.72	0406.20.56	0406.90.20
0202.30.04	0208.90.91	0403.90.74	0406.20.57	0406.90.25
0202.30.06	0210.11.00	0403.90.85	0406.20.61	0406.90.28
0202.30.30	0210.19.00	0403.90.87	0406.20.65	0406.90.31
0202.30.50	0401.10.00	0403.90.90	0406.20.69	0406.90.33
0203.12.10	0401.20.20	0404.10.08	0406.20.73	0406.90.34
0203.19.20	0401.40.02	0404.10.11	0406.20.77	0406.90.36
0204.10.00	0401.40.05	0404.10.20	0406.20.81	0406.90.38
0204.21.00	0401.50.02	0404.10.48	0406.20.85	0406.90.39

0406.90.43	0709.99.30	0805.40.80	1006.40.00	1507.90.40
0406.90.44	0709.99.45	0805.50.20	1008.21.00	1508.10.00
0406.90.46	0709.99.90	0806.10.20	1008.29.00	1508.90.00
0406.90.49	0710.22.37	0806.10.60	1008.40.00	1512.11.00
0406.90.51	0710.29.40	0806.20.10	1008.50.00	1512.19.00
0406.90.52	0710.40.00	0806.20.20	1008.60.00	1512.21.00
0406.90.59	0710.80.20	0806.20.90	1008.90.01	1512.29.00
0406.90.61	0710.80.40	0807.11.40	1101.00.00	1514.11.00
0406.90.63	0710.80.45	0807.19.10	1102.90.27	1514.19.00
0406.90.66	0710.80.60	0807.19.80	1103.11.00	1514.91.90
0406.90.72	0710.80.85	0808.30.40	1103.19.90	1514.99.50
0406.90.76	0710.80.97	0808.40.40	1104.19.10	1514.99.90
0406.90.82	0711.20.38	0809.10.00	1104.19.90	1515.11.00
0406.90.86	0711.20.40	0809.30.20	1104.29.10	1515.19.00
0406.90.90	0711.51.00	0809.40.40	1105.20.00	1515.21.00
0406.90.93	0711.59.10	0810.20.10	1107.10.00	1515.29.00
0406.90.95	0712.20.20	0811.90.22	1107.20.00	1516.20.10
0406.90.99	0712.20.40	0811.90.40	1108.13.00	1516.20.90
0408.11.00	0712.31.20	0812.10.00	1202.30.05	1517.10.00
0408.19.00	0712.39.20	0812.90.10	1202.41.05	1517.90.45
0408.91.00	0712.90.20	0812.90.20	1202.42.05	1517.90.50
0408.99.00	0712.90.78	0812.90.30	1204.00.00	1517.90.90
0409.00.00	0714.40.10	0812.90.40	1205.10.00	1518.00.20
0601.10.30	0714.50.10	0812.90.50	1205.90.00	1522.00.00
0601.10.85	0714.90.05	0812.90.90	1207.21.00	1602.10.00
0601.20.10	0714.90.39	0813.20.10	1207.29.00	1602.20.20
0602.90.50	0714.90.42	0813.20.20	1208.10.00	1602.41.90
0603.11.00	0802.11.00	0813.40.15	1208.90.00	1602.42.40
0701.10.00	0802.12.00	0813.40.30	1209.22.20	1602.50.60
0701.90.50	0802.21.00	0813.40.40	1209.24.00	1603.00.10
0702.00.20	0802.22.00	0813.40.90	1209.25.00	1702.11.00
0702.00.40	0802.32.00	0813.50.00	1209.91.10	1702.19.00
0703.90.00	0802.62.00	0814.00.80	1209.91.50	1702.50.00
0704.90.40	0802.80.20	0901.90.20	1212.91.00	1704.90.10
0706.10.05	0802.90.10	0904.21.40	1212.99.30	1704.90.52
0706.10.20	0802.90.98	0904.22.40	1214.10.00	1704.90.54
0706.90.40	0804.10.20	0910.99.07	1302.13.00	1704.90.74
0707.00.50	0804.10.80	1001.11.00	1302.39.00	1704.90.90
0708.20.90	0804.20.40	1001.19.00	1401.90.20	1806.20.79
0708.90.40	0804.20.80	1001.91.00	1404.90.10	1806.20.81
0709.20.90	0804.30.20	1001.99.00	1404.90.20	1806.20.85
0709.40.20	0804.30.40	1003.10.00	1501.10.00	1806.20.95
0709.40.60	0804.30.60	1003.90.20	1501.20.00	1806.20.99
0709.51.01	0804.40.00	1003.90.40	1501.90.00	1901.10.05
0709.59.90	0805.10.00	1006.10.00	1502.10.00	1901.10.15
0709.70.00	0805.20.00	1006.20.20	1502.90.00	1901.10.35
0709.92.00	0805.40.40	1006.20.40	1503.00.00	1901.10.45
0709.93.30	0805.40.60	1006.30.90	1507.10.00	1901.10.55

1901.10.60	2008.11.42	2105.00.05	2309.90.95
1901.10.80	2008.19.20	2105.00.10	2401.10.61
1901.10.95	2008.19.40	2105.00.25	2401.10.63
1901.90.10	2008.19.50	2105.00.30	2401.20.05
1901.90.20	2008.19.85	2105.00.50	2401.20.31
1901.90.32	2008.20.00	2106.90.22	2401.20.33
1901.90.33	2008.30.20	2106.90.24	2401.20.83
1901.90.34	2008.30.30	2106.90.28	2401.20.85
1901.90.38	2008.30.35	2106.90.32	2401.30.25
1901.90.44	2008.30.40	2106.90.34	2401.30.27
1901.90.46	2008.30.46	2106.90.38	2401.30.35
1901.90.48	2008.30.55	2106.90.48	2401.30.37
1901.90.56	2008.30.66	2106.90.62	2402.10.30
1901.90.70	2008.30.70	2106.90.64	2402.10.60
1903.00.40	2008.30.80	2106.90.78	2402.20.80
1904.20.10	2008.30.85	2106.90.83	2402.90.00
1904.20.90	2008.40.00	2106.90.85	2403.11.00
2001.90.35	2008.60.00	2106.90.95	2403.19.20
2001.90.60	2008.70.10	2202.90.10	2403.19.30
2002.10.00	2008.80.00	2202.90.22	2403.19.60
2002.90.80	2008.97.10	2202.90.24	2403.91.43
2003.10.01	2008.99.05	2202.90.30	2403.91.45
2003.90.80	2008.99.10	2202.90.35	2403.99.20
2004.10.80	2008.99.18	2204.21.20	2403.99.30
2004.90.85	2008.99.25	2204.21.50	2403.99.60
2005.51.20	2008.99.29	2204.29.20	3301.13.00
2005.60.00	2008.99.60	2204.29.40	3502.11.00
2005.70.50	2008.99.70	2204.29.60	3502.19.00
2005.70.60	2009.11.00	2204.29.80	3503.00.20
2005.70.70	2009.12.25	2204.30.00	3503.00.40
2005.70.91	2009.12.45	2205.90.40	3823.13.00
2005.70.97	2009.19.00	2206.00.30	3823.19.40
2005.99.30	2009.21.20	2206.00.60	3823.70.20
2005.99.50	2009.21.40	2207.10.60	3823.70.40
2005.99.80	2009.29.00	2207.20.00	3823.70.60
2006.00.20	2009.31.40	2208.40.20	4101.20.30
2006.00.40	2009.31.60	2208.40.60	4101.50.30
2006.00.50	2009.39.60	2302.50.00	4102.10.30
2006.00.60	2009.41.20	2303.10.00	4102.29.30
2007.10.00	2009.41.40	2304.00.00	4103.30.20
2007.91.10	2009.49.20	2306.10.00	4103.90.20
2007.99.15	2009.49.40	2308.00.10	
2007.99.35	2009.61.00	2308.00.98	
2007.99.55	2009.69.00	2309.90.22	
2007.99.60	2009.89.40	2309.90.24	
2007.99.65	2009.90.40	2309.90.42	
2007.99.70	2101.30.00	2309.90.44	
2008.11.22	2103.20.40	2309.90.60	

Rules and Regulations

Federal Register

Vol. 81, No. 9

Thursday, January 14, 2016

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3570

RIN 0575-AD02

Community Facilities Technical Assistance and Training Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule with comments.

SUMMARY: Title VI, Section 6006 of the Agricultural Act of 2014 (Pub. L. 113-79)(2014 Farm Bill) authorized the Essential Community Facilities Technical Assistance and Training Program. The Act authorizes the Secretary of Agriculture to make grants to public bodies and private nonprofit corporations, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations) that will serve Rural Areas for the purpose of providing technical assistance and training, with respect to essential community facilities programs. This rule implements Section 6006 of the 2014 Farm Bill, by establishing the policies and procedures for the Technical Assistance and Training (TAT) grants program. The intended effect of this action is to assist rural communities in meeting the community facility needs.

DATES: *Effective date:* This final rule is effective March 14, 2016.

Comments due date: Written comments on this rule must be received on or before March 14, 2016. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 14, 2016.

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

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

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT:

Nathan Chitwood, Regional Coordinator, Rural Housing Service, U.S. Department of Agriculture, 601 Business Loop 70 West, Suite 235, Columbia, MO 65203 telephone: (573) 876-0965. Email contact: Nathan.chitwood@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

Section 306(a) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C 1926(a)) was amended by Section 6006 of the Agricultural Act of 2014 (Pub. L. 113-79) to establish the Community Facilities Technical Assistance and Training Grants program. This action is needed to implement Section 6006 of the 2014 Farm Bill, which authorizes grants to be made to Public Bodies, Nonprofit Corporations, and Federally-recognized tribes and Indian Tribes on Federal and State Reservations that will serve Rural Areas for the purpose of enabling the Grantees to provide Technical Assistance and training with respect to Essential Community Facilities authorized under Section 306(a)(1) of the CONACT (7 U.S.C. 1926(a)).

II. Cost and Benefits

Because this grant is new to the Agency, there is no history to use to determine a cost to apply. Therefore, the Agency examined similar programs administered by other agencies within

the Department. The Agency used the Rural Utilities Service (RUS) Water and Environmental Programs (WEP) Technical Assistance and Training (TAT) grant as a comparison. The number of applications and the number of awarded grants used in the calculation are the same as the number of WEP TAT applications and grants awarded last year. The Agency based our calculations upon receiving 70 total applications with 35 of them selected for funding. The costs include the estimated time for 70 applicants to complete and submit an application and for the 35 successful applicants to carry out the activities of an awarded grant. The Agency used similar cost projects as used by WEP for their TAT grant. The total expense for all the applicants and successful applicants was estimate to be approximately \$188,000.

This program will benefit Rural Area residents by providing training, managerial assistance, and assistance to entities making application to the Community Facilities Program. The Agency understands there is a great need for this type of assistance in Rural Areas.

Executive Order 12866—Classification

This final rule has been reviewed under Executive Order (EO) 12866 and has been determined not significant by the Office of Management and Budget (OMB).

Programs Affected

The affected programs are listed in the Catalog of Federal Domestic Assistance Program under 10.766, Community Facilities Loans and Grants.

Executive Order 12372—Intergovernmental Review

This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Agency conducts intergovernmental consultations for each loan in the manner delineated in 2 CFR part 415, subpart C. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: https://www.whitehouse.gov/omb/grants_spoc.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order (EO) 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Agency has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under EO 13175. However, since technical assistance and training associated with the development of essential community facilities is a resource needed by many Tribes, the Agency commits to provide at least one Tribal Consultation, focused on unique challenges (and potential solutions) coinciding with the implementation of this rule. If a Tribe requests consultation, the Agency will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress. If a tribe would like to engage in consultation with the Agency on this rule, please contact the Agency's Native American Coordinator at (720) 544-2911 or AIAN@wdc.usda.gov.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

The document has been reviewed in accordance with 7 CFR part 1940,

subpart G, "Environmental Program." The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency 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, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a Statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities because this rulemaking action does not involve a new or expanded program.

Executive Order—13132—Federalism

It has been determined, under EO 13132, Federalism, that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies contained in this rule do not have any 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency is now seeking the Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this rule. This information collection requirement will not become effective until approved by OMB.

Title: Community Facilities Technical Assistance and Training Grants.

OMB Number: 0575-NEW.

Type of Request: New collection.

Abstract: This is a new information collection. This information is vital to the Agency to make wise decisions regarding the eligibility of Projects and Applicants in order to reduce the risk associated with making grants, to ensure compliance with the rule, and to ensure that funds obtained from the Government are used appropriately. This collection of information is necessary in order to implement the Community Facilities Technical Assistance and Training Grants regulation.

The following estimates are based on the average over the first three years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 47 hours per response.

Respondents: Rural developers, public bodies, local governments, non-profits and federally recognized tribes.

Estimated Number of Respondents: 70.

Estimated Number of Responses: 70.
Estimated Total Annual Burden on Respondents: 3,290.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of Agency, including whether the information will have practical utility; (b) the accuracy of the Agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Non-Discrimination Policy

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the *USDA Program Discrimination Complaint Form* (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Discussion of the Final Rule

The following paragraphs discuss each section of the Final rule and provide additional information on the Agency's intent in implementing each section.

A. Purpose (§ 3570.251)

This section describes the purpose, scope and applicability of the program. The Agency will make grants to Nonprofit Corporations and Public Bodies, including Federally recognized Tribes and Indian Tribes on Federal and State reservations, to provide to associations Technical Assistance and/or training with respect to essential community facilities programs. In many cases there is a need to hire outside consultants to prepare reports, such as Architectural or financial feasibility, and surveys necessary to request financial assistance to develop the identified community facilities. The Grantee can then assist in preparing applications for financial assistance. If an existing community facility borrower or grantee needs to improve the management, including financial management, related to their existing community facility operations, the Grantee may assist in providing such service. The Agency may also request assistance with other areas of need that have been identified. Any area of need identified will be announced in the Notice.

The Agency recognizes and understands that many smaller, low income rural communities have very limited resources and staff to identify needs, develop application for financing, and operate essential community facilities. In many cases, those communities are governed by volunteers who lack the time or the expertise to develop an essential community facility. These grants will allow the Agency to provide funds to those communities so they may obtain the types of services they need in order to develop their community facility.

It is the intent of this program to assist entities in rural area in accessing funding under the Rural Housing Services Community Facilities Programs.

B. Definitions and Abbreviations (§ 3570.252)

This section presents program specific definitions to clarify terms used in the rule. Program definitions are found at 7 CFR 3570.63, and apply to this regulation. Many of the definitions in this section are self-explanatory. The following definitions have specific meaning to this regulation:

1. **Actual Capacity:** The Rural Community Development Initiative (RCDI) Grant uses this term. This term is significant because it describes the level of expertise required by the Technical Assistance Provider. The eligible purposes of the RCDI program are different than this program. The Agency used the basic language of the definition of capacity in the RCDI Grant and modified it to meet the eligible purposes of this grant.

2. **Applicant:** To be eligible to apply for TAT grant funds, the applicant must be a public body or a private nonprofit corporation, (such as State, county, city, township, and incorporated town and village, borough, authority, district, and Indian tribes on Federal and State reservation). A Nonprofit corporation that applies for this program as a Technical Assistance Provider must be designated tax-exempt by the Internal Revenue Service. This was added by the Agency to ensure that Nonprofit corporations that apply are not structured to only benefit the members of the corporation. This same requirement exists in other USDA grant programs such as the Rural Utilities Service Technical Assistance and Training Grant Program. Nonprofit Corporations applying as Ultimate Recipients must demonstrate Community Ties to the Rural Area. Public bodies and Indian Tribes applying as Ultimate Recipients do not need to further demonstrate Community Ties under this regulation.

3. **Audit:** Audit is a general term that is used throughout the Agency. The requirements for when an audit is required can be found at 2 CFR parts 200 and 400.

4. **Community Ties:** this definition is needed to demonstrate the requisite significant ties to the local Rural Area. This definition was taken from existing Agency guidance for the CF program.

5. **CONACT:** This is the general abbreviation of the Consolidated Farm and Rural Development Act and is widely used throughout the Agency.

6. Conflict of Interest: This is a standard definition that is used by CF in their other programs.

7. DUNS: This is the general abbreviation for the Data Universal Numbering System (DUNS) which is obtained through Dun and Bradstreet. It is a general term used throughout the Agency.

8. Generally Accepted Accounting Principles (GAAP): the standard framework of guidelines for financial accounting used in any given jurisdiction; generally known as accounting standards or standard accounting practice. These include the standards, conventions, and rules that accountants follow in recording and summarizing and in the preparation of financial statements.

9. Indian Tribe: This is the same definition that is used in the Community Facilities Loan and Grant Program. The language in the statute specifically mentioned Indian Tribes located on Federal or State recognized Indian reservations; however, the list of examples was inexhaustive. The Agency determined that this language was not intended to prohibit Indian Tribes not located on a Federal or State recognized reservation from being eligible. The Agency has added all Federal and State recognized Indian Tribes as eligible to apply for this grant. The language is the same as the applicant eligibility requirements of the Community Facility Programs.

10. Jurisdiction: This definition was added so that the Agency could give priority to those projects that serve multiple units of local governance such as counties, cities, townships, special use districts and others.

11. Letter of Conditions: This is a general term used throughout the Agency to describe the document issued by the Agency that lists the requirements that must be met before grant funds are made available to the Grantee.

12. Low Income: The Agency intends for this program to assist low income areas. Additional points are awarded to projects serving low income areas. The Agency will compare the median household income (MHI) of the projects service area to the state's nonmetropolitan median household income. To be inclusive, the Agency is defining low income as being below the state's nonmetropolitan median household income or the poverty line whichever is higher. The MHI is based upon the service area of the facility, not the location. The State's MHI can be obtained by contacting the Agency. The poverty line is defined in a separate definition.

13. Multi-Jurisdictional: The Agency wants to give priority to those projects that cover more than one unit of government. Points are awarded to projects based upon the number of jurisdictions involved in the project. For the purpose of the grant priority will be given to a project that covers at least two jurisdictions. Two or more counties or cities, or Tribes that work together on a project would be considered multi-jurisdictional.

14. Professional Services: The Agency recognizes that one of the major hurdles a potential applicant faces is obtaining funds to hire a professional provider such as an architect, engineer, accountant, and other types of professional services. In order to submit a complete application to the Agency for Community Facility Loans and Grant the applicant may have to provide a preliminary architectural report (PAR), a preliminary engineering report, a financial feasibility report completed by an independent third party, or other types of professional assistance. These professional services many times are not provided by a technical assistance provider. The Agency separated out these types of services so an applicant may apply for grant funds to contract directly for these types of services without having a technical services provider.

15. Project: This is a term used throughout the Agency to describe the eligible purpose that the applicant is seeking grant funding for.

16. Project Cost: This is a term throughout the Agency to describe the amount of funds needed to complete the proposed Project.

17. Secretary: This is the general term used to describe the Secretary of Agriculture.

18. Technical Assistance: The Agency intends for this definition to be broad in order to give applicants the flexibility to solve problems that are important in the rural areas they serve. The technical assistance can include feasibility studies, gathering information for environmental reviews, obtaining professional services, assisting with bookkeeping, providing training for existing facilities, and other types of problem solving activities, but must be for an eligible CF project.

19. Technical Assistance Provider: This is the entity that provides the Technical Assistance.

20. Ultimate Recipient: The Ultimate Recipient is the entity that is assisted by the applicant. An applicant may also be the Ultimate Recipient. For example, a city may apply for grant funds to hire an architect to complete a Preliminary Architectural Report (PAR) for the

construction of a fire station. If the Applicant and the Ultimate Recipient are the same entity, they must meet the definition of both the Applicant and the Ultimate recipient.

C. Compliance With Federal and State Requirements (§ 3570.253)

This section lists some of the Federal and State Requirements that also apply to this grant.

D. Source of Funds (§ 3570.254)

By statute, the Secretary must make available for this program at least three percent (3%) of the annual appropriated funds for the Community Facilities Loan, Grant and Guaranteed Programs. The Secretary cannot make more than five percent (5%) of those funds available. Because the Agency recognizes that these funds are in great demand to assist entities in rural areas, the Secretary will make the maximum of five percent (5%) available each year unless the Secretary lowers the amount by announcing the reduction in a Notice in the **Federal Register**. These funds will be available until July 31 of each year. The Agency has established this date so that any unused TAT funds may be reverted back to other CF program accounts so that the Agency is able to utilize the funds for other CF projects. The Agency believes there is adequate need for the TAT funds and that they will be utilized by the July 31 deadline. Any unused funds will revert back to the Community Facilities Loan, Grant and Guaranteed Programs.

E. Matching Funds (§ 3570.255)

The Agency encourages any applicant to use matching funds, if available, in order to maximize the program benefit and outreach and to encourage the partnership between the government and the private sector. Priority will be given those applicants who commit matching funds in the amount of at least 5% of the total project costs.

F. Allocation of Funds (§ 3570.256)

The Agency will administer these funds and award them on a competitive basis.

G. Statute and Regulation Reference (§ 3570.257)

All references to statutes and regulations will include all successor statutes and regulations.

H. Environmental and Intergovernmental Review (§ 3570.261)

This section lists the environmental and intergovernmental review policies that must be met. The intergovernmental review process may

not be required in every state. To see if the intergovernmental review is required in your state, you can contact the State Office.

I. Applicant Eligibility Requirements (§ 3570.262)

This section addresses the eligibility requirement for the Applicant and the Ultimate recipient. The Applicant may apply as a Technical Assistance Provider (not the Ultimate Recipient) or as an Ultimate Recipient.

1. Applicants applying as Technical Assistance Providers must be a Nonprofit corporation with a tax exempt status from the IRS, a Public Body, or Federally recognized Indian Tribe or Indian Tribe on a Federal or State reservation. A Technical Assistance Provider does not have to be located in the rural area. It is the experience of the agency that many experienced Technical Assistance Providers are located outside of the rural area. Therefore, there is no community ties requirement for Technical Assistance Providers. There is a tax-exempt status requirement however. This exists to ensure that the Technical Assistance Providers are operating on a not for profit basis. The applicant may provide the technical assistance through its existing staff, be assisted by an affiliate or member organization that has experience, or contract out for no more than 49% of the expertise needed to provide the technical assistance. The Agency determined that if the applicant had to contract for more than 49% of the technical assistance provided, then the applicant did not possess adequate experience. This same requirement is used in the Agency's Rural Community Development Initiative (RCDI) which also provides technical assistance and training grants.

2. Applicants applying as Ultimate Recipients must meet these same requirements, except that if they are a Nonprofit Corporation, they don't need to demonstrate a tax-exempt status from the IRS. Ultimate Recipients that are nonprofit corporations must demonstrate Community Ties as outlined in § 3570.262(b)(3)(i) through (iii). It is the opinion of the Agency that such ties are necessary to ensure that the project will carry out a public purpose and continue to primarily serve a Rural Area. Ultimate Recipients that are Public bodies or Indian Tribes are not required to further demonstrate Community Ties since these ties are demonstrated by the way the Public Bodies and Indian Tribes are structured. This program is meant to assist entities apply for funding from the Community Facilities programs. If the ultimate

recipient for this grant is not eligible to obtain funding from the Community Facilities program, the use of these funds does not meet the intent of this grant.

J. Eligible Project Purposes (§ 3570.263)

The statute defines the eligible uses of grant funds. The Agency did not further restrict the purposes in the regulation. The Agency wants this grant program to provide great flexibility and allow the applicants and ultimate recipients to assess their needs and request funds that meet one or more of the eligible purposes.

K. Ineligible Project Purposes (§ 3570.264)

This section lists activities that cannot be funded with these grants. This grant program is not intended to fund duplicate services including those previously performed. Grant funds cannot be used to pay for expenses reimbursed by other funding sources. Since this is a technical assistance and training grant program, grant funds may not be used to purchase real estate, improve or develop office space or repair and maintain private property. If an applicant or ultimate recipient has these needs, the Community Facilities programs may provide funding for this purpose. Furthermore, funding such purposes with a TAT grant would be duplicative and inconsistent with the authorized intended use of these funds. An applicant cannot obtain grant funds to do outreach to generate applications for the Community Facilities Program without there having been community involvement in identifying an existing need. The applicant may work with ultimate recipients to assist them in making applications to the Community Facilities programs. The assistance may include preparing budgets, compiling information requested by the Agency, or any other assistance which may be requested by the ultimate recipient. The Agency also limited the amount of indirect or administrative costs that can be incurred as part of the project to ten percent (10%). The Agency determined that the demand for these funds far exceed the amount of funds available. The limit on the amount of funds that can be used for indirect or administrative costs will allow more grant funds to be available to assist ultimate recipients. Grant funds may not be used to prepare environmental assessments for the ultimate recipient to make application to the Community Facilities programs. The Agency is ultimately responsible for completing environmental assessments; therefore, the Agency has determined that these

grant funds cannot be used for that purpose. The statute further requires that the grant benefit Rural Areas. In order to meet this requirement, the Agency is requiring the ultimate recipient and project to be located in a Rural Area. If either is not located in a Rural Area the project would not be eligible for a TAT grant. The Agency determined that grant funds must be used to provide assistance to a project that primarily serves an area that is considered low income. Limited grant funds should be targeted to those areas with low income. The Community Facilities grant program prohibits projects in areas with a median household income (MHI) exceeding 90% of the State's MHI. This grant is more inclusive as it allows the MHI of the project's service area to be up to 100% of the state's MHI to maximize the number of low income communities that are eligible for this assistance.

L. Applications (§ 3570.267)

This section outlines what is required to submit an application for grant funding. The Agency will publish an annual Notice in the **Federal Register** which will state the application filing period. The Notice will advise the public where applications are to be submitted and how they may contact the Agency with questions regarding the application process. The Agency will accept electronic applications through the Grants.gov Web site. Instructions for submitting applications via grants.gov will be available on the grants.gov Web site. The applicant should be aware that the application process via grants.gov may take several days to complete. The applicant will have the option to submit paper applications to an address in the **Federal Register** Notice. The required forms and narrative information that needs to be submitted in the application packet is listed in this section.

M. Grant Processing (§ 3570.272)

This section describes how applications will be processed by the Agency. The procedures described in this section are standard procedures and are meant to encourage complete applications and provide the necessary assistance to applicants.

N. Scoring (§ 3570.273)

The Agency will score and rank applications based on the income of the service area of the Ultimate Recipients, Multi-Jurisdictions, soundness of approach, matching funds, State Director discretionary points and Administrator discretionary points. Congress mandated that the Agency give priority to applicants that have

experience providing technical assistance and training. Because of this mandate from Congress, the Agency gave significant weight to this priority (maximum 40 points). The Agency may revise this scoring process in its annual Notice in the **Federal Register**.

O. Funds Disbursement (§ 3570.274)

All funds will be disbursed in accordance with 2 CFR parts 200 and 400. The grantee may receive advance payments if the grantee demonstrates it has the financial management systems in place to control the grant funds and account for the use of all the grant funds. The Grantee can request a reimbursement method of payment by using Standard Form SF 270 "Request for Advance or Reimbursement". If the project includes matching funds, the request for grant funds must also account for the usage of any required matching funds.

P. Grant Cancellation or Major Changes (§ 3570.275)

Any grant cancellations and major changes will be in accordance with 2 CFR parts 200 and 400. This section outlines the requirements for making changes in the scope of work. The Agency understands that projects can change and other needs may be identified. Therefore, the Agency is willing to allow the grantee to request changes to the project. Any changes to the scope of work must also be eligible grant purposes.

Q. Reporting (§ 3570.276)

This section outlines the reporting requirements the grantee must follow. Reports will be required to be submitted according to the schedule set in the grant agreement, which will be no more frequent than quarterly. The Agency uses these reports to monitor the progress of the project. The report must show how grant funds and any matching funds are spent. The reports will include the SF 425 "Federal Financial Report" and a Project Performance Report. The Agency and the grantee will use these reports to make sure the time schedules are being met and address any challenges that the grantee may be facing. The Agency requires the grantee to list actual accomplishments for each reporting period. The grantee must explain why any objectives were not achieved during the reporting cycle. The Agency will require the grantee to provide a summary of the race, sex, and national origin of the ultimate recipients. This information is used by the Agency to monitor any possible discrimination in its Federal programs. The Agency is

requiring additional information to be submitted with the final report. The Agency requests grantees to describe challenges they faced during the project, advice they would give to future grantees, the strengths and weaknesses of the grant, what improvements could be made to the grant process, and the post-grant plans for the project. The Agency will use this feedback to improve the grant process.

List of Subjects in 7 CFR Part 3570

Grant programs—Housing and community development, Reporting requirements, Rural areas, and Technical assistance.

For the reasons stated in the preamble, Chapter XXXV, title 7 of the Code of Federal Regulations is amended as follows:

PART 3570—COMMUNITY PROGRAMS

■ 1. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 2. Add and reserve subparts C, D, and E.

■ 3. Add subpart F, consisting of §§ 3570.251 through 3570.300, to read as follows:

Subpart F—Community Facilities Technical Assistance and Training Grants

Sec.

- 3570.251 Purpose.
- 3570.252 Definitions and abbreviations.
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Subpart F—Community Facilities Technical Assistance and Training Grants

§ 3570.251 Purpose.

This subpart contains the provisions and procedures by which the Agency will administer the Essential Community Facilities Technical Assistance and Training Program. The purpose of the program is to provide technical assistance and training with respect to essential community facilities programs. To meet this purpose, the Agency will make grants to public bodies and private nonprofit corporations, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations) to provide associations Technical Assistance and/or training with respect to essential community facilities programs. The Technical Assistance and/or training will assist communities, Indian Tribes, and Nonprofit Corporations to identify and plan for community facility needs that exist in their area. Once those needs have been identified, the Grantee can assist in identifying public and private resources to finance those identified community facility needs.

§ 3570.252 Definitions and abbreviations.

The definitions and abbreviations in § 3570.53 apply to this subpart unless otherwise provided. In addition, these definitions and abbreviations are used in this subpart:

Actual capacity. The demonstrated ability of the Technical Assistance Provider to develop the capacity of Ultimate Recipients in the areas of developing applications for the Community Facilities program, improving the management capabilities of their community facilities, and providing training.

Administrator. The Administrator of the Rural Housing Service (RHS).

Applicant. Public bodies and private nonprofit corporations, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations) that has applied for, or intends to apply for, a Technical Assistance and Training Grant under this subpart. The applicant must be either a Technical Assistance Provider or an Ultimate Recipient.

Audit. An examination of an organization's financial Statements by an independent Certified Public Accountant (CPA), for the purpose of expressing an opinion on the fairness

with which the Statements present the financial position, results of operations, and changes in cash flows in conformity with Generally Accepted Accounting Principles (GAAP) and for determining whether the Applicant or Ultimate Recipient of Federal government funding has complied with the applicable laws, regulations, and contract for those events reflected in the financial Statements. All audits must meet the requirements of 2 CFR 200.500–200.518.

Community ties. The significant ties to the Rural Area that need to be demonstrated by a Nonprofit corporation who is an Ultimate Recipient, by either substantial public funding through taxes, revenue bonds or other local Government sources, and/or substantial voluntary community funding; and, a broadly-based ownership and control by members of the community. It can also be demonstrated by local membership and control characteristics.

CONACT. The Consolidated Farm and Rural Development Act (7 U.S.C. 1926 *et seq.*).

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, Project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent Conflict of Interest, including, but not limited to, owner(s) and their immediate family members. An example of Conflict of Interest occurs when the Grantee's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the Applicant receiving the benefits or services of the grant.

DUNS. A Data Universal Numbering System (DUNS) which is obtained from Dun and Bradstreet and is used when applying for Federal financial assistance.

Generally Accepted Accounting Principles (GAAP). A widely accepted set of rules, conventions, standards and procedures for reporting financial information, as established by the Financial Accounting Standards Board.

Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Jurisdiction. A unit of government or other entity with similar powers. Examples include, but are not limited to: City, county, district, special purpose district, township, town, borough, village, and State.

Letter of Conditions. A legal document presented to the Applicant selected for funding that outlines all conditions that must be agreed to and accepted before final grant approval.

Low income. A median household income (MHI) that does not exceed the State Non-Metropolitan Median Household Income (SNMHI) or the Poverty Line, whichever is higher.

Multi-jurisdictional. Concerning two or more jurisdictions.

Professional services. Services provided by a person or entity having specialized knowledge and skills to plan, design, prepare procurement, construction, or other technical support documents, administer construction contracts, and/or other related services for a Project.

Project. The Technical Assistance that an Applicant is currently planning as described in the Project description in the application, to be financed in whole or in part with Agency assistance.

Secretary. The Secretary of Agriculture.

Technical Assistance. A function such as supervision, oversight, training, or professional consultation related to an Essential Community Facility that is performed for the benefit of an Ultimate Recipient or proposed Ultimate Recipient, which is a problem solving activity, as determined by the Agency.

Technical Assistance Provider. Grantee who will provide technical assistance to Ultimate Recipients.

Ultimate Recipient. Entity receiving assistance from the Grantee. If a Nonprofit corporation is either applying for funding as an Ultimate Recipient or is benefitting from the TAT Grant as the Ultimate Recipient, it must demonstrate Community Ties to the Rural Area. These ties may be demonstrated by:

(1) Obtaining substantial public funding through taxes revenue bonds, or other local Government sources, and/or substantial voluntary community funding, or

(2) Having a broadly-based ownership and control by members of the community, or

(3) Demonstrating all of the following characteristics:

(i) Members of the organization are primarily from the local rural community,

(ii) Membership is open to all adults in the local rural community,

(iii) Members of the organization have ultimate control of the proposed community facility; and

(iv) The organization receives the majority of its funding from its members or their volunteer efforts. Public bodies and Indian Tribes that are applying for funding as Ultimate Recipients or are the benefitting from TAT grant funds as the Ultimate Recipient are not required to further demonstrate Community ties to the local Rural Areas.

§ 3570.253 Compliance with Federal and State requirements.

(a) *Federal statutory requirements.* Applicants must comply with, all applicable Federal laws and Executive Order requirements including, but not limited to:

(1) Section 504 of the Rehabilitation Act of 1973.

(2) Civil Rights Act of 1964.

(3) The American with Disabilities Act (ADA) of 1990.

(4) Executive Order 12549 Debarment and Suspension and 2 CFR parts 180 and 417.

(5) Section 319 of Public Law 101–121 on Lobbying.

(6) Age Discrimination Act of 1975.

(7) Fair Housing Act of 1968.

(8) Executive Order 11246 Equal Employment Opportunity.

(9) Title IX of the Education Amendments of 1972.

(10) 2 CFR parts 200 and 400

“Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”.

(b) State laws, local laws, regulatory commission regulations. Applicants must comply with all applicable state and local laws and regulatory commission regulations. If there are conflicts between this subpart and State or local laws or regulations, the provisions of this subpart will control.

§ 3570.254 Source of funds.

The Agency will reserve 5 percent of any funds annually appropriated to carry out each of the Essential Community Facilities grant, loan and loan guarantee programs unless otherwise noted in the annual Notice published in the **Federal Register**. TAT reserved grant funds not obligated by July 31 of each fiscal year will be used

to fund Essential Community Facilities grant, loan, and/or loan guarantee programs.

§ 3570.255 Matching funds.

Any matching funds must comply with the requirements outlined at 2 CFR 200.306.

§ 3570.256 Allocation of funds.

The Agency will administer these grant funds and will award them on a competitive basis.

§ 3570.257 Statute and regulation references.

All references to statutes and regulations are to include any and all successor statutes and regulations.

§§ 3570.258–3570.260 [Reserved]

§ 3570.261 Environmental and intergovernmental review.

All grants awarded under this subpart are subject to the environmental requirements of 7 CFR part 1940, subpart G. Technical Assistance under this program is categorically excluded unless extraordinary circumstances exist.

§ 3570.262 Applicant eligibility requirements.

There are two types of Applicants. The applicant must be either a Technical Assistance Provider or an Ultimate Recipient, and must meet eligibility requirements before being considered for Agency assistance.

(a) Applicants applying as Technical Assistance Providers must:

(1) Be a public body or a private nonprofit corporation, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations);

(2) Be legally established and located within one of the following:

- (i) A State as defined § 3570.252; or
- (ii) The District of Columbia; and

(3) Have the proven ability, background, experience (as evidenced by the organization's satisfactory completion of Project(s) similar to those proposed), legal authority and actual capacity to provide Technical Assistance and/or training to Ultimate Recipients as provided in § 3570.252. To meet the requirement of actual capacity, an Applicant must either:

(i) Have the necessary resources to provide Technical Assistance and/or training to associations in Rural Areas through its staff,

(ii) Be assisted by an affiliate or member organization which has such background and experience and which

agrees, in writing, that it will provide the technical assistance, or

(iii) May contract with a nonaffiliated organization for not more than 49 percent of the awarded grant to provide the proposed technical assistance.

(4) Nonprofits applying as Technical Assistance Providers must be designated tax exempt by the Internal Revenue Service.

(b) Applicants applying as Ultimate Recipients must be:

(1) A public body,

(2) An Indian Tribe, or

(3) A Nonprofit corporation that demonstrates Community ties to the Rural Area by:

(i) Obtaining substantial public funding through taxes revenue bonds, or other local Government sources, and/or substantial voluntary community funding,

(ii) Having a broadly-based ownership and control by members of the community, or

(iii) Demonstrating all of the following characteristics:

(A) Members of the organization are primarily from the local rural community,

(B) Membership is open to all adults in the local rural community,

(C) Members of the organization have ultimate control of the proposed community facility; and

(D) The organization receives the majority of its funding from its members or their volunteer efforts.

§ 3570.263 Eligible project purposes.

(a) Grant funds and any matching funds may be used by Technical Assistance Providers to:

(1) Assist communities in identifying and planning for community facility needs;

(2) Identify resources to finance community facility needs from public and private sources;

(3) Prepare reports and surveys necessary to request financial assistance to develop community facilities;

(4) Prepare applications for Agency financial assistance;

(5) Improve the management, including financial management, related to the operation of community facilities; or

(6) Assist with other areas of need identified by the Secretary.

(b) Grant Funds and any matching funds may be used by Ultimate Recipients only to prepare reports and surveys necessary to request financial assistance to develop community facilities. Applicants applying as Ultimate Recipients will be limited to this purpose.

§ 3570.264 Ineligible project purposes.

Ineligible purposes for grant funds and any matching funds include, but are not limited to:

(a) Duplicate services, such as those previously performed by an association's consultant in developing a Project, including feasibility, design, Professional Services, and cost estimates prior to receiving the grant award.

(b) Purchase real estate or vehicles, improve or renovate office space, or repair and maintain privately owned property.

(c) Pay the costs for construction, improvement, rehabilitation, modification, or operation and maintenance of an Essential Community Facility.

(d) Procure applications for the Agency's community facilities or other loan or grant program. Grant funds cannot be used to generate new applications; however, as stated in § 3570.262(c)(4) funds can be used to assist with application preparation for Agency programs.

(e) Pay for other costs that are not allowed under 2 CFR part 200.

(f) Pay an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), which has been recorded. An Applicant will be ineligible to receive a grant until the judgment is paid in full or otherwise satisfied.

(g) Intervene in Federal or adjudicatory proceedings.

(h) Fund political or lobbying activities.

(i) Conduct an income survey associated with developing a complete application for a potential Applicant.

(j) Pay for indirect or administrative costs in excess of 10% of the amount of grant.

(k) Prepare environmental assessments.

(l) Provide assistance to an Ultimate Recipient, or a Project, that is not located in a Rural Area.

(m) Pay for expenses incurred more than three years after the date of the grant agreement.

(n) Provide assistance to a Project that primarily serves an area that is not considered Low Income.

(o) Fund a project where a Conflict of Interest exists.

§§ 3570.265–3570.266 [Reserved]

§ 3570.267 Applications.

(a) *Filing period.* The Agency will publish an annual notice in the **Federal Register** stating the filing period, where to file, and all other applicable information necessary to submit a complete application.

(b) *Application requirements.* To file an application, an organization must provide their DUNS number. An organization may obtain a DUNS number from Dun and Bradstreet by calling (1-866-705-5711). To file a complete application the following information must be submitted:

- (1) "Application for Federal Assistance (For Non-Construction)
- (2) "Budget Information—Non-Construction Programs."
- (3) "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transaction."
- (4) "Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1—For Grantees Other Than Individuals."
- (5) "Certification Regarding Debarment."
- (6) Attachment regarding assistance provided to Agency Employees as required by RD Instruction 1900—D (1900.153(a)), as applicable.
- (7) "Equal Opportunity Agreement."
- (8) "Assurance Agreement."
- (9) Indirect Cost Rate Agreement (if applicable, Applicant must include approved cost agreement rate schedule).
- (10) Statement of Compliance with Title VI of the Civil Rights Act of 1964.
- (11) "Disclosure of Lobbying Activities" (include only if grant exceeds \$100,000).

(c) *Supporting information.* All applications shall be accompanied by the following supporting information:

- (1) For Nonprofit Corporations,
 - (i) Certified copies of current organizational documents including Certificate of Incorporation, bylaws, and Certificate of Good Standing,
 - (ii) Evidence of tax exempt status from the Internal Revenue Service if applying as a Technical Assistance Provider, and
 - (iii) Evidence of Community Ties to a Rural Area if a Nonprofit Corporation applying as an Ultimate Recipient.
- (2) For applicants applying as a Technical Assistance Provider, a narrative of their experience in providing services similar to those proposed. The narrative will provide a brief description of successfully completed Projects including the need that was identified and objectives accomplished.
- (3) Latest financial information to show the Applicant's financial capacity to carry out proposed work. A current Audit is preferred; however, Applicants may submit a balance sheet and an income Statement in lieu of an Audit report.
- (4) Documentation of cash matching funds, if applicable.

(5) List of proposed services to be provided.

(6) For Applicants applying as Technical Assistance Providers who have not identified the Ultimate Recipients, a narrative explaining how they will select Ultimate Recipients to be assisted with grant funds.

(7) Estimated breakdown of costs (direct and indirect) including those to be funded by Grantee as well as matching funds and other sources. Sufficient detail will be provided to permit the Agency to determine if the costs are allowed, reasonable, and applicable.

(8) Evidence that a Financial Management System used to track Project costs is in place or proposed.

(9) Documentation relevant to scoring criteria including, but not limited to:

- (i) List of Ultimate Recipients to be served and the county, State or States where assistance will be provided. Identify Ultimate Recipients by name, or other characteristics such as size, income, location, and provide MHI and population data.

(ii) Description of type of Technical Assistance and/or training to be provided and the tasks to be contracted.

(iii) Description of how the Project will be evaluated, clearly stated goals, and the method proposed to measure results.

(iv) Documentation of the need for the proposed service. Provide detailed explanation of how the proposed service differs from other similar services being provided in same area.

(v) Personnel on staff or to be contracted to provide services and their experience with similar Projects.

(vi) Statement indicating the number of months it will take to complete the Project or service, and

(vii) Documentation on cost effectiveness of Project. Provide the cost per Ultimate Recipient to be served or the proposed cost of personnel to provide assistance.

§§ 3570.268—3570.271 [Reserved]

§ 3570.272 Grant processing.

(a)–(c) [Reserved]

(d) Applications that are not selected for funding due to low rating will be notified by the Agency. Applications that cannot be funded in the fiscal year that the application was received will not be retained for consideration in the following fiscal year.

(e) Applicants selected for funding will need to accept the conditions set forth in the Letter of Conditions, meet all such conditions, and complete a grant agreement which outlines the terms and conditions of the grant award before grant funds will be disbursed.

§ 3570.273 Scoring.

The Agency will score each application using the following scoring factors unless otherwise provided in an annual Notice in the **Federal Register**:

(a) *Experience:* Applicant Experience at developing and implementing successful technical assistance and/or training programs:

(1) More than 10 years—40 points.

(2) More than 5 years to 10 years—25 points.

(3) 3 to 5 years—10 points.

(b) *No prior grants received:*

(1) Applicant has never received a TAT Grant—5 points.

(2) [Reserved]

(c) *Population:* The average population of proposed area(s) to be served:

(1) 2,500 or less—15 points.

(2) 2,501 to 5,000—10 points.

(3) 5,001 to 10,000—5 points.

(d) *MHI:* The average median household income (MHI) of proposed area to be served is below the higher of the poverty line or:

(1) 60 percent of the State's MHI—15 points.

(2) 70 percent of the State MHI—10 points.

(3) 90 percent of the State's MHI—5 points.

(e) *Multi-jurisdictional:* The proposed technical assistance or training project a part of a Multi-jurisdictional project comprised of:

(1) More than 10 jurisdictions—15 points.

(2) More than 5 to 10 jurisdictions—10 points.

(3) 3 to 5 jurisdictions—5 points.

(f) *Soundness of approach:* Up to 10 points.

(1) Needs assessment: The problem/issue being addressed is clearly defined, supported by data, and addresses the needs;

(2) Goals & objectives are clearly defined, tied to the need as defined in the work plan, and are measurable;

(3) Work plan clearly articulates a well thought out approach to accomplishing objectives & clearly identifies who will be served by the project;

(4) The proposed activities are needed in order for a complete Community Facilities loan and/or grant application.

(g) *Matching funds:*

(1) There is evidence of the commitment of other cash funds of 20% of the total project costs 10 points.

(2) There is evidence of the commitment of other cash funds of 10% of the total project costs 5 points.

(h) *State Director discretionary points.* The State Director may award up to 10 discretionary points for the highest

priority project in each state, up to 7 points for the second highest priority project in each state and up to 5 points for the third highest priority project that address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster, or other areas of need in their particular state. The State Director will place written documentation in the project file each time the State Director assigns these points—Up to 10 points.

(i) *Administrator discretionary points.* The Administrator may award up to 20 discretionary points for projects to address geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives identified by the Secretary—Up to 20 points.

§ 3570.274 Fund disbursement.

The Agency will make payments under this agreement in accordance with 2 CFR 200.305. All requests for advances or reimbursements must be in compliance with 2 CFR 200.306 and include any required matching fund usage.

§ 3570.275 Grant cancellation or major changes.

Any change in the scope of the Project, budget adjustments of more than 10 percent of the total budget, and any other significant change in the Project must be in compliance with 2 CFR 200.308 and 200.339. The changes must be requested in writing and approved by the Agency in writing. Any change not approved may be cause for termination of the grant.

§ 3570.276 Reporting.

(a) The Grantee must provide periodic reports as required by the Agency. A financial status report, SF 425 “Federal Financial Report,” and a project performance report will be required as provided in the grant agreement. The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The Project performance reports shall include, but are not limited to, the following:

- (1) A description of the activities that the funds reflected in the financial status report were used for;
- (2) A comparison of actual accomplishments to the objectives for that period;
- (3) Reasons why established objectives were not met, if applicable;

(4) Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a Statement of the action taken or planned to resolve the situation;

(5) Objectives and timetables established for the next reporting period;

(6) A summary of the race, sex, and national origin of the Ultimate Recipients;

(7) The final report will also address the following:

(i) What have been the most challenging or unexpected aspects of this grant?

(ii) What advice would you give to other organizations planning a similar grant? What are the strengths and limitations of this grant? If you had the opportunity, what would you have done differently?

(iii) Are there any post-grant plans for this Project? If yes, how will they be financed?

(b) [Reserved]

§ 3570.277 Audit or financial statement.

The Grantee will provide an Audit report or financial Statement in accordance with 2 CFR 200.500–200.517 and as follows:

(a) Grantees expending \$750,000 or more Federal funds per fiscal year will submit an Audit conducted in accordance with 2 CFR parts 200, 215, 220, 225, 230 and 400, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.”

(b) Grantees expending less than \$750,000 will provide annual financial Statements covering the grant period, consisting of the organization’s statement of income and expense and balance sheet signed by an appropriate Official of the organization. Financial statements will be submitted within 90 days after the Grantee’s fiscal year.

§§ 3570.278–3570.280 [Reserved]

§ 3570.281 Grant servicing.

Grants will be serviced in accordance with 7 CFR part 1951, subpart E.

§ 3570.282 [Reserved]

§ 3570.283 Exception authority.

The Administrator may make an exception to any requirement or provision of this subpart, if such an exception is necessary to implement the intent of the authorizing statutes in a time of national emergency or in

accordance with a Presidentially-declared disaster, or on a case-by-case basis, when such an exception is in the best financial interest of the Federal Government and is otherwise not in conflict with applicable laws. No exceptions, however, will be granted for Applicant, Ultimate Recipient, or Project eligibility.

§ 3570.284 Review or appeal rights.

A person may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question or appeal to the USDA National Appeals Division in accordance with 7 CFR part 11.

§§ 3570.285–3570.299 [Reserved]

§ 3570.300 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) for approval.

Dated: December 11, 2015.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–00479 Filed 1–13–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1275; Directorate Identifier 2014–NM–070–AD; Amendment 39–18354; AD 2015–26–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2004–14–09 for certain Airbus Model A320–211, –212, and –231 airplanes. AD 2004–14–09 required repetitive inspections for fatigue cracking of the lower surface panel on the wing center box, and repair if necessary; and modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. This new AD retains the requirements of AD 2004–14–09, reduces the compliance times for the repetitive inspections, and requires an additional repair for certain airplanes. This AD was

prompted by a determination that, based on the average flight duration, the average weight of fuel at landing is higher than that defined for the analysis of the fatigue-related tasks; and that shot peening might have been improperly done on the chromic acid anodizing (CAA) protection, which would adversely affect fatigue crack protection. We are issuing this AD to detect and correct fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective February 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 13, 2004 (69 FR 41398, July 9, 2004).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 27, 1998 (63 FR 56542, October 22, 1998).

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2015-1275>; 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 final rule, 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. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1275.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2004-14-09, Amendment 39-13718 (69 FR 41398, July 9, 2004). AD 2004-14-09 applied to certain Airbus Model A320-211, -212, and -231 airplanes. The NPRM published in the **Federal Register** on May 8, 2015 (80 FR 26492). The NPRM was prompted by a determination that, based on the average flight duration, the average weight of fuel at landing is higher than that defined for the analysis of the fatigue-related tasks; and that shot peening might have been improperly done on the CAA protection, which would adversely affect fatigue crack protection. The NPRM proposed to continue to require repetitive inspections for fatigue cracking of the lower surface panel on the wing center box, and repair if necessary; and modification of the lower surface panel on the wing center box, which constitutes terminating action for the repetitive inspections. The NPRM also proposed to reduce the compliance times for the repetitive inspections, and would require a repair for certain airplanes. We are issuing this AD to detect and correct fatigue cracking of the lower surface panel on the wing center box, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014-0065, dated March 14, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition on certain Model A320-211, -212, and -231 airplanes. The MCAI states:

During center fuselage certification full scale test, damage was found in the center wing box (CWB) lower surface panel.

This condition, if not detected and corrected, could affect the structural integrity of the CWB.

To prevent such damage, Airbus developed mod 22418 which consists in shot-peening of the lower panel in the related area. Mod 22418 has been embodied in production from aeroplane [manufacturer serial number] (MSN) 0359. For unmodified in-service aeroplanes, Airbus issued Service Bulletin (SB) A320-57-1082 to introduce repetitive High Frequency Eddy Current (HFEC) inspections on the external face of the center wing box lower panel between Frame (FR) 41 and FR42 to detect damage.

DGAC [Direction Générale de l'Aviation Civile] France issued AD 2002-342 [http://ad.easa.europa.eu/blob/20023420tb_superseded.pdf/AD_F-2002-342_1] to require these inspections and, depending on findings, applicable corrective action(s).

Airbus also issued SB A320-57-1043 as an optional terminating action for the repetitive inspections required by DGAC France AD 2002-342.

Since that [DGAC] AD was issued, the results of a survey, carried out on the A320 fleet, highlighted some differences between the mission parameters, mainly on the weight of fuel at landing and on the average flight duration, which are higher than those defined for the analysis of the fatigue related tasks.

These findings have led to an adjustment of the A320 reference fatigue mission. Consequently, the threshold and intervals of these repetitive inspections have been revised and a new threshold figure expressed in flight hours (FH) has been established.

In addition, it has been identified that, on aeroplanes that have been modified in accordance with Airbus SB A320-57-1043 (Airbus mod 22418) at Revision 05 or an earlier Revision, the shot peening may have been improperly done on the Chromic Acid Anodizing (CAA) protection, which has no fatigue benefit effect. Therefore, the inspections per Airbus SB A320-57-1082 are required again on these aeroplanes.

Consequently, new shot-peening procedures with proper CAA protection removal instructions have been developed and their embodiment through Airbus SB A320-57-1043 Revision 06 cancels the repetitive inspections per Airbus SB A320-57-1082, as required by DGAC France AD 2002-342.

For the reasons described above, this new [EASA] AD retains the requirements of DGAC France AD 2002-342, which is superseded, but requires these actions to be accomplished within reduced thresholds and intervals. In addition, the optional terminating action provision (SB A320-57-1043) is amended by including reference to the SB at Revision 06.

The optional terminating action described in Airbus Service Bulletin A320-57-1043, Revision 06, dated December 5, 2013, is accomplishing shot peening in the radius of the milling step between stiffeners 13 and 14 near the fuel pump aperture. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2015-1275-0002>.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 26492, May 8, 2015) or on the determination of the cost to the public.

Conclusion

We reviewed the available 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 (80 FR

26492, May 8, 2015) for correcting the unsafe condition; and

- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 26492, May 8, 2015).

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–57–1043, Revision 06, dated December 5, 2013. This service information describes procedures for shot peening in the radius of the milling step between stiffeners 13 and 14 near the fuel pump aperture.

Airbus has also issued Service Bulletin A320–57–1082, Revision 04, dated December 5, 2013. This service information describes procedures for inspections for cracking of the lower surface panel on the wing center box.

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

Costs of Compliance

We estimate that this AD affects 46 airplanes of U.S. registry.

The actions that were required by AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), and retained in this AD take about 25 work-hours per product, at an average labor rate of \$85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2004–14–09 is \$2,125 per product.

The new requirements of this AD will add no additional economic burden.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD. 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-2015-1275>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the ADDRESSES section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), and adding the following new AD:

2015–26–06 Airbus: Amendment 39–18354. Docket No. FAA–2015–1275; Directorate Identifier 2014–NM–070–AD.

(a) Effective Date

This AD becomes effective February 18, 2016.

(b) Affected ADs

This AD replaces AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004).

(c) Applicability

This AD applies to Airbus Model A320–211, –212, and –231 airplanes, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification 22418 has been embodied in production.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that, based on the average flight duration, the average weight of fuel at landing is higher than that defined for the analysis of the fatigue-related tasks; and that shot peening might have been improperly done on the chromic acid anodizing (CAA) protection, which would adversely affect fatigue crack protection. We are issuing this AD to detect and correct fatigue cracking of the lower surface panel on the wing center box (WCB), which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections, With No Changes

This paragraph restates the requirements of paragraph (a) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. Except as provided by paragraph (k) of this AD: Prior to the accumulation of 20,000 total flight cycles, or within 60 days after November 27, 1998 (the effective date of AD 98–22–05, Amendment 39–10851 (63 FR 56542, October 22, 1998)), whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect fatigue cracking of the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002. Repeat the HFEC inspection thereafter at intervals not to exceed 7,500 flight cycles until the actions required by paragraph (i) of this AD are accomplished.

(h) Retained Repair, With No Changes

This paragraph restates the requirements of paragraph (b) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. Except as provided by paragraph (j) of this AD, if any cracking is detected during any inspection required by paragraph (g) of this AD: Prior to further flight, repair in accordance with Airbus

Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002. Accomplishment of the repair constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD for the repaired area only.

(i) Retained Inspection/Modification/Repair, With New Terminating Action

This paragraph restates the requirements of paragraph (c) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with new terminating action provided. Prior to the accumulation of 25,000 total flight cycles, or within 60 days after November 27, 1998 (the effective date of AD 98–22–05, Amendment 39–10851 (63 FR 56542, October 22, 1998)), whichever occurs later: Perform an HFEC inspection to detect fatigue cracking of the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002. Accomplishment of the initial inspection required by paragraph (p) of this AD constitutes terminating action for the inspection requirements of this paragraph.

(1) If no cracking is detected: Prior to further flight, modify the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997; or Revision 05, dated April 30, 2002. Accomplishment of the modification constitutes terminating action for the requirements of paragraph (g) of this AD.

(2) Except as provided by paragraph (j) of this AD: If any cracking is detected, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002; and modify any uncracked area, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, or Revision 05, dated April 30, 2002. Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of paragraph (g) of this AD.

(j) Retained Service Bulletin Exception, With Revised Repair Instructions

This paragraph restates the requirements of paragraph (d) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with revised repair instructions. If any cracking is detected during any inspection required by paragraph (h) or (i)(2) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent); or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). After the effective date of this AD only repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(k) Retained Provision for Certain Inspection Exception, With No Changes

This paragraph restates the provision of paragraph (e) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. The actions required by paragraph (g) of this AD are not required to be accomplished if the requirements of paragraph (i) of this AD are accomplished at the time specified in paragraph (g) of this AD.

(l) Retained Initial Inspection, With Terminating Action

This paragraph restates the requirements of paragraph (f) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with terminating action provided. For airplanes on which neither the inspection required by paragraph (g) of this AD nor the modification required by paragraph (i)(1) of this AD has been done before August 13, 2004 (the effective date of AD 2004–14–09): Perform an HFEC inspection to detect fatigue cracking of the lower surface panel on the WCB, in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997; or Revision 03, dated April 30, 2002; at the later of the times specified in paragraphs (l)(1) and (l)(2) of this AD. Accomplishment of the inspection required by this paragraph terminates the requirements of paragraph (g) of this AD. Accomplishment of the initial inspection required by paragraph (p) of this AD terminates the inspection requirements of this paragraph.

(1) Prior to the accumulation of 13,200 total flight cycles or 39,700 total flight hours, whichever is first.

(2) Prior to the accumulation of 20,000 total flight cycles, or within 3,500 flight cycles after August 13, 2004 (the effective date of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004)), whichever is later.

(m) Retained Repetitive Inspections, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with no changes. If no cracking is detected during the inspection required by paragraph (g) or (l) of this AD: Repeat the inspection required by paragraph (l) of this AD at the applicable time specified in paragraph (m)(1) or (m)(2) of this AD. Accomplishment of the modification required by paragraph (i)(1) of this AD terminates the requirements of this paragraph.

(1) For airplanes on which the inspections required by paragraph (g) of this AD have been initiated before August 13, 2004 (the effective date of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004)): Do the next inspection within 5,700 flight cycles after accomplishment of the last inspection, or within 1,800 flight cycles after August 13, 2004, whichever is later. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(2) For airplanes on which no inspection required by paragraph (g) of this AD has been done before August 13, 2004 (the effective date of AD 2004–14–09, Amendment 39–

13718 (69 FR 41398, July 9, 2004)): Do the next inspection within 5,700 flight cycles after accomplishment of the inspection required by paragraph (l) of this AD. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(n) Retained Repair/Modification, With Revised Repair Instructions

This paragraph restates the requirements of paragraph (h) of AD 2004–14–09, Amendment 39–13718 (69 FR 41398, July 9, 2004), with revised repair instructions. If any cracking is detected during any inspection required by paragraph (l) or (m) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997, or Revision 03, dated April 30, 2002; and modify any uncracked area, in accordance with Airbus Service Bulletin A320–57–1043, Revision 02, dated May 14, 1997, or Revision 05, dated April 30, 2002. Where Airbus Service Bulletin A320–57–1082 specifies to contact Airbus for an appropriate repair action: Prior to further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the DGAC (or its delegated agent); or EASA; or Airbus's EASA DOA. After the effective date of this AD only repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. Accomplishment of the repair of cracked area(s) and modification of uncracked area(s) constitutes terminating action for the requirements of paragraphs (g) through (n) of this AD.

(o) New Requirement of This AD: Repair of Certain Airplanes

For airplanes on which the actions specified in Airbus Service Bulletin A320–57–1043 have not been accomplished, and on which a repair has been accomplished, as specified in the service information identified in paragraph (o)(1), (o)(2), (o)(3), or (o)(4) of this AD: Within 30 days after the effective date of this AD, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the EASA; or Airbus's EASA DOA.

(1) Airbus Service Bulletin A320–57–1082, dated October 31, 1996.

(2) Airbus Service Bulletin A320–57–1082, Revision 01, dated December 10, 1997.

(3) Airbus Service Bulletin A320–57–1082, Revision 02, dated July 26, 1999.

(4) Airbus Service Bulletin A320–57–1082, Revision 03, dated April 30, 2002.

(p) New Requirement of This AD: Repetitive WCB Inspections

At the applicable time specified in paragraphs (p)(1) and (p)(2) of this AD: Do an HFEC inspection for cracking of the lower surface panel on the WCB, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1082, Revision 04, dated December 5, 2013. Repeat the inspection of the lower surface panel on the WCB thereafter at intervals not to exceed 7,200 flight cycles or 14,400 flight hours, whichever occurs first. Accomplishment of

the initial inspection required by this paragraph terminates the inspections required by paragraphs (g), (i), and (l) of this AD.

(1) For airplanes on which the actions specified in Airbus Service Bulletin A320-57-1043 have not been done: At the later of the times specified in paragraphs (p)(1)(i) and (p)(1)(ii) of this AD.

(i) Before the accumulation of 20,700 flight cycles or 41,400 flight hours, whichever occurs first since first flight of the airplane.

(ii) Within 7,200 flight cycles or 14,400 flight hours, whichever occurs first after doing the most recent inspection as specified in the service information specified in paragraph (o)(1), (o)(2), (o)(3), or (o)(4) of this AD.

(2) For airplanes on which the actions specified in Airbus Service Bulletin A320-57-1043 have been done: At the latest of the times specified in paragraphs (p)(2)(i), (p)(2)(ii), and (p)(2)(iii) of this AD.

(i) Within 7,200 flight cycles or 14,400 flight hours, whichever occurs first since doing the actions specified in Airbus Service Bulletin A320-57-1043.

(ii) Within 3,750 flight cycles or 7,500 flight hours, whichever occurs first after July 31, 2012 (as described in Airbus Service Bulletin A320-57-1082, Revision 04, dated December 5, 2013).

(iii) Within 850 flight cycles or 1,700 flight hours, whichever occurs first after the effective date of this AD.

(q) New Requirement of This AD: Repair of WCB

If any crack is found during any inspection required by paragraph (p) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; the EASA; or Airbus's EASA DOA.

(r) New Optional Terminating Action

Modification of an airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-57-1043, Revision 06, dated December 5, 2013, constitutes terminating action for the actions required by paragraph (p) of this AD.

(s) Credit for Previous Actions

This paragraph provides credit for applicable actions required by paragraphs (g) through (n) of this AD, if those actions were performed before the effective date of this AD using the applicable Airbus Service Information provided in paragraphs (s)(1) through (s)(8) of this AD.

(1) Airbus Service Bulletin A320-57-1043, dated February 16, 1993, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A320-57-1043, Revision 01, dated June 14, 1996, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A320-57-1043, Revision 02, dated May 14, 1997, which was incorporated by reference on November 27, 1998 (63 FR 56542, October 22, 1998).

(4) Airbus Service Bulletin A320-57-1043, Revision 03, dated October 24, 1997, which is not incorporated by reference in this AD.

(5) Airbus Service Bulletin A320-57-1043, Revision 04, dated May 15, 1999, which is not incorporated by reference in this AD.

(6) Airbus Service Bulletin A320-57-1082, Revision 01, dated December 10, 1997, which was incorporated by reference on November 27, 1998 (63 FR 56542, October 22, 1998).

(7) Airbus Service Bulletin A320-57-1082, Revision 02, dated July 26, 1999, which is not incorporated by reference in this AD.

(8) Airbus Service Bulletin A320-57-1082, Revision 03, dated April 30, 2002, which was incorporated by reference on August 13, 2004 (69 FR 41398, July 9, 2004).

(t) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1405; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer*: As of the effective date of this AD, 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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(u) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014-0065, dated March 14, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1275.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (v)(6) and (v)(7) of this AD.

(v) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 18, 2016.

(i) Airbus Service Bulletin A320-57-1043, Revision 06, dated December 5, 2013.

(ii) Airbus Service Bulletin A320-57-1082, Revision 04, dated December 5, 2013. (4) The following service information was approved for IBR on August 13, 2004 (69 FR 41398, July 9, 2004).

(i) Airbus Service Bulletin A320-57-1043, Revision 05, dated April 30, 2002.

(ii) Airbus Service Bulletin A320-57-1082, Revision 03, dated April 30, 2002.

(5) The following service information was approved for IBR on November 27, 1998 (63 FR 56542, October 22, 1998).

(i) Airbus Service Bulletin A320-57-1043, Revision 02, dated May 14, 1997. Pages 1 through 6, 8, 13, and 14 of this service bulletin are marked Revision 02, dated May 14, 1997; pages 7, 9 through 12, and 15 of this service bulletin are from the original issue, dated February 16, 1993.

(ii) Airbus Service Bulletin A320-57-1082, Revision 01, dated December 10, 1997.

(6) 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>.

(7) 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.

(8) 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 18, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-32519 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2015-1982; Directorate Identifier 2014-NM-108-AD; Amendment 39-18353; AD 2015-26-05]

RIN 2120-AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark

1000, 2000, 3000, and 4000 airplanes. This AD was prompted by a design review, which revealed that no controlled bonding provisions are present on a number of critical locations outside the fuel tank. This AD requires installing additional and improved fuel system bonding provisions, and revising the airplane maintenance or inspection program, as applicable, by incorporating fuel airworthiness limitation items and critical design configuration control limitations. We are issuing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective February 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 18, 2016.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2015-1982> 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 final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88-6280-350; fax +31 (0)88-6280-111; email technicalservices@fokker.com; Internet <http://www.myfokkerfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-1982.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The NPRM published in the **Federal Register** on June 15, 2015 (80 FR 34106).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014-0109, dated May 8, 2014 (referred to after this the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The MCAI states:

Prompted by an accident * * *, the Federal Aviation Administration (FAA) published Special Federal Aviation Regulation (SFAR) 88 [(66 FR 223086, May 7, 2001)], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.

The review conducted by Fokker Services on the Fokker F28 design, in response to these regulations, revealed that no controlled bonding provisions are present on a number of critical locations outside the fuel tank.

This condition, if not corrected, could create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosions and consequent loss of the aeroplane.

To address this potential unsafe condition, Fokker Services developed a set of fuel tank bonding modifications.

For the reasons described above, this [EASA] AD requires the installation of additional and improved bonding provisions. These modifications do not require opening of the fuel tank access panels.

More information on this subject can be found in Fokker Services All Operators Message AOF28.038#02.

Required actions include revising the airplane maintenance or inspection program, as applicable, by incorporating fuel airworthiness limitation items and critical design configuration control limitations. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2015-1982-0002>.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 34106, June 15, 2015) 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 (80 FR 34106, June 15, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 34106, June 15, 2015).

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker F28 Appendix SB SBF28-28-059/APP01, dated July 15, 2014, of Fokker F28 Proforma Service Bulletin SBF28-28-059, Revision 1, dated July 15, 2014. The service information describes procedures for the installation of additional bonding provisions outside the fuel tank. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 5 airplanes of U.S. registry.

We also estimate that it will take about 11 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 \$140 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$5,375, or \$1,075 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2015-1982>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2015-26-05 Fokker Services B.V.:

Amendment 39-18353. Docket No. FAA-2015-1982; Directorate Identifier 2014-NM-108-AD.

(a) Effective Date

This AD becomes effective February 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a design review, which revealed that no controlled bonding provisions are present on a number of critical locations outside the fuel tank. We are issuing this AD to prevent an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Installation of Bonding Provisions

Within 24 months after the effective date of this AD, install additional and improved fuel system bonding provisions, in accordance with the Accomplishment Instructions of Fokker F28 Appendix SB SBF28-28-059/APP01, dated July 15, 2014, of Fokker F28 Proforma Service Bulletin SBF28-28-059, Revision 1, dated July 15, 2014.

(h) Revision of Maintenance or Inspection Program

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD: Revise the airplane maintenance or inspection program, as applicable, by incorporating the fuel airworthiness limitation items and critical design configuration control limitations (CDCCLs) specified in paragraph 1.L.(1)(b) of Fokker F28 Appendix SB SBF28-28-059/APP01, dated July 15, 2014, of Fokker F28 Proforma Service Bulletin SBF28-28-059, Revision 1, dated July 15, 2014.

(1) Before further flight, after accomplishing the installation required by paragraph (g) of this AD.

(2) Within 30 days after the effective date of this AD.

(i) No Alternative Actions, Intervals, and/or CDCCLs

After incorporating the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) 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: 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 Fokker B.V. Service'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 2014-0109, dated May 8, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2015-1982-0002>.

(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) Fokker F28 Proforma Service Bulletin SBF28-28-059, Revision 1, dated July 15, 2014.

(ii) Fokker F28 Appendix SB SBF28-28-059/APP01, dated July 15, 2014.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88-6280-350; fax +31 (0)88-6280-111; email technicalservices@fokker.com; Internet <http://www.myfokkerfleet.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 11, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015-32259 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2013-6001; Airspace
Docket No. 15-ANM-10]

RIN 2120-AA66

**Amendment of United States Area
Navigation (RNAV) Route Q-35,
Western United States**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule; technical
amendment.

SUMMARY: This action makes an editorial change to the legal description of United States Area Navigation Route Q-35 to reverse the order of points listed in the route description in FAA Order 7400.9. This action is simply to comply with the standard format for describing routes. The existing alignment of the airway is not affected by this action.

DATES: Effective date 0901 UTC, March 31, 2016. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jason Stahl, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it is merely an editorial change of the legal description of Q-35 to comply with existing administrative format procedures.

History

Airway and route legal descriptions are published in FAA Order 7400.9Z, Airspace Designations and Reporting Points. Current format guidelines for these legal descriptions require that the order of points in a description be listed from "west-to-east" or from "south-to-north," as applicable. The description for Q-35 lists the points from "north-to-south." This rule simply reverses the order of the points listed in Order 7400.9Z to a "south-to-north" format for standardization.

United States Area Navigation Routes are published in paragraph 2006 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The United States Area Navigation Route listed in this document will be published subsequently in the Order.

**Availability and Summary of
Documents for Incorporation by
Reference**

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by reversing the order of points listed in the legal description of United States Area Navigation Route Q-35 as published in FAA Order 7400.9Z, Airspace Designations and Reporting Points. This is only an editorial change revising the order "south to north" instead of "north to south" to comply with the standard route description

format. The change does not alter the current alignment of Q-35 and the airway track is correct on aeronautical charts.

Since this action merely involves an editorial change in the legal description of United States Area Navigation Route Q-35 to standardize the format, and does not involve a change in the dimensions or operating requirements of the affected route, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9Z,

Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 2006 United States Area Navigation Routes

* * * * *

Q-35 DRK to IMB [Amended]

DRK	VORTAC	(Lat. 34°42'09" N., long. 112°28'49" W.)
CORKR	FIX	(Lat. 36°05'02" N., long. 112°24'01" W.)
WINEN	WP	(Lat. 37°56'00" N., long. 113°30'00" W.)
NEERO	WP	(Lat. 41°49'03" N., long. 118°01'29" W.)
IMB	VORTAC	(Lat. 44°38'54" N., long. 119°42'42" W.)

Issued in Washington, DC, on December 28, 2015.

Kenneth Ready,

Acting Manager, Airspace Policy Group.

[FR Doc. 2015-33095 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 300**

[Docket No. 150902807-5999-02]

RIN 0648-BE99

International Fisheries; Pacific Tuna Fisheries; Vessel Register Required Information, International Maritime Organization Numbering Scheme

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations to implement a resolution adopted by the Inter-American Tropical Tuna Commission (IATTC) that requires U.S. vessels fishing for tuna and tuna-like species with a capacity equal to or greater than 100 gross register tons (GRT) to have an International Maritime Organization (IMO) number. The IMO number will be included with information the United States sends to the IATTC for vessels authorized to fish for tuna and tuna-like species in the IATTC Convention Area, and will enable more effective tracking of vessels that may be engaging in illegal, unreported, and unregulated fishing.

DATES: This final rule is effective February 13, 2016.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to Chris Fanning, NMFS West Coast Region and by email to *OIRA_Submission@*

omb.eop.gov. Copies of the Regulatory Impact Review (RIR) and other supporting documents are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2015-0129 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115-0070, or by email to *RegionalAdministrator.WCRHMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT:

Chris Fanning, NMFS, West Coast Region, 562-980-4198.

SUPPLEMENTARY INFORMATION:**Background on the Proposed and Final Rulemaking**

On October 27, 2015, NMFS published a proposed rule in the **Federal Register** (80 FR 65683) that would revise and add regulations at 50 CFR part 300, subpart C. The purpose of the proposed rule was to implement the new regional vessel register requirements in IATTC Resolution C-14-01 (*Resolution (Amended) on a Regional Vessel Register*). It was available for public comment through November 27, 2015. No comments were received.

As a Contracting Party to the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission, and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The Tuna Conventions Act (TCA) (16 U.S.C. 951-962), as amended on November 5, 2015, by Title II of Public Law 114-81, directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department of Homeland Security, to promulgate such regulations as may be necessary to carry out the United States' international obligations under the IATTC Convention, including recommendations and decisions adopted by the IATTC. The Secretary's authority to promulgate such regulations has been delegated to NMFS. The proposed rule included

background information on the TCA and the IATTC, the international obligations of the United States under the TCA, and the basis for the proposed regulations, and therefore, is not repeated here. There have been no changes from the proposed rule in this final rule.

For each of the subject fishing vessels, this final rule requires that the owner of the fishing vessel ensure that an IMO number has been issued for the vessel or apply to NMFS for an exemption from the requirement. In the event that a fishing vessel owner is unable to ensure that an IMO number is issued for the fishing vessel after following the instructions given by the designated manager of the IMO ship identification number scheme, the fishing vessel owner may request an exemption from the requirement from the West Coast Regional Administrator. Upon receipt of a request for an exemption, the West Coast Regional Administrator will assist the fishing vessel owner in requesting an IMO number. If the West Coast Regional Administrator determines that the fishing vessel owner has followed all appropriate procedures but is unable to obtain an IMO number for the fishing vessel, he or she will issue an exemption from the requirements for the vessel and its owner and notify the owner of the exemption. NMFS notes that IHS Maritime, the company that provides fishing vessels with an IMO number, is a private third party. Because of this, it is conceivable that an eligible vessel may not be able to complete the necessary steps and supply the required information, resulting in a denied vessel number request.

To minimize the burden on affected U.S. businesses, NMFS is not requiring that vessel owners report the IMO numbers associated with their vessel to NMFS. NMFS will collect that information from IHS Maritime directly and via data available from the United States Coast Guard.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the TCA and other applicable laws.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a Final Regulatory Flexibility Analysis was not required and none was prepared.

Paperwork Reduction Act (PRA) Collection of Information

This action contains a collection-of-information requirement subject to PRA, which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0387. A request for revision to account for the additional information that would be required pursuant to this rule is under OMB review. Public reporting burden for obtaining an IMO number, or for making an IMO exemption request are each estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to Office of Information and Regulatory Affairs (OIRA_Submission@omb.eop.gov or fax to 202-395-7285).

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Vessels, Reporting and recordkeeping requirements, Treaties.

Dated: January 8, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 300 are amended as follows:

Title 15—Commerce and Foreign Trade

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

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

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

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add an entry for “300.22(b)(3)” in alphanumeric order to read as follows:

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

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * *	
50 CFR:	
* * *	
300.22(b)(3)	-0387
* * *	

Title 50—Wildlife and Fisheries

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

■ 3. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 4. In § 300.22, revise paragraph (b)(3) to read as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

* * *
(b) * * *

(3) *Vessel information.* (i) Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons and cubic meters; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this and other parts of the CFR.

(ii) *IMO numbers.* For the purpose of this section, an “IMO number” is the unique six or seven digit number issued for a vessel under the ship identification number scheme adopted by the International Maritime Organization (IMO) and managed by the entity identified by the IMO (currently IHS Maritime) and is also known as a Lloyd’s Register number.

(iii) *Requirement for IMO number.* The owner of a fishing vessel of the United States used for commercial fishing for tuna and tuna-like species in the IATTC Convention Area shall ensure that an IMO number has been issued for the vessel if the vessel’s Certificate of Documentation issued under 46 CFR part 67 indicates that the vessel’s total internal volume is 100 gross register tons or greater. A vessel owner may request that an IMO number be issued for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the Web site of IHS Maritime.

(iv) *Request for exemption.* In the event that a fishing vessel owner, after following the instructions given by the designated manager of the IMO ship identification number scheme, is unable to ensure that an IMO number is issued for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the West Coast Regional Administrator. The request must be sent by mail to NMFS West Coast Region, 501 W. Ocean Blvd., Suite

4200, Long Beach, CA 90802, and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(v) *Exemption process.* Upon receipt of a request for an exemption under paragraph (b)(3)(iv) of this section, the West Coast Regional Administrator will, to the extent he or she determines appropriate, assist the fishing vessel owner in requesting an IMO number. If the West Coast Regional Administrator determines that the fishing vessel owner has followed all appropriate procedures and yet is unable to obtain an IMO number for the fishing vessel, he or she will issue an exemption from the requirements of paragraph (b)(3)(iii) of this section for the vessel and its owner and notify the owner of the exemption. The West Coast Regional Administrator may limit the duration of the exemption. The West Coast Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of paragraph (b)(3)(iii) of this section within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

* * * * *

[FR Doc. 2016-00586 Filed 1-13-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP-1090-F]

RIN 1120-AA85

Designation of Offenses

AGENCY: Federal Bureau of Prisons.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons (Bureau) removes rules which designated various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c) because that provision, which necessitated regulations, has been repealed in relevant part.

DATES: This rule is effective on February 16, 2016.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION: The Bureau removes rules which designated various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c) because that provision, which necessitated regulations, has been repealed in relevant part. The Bureau published a proposed rule on this subject on February 8, 2013 (78 FR 9353). We received no comments on the proposed rule.

Previously, section 4042(c) of Title 18, United States Code, effective November 26, 1998, provided for notification of sex offender release and certain related functions to facilitate effective sex offender registration and tracking. Notifications were required to be made for persons convicted of the federal offenses noted in subsection (c)(4)(A) through (D). Subsection (c)(4)(E) authorized the Attorney General to designate other offenses as sexual offenses for purposes of subsection (c). The Attorney General delegated this authority to the Director of the Bureau of Prisons. (See 63 FR 69386, December 16, 1998, "1998 interim rule".)

The 1998 interim rule designated additional offenses which are to be considered sexual offenses for purposes of 18 U.S.C. 4042(c). These additional designations, listed in current § 571.72, include state sexual offenses, District of Columbia Code sexual offenses, and certain Uniform Code of Military Justice offenses.

The regulations, therefore, were specifically promulgated in accordance with language in § 4042(c)(4)(E) providing that offenses in addition to those specifically enumerated at § 4042(c)(4)(A)-(D) may be "designated by the Attorney General as a sexual offense for the purposes of this subsection."

However, 18 U.S.C. 4042(c)(4) was repealed by the Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248). Because the revised § 4042(c) requires release notice for persons required to register under SORNA, the Bureau no longer needs to separately designate sexual offenses in addition to those set forth by the statute. The offenses previously listed in the regulation are generally incorporated in SORNA's comprehensive list of covered offenses, thereby rendering the Bureau's current regulations in subpart H of 28 CFR part 571 unnecessary. We therefore now remove and reserve 28 CFR part 571, subpart H.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation and in accordance with Executive Order 13563 "Improving Regulation and Regulatory Review" section 1(b) General Principles of Regulation.

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both 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, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Charles E. Samuels, Jr.,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301 and 28 U.S.C. 509, 510, and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 571 as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

Subpart H—[Removed and Reserved]

■ 2. Subpart H, Designation of Offenses for Purposes of 18 U.S.C. 4042(c) is removed and reserved.

[FR Doc. 2016–00385 Filed 1–13–16; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0864; FRL–9941–29–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Infrastructure and Interstate Transport for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Federal Clean Air Act (CAA) the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submission from the State of Texas for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS). The submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2008 Pb NAAQS (infrastructure SIP or i-SIP). This i-SIP ensures that the State's SIP is adequate to meet the state's responsibilities under the CAA, including the four CAA requirements for interstate transport of Pb emissions.

DATES: This final rule is effective on February 16, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2011–0864. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214–665–6633, donaldson.tracie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our October 15, 2015, proposal (80 FR 62003). In that document, we proposed that the Texas i-SIP submittal for the 2008 Pb NAAQS met the requirements for an i-SIP,

including the requirements for interstate transport of Pb emissions. This action is being taken under section 110 of the Act. We did not receive any comments regarding our proposed approval.

II. Final Action

We are approving the September 8, 2011 and October 13, 2011, submissions from Texas, which address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 Pb NAAQS. Specifically, we are approving these infrastructure elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are also approving the Texas demonstration that it meets the four statutory requirements for interstate transport of Pb emissions.

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, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 March 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Intergovernmental relations, Lead (Pb), Reporting and recordkeeping requirements.

Dated: January 5, 2016.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 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 SS—Texas

■ 2. In § 52.2270, the second table in paragraph (e) titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding the entry “Infrastructure and Interstate Transport for the 2008 Pb NAAQS” at the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *
(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* Infrastructure and Interstate Transport for the 2008 Pb NAAQS.	* Statewide	* 9/8/2011, 10/13/2011	* 1/14/2016 [Insert Federal Register citation].	*

[FR Doc. 2016–00574 Filed 1–13–16; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0673; FRL–9941–13–Region 9]

Partial Approval and Disapproval of Nevada Air Plan Revisions, Clark County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a partial approval and partial disapproval of revisions to the Clark County portion of the Nevada State Implementation Plan

(SIP). The SIP revisions include rescission of four local rules that collectively apply to sources that emit volatile organic compounds (VOCs), oxides of sulfur (SO_x), and particulate matter (PM). In this final action, the EPA is approving the rescission of two of the rules and disapproving the rescission of the other two rules. Approval of the rescission of the two local rules removes them from the Nevada SIP. The two rules for which the EPA is disapproving rescission remain in the Nevada SIP.

DATES: This rule is effective on February 16, 2016.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2015–0673 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street,

San Francisco, California 94105–3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

Table of Contents

I. Proposed Action

II. Public Comments and EPA Responses
 III. EPA Action
 IV. Statutory and Executive Order Reviews

I. Proposed Action

On November 5, 2015 (80 FR 68486), under section 110(k)(3) of the Clean Air

Act (CAA or “Act”), the EPA proposed a partial approval and partial disapproval of the rescission of four local rules submitted by the Nevada Division of Environmental Protection (NDEP) on November 20, 2014 as a

revision to the Clark County portion of the Nevada SIP.

Table 1 lists the rule rescissions that the EPA is approving in today’s action, as currently ordered in the Nevada SIP.¹

TABLE 1—APPROVED RULE RESCISSIONS

Rule Section of the Clark County Air Quality Regulations (CCAQR)	Title	Local effective date	SIP approval date	FR citation
Section 29	Sulfur Contents of Fuel Oil	December 29, 1978	August 27, 1981	46 FR 43141
Section 30, subsections 30.1–30.7 (excluding subsection 30.4).	Incinerators	December 29, 1978	August 27, 1981	46 FR 43141
Section 30, subsection 30.4	[exemptions for certain types of incinerators].	September 3, 1981	June 18, 1982	47 FR 26386
Section 30, subsection 30.8	[related to maximum allowable emission rates].	September 3, 1981	June 18, 1982	47 FR 26386

Table 2 lists the rule rescissions that the EPA is disapproving in today’s

action, as currently ordered in the Nevada SIP.

TABLE 2—DISAPPROVED RULE RESCISSIONS

Rule Section of the CCAQR	Title	Local effective date	SIP approval date	FR citation
Section 52, subsections 52.1–52.10 (excluding subsections 52.4.2.3 and 52.7.2).	Handling of Gasoline at Service Stations, Airports and Storage Tanks.	December 28, 1978	April 14, 1981	46 FR 21758
Section 52, subsections 52.4.2.3 and 52.7.2.	[related to vapor recovery and sales information].	September 3, 1981	June 18, 1982	47 FR 26386
Section 60 (excluding subsections 60.4.2–60.4.3).	Evaporation and Leakage	June 28, 1979	April 14, 1981	46 FR 21758
Section 60, subsection 60.4.2	[General prohibition on the use of cutback asphalt].	September 3, 1981	March 20, 1984	49 FR 10259
Section 60, subsection 60.4.3	[Exceptions to subsection 60.4.2]	September 3, 1981	June 18, 1982	47 FR 26386

We proposed approval of the rescission of CCAQR sections 29 and 30, as approved into the SIP, based on our conclusion that these rules were not specifically required under the CAA and that rescission would be consistent with section 110(l) of the CAA, *i.e.*, the rescission of the two rules would not interfere with attainment or maintenance of any of the national ambient air quality standards (NAAQS). We proposed to disapprove the rescission of CCAQR sections 52 and 60, as approved into the SIP, because rescission would be inconsistent with section 110(l) of the CAA. More specifically, we concluded that rescission of sections 52 and 60 would allow for an increase in VOC emissions and thus would not be protective of the 2008 ozone NAAQS. Our conclusion in this regard derives from the following findings:

1. The rescission of Section 52 would allow an increase in VOC emissions

from gasoline dispensing facilities that would not be controlled by other regulations.

2. The rescission of Section 60 would allow an increase in VOC emissions from the allowance of cutback asphalt use during summer months that would not be controlled by other regulations.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

Under section 110(k)(3) of the Act, the EPA is finalizing a partial approval and partial disapproval of the SIP revision submitted by NDEP on November 20, 2014. More specifically, we are approving the rescission of CCAQR

Sections 29 and 30 from the Nevada SIP and we are disapproving the rescission of CCAQR Sections 52 and 60.

Rescission of CCAQR Sections 29 and 30 means the removal of the rules from the Nevada SIP. Disapproval of the rescission of CCAQR Sections 52 and 60 means that the rules remain in the Nevada SIP.

This final partial disapproval does not trigger sanctions or a Federal Implementation Plan (FIP) clock. Sanctions will not be imposed under CAA section 179(b) because the SIP submittal that we are partially disapproving is not a required SIP submittal. The EPA will not promulgate a FIP in this instance under CAA section 110(c)(1) because the partial disapproval of the SIP revision retains existing SIP rules and does not reveal a deficiency in the SIP for the area that a FIP must correct.

¹ Unless otherwise specified, all references to CCAQR Sections in this document are to those sections in their entirety.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law.

Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: December 24, 2015.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart DD—Nevada

§ 52.1470 [Amended]

■ 2. In § 52.1470 in paragraph (c), Table 3 is amended by removing the entries for “Section 29,” “Section 30: Subsections 30.1–30.7 (excluding subsection 30.4),” “Section 30 (Incinerators): Subsection 30.4,” and “Section 30 (Incinerators): Subsection 30.8.”

[FR Doc. 2016–00340 Filed 1–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2015–0647; FRL–9941–21–Region 6]

Approval and Promulgation of Implementation Plans; Arkansas; Crittenden County Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Arkansas State Implementation Plan (SIP) submitted to meet the Clean Air Act (CAA) emissions inventory (EI) requirement for the Crittenden County ozone nonattainment area. EPA is approving the SIP revision because it

satisfies the CAA EI requirement for Crittenden County under the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The inventory includes emissions data for Nitrogen Oxides (NO_x) and Volatile Organic Compounds (VOCs). EPA is approving the revisions pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: This rule is effective on March 14, 2016 without further notice, unless the EPA receives relevant adverse comment by March 14, 2016. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0647, at <http://www.regulations.gov> or via email to Schwartz.Colin@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.Regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Colin Schwartz, 214-665-7262, Schwartz.Colin@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Colin Schwartz, 214-665-7262, Schwartz.Colin@epa.gov. To inspect the hard copy materials, please schedule an

appointment with Mr. Schwartz or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

A. The 2008 Ozone NAAQS and Emissions Inventory Requirement

On March 12, 2008, the EPA revised the eight-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. (73 FR 16436, March 27, 2008). The EPA designated Crittenden County as a nonattainment area for the 2008 ozone NAAQS (77 FR 30088, May 21, 2012).¹

CAA sections 172(c)(3) and 182(a)(1) require states to develop and submit as a SIP revision an emissions inventory for all areas designated as nonattainment for the ozone NAAQS. 42 U.S.C. 172(c) and 182(a). An emissions inventory is an estimation of actual emissions of air pollutants in an area. Ground-level ozone, O₃, is a gas that is formed by the reaction of VOCs and NO_x in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and non-road motor vehicles and engines, and smaller sources, collectively referred to as area sources. The EIs provide data for a variety of air quality planning tasks including establishing baseline emission levels, calculating federally required emission reduction targets, emission inputs into air quality simulation models, and tracking emissions over time. The total EI of VOC and NO_x for an area are summarized from the estimates developed for four general categories of emissions sources: Point, area, mobile, and biogenic. The EPA's 2008 ozone standard SIP requirements rule recommends that states use 2011 as a base year to address EI requirements (80 FR 12264, 34190, March 6, 2015).

B. Arkansas' Submittal

On August 28, 2015, Arkansas submitted to the EPA the SIP revision addressing the emissions inventory requirement for Crittenden County under the 2008 ozone NAAQS. The inventory includes estimates of 2011 NO_x and VOC emissions in tons per year. The 2011 Base Year Inventory is the starting point for calculating the reductions necessary to meet the

requirements of the CAA. Sections 172(c)(3) and 182(b)(1) of the CAA require that nonattainment plan provisions include an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The inventory includes all area, point, non-road mobile, and on-road mobile source emissions in the Crittenden County ozone nonattainment area. The inventory also includes a description of the methods used to estimate emissions. A copy of the submittal is available in the electronic docket for this action.

C. What criteria must be met for the EPA to approve this SIP revision?

Section 182(a)(1) of the CAA requires states with nonattainment areas to submit a comprehensive and accurate inventory of ozone precursor emissions from all sources within two years of the effective date of designation, which was July 20, 2012. Also, Section 172(c)(3) requires that such an inventory shall include a comprehensive accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

II. The EPA's Evaluation

EPA reviewed the revision for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. For a full discussion of our evaluation, please see our Technical Support Document (TSD).

Sections 172(c)(3) and 182(a)(1) of the CAA require an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The 2011 base year emission inventory data include all point, area, and non-road and on-road mobile sources in Crittenden County. Point source emissions were entered through the State and Local Emissions Inventory System (SLEIS) and area sources were developed in accordance with the federal Air Emissions Reporting Requirements (AERR) rule. Non-road mobile sources utilized the National Mobile Inventory Model (NMIM) while the on-road sources used the Motor Vehicle Emissions Simulator (MOVES2010b). The EPA has determined that the inventory was developed in accordance with CAA guidelines and that the revised 2011 base year emission inventory is approvable. The submittal meets the goal of reaching attainment by reducing O₃ forming precursors. Table 1 lists the emissions inventory for the Crittenden County area. For more detail on how the

¹ On October 1, 2015, the EPA strengthened the ozone standard to 0.070 ppm (80 FR 65292, October 26, 2015). The EPA has not made designations under this new standard and the emission inventory under evaluation in this rulemaking does not address that standard.

emissions inventories were estimated and evaluated, see the TSD.

TABLE 1—BASE YEAR EMISSIONS INVENTORY, 2011 DATA

Category	Ozone season daily NO _x	Annual NO _x	Ozone season daily VOC	Annual VOC	Ozone season daily CO	Annual CO
Units	Tons/day	Tons/year	Tons/day	Tons/year	Tons/day	Tons/year
Point	0.0017	.063	.051	186.84	0.004	1.58
Area	8.70	3,165.17	24.90	8,868.94	20.32	7,375.56
Non-road Mobile	2.11	582.63	3.66	881.35	13.78	3,476.63
On-road Mobile	6.80	2,542	2.42	845	23.13	9,051
Total	17.61	6,290.43	31.49	10,782.13	57.234	19,904.77

III. Final Action

We are approving revisions to the Arkansas SIP that pertain to the 2008 ozone SIP emissions inventory for Crittenden County, as are listed in Table 1.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on March 14, 2016 without further notice unless we receive relevant adverse comment by February 16, 2016. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant 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.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have

tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Samuel Coleman was designated the Acting Regional Administrator on December 30, 2015 through the order of succession outlined in Regional Order R6–1110.1, a copy of which is included in the docket for this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by

reference, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: December 30, 2015.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 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 E—Arkansas

■ 2. In § 52.170(e), the third table titled “EPA-Approved Nonregulatory

Provisions and Quasi-Regulatory Measures” is amended by adding an entry for “Crittenden County Base Year Emission Inventory for the 2008 Ozone Standard” to the end of the table.

The addition reads as follows:

§ 52.170 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Crittenden County Base Year Emission Inventory for the 2008 Ozone Standard.	Crittenden County	8/28/2015	1/13/2016 [Insert Federal Register citation].	

[FR Doc. 2016–00559 Filed 1–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2015–0587; FRL 9941–01–Region 7]

Approval of Missouri’s Air Quality Implementation Plans; Early Progress Plan of the St. Louis Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard

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 State Implementation Plan (SIP) submitted by the State of Missouri consisting of the Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) for the St. Louis Nonattainment area under the 2008 8-hour National Ambient Air Quality Standard (NAAQS). On August 26, 2013, EPA received from the Missouri Department of Natural Resources (MDNR) an Early Progress Plan for the St. Louis area showing progress toward attainment under the 2008 Ozone NAAQS. This submittal was developed to establish MVEBs for the St. Louis 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the St. Louis 8-hour ozone nonattainment area fulfills EPA’s requirement to act on the MDNR SIP

submission and to formalize that the MVEB is approved, and when considered with the emissions from all sources, demonstrates progress toward attainment from the 2008 base year through a 2015 target year. EPA found these MVEBs adequate for transportation conformity purposes in an earlier action on March 5, 2014.

DATES: This direct final rule will be effective March 14, 2016, without further notice, unless EPA receives adverse comment by February 16, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2015–0587, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy,

information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7718 or by email at brown.steven@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” refer to EPA. This section provides additional information by addressing the following:

- I. What is the background for this action?
- II. What are the criteria for early progress plans?
- III. What is EPA’s analysis of the request?
- IV. What are the MVEB’s for the St. Louis 8-hour ozone area?
- V. What action is EPA taking?

I. What is the background for this action?

EPA’s final rule designating nonattainment areas and associated classifications for the 2008 ozone National Ambient Air Quality Standards (NAAQS) was published in the **Federal Register** on May 21, 2012 (77 FR 30088). The St. Louis area was designated as marginal nonattainment. The St. Louis ozone area had previously been designated nonattainment for the 1-hour ozone standard and had 1-hour motor vehicle emissions budgets (MVEBs) for NO_x and VOC established in the St. Louis 1-hour maintenance plan SIP (66 FR 33996). The 1-hour MVEBs were the only approved MVEBs for St. Louis and were based on EPA’s MOBILE6.2

emissions model. Consequently, the transportation partners in St. Louis were required to use the 1-hour MVEB test to demonstrate transportation conformity for the 8-hour ozone standard until new MVEBs were approved or found adequate, as required by the transportation conformity rule at 40 CFR 93.109(c)(2)(i). Missouri submitted this plan to establish new 8 hour MVEBs developed with EPA's current MOVES2014 model.

EPA allows for the establishment of MVEBs for the 8-hour ozone standard prior to a state submitting its first required 8-hour ozone SIP that would include new MVEBs. Although voluntary, these "early" MVEBs must be established through a plan, known as the "Early Progress Plan," that meets all the requirements of a SIP submittal. The preamble of the July 1, 2004, final transportation conformity rule (see, 69 FR 40019) reads as follows:

"The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (e.g., rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas are free to establish, through the SIP process, a motor vehicle emissions budget or budgets that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emission budget that does not demonstrate attainment

but is consistent with projections and commitments to control measures and achieves some progress toward attainment (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from current level of emissions, instead of a specific percentage required by the Clean Air Act for moderate and above ozone areas."

II. What are the criteria for early progress plans?

The Early Progress Plan must demonstrate that the SIP revision containing the MVEBs, when considered with emissions from all sources, and when projected from the base year to a future year, shows some progress toward attainment. EPA has previously indicated that a 5 percent to 10 percent reduction in emissions from all sources could represent a significant level of emissions reductions from current levels (69 FR 40019). This allowance is provided so that areas have an opportunity to use the budget test to demonstrate conformity as opposed to the interim conformity tests (i.e., 2002 baseline test and/or action versus baseline test). The budget test with an adequate or approved MVEB budget is generally more protective of air quality and provides a more relevant basis for conformity determinations than the interim emissions test. (69 FR 40026).

It should also be noted that the Early Progress Plan is not a required plan and does not substitute for required submissions such as an attainment demonstration or rate-of-progress plan, if such plans become required for the St. Louis 8-hour ozone area.

III. What is EPA's analysis of the request?

In August 2013, the State submitted to EPA an Early Progress Plan for the purpose of establishing MVEBs for the St. Louis 8-hour ozone area. The submittal utilizes a base year of 2008, and a projected year of 2015 to establish NO_x and VOC MVEBs. The planning assumptions used to develop the MVEBs were discussed and agreed to by the St. Louis interagency consultation group, East West Gateway (EWG), which consists of the transportation and air quality partners in the St. Louis 8-hour ozone nonattainment area. Tables 1 and 2 below show the differences by source categories between the 2008 base year and 2015 forecast year. The NO_x and VOC emissions in tons per day (tpd) within the St. Louis nonattainment area are expected to decrease significantly, 31 percent and 12 percent, respectively, between 2008 and 2015. These emission trends demonstrate that progress will be made towards attainment of the 2008 8-hour ozone NAAQS.

Source	2008 NO _x (tpd)	2015 NO _x (tpd)
Point	88.84	86.32
Area	6.52	6.64
On-road	161.25	76.70
Non-road	65.18	53.72
Total	321.79	223.38
Total Percent Reduction	31%	

Source	2008 VOC (tpd)	2015 VOC (tpd)
Point	18.01	21.60
Area	99.47	111.73
On-road	60.86	32.70
Non-road	45.08	30.67
Total	223.42	196.70
Total Percent Reduction	12%	

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements

of the CAA, including Section 110 and implementing regulations.

IV. What are the MVEB's for the St. Louis 8-hour ozone area?

Through this rulemaking, EPA is approving the 2015 regional MVEBs for

NO_x and VOC for the St. Louis 8-hour ozone area. EPA has determined that the MVEBs contained in the Early Progress Plan SIP revision are consistent with emission reductions from all sources within the nonattainment area and are showing progress toward attainment.

The 2015 MVEBs in tpd for VOCs and NO_x for the St. Louis, Missouri area are as follows:

	2015 NO _x (tons per day)	2015 VOC (tons per day)
St. Louis Area MVEB	76.70	32.70

EPA found these MVEBs adequate for transportation conformity purposes in an earlier action (March 5, 2014, 79 FR 12504). As of March 19, 2014, the effective date of EPA's adequacy finding for these MVEBs, conformity determinations in St. Louis must meet the budget test using these 8-hour MVEBs, instead of the 1-hour ozone MVEBs. It should be noted that the previous adequacy finding does not relate to the merits of the SIP submittal, nor does it indicate whether the submittal meets the requirements for approval. This EPA rulemaking action takes formal action on the Early Progress Plan SIP revision.

V. What action is EPA taking?

EPA is taking direct final action to approve this SIP revision. We are publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve this SIP revision, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

Statutory and Executive Order Reviews

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2015.

Mark Hague,
Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

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 AA—Missouri

§ 52.1320 Identification of plan.

■ 2. Section 52.1320(e) is amended by adding new entry (68) at the end of the table to read as follows:

* * * * *
(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
(68) Missouri Early Progress Plan.	St. Louis	8/26/13	1/14/16 [<i>Insert Federal Register citation</i>].	[EPA-R07-OAR-2015-0587; FRL-9941-01-Region 7].

[FR Doc. 2016-00428 Filed 1-13-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2013-0765; FRL-9940-97-Region 7]

Approval and Promulgation of Implementation Plans; State of Kansas; Annual Emissions Fee and Annual Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; technical amendment.

SUMMARY: The Environmental Protection Agency (EPA) inadvertently approved and codified this action under both part 52 (Approval and Promulgation of Implementation Plans) and part 70 (State Operating Permit Programs). This technical amendment removes the part 52 approval and codification and makes a clarification to part 70.

DATES: This action is effective January 14, 2016.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at (913) 551-7214, or by email at kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION: On January 27, 2014 (79 FR 4274), EPA published a direct final rule approving a SIP revision for Kansas that included revisions to K.A.R. 28-19-202 “Annual Emission Fees.” The rule revision amended KAR 28-19-202 “Annual Emissions Fees” to align the state’s reporting requirements with EPA’s reporting requirements, and was incorrectly approved and codified under part 52 and part 70.

This rule also included revisions to the operating permits program, K.A.R. 28-19-517 “Class I Operating Permits; Annual Emissions Inventory.” This part 70 appendix A revision added new

paragraph (f) “The Kansas Department of Health and Environment submitted revisions to Kansas Administrative Record (KAR) 28-19-202 and 28-19-517 on April 15, 2011; approval of section (c) effective March 28, 2014.”

This technical amendment removes the erroneous part 52 approval of KAR 28-19-202 “Annual Emissions Fees” and recodifies the table. This action also revises paragraph (f) to read as follows: (f) “The Kansas Department of Health and Environment submitted revisions to Kansas Administrative Record (KAR) 28-19-202 and 28-19-517 on April 15, 2011; effective March 28, 2014.”

List of Subjects

40 CFR Part 52

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

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 23, 2015.

Becky Weber,

Acting Regional Administrator, Region 7.

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.*

§ 52.870 [Amended]

■ 2. In § 52.870, paragraph(c) is amended by removing the table entry “K.A.R. 28-19-202.”

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A is amended by revising paragraph (f) under Kansas to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Kansas

* * * * *

(f) The Kansas Department of Health and Environment submitted revisions to Kansas Administrative Record (KAR) 28-19-202 and 28-19-517 on April 15, 2011; effective March 28, 2014.

* * * * *

[FR Doc. 2016-00573 Filed 1-13-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2015-0538; FRL-9939-53]

Aspergillus flavus AF36; Time Limited Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(a) requirement of a tolerance for residues of the pesticide *Aspergillus flavus* AF36 in or on dried figs resulting from use in accordance

with the terms of an emergency exemption issued under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This action is in response to the issuance of a crisis emergency exemption under FIFRA section 18 authorizing use of the pesticide on dried figs. The time-limited exemption from the requirement of a tolerance expires on December 31, 2017.

DATES: This regulation is effective January 14, 2016. Objections and requests for hearings must be received on or before March 14, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2015-0538, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Susan T. Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfRNNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2015-0538 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 14, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2015-0538, by one of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

• **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6), 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36, in or on dried figs. This time-limited exemption from the requirement of a tolerance expires on December 31, 2017.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances or exemptions from the requirement of a tolerance must be consistent with the safety standard in 408(b)(2) and (c)(2), respectively, and can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances or exemptions from the requirement of a tolerance to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.*, without having received any petition from an outside party.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. In evaluating the safety of an exemption, section 408(c)(2)(B) requires EPA to take into account the considerations set forth in 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for *Aspergillus flavus* AF36 on Dried Figs and FFDCA Tolerances

The California Department of Pesticide Regulation asserted that an emergency condition, brought on by an ongoing drought in California, existed in accordance with the criteria for approval of an emergency exemption, and utilized a crisis exemption under FIFRA section 18 to allow the use of *Aspergillus flavus* AF36 to reduce aflatoxin-producing fungi on dried figs in California. The California Department of Pesticide Regulation invoked the crisis exemption provision on June 15, 2015. After having reviewed the crisis exemption, EPA concurred on the emergency action in order to meet the emergency needs of fig growers in California. The crisis exemption program expired on July 31, 2015.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of *Aspergillus flavus* AF36 in or on dried figs. In doing so, EPA considered the safety standard in FFDCA section 408(c)(2), and EPA decided that the necessary exemption from the requirement of a tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the crisis exemption in order to address an urgent, non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this exemption from the requirement of a tolerance without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). This time-limited exemption from the requirement of a tolerance expires on December 31, 2017. EPA will take action to revoke the time-limited exemption from the requirement of a tolerance earlier if any experience with scientific data, or other relevant information on this pesticide indicates that the residues are not safe.

Because this time-limited exemption from the requirement of a tolerance is being approved under emergency conditions, EPA has not made any decisions about whether *Aspergillus flavus* AF36 meets FIFRA's registration requirements for use on dried figs or whether permanent tolerances or exemption from the requirement of a

tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited exemption from the requirement of a tolerance serves as a basis for registration of *Aspergillus flavus* AF36 by a State for special local needs under FIFRA section 24(c). Nor does this exemption from the requirement of a tolerance by itself serve as the authority for persons in any State other than California to use this pesticide on the applicable crop under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the crisis exemption for *Aspergillus flavus* AF36, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Toxicological Profile

Consistent with the FFDCA section 408(b)(2)(D), the EPA reviewed the available scientific data and other relevant information for *Aspergillus flavus* AF36, and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. The EPA also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Aspergillus flavus refers to a diverse group of saprophytic soil fungi strains, which are ubiquitously distributed throughout the United States. This fungal group includes strains that produce aflatoxin (*i.e.*, toxigenic strains) and strains that do not produce aflatoxins (*i.e.*, atoxigenic strains). The toxigenic strains can cause aflatoxin contamination in seed, nut, and grain crops pre- and postharvest. In addition, toxigenic strains of several *Aspergillus* spp. can cause aspergillosis disease in humans (Ref. 1, 2).

Aspergillus flavus AF36 is an atoxigenic strain registered as a microbial pesticide for use on cotton, corn, and pistachios. The AF36 strain is a soil colonizing fungus and displaces toxigenic strains through competition, thereby reducing aflatoxin levels on crops contaminated with toxigenic strains of *Aspergillus* spp. (Ref. 3).

The toxicological profile of *Aspergillus flavus* were previously described in the **Federal Register** July 14, 2003 (68 FR 41535) (FRL-7311-6) and the data were used to establish the tolerance exemption for *Aspergillus flavus* AF36 in or on cotton (see the **Federal Register** of July 14, 2003), corn (see the **Federal Register** of March 23, 2011 (76 FR 16297) (FRL-8868-7)), and pistachio (see the **Federal Register** of March 9, 2012 (77 FR 14287) (FRL-

9341-5). The studies used to establish the tolerance exemptions in or on cotton, corn, and pistachio tested the toxicity/pathogenicity of *Aspergillus flavus* AF36 to rats through acute oral and pulmonary exposures and did not find any evidence of toxicity or infection (Ref. 1). Further, when exposed through intratracheal dosing, rats cleared *Aspergillus flavus* AF36 from their systems within 8 days. Moreover, rats exposed to *Aspergillus flavus* AF36 cleared the fungus from their body without compromising their immune system. After more than a decade of agricultural use in cotton and several years of use in corn and pistachio, there have not been any reports of hypersensitivity or other problems from workers exposed to *Aspergillus flavus* AF36. Therefore, based on the atoxigenic profile of *Aspergillus flavus* AF36, and previous toxicological evaluations to establish tolerance exemptions in or on cotton (see the **Federal Register** of July 14, 2003), corn (see the **Federal Register** of March 23, 2011), and pistachio (see the **Federal Register** of March 9, 2012), EPA concludes that there are no toxicological endpoints of concern for *Aspergillus flavus* AF36 and that there are no hazards associated with this particular isolate; therefore, any expected residues on food would be safe to consume.

V. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 directs the EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Food exposure: Aspergillus flavus AF36 will be applied as a single broadcast application to soil in California fig orchards from mid-June to mid-July 2015. The proposed method of application is by grain seed (wheat-infested *Aspergillus flavus* AF36 inoculum) applied to the orchard floor by ground. Grain seed inoculum is directed under the fig tree canopy where soil is wetted before and after the application. After application, *Aspergillus flavus* AF36 germinates using a grain carrier as a nutrient source and displaces aflatoxin-producing strains of *Aspergillus flavus*. Thus, the use of *Aspergillus flavus* AF36 in fig orchards should not increase the total *Aspergillus flavus* population in the environment (Ref. 1). Although, total *Aspergillus flavus* populations may

increase immediately after applying *Aspergillus flavus* AF36, populations of *Aspergillus flavus* AF36 decline by spring of the year after application and there is no evidence of long term increases in populations of *Aspergillus flavus* resulting from application of *Aspergillus flavus* AF36. In addition, levels of natural *Aspergillus flavus* populations can fluctuate greatly over the course of a year (Ref. 1). Therefore, a temporary increase in *Aspergillus flavus* populations resulting from an application of *Aspergillus flavus* AF36 are not expected to produce effects that do not already occur from exposure to natural *Aspergillus flavus* populations.

Drinking water exposure: Similar to previous drinking water exposures for cotton and corn uses (see **Federal Register** of July 14, 2003 and March 23, 2011) exposure to residues of *Aspergillus flavus* AF36 ensuing from application in fig orchards is possible as a result of consuming drinking water, but it is not likely to be greater than existing exposures to naturally occurring strains of *Aspergillus flavus* AF36. This time-limited exemption from the requirement of a tolerance will only allow for applications in California in an area where the climate is arid, which minimizes the potential for contamination of surface or ground water that may serve as a source of drinking water. Further, because *Aspergillus flavus* AF36 will only be applied as a granular formulation to terrestrial sites, offsite movement into water is not anticipated. If *Aspergillus flavus* AF36 residues should be present in drinking water, the results of a study assessing acute oral toxicity and pathogenicity found that no toxicity, pathogenicity, and/or infectivity is likely to occur from exposure to any level of *Aspergillus flavus* AF36 resulting from an application of *Aspergillus flavus* AF36 made in accordance with good agricultural practice.

Other non-occupational exposure: Non-occupational dermal and inhalation exposure is expected to be minimal to non-existent for the use of *Aspergillus flavus* AF36 on figs. As previously described in the **Federal Register** of July 14, 2003, March 23, 2011, and March 9, 2012; *Aspergillus flavus* AF36 will be applied to agricultural sites and not in the proximity of schools, residential areas, nursing homes, or daycare facilities. Moreover, *Aspergillus flavus* AF36 will be applied in a granular form which will minimize drift and exposure.

VI. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDC A requires that, when considering whether to establish, modify, or revoke a tolerance, the EPA consider “available information concerning the cumulative effects of a particular pesticide’s . . . residues and other substances that have a common mechanism of toxicity.”

The EPA has not found *Aspergillus flavus* AF36 to share a common mechanism of toxicity with any other substances, and *Aspergillus flavus* AF36 does not appear to produce a toxic metabolite produced by other substances. For the purposes of this exemption from the requirement of a tolerance action, therefore, the EPA has assumed that *Aspergillus flavus* AF36 does not have a common mechanism of toxicity with other substances since there is no indication of mammalian toxicity or pathogenicity resulting from exposure to *Aspergillus flavus* AF36. For information regarding the EPA’s efforts to determine chemicals that have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the EPA’s Web site at <http://www.epa.gov/pesticides/cumulative>.

VII. Determination of Safety for the U.S. Population, Infants and Children

In considering the establishment of a time-limited exemption from the requirement of a tolerance for a pesticide chemical residue, FFDC A section 408(b)(2)(C) requires that EPA assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDC A section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. This additional margin of exposure (safety) is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

In this instance, based on all the available information, EPA concludes that there are no effects of concern to infants, children, or adults when *Aspergillus flavus* AF36 is used in accordance with the crisis exemption. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children.

Moreover, based on the data and EPA analysis presented in this document, the Agency is able to conclude that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Aspergillus flavus* AF36 when it is used as an antifungal agent in accordance with the crisis exemption. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there is reasonable certainty of no harm via dietary exposure from this fungus when used as an antifungal agent because the microorganism is non-toxic and non-pathogenic to animals and humans. EPA arrived at this conclusion based on the very low levels of mammalian toxicity for acute oral and pulmonary effects with no toxicity or infectivity at the doses tested (see Unit IV. of this document).

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

The EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Aspergillus flavus* AF36. Therefore, a time-limited exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* AF36 in or on dried figs when used in accordance with the crisis exemption. This time-limited exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36 in or on dried figs will expire and is revoked on December 31, 2017.

X. References

1. U.S. EPA. 2015. Human Health and Environmental Assessment for the California Section 18 (Emergency Exemption) request for the use of AF36, an end use formulation containing the active ingredient, *Aspergillus flavus*

- Strain AF36. Memorandum from G. Tomimatsu, Ph.D. and M. Djurickovic, M.S. to S. Borges.
- Jensen, A.B., K. Aronstein, J.M. Flores, S. Vojvodic, M.A. Palacio and M. Spivak. 2013. Standard methods for fungal brood disease research. *J. Apic. Res.* 52 (1).
 - Ehrlich, K.C. 2014. Non-aflatoxigenic *Aspergillus flavus* to prevent aflatoxin contamination in crops: Advantages and limitations. *Front. Micro.* <http://dx.doi.org/10.3389/fmicb.2014.00050>.

XI. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCa sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCa sections 408(e) and 408(l)(6), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCa section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between

the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 18, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

- 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

- 2. In § 180.1206, add a new paragraph (d) to read as follows:

§ 180.1206 *Aspergillus flavus* AF36; exemption from the requirement of a tolerance.

* * * * *

(d) *Section 18 emergency exemptions.* A time-limited exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* AF36, in or on dried figs, resulting from use of the pesticide pursuant to a FIFRA section 18 emergency exemption. This time-limited exemption from the requirement of a tolerance for residues

of *Aspergillus flavus* AF36 in or on dried figs will expire and is revoked on December 31, 2017.

[FR Doc. 2016–00665 Filed 1–13–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–8417]

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 Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4149.

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				
Pennsylvania:				
Apollo, Borough of, Armstrong County	420092	January 3, 1975, Emerg; August 10, 1979, Reg; February 17, 2016, Susp.	Feb. 17, 2016 ...	Feb. 17, 2016.
Applewold, Borough of, Armstrong County.	420093	March 11, 1975, Emerg; September 18, 1987, Reg; February 17, 2016, Susp.	.....do*	Do.
Bethel, Township of, Armstrong County	421300	August 8, 1975, Emerg; June 3, 1988, Reg; February 17, 2016, Susp.	.....do	Do.
Boggs, Township of, Armstrong County	421301	March 3, 1977, Emerg; November 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Brady's Bend, Township of, Armstrong County.	421302	April 22, 1976, Emerg; July 3, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Burrell, Township of, Armstrong County	421303	October 25, 1977, Emerg; November 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Cadogan, Township of, Armstrong County.	421304	June 15, 1976, Emerg; June 5, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
Cowanshannock, Township of, Armstrong County.	421230	May 23, 1977, Emerg; November 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Dayton, Borough of, Armstrong County	421211	July 31, 1975, Emerg; May 1, 1985, Reg; February 17, 2016, Susp.	.....do	Do.

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
East Franklin, Township of, Armstrong County.	421305	April 22, 1975, Emerg; April 5, 1988, Reg; February 17, 2016, Susp.	.....do	Do.
Ford City, Borough of, Armstrong County.	420094	December 3, 1974, Emerg; May 19, 1987, Reg; February 17, 2016, Susp.	.....do	Do.
Freeport, Borough of, Armstrong County.	420095	October 25, 1974, Emerg; June 17, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Gilpin, Township of, Armstrong County	421306	July 25, 1975, Emerg; January 12, 2001, Reg; February 17, 2016, Susp.	.....do	Do.
Hovey, Township of, Armstrong County	422299	April 7, 1976, Emerg; November 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Kiskiminetas, Township of, Armstrong County.	421209	February 28, 1977, Emerg; April 5, 1988, Reg; February 17, 2016, Susp.	.....do	Do.
Kittanning, Borough of, Armstrong County.	420096	February 5, 1975, Emerg; July 3, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Kittanning, Township of, Armstrong County.	421307	June 18, 1984, Emerg; May 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Leechburg, Borough of, Armstrong County.	420097	April 2, 1974, Emerg; May 20, 1977, Reg; February 17, 2016, Susp.	.....do	Do.
Madison, Township of, Armstrong County.	421308	September 27, 1976, Emerg; May 1, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
Mahoning, Township of, Armstrong County.	422633	March 3, 1977, Emerg; June 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Manor, Township of, Armstrong County	421309	July 7, 1975, Emerg; May 19, 1987, Reg; February 17, 2016, Susp.	.....do	Do.
Manorville, Borough of, Armstrong County.	420098	April 7, 1975, Emerg; July 2, 1987, Reg; February 17, 2016, Susp.	.....do	Do.
North Apollo, Borough of, Armstrong County.	422300	July 29, 1976, Emerg; May 1, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
North Buffalo, Township of, Armstrong County.	421310	April 12, 1976, Emerg; November 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Parker, City of, Armstrong County	420099	April 13, 1976, Emerg; September 30, 1987, Reg; February 17, 2016, Susp.	.....do	Do.
Parks, Township of, Armstrong County	421311	February 13, 1976, Emerg; April 5, 1988, Reg; February 17, 2016, Susp.	.....do	Do.
Perry, Township of, Armstrong County	422301	May 6, 1975, Emerg; May 4, 1988, Reg; February 17, 2016, Susp.	.....do	Do.
Pine, Township of, Armstrong County ..	421312	May 24, 1976, Emerg; February 1, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
Plumcreek, Township of, Armstrong County.	421313	May 18, 1984, Emerg; November 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Rayburn, Township of, Armstrong County.	421314	May 10, 1976, Emerg; November 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Redbank, Township of, Armstrong County.	421315	March 8, 1977, Emerg; June 1, 1986, Reg; February 17, 2016, Susp.	.....do	Do.
Rural Valley, Borough of, Armstrong County.	422302	March 7, 1977, Emerg; May 1, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
South Bend, Township of, Armstrong County.	421214	February 28, 1977, Emerg; June 5, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
South Bethlehem, Borough of, Armstrong County.	420100	March 9, 1977, Emerg; February 1, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
South Buffalo, Township of, Armstrong County.	421210	April 17, 1975, Emerg; June 18, 1987, Reg; February 17, 2016, Susp.	.....do	Do.
Sugarcreek, Township of, Armstrong County.	422303	April 19, 1976, Emerg; October 15, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
Washington, Township of, Armstrong County.	421317	February 17, 1977, Emerg; February 4, 1988, Reg; February 17, 2016, Susp.	.....do	Do.
Wayne, Township of, Armstrong County	421318	October 3, 1975, Emerg; June 5, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
West Franklin, Township of, Armstrong County.	422304	February 25, 1977, Emerg; May 1, 1985, Reg; February 17, 2016, Susp.	.....do	Do.
Region V				
Illinois:				
Cherry Valley, Village of, Boone and Winnebago Counties.	170721	February 18, 1975, Emerg; March 16, 1981, Reg; February 17, 2016, Susp.	.....do	Do.
Fox Lake, Village of, Lake and McHenry Counties.	170362	March 9, 1973, Emerg; September 29, 1978, Reg; February 17, 2016, Susp.	.....do	Do.
Grayslake, Village of, Lake County	170363	December 11, 1973, Emerg; June 4, 1980, Reg; February 17, 2016, Susp.	.....do	Do.
Hainesville, Village of, Lake County	171005	N/A, Emerg; May 11, 1995, Reg; February 17, 2016, Susp.	.....do	Do.

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
Hawthorn Woods, Village of, Lake County.	170366	October 28, 1983, Emerg; November 2, 1983, Reg; February 17, 2016, Susp.	.....do	Do.
Lake Zurich, Village of, Lake County	170376	October 11, 1974, Emerg; July 5, 1983, Reg; February 17, 2016, Susp.	.....do	Do.
Loves Park, City of, Boone and Winnebago Counties.	170722	February 23, 1973, Emerg; October 17, 1978, Reg; February 17, 2016, Susp.	.....do	Do.
Machesney Park, Village of, Winnebago County.	171009	September 30, 1981, Emerg; September 30, 1981, Reg; February 17, 2016, Susp.	.....do	Do.
Mundelein, Village of, Lake County	170382	March 30, 1973, Emerg; July 2, 1981, Reg; February 17, 2016, Susp.	.....do	Do.
New Milford, Village of, Winnebago County.	175182	N/A, Emerg; December 21, 2007, Reg; February 17, 2016, Susp.	.....do	Do.
Pecatonica, Village of, Winnebago County.	170797	July 14, 1978, Emerg; December 1, 1981, Reg; February 17, 2016, Susp.	.....do	Do.
Rockford, City of, Ogle and Winnebago Counties.	170723	February 9, 1973, Emerg; December 4, 1979, Reg; February 17, 2016, Susp.	.....do	Do.
Roscoe, Village of, Winnebago County	170724	June 11, 1974, Emerg; March 1, 1982, Reg; February 17, 2016, Susp.	.....do	Do.
Round Lake, Village of, Lake County ...	170388	September 13, 1974, Emerg; August 1, 1980, Reg; February 17, 2016, Susp.	.....do	Do.
Round Lake Beach, Village of, Lake County.	170389	March 12, 1975, Emerg; August 1, 1980, Reg; February 17, 2016, Susp.	.....do	Do.
Round Lake Park, Village of, Lake County.	170391	July 21, 1975, Emerg; June 4, 1980, Reg; February 17, 2016, Susp.	.....do	Do.
South Beloit, City of, Winnebago County.	170725	March 25, 1974, Emerg; January 2, 1980, Reg; February 17, 2016, Susp.	.....do	Do.
Volo, Village of, Lake County	171042	N/A, Emerg; April 3, 1998, Reg; February 17, 2016, Susp.	.....do	Do.
Wauconda, Village of, Lake County	170396	January 13, 1975, Emerg; December 1, 1981, Reg; February 17, 2016, Susp.	.....do	Do.
Winnebago County, Unincorporated Areas.	170720	February 16, 1973, Emerg; November 19, 1980, Reg; February 17, 2016, Susp.	.....do	Do.
Ohio:				
Delaware, City of, Delaware County	390148	January 31, 1975, Emerg; November 2, 1983, Reg; February 17, 2016, Susp.	.....do	Do.
Delaware County, Unincorporated Areas.	390146	February 16, 1977, Emerg; October 18, 1983, Reg; February 17, 2016, Susp.	.....do	Do.
Region VI				
Texas:				
Aransas County, Unincorporated Areas	485452	June 19, 1970, Emerg; August 6, 1971, Reg; February 17, 2016, Susp.	.....do	Do.
Aransas Pass, City of, Aransas, Nueces and San Patricio Counties.	485453	June 19, 1970, Emerg; June 25, 1971, Reg; February 17, 2016, Susp.	.....do	Do.
Fulton, Town of, Aransas County	480012	February 27, 1987, Emerg; February 27, 1987, Reg; February 17, 2016, Susp.	.....do	Do.
Port Aransas, City of, Aransas and Nueces Counties.	485498	June 19, 1970, Emerg; June 25, 1971, Reg; February 17, 2016, Susp.	.....do	Do.
Rockport, City of, Aransas County	485504	June 19, 1970, Emerg; July 2, 1971, Reg; February 17, 2016, Susp.	.....do	Do.

*-do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 22, 2015.

Roy E. Wright,

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016-00541 Filed 1-13-16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2015-0001; Internal Agency Docket No. FEMA-8415]

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 Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4149.

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 IV				
Tennessee:				
Chattanooga, City of, Hamilton County	470072	March 3, 1972, Emerg; September 3, 1980, Reg; February 3, 2016, Susp.	Feb. 3, 2016	Feb. 3, 2016.
Collegedale, City of, Hamilton County ..	475422	March 3, 1972, Emerg; December 1, 1972, Reg; February 3, 2016, Susp.	.....do *	Do.
East Ridge, City of, Hamilton County ...	475424	March 3, 1972, Emerg; October 27, 1972, Reg; February 3, 2016, Susp.	.....do	Do.

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
Hamilton County, Unincorporated Areas	470071	March 3, 1972, Emerg; August 1, 1979, Reg; February 3, 2016, Susp.	.....do	Do.
Lakesite, City of, Hamilton County	470413	N/A, Emerg; November 24, 2010, Reg; February 3, 2016, Susp.	.....do	Do.
Lookout Mountain, Town of, Hamilton County.	470075	May 6, 1977, Emerg; June 5, 2003, Reg; February 3, 2016, Susp.	.....do	Do.
Red Bank, City of, Hamilton County	470076	November 7, 1973, Emerg; March 15, 1979, Reg; February 3, 2016, Susp.	.....do	Do.
Signal Mountain, Town of, Hamilton County.	470078	September 23, 1977, Emerg; June 28, 1979, Reg; February 3, 2016, Susp.	.....do	Do.
Soddy-Daisy, City of, Hamilton County	475445	March 3, 1972, Emerg; March 3, 1972, Reg; February 3, 2016, Susp.	.....do	Do.
Region V				
Wisconsin:				
Bagley, Village of, Grant County	550145	July 25, 1975, Emerg; June 17, 1986, Reg; February 3, 2016, Susp.	.....do	Do.
Bloomington, Village of, Grant County ..	550146	August 1, 1975, Emerg; August 19, 1986, Reg; February 3, 2016, Susp.	.....do	Do.
Blue River, Village of, Grant County	550147	N/A, Emerg; July 2, 2009, Reg; February 3, 2016, Susp.	.....do	Do.
Grant County, Unincorporated Areas	555557	March 26, 1971, Emerg; May 25, 1973, Reg; February 3, 2016, Susp.	.....do	Do.
Muscoda, Village of, Grant and Iowa Counties.	550153	October 25, 1974, Emerg; September 8, 1999, Reg; February 3, 2016, Susp.	.....do	Do.
Platteville, City of, Grant County	550154	June 24, 1975, Emerg; September 29, 1996, Reg; February 3, 2016, Susp.	.....do	Do.
Potosi, Village of, Grant County	550155	August 23, 2001, Emerg; September 2, 2011, Reg; February 3, 2016, Susp.	.....do	Do.
Region IX				
Arizona:				
Cochise County, Unincorporated Areas	040012	July 29, 1975, Emerg; December 4, 1984, Reg; February 3, 2016, Susp.	.....do	Do.
Sierra Vista, City of, Cochise County	040017	February 24, 1975, Emerg; September 28, 1984, Reg; February 3, 2016, Susp.	.....do	Do.

* -do- = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp. —Suspension.

Dated: December 14, 2015.

Roy E. Wright,

Deputy Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016-00542 Filed 1-13-16; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 5

[ET Docket Nos. 10-236 and 06-155, FCC 13-15]

Radio Experimentation and Market Trials—Streamlining Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has

approved, for a period of three years, the information collection associated with the Commission's *Radio Experimentation and Market Trials*, Report and Order (*Order*)'s streamlining rules. This document is consistent with the *Order*, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: Amendment of §§ 5.59, 5.61, 5.63, 5.64, 5.65, 5.73, 5.79, 5.81, 5.107, 5.115, 5.121, 5.123, 5.205, 5.207, 5.217(b), 5.307, 5.308, 5.309, 5.311, 5.404, 5.405, 5.406, 5.504, and 5.602, published at 78 FR 25138, April 29, 2013, are effective January 14, 2016.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology Bureau, at (202) 418-2452, or email: Rodney.Small@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on December 17, 2015, OMB approved, for a period of three years, the information collection requirements relating to the streamlining rules contained in the

Commission's *Order*, FCC 13-15, published at 78 FR 25138, April 29, 2013. The OMB Control Number is 3060-0065. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1-A620, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060-0065, in your correspondence. The Commission will also accept your comments via email at PRA@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on December 17, 2015, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 5. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060-0065. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060-0065.

OMB Approval Date: December 17, 2015.

OMB Expiration Date: December 31, 2018.

Title: Radio Experimentation and Market Trials—Streamlining Rules.

Form Number: FCC Form 442.

Respondents: Business or other for-profit entities; not-for-profit institutions, and individuals or household.

Number of Respondents and Responses: 495 respondents; 560 responses.

Estimated Time per Response: 4 hours.

Frequency of Response: On-occasion reporting requirements; recordkeeping requirements; and third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 47 U.S.C. Sections 4, 302, 303, 306, and 307 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,049 hours.

Total Annual Cost: \$41,600.

Nature and Extent of Confidentiality: There is no need for confidentiality, except for personally identifiable information individuals may submit, which is covered by a system of records, FCC/OET-1, "Experimental Radio Station License Files," 71 FR 17234, April 6, 2006.

Privacy Act: No impact(s).

Needs and Uses: On January 31, 2013, the Commission adopted a Report and Order, in ET Docket No. 10-236 and 06-155; FCC 13-15, which updates part 5

of the CFR—"Experimental Radio Service" (ERS). The Commission's recent Report and Order revises and streamlines rules for Experimental licenses. The new rules provide additional license categories to potential licensees. The new license categories are: (1) Program Experimental Radio License; (2) Medical Testing Experimental Radio License; and (3) Compliance Testing Experimental Radio License, including testing of radio frequency equipment in an Open Area Test Site.

Federal Communications Commission.

Sheryl Todd,

Deputy Secretary.

[FR Doc. 2015-33250 Filed 1-13-16; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R5-ES-2011-0024; 4500030113]

RIN 1018-AY98

Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Northern Long-Eared Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), finalize a rule under authority of section 4(d) of the Endangered Species Act of 1973 (Act), as amended, that provides measures that are necessary and advisable to provide for the conservation of the northern long-eared bat (*Myotis septentrionalis*), a bat species that occurs in 37 States, the District of Columbia, and 13 Canadian Provinces.

DATES: This rule is effective February 16, 2016.

ADDRESSES: This final 4(d) rule, the final environmental assessment, biological opinion, and list of references are available on the Internet at <http://www.regulations.gov> under Docket No. FWS-R5-ES-2011-0024 and at <http://www.fws.gov/midwest/Endangered>. Comments and materials we received, as well as supporting documentation we used in preparing this final 4(d) rule, are available for public inspection at <http://www.regulations.gov>, and by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Twin Cities Ecological Services Field Office, 4101 American Blvd. East,

Bloomington, MN 55425; telephone (612) 725-3548, ext. 2201; or facsimile (612) 725-3609.

FOR FURTHER INFORMATION CONTACT: Peter Fasbender, Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities Ecological Services Field Office, 4101 American Blvd. East, Bloomington, MN 55425; telephone (612) 725-3548, ext. 2210; or facsimile (612) 725-3609. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

The need for the regulatory action and how the action will meet that need: Consistent with section 4(d) of the Act, this final 4(d) rule provides measures that are tailored to our current understanding of the conservation needs of the northern long-eared bat.

On April 2, 2015, we published a document that is both a final rule to list the northern long-eared bat as a threatened species and an interim 4(d) rule to provide measures that are necessary and advisable to provide for the conservation of the northern long-eared bat. At that time, we opened a 90-day public comment period on the interim rule, and we committed to publish a final 4(d) rule by December 31, 2015, and to complete review pursuant to the National Environmental Policy Act (NEPA). Previously, on January 16, 2015, we published a proposed 4(d) rule with a 60-day public comment period. Therefore, we have had two comment periods totaling 150 days on two versions of the 4(d) rule.

Statement of legal authority for the regulatory action: Under section 4(d) of the Act, the Secretary of the Interior has discretion to issue such regulations she deems necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation, with respect to a threatened species, any act prohibited by section 9(a)(1) of the Act.

Summary of the major provisions of the regulatory action: This final species-specific 4(d) rule prohibits purposeful take of northern long-eared bats throughout the species' range, except in instances of removal of northern long-eared bats from human structures, defense of human life (including public health monitoring), removal of hazardous trees for protection of human life and property, and authorized capture and handling of northern long-eared bats by individuals permitted to conduct these same activities for other

bats until May 3, 2016. After May 3, 2016, individuals who wish to capture and handle northern long-eared bats for recovery purposes will need a permit pursuant to section 10(a)(1)(A) of the Act.

Incidental take resulting from otherwise lawful activities will not be prohibited in areas not yet affected by white-nose syndrome (WNS). WNS is a fungal disease affecting many hibernating U.S. bat species. Ninety- to one-hundred-percent mortality has been seen in bats affected by the disease in the eastern United States.

Take of northern long-eared bats in their hibernacula (which includes caves, mines, and other locations where bats hibernate in winter) is prohibited in areas affected by WNS, unless permitted under section 10(a)(1)(A) of the Act. Take of northern long-eared bats inside of hibernacula may include disturbing or disrupting hibernating individuals when they are present as well as the physical or other alteration of the hibernaculum's entrance or environment when bats are not present if the result of the activity will impair essential behavioral patterns, including sheltering northern long-eared bats.

For northern long-eared bats outside of hibernacula, we have established separate prohibitions from take for activities involving tree removal and activities that do not involve tree removal. Incidental take of northern long-eared bats outside of hibernacula resulting from activities other than tree removal is not prohibited. Incidental take resulting from tree removal is prohibited if it: (1) Occurs within a 0.25 mile (0.4 kilometer) radius of known northern long-eared bat hibernacula; or (2) cuts or destroys known occupied maternity roost trees, or any other trees within a 150-foot (45-meter) radius from the known maternity tree during the pup season (June 1 through July 31). Incidental take of northern long-eared bats as a result of the removal of hazardous trees for the protection of human life and property is also not prohibited.

Peer review and public comment: We sought comments on our proposed 4(d) rule from independent specialists to ensure that this rule is based on scientifically sound data, assumptions, and analyses. We also considered all comments and information we received during the comment periods on the proposed and interim 4(d) rules.

Previous Federal Actions

Please refer to the proposed (78 FR 61046; October 2, 2013) and final (80 FR 17974; April 2, 2015) listing rules for the northern long-eared bat for a

detailed description of previous Federal actions concerning this species. On January 16, 2015, we published a proposed 4(d) rule (80 FR 2371) for the northern long-eared bat and on April 2, 2015, we published an interim 4(d) rule (80 FR 17974) for this species.

Background

The northern long-eared bat is a wide-ranging species that is found in a variety of forested habitats in summer and hibernates in caves, mines, and other locations in winter. WNS is the main threat to this species and has caused a precipitous decline in bat numbers (in many cases, 90–100 percent) where the disease has occurred. Declines in the numbers of northern long-eared bats are expected to continue as WNS extends across the species' range. For more information on the northern long-eared bat, its habitat, and WNS, please refer to the October 2, 2013, proposed listing (78 FR 61046) and the April 2, 2015, final listing (80 FR 17974) rules.

The Act (16 U.S.C. 1531 *et seq.*) does not specify particular prohibitions, or exceptions to those prohibitions, for threatened species. Instead, under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of such species. The Secretary also has the discretion to prohibit by regulation, with respect to any threatened wildlife species, any act prohibited under section 9(a)(1) of the Act with respect to endangered species. Exercising this discretion under section 4(d) of the Act, the Service developed general prohibitions (50 CFR 17.31) and exceptions to those prohibitions (50 CFR 17.32) under the Act that apply to most threatened wildlife species.

In addition, for threatened species, under the authority of section 4(d) of the Act, the Service may develop prohibitions and exceptions that are tailored to the specific conservation needs of the species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and be incorporated into a separate, species-specific, rule under section 4(d) of the Act. These rules will also include provisions that are tailored to the specific conservation needs of the threatened species and may be more or less restrictive than the general provisions at 50 CFR 17.31.

Definitions

This final rule uses several definitions and provisions contained in the Act and its implementing regulations.

The Act and its implementing regulations (50 CFR part 17) define take as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct.

The term "harass" (50 CFR 17.3) means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

The term "harm" (50 CFR 17.3) means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

"Purposeful take" includes the capture and handling of individual bats. Take in this manner includes both capture and handling to remove bats from human structures and take that is for research purposes (e.g., attaching a radiotracking device). Other purposeful take would include intentional removal of bats from hibernacula or the intentional killing or harassing of bats under any circumstance.

"Human structures" are defined as houses, garages, barns, sheds, and other buildings designed for human entry.

"Incidental take" is defined at 50 CFR 17.3 as any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, an otherwise lawful activity. Examples of incidental take (or non-purposeful take as it is sometimes referred to in this rule) include land-management actions, such as implementation of forestry practices, where bats may be harmed, harassed, or killed as a result of those otherwise lawful actions. The actions contemplated in this rule include a wide range of actions for purposes such as right-of-way development and maintenance, forestry, land use for development unrelated to wildlife management, management of lands as habitats other than bat habitat (e.g., prairie), energy production and transmission, and other activities.

Incidental take within the context of this rule is regulated in distinct and separate manners relative to the geographic location of the activity in question. For the purposes of this rule, we have developed a map associated with the occurrence and spread of WNS. This map will be updated by the first of each month as the disease spreads throughout the range of the species and

posted at <http://www.fws.gov/midwest/Endangered>.

“Known hibernacula” are defined as locations where northern long-eared bats have been detected during hibernation or at the entrance during fall swarming or spring emergence.

“Known, occupied maternity roost trees” are defined as trees that have had female northern long-eared bats or juvenile bats tracked to them or the presence of females or juveniles is known as a result of other methods.

“Tree removal” is defined as cutting down, harvesting, destroying, trimming, or manipulating in any other way the trees, saplings, snags, or any other form of woody vegetation likely to be used by northern long-eared bats.

WNS Zone

The WNS zone, as mapped, provides the boundary for the distinction of implementation of this rule. To estimate the area impacted by WNS, we have used data on the presence of the fungus causing the disease, called *Pseudogymnoascus destructans*, or *Pd*, or evidence of the presence of the disease (WNS) in the bats within a hibernaculum. Our final listing determination provides additional information concerning *Pd* and WNS (80 FR 17993; April 2, 2015). Confirmed evidence of infection at a location within a county is mapped as a positive detection for the entire county. In addition, we have added a 150-mile (241-kilometer (km)) buffer to the *Pd*-positive county line to account for the spread of the fungus from one year to the next. In instances where the 150-mile (241-km) buffer line bisects a county, the entire county is included in the WNS zone.

Over the past 5 years, an average of 96 percent of the new *Pd* or WNS counties in any single year were within 150 miles (241 km) of a county that was *Pd*- or WNS-positive in a prior year (Service 2015, unpublished data). *Pd* is generally present for a year or two before symptoms of WNS appear and mortality of bats begins to occur. Given the relatively short amount of time between detection and population-level impacts, it is important that we protect those buffer areas and the bats within them with the same regulations as those in known WNS positive counties. Therefore, the positive counties, plus a buffer around them, are the basis for the WNS zone map.

Summary Comparison of the Interim 4(d) Rule and This Final Rule

Based on information we received in comment periods on the proposed and interim 4(d) rules (see Summary of

Comments and Recommendations below), we revised the provisions of the interim 4(d) rule to better reflect the disproportionate effect that the disease, WNS, has had and will continue to have, we believe, on northern long-eared bat populations.

In the interim rule, we used the term “white-nose syndrome buffer zone” to identify “the portion of the range of the northern long-eared bat” within 150 miles (241 km) of the boundaries of U.S. counties or Canadian districts where the fungus *Pseudogymnoascus destructans* (*Pd*) or WNS had been detected. For purposes of clarification, in this final rule, we have changed the term “white-nose syndrome buffer zone” to “white-nose syndrome zone” or “WNS zone.” And we state that the “WNS zone” is “the set of counties within the range of the northern long-eared bat” within 150 miles (241 km) of the boundaries of U.S. counties or Canadian districts where *Pd* or WNS had been detected.

The interim 4(d) rule generally applies the prohibitions of 50 CFR 17.31 and 17.32 to the northern long-eared bat, which means that the interim rule, among other things, prohibits the purposeful take of northern long-eared bats throughout the species’ range, but the interim rule includes exceptions to the purposeful take prohibition. The exceptions for purposeful take are: (1) In instances of removal of northern long-eared bats from human structures (if actions comply with all applicable State regulations); and (2) for authorized capture, handling, and related activities of northern long-eared bats by individuals permitted to conduct these same activities for other bat species until May 3, 2016. Under the interim rule, incidental take is not prohibited outside the WNS zone if the incidental take results from otherwise lawful activities. Inside the WNS zone, there are exceptions for incidental take for the following activities, subject to certain conditions: Implementation of forest management; maintenance and expansion of existing rights-of-way and transmission corridors; prairie management; minimal tree removal; and removal of hazardous trees for the protection of human life and property.

This final 4(d) rule does not generally apply the prohibitions of 50 CFR 17.31 to the northern long-eared bat. This rule continues to prohibit purposeful take of northern long-eared bats throughout the species’ range, except in certain cases, including instances of removal of northern long-eared bats from human structures and for authorized capture, handling, and related activities of northern long-eared bats by individuals permitted to conduct these same

activities for other bat species until May 3, 2016. After May 3, 2016, a permit pursuant to section 10(a)(1)(A) of the Act is required for the capture and handling of northern long-eared bats. Under this rule, incidental take is still not prohibited outside the WNS zone.

We have revised the interim rule’s language concerning incidental take inside the WNS zone. Under this final rule, within the WNS zone, incidental take is prohibited only if: (1) Actions result in the incidental take of northern long-eared bats in hibernacula; (2) actions result in the incidental take of northern long-eared bats by altering a known hibernaculum’s entrance or interior environment if the alteration impairs an essential behavioral pattern, including sheltering northern long-eared bats; or (3) tree-removal activities result in the incidental take of northern long-eared bats when the activity either occurs within 0.25 mile (0.4 kilometer) of a known hibernaculum, or cuts or destroys known occupied maternity roost trees, or any other trees within a 150-foot (45-meter) radius from the maternity roost tree, during the pup season (June 1 through July 31). Take of northern long-eared bats in their hibernacula may include disturbing or disrupting hibernating individuals when they are in the hibernacula. Take of northern long-eared bat also includes the physical or other alteration of the hibernaculum’s entrance or environment when bats are not present if the result of the activity will impair essential behavioral patterns, including sheltering northern long-eared bats. Any take resulting from otherwise lawful activities outside known hibernacula, other than tree removal, is not prohibited, as long as it does not change the bat’s access to or quality of a known hibernaculum for the species. This final rule makes these revisions because, in areas impacted by WNS, the most important conservation actions for the northern long-eared bat are to protect bats in hibernacula and maternity roost trees, and to continue to monitor populations in summer habitat (*e.g.*, identify where the species continues to survive after the detection of *Pd* or WNS and determine the factors influencing its resilience), while developing methods to abate WNS as quickly as possible.

Under this rule, we individually set forth prohibitions on possession and other acts with unlawfully taken northern long-eared bats, and on import and export of northern long-eared bats. These prohibitions were included in the interim 4(d) through the general application of the prohibitions of 50 CFR 17.31 to the northern long-eared bat. Under this rule, take of the northern

long-eared bat is also not prohibited for the following: Removal of hazardous trees for protection of human life and property; take in defense of life; and take by an employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service. Regarding these three exceptions, take in defense of life was not included in the interim 4(d) rule, but the other two exceptions were, either through the general application of 50 CFR 17.31 or through a specific exception included in the interim 4(d) rule.

Provisions of the 4(d) Rule for the Northern Long-Eared Bat

For a threatened species, the Act does not specify prohibitions, or exceptions to those prohibitions, relative to take of the species. Instead, under Section 4(d) of the Act, the Secretary has discretion to issue regulations deemed to be necessary and advisable for the conservation of a threatened species. By regulation, the Secretary has determined that take prohibitions for endangered species are also applicable to threatened species unless a special rule is issued under section 4(d) for a particular threatened species. Under this 4(d) rule, we have applied several of the prohibitions specified in the Act for endangered species and the provisions of 50 CFR 17.32 (permit regulations) to the northern long-eared bat as described below.

For this 4(d) rule, the Service has completed a biological opinion under Section 7 of the Act on our action of finalizing this rule. In addition, the biological opinion provides for streamlined consultation for all federal agency actions that may affect the northern long-eared bat; therefore, the scope of the biological opinion included the finalization and implementation of the 4(d) rule. The biological opinion resulted in a non-jeopardy determination. Provided Federal action agencies follow the criteria outlined in this rule and implement the streamlined consultation process outlined in the biological opinion, their section 7 consultation requirements will be met. If unable to follow these criteria, standard section 7 procedures will apply.

Exceptions to the Purposeful Take Prohibition

We have exempted the purposeful take of northern long-eared bats related to the protection of human health and safety. A very small percentage of bats

may be infected with rabies or other diseases that can be transmissible to humans. When there is the possibility that a person has been exposed to a diseased bat, it is important that they coordinate with medical professionals (*e.g.*, doctor, local health department) to determine the appropriate response. When warranted to protect human health and safety, we have exempted from the take prohibition of northern long-eared bats in defense of one's own life or the lives of others, including for public health monitoring purposes (*i.e.*, collecting a bat after human exposure and submitting for disease testing).

We have also exempted the purposeful take of northern long-eared bats related to removing the species from human structures, but only if the actions comply with all applicable State regulations. Northern long-eared bats have occasionally been documented roosting in human-made structures, such as houses, barns, pavilions, sheds, cabins, and bat houses (Mumford and Cope 1964, p. 480; Barbour and Davis 1969, p. 77; Cope and Humphrey 1972, p. 9; Amelon and Burhans 2006, p. 72; Whitaker and Mumford 2009, p. 209; Timpone et al. 2010, p. 119; Joe Kath 2013, pers. comm.). We conclude that the overall impact of bat removal from human structures is not expected to adversely affect conservation and recovery efforts for the species. In addition, we provide the following recommendations:

- Minimize use of pesticides (*e.g.*, rodenticides) and avoid use of sticky traps as part of bat evictions/exclusions.
- Conduct exclusions during spring or fall unless there is a perceived public health concern from bats present during summer and/or winter.
- Contact a nuisance wildlife specialist for humane exclusion techniques.

We have exempted the purposeful take that results from actions relating to capture, handling, and related activities for northern long-eared bats by individuals permitted to conduct these same activities for other species of bats until May 3, 2016. Under the interim rule, for a period of 1 year from the interim rule's effective date (May 3, 2016), we had exempted the purposeful take that is caused by the authorized capture, handling, and related activities (*e.g.*, attachment of radio transmitters for tracking) of northern long-eared bats by individuals permitted to conduct these same activities for other bats. We have continued the exemption through the expiration date established by the interim rule. After May 3, 2016, a permit pursuant to section 10(a)(1)(A) of the Act is required for the capture and

handling of northern long-eared bats, except that associated with bat removal from human structures. We determined that it was important to regulate the intentional capture and handling of northern long-eared bats through the Act's scientific permit process to help ensure that the surveyor's qualifications and methods used are adequate to protect individual bats and provide reliable survey results.

Incidental Take Outside of the WNS Zone Not Prohibited

Incidental take in areas that have not yet been impacted by WNS (*i.e.*, in areas outside the WNS zone) is not prohibited by this final rule. We believe the level of take associated with on-going land management and development actions, including all actions that may incidentally take the northern long-eared bat, do not individually or cumulatively affect healthy bat populations. As noted in our decision to list the northern long-eared bat as a threatened species, WNS is the primary cause of the species' decline, and we would not have listed the northern long-eared bat if not for the impact of WNS. In addition, we conclude that regulating incidental take in areas not affected by WNS is not expected to change the rate at which WNS progresses across the range of the species. In other words, regulating incidental take outside the WNS zone will not influence the future impact of the disease throughout the species' range or the status of the species. For these reasons, we have concluded that the prohibition of incidental take outside of the WNS zone is not necessary and advisable for the protection and recovery of the species. Incidental take, therefore, is not prohibited outside of the WNS zone.

Prohibitions and Exemptions Related to Incidental Take Inside the WNS Zone

Our approach to designing the regulatory provisions for the northern long-eared bat inside the WNS zone reflects the significant role WNS plays as the central threat affecting the species. For other threatened species, habitat loss or other limiting factors usually contribute to the decline of a species. In these situations, regulations are needed to address either the habitat loss or the other limiting factors.

The northern long-eared bat is not habitat-limited and has demonstrated a great deal of plasticity within its environment (*e.g.*, living in highly fragmented forest habitats to contiguous forest blocks from the southern United States to Canada's Yukon Territory) in the absence of WNS. For the northern long-eared bat, land management and

development actions that have been ongoing for centuries (*e.g.*, forest management, forest conversion) have not been shown to have significant negative impacts to northern long-eared bat populations.

As WNS continues to move across the range of the species, northern long-eared bat populations have declined and will continue to decline. Declines in northern long-eared bat populations in WNS-positive regions have been significant, and northern long-eared bats are now relatively rare on those landscapes. As populations decline as a result of WNS, the chances of any particular activity affecting northern long-eared bats becomes more remote. Therefore, in the WNS zone, we focused the regulatory provisions on sensitive life stages at known, occupied maternity roost trees and hibernacula.

We developed regulations that provide some level of protection to the species where it persists in the face of WNS. However, we have provided flexibility so that the regulated public will seek to conserve the species and foster its recovery at sites where it has been lost should tools to address WNS become available or where the species shows signs of resilience. Further, because we believe recovery of this species will require many partnerships across the species' range, minimizing regulatory impacts on activities inconsequential to northern long-eared bat populations provides an important step in building partnerships for the species' recovery.

The northern long-eared bat is a forest-dependent species, typically roosting in trees. In establishing regulations that are necessary and advisable for the conservation of the species, we have tailored species-specific regulatory provisions toward potential impacts to trees. For the incidental take of bats outside of hibernacula, we have specifically established two sets of provisions: the first set applies to activities that do not involve tree removal and the second applies to activities that do involve tree removal. By tree removal, we mean cutting down, harvesting, destroying, trimming, or manipulating in any other way the trees, saplings, snags, or any other form of woody vegetation that is likely to be used by the northern long-eared bat.

In this final 4(d) rule, we have limited the prohibition of incidental take of northern long-eared bats to specific circumstances. This does not mean that all activities that could result in the incidental take of the northern long-eared bat will do so. The relative exposure of the species and the species

response to a potential stressor are critical considerations in evaluating the potential for incidental take to occur. For example, under the discussion of tree removal, below, we describe what is prohibited by the final 4(d) rule in the WNS zone and provide examples of how other activities could be implemented in a way that avoids the potential for incidental take.

Hibernacula

Northern long-eared bats predominantly overwinter in hibernacula that include caves and abandoned mines. For additional details about the characteristics of the hibernacula selected by northern long-eared bats, see the final listing determination (80 FR 17974; April 2, 2015). Northern long-eared bats have shown a high degree of philopatry (using the same site over multiple years) for a hibernaculum (Pearson 1962, p. 30), although they may not return to the same hibernaculum in successive seasons (Caceres and Barclay 2000, p. 2).

Hibernacula are so significant to the northern long-eared bat that they are considered a primary driver in the species distribution (*e.g.*, Kurta 1982, p. 302). Northern long-eared bats are documented in hibernacula in 29 of the 37 states within the species' range. Other States within the species' range have no known hibernacula, which may reflect that no suitable hibernacula are present, a limited survey effort, or the northern long-eared bat's use of sites not previously identified as suitable.

In general, bats select hibernacula because they have characteristics that allow the bats to meet specific life-cycle requirements. Factors influencing a hibernaculum's suitability include its physical structure (*e.g.*, openings, interior space, depth), air circulation, temperature profile, and location relative to foraging sites (Tuttle and Stevenson 1978, pp. 108–121).

Overwinter survival can be a particularly challenging period in the northern long-eared bat's life cycle. Hibernating bats appear to balance their physical condition (*e.g.*, fat reserves upon entering hibernation), hibernacula characteristics (*e.g.*, temperature variation, humidity), social resources (*e.g.*, roosting singly or in groups), and metabolic condition (*i.e.*, degree of torpor, which is the state of mental or physical inactivity) to meet overwinter survival needs. The overwinter physiological needs of the species include maintaining body temperature above freezing, minimizing water loss, meeting energetic needs until prey again become available, and responding to

disturbance or disease. Because of this complex interplay of hibernacula characteristics and bat physiology, changes to hibernacula can significantly impact their suitability as well as the survival of any hibernating bats.

In general, northern long-eared bats arrive at hibernacula in August or September, enter hibernation in October and November, and emerge from the hibernacula in March or April (Caire et al. 1979, p. 405; Whitaker and Hamilton 1998, p. 100; Amelon and Burhans 2006, p. 72). However, hibernation may begin as early as August (Whitaker and Rissler 1992b, p. 56). Northern long-eared bats have been observed moving among hibernacula throughout the winter (Griffin 1940a, p. 185; Whitaker and Rissler 1992a, p. 131; Caceres and Barclay 2000, pp. 2–3). Whitaker and Mumford (2009, p. 210) found that this species flies in and out of some mines and caves in southern Indiana throughout the winter.

Human disturbance of hibernating bats has long been considered a threat to cave-hibernating bat species like the northern long-eared bat. Modifications to bat hibernacula can affect the microclimate (*e.g.*, temperature, humidity) of the subterranean habitat, and thus the ability of the cave or mine to support hibernating bats, including the northern long-eared bat. Anthropogenic modifications to cave and mine entrances may not only alter flight characteristics and access (Spanjer and Fenton 2005, p. 1110), but may change airflow and alter internal microclimates of the caves and mines, eliminating their utility as hibernacula (Service 2007, p. 71). For example, Richter et al. (1993, p. 409) attributed the decline in the number of Indiana bats at Wyandotte Cave, Indiana (which harbors one of the largest known populations of hibernating Indiana bats (*Myotis sodalis*)), to an increase in the cave's temperature resulting from restricted airflow caused by a stone wall erected at the cave's entrance. In addition to the direct access modifications to caves discussed above, debris buildup at entrances or on cave gates can also significantly modify the cave or mine site characteristics by restricting airflow and the course of natural water flow. Water-flow restriction could lead to flooding, thus drowning hibernating bats (Amelon and Burhans 2006, p. 72). Thomas (1995, p. 942) used infrared detectors to measure flight activity in hibernating northern long-eared bats and little brown bats in response to the presence of a human observer. Flight activity significantly increased with the presence of an observer, beginning within 30 minutes

of the visit, peaking 1.0 to 7.5 hours later, and remaining significantly above baseline level for 2.5 to 8.5 hours. These results suggest that hibernating bats are sensitive to non-tactile stimuli and arouse and fly following human visits. Boyles and Brack's (2009) model predicted that the survival rate of hibernating little brown bats drops from 96 percent to 73 percent with human visitations to hibernacula. Prior to the outbreak of WNS, Amelon and Burhans (2006, p. 73) indicated that "the widespread recreational use of caves and indirect or direct disturbance by humans during the hibernation period pose the greatest known threat to [the northern long-eared bat]."

Hibernacula and surrounding forest habitats play important roles in the life cycle of the northern long-eared bat beyond the time when the bats are overwintering. In both the early spring and fall, the hibernacula and surrounding forested habitats are the focus of bat activity in two separate periods referred to as "spring staging" and "fall swarming."

During the spring staging, bats begin to gradually emerge from hibernation, exit the hibernacula to feed, but re-enter the same or alternative hibernacula to resume daily bouts of torpor (Whitaker and Hamilton 1998, p. 100). The staging period for the northern long-eared bat is likely short in duration (Whitaker and Hamilton 1998, p. 100; Caire et al. 1979, p. 405). In Missouri, Caire et al. (1979, p. 405) found that northern long-eared bats moved into the staging period in mid-March through early May. In Michigan, Kurta et al. (1997, p. 478) determined that by early May, two-thirds of the *Myotis* species, including the northern long-eared bat, had dispersed to summer habitat.

Beginning in mid to late summer, after their young have gained some level of independence, northern long-eared bats exhibit a behavior near hibernacula referred to as swarming. Both male and female northern long-eared bats are present at swarming sites (often with other species of bats). During this period, heightened activity and congregation of transient bats around caves and mines is observed, followed later by increased sexual activity and bouts of torpor prior to winter hibernation (Fenton 1969, p. 601; Parsons et al. 2003, pp. 63–64; Davis and Hitchcock 1965, pp. 304–306). The purposes of swarming behavior may include introduction of juveniles to potential hibernacula, copulation, and stopping over sites on migratory pathways between summer and winter regions (Kurta et al. 1997, p. 479; Parsons et al. 2003, p. 64; Lowe 2012,

p. 51; Randall and Broders 2014, pp. 109–110). The swarming season for some species of the genus *Myotis* begins shortly after females and young depart maternity colonies (Fenton 1969, p. 601). For the northern long-eared bat, the swarming period may occur between July and early October, depending on latitude within the species' range (Fenton 1969, p. 598; Kurta et al. 1997, p. 479; Lowe 2012, p. 86; Hall and Brenner 1968, p. 780; Caire et al. 1979, p. 405). The northern long-eared bat may investigate several cave or mine openings during the transient portion of the swarming period, and some individuals may use these areas as temporary daytime roosts or may roost in forest habitat adjacent these sites (Kurta et al. 1997, pp. 479, 483; Lowe 2012, p. 51). Little is known about northern long-eared bat roost selection outside of caves and mines during the swarming period (Lowe 2012, p. 6).

Based on the importance of hibernacula to northern long-eared bats, take is prohibited in and around the hibernacula within the WNS zone, including activities that may alter the hibernacula at any time of the year. Further, we have determined that when the conservation measures for the northern long-eared bat included in this final 4(d) rule are applied to areas within 0.25 mile (0.4 km) of the hibernacula, the potential for negative impacts to individuals is significantly reduced.

Activities Not Involving Tree Removal Are Not Prohibited

Under this final 4(d) rule, activities within the WNS zone not involving tree removal are not prohibited provided they do not result in the incidental take of northern long eared bats in hibernacula or otherwise impair essential behavioral patterns at known hibernacula. In our final listing determination (80 FR 17974; April 2, 2015), we identified a number of activities not involving tree removal that may have direct or indirect effects on northern long-eared bats. These activities have the potential to cause the incidental take of northern long-eared bats and include activities such as the operation of utility-scale wind-energy turbines, application of pesticides, and prescribed fire (this is not an exhaustive list; it is merely representative of activities that may result in take of northern long-eared bats).

At the time of our listing determination and the interim 4(d) rule (80 FR 17974; April 2, 2015), we stated that we had no compelling evidence that these activities would have significant effects on the northern long-

eared bat when considered alone. However, we thought these factors may have a cumulative effect on this species when considered in concert with WNS. After additional consideration and our review of public comments received on the proposed and interim 4(d) rules, we did not find compelling evidence that regulating these potential cumulative effects would result in significant impacts at the species level. Effects to relatively small numbers of individuals are not anticipated to impair conservation efforts or the recovery potential of the species.

Wind-Energy Facilities

Wind-energy facilities are found scattered throughout the range of the northern long-eared bat, and many new facilities are anticipated to be constructed over the next 15 years (United States Department of Energy 2008, unpaginated). We reviewed post-construction mortality monitoring studies conducted at various times from 1998 through 2014 at 81 unique operating wind-energy facilities in the range of the northern long-eared bat in the United States and Canada (Service 2015, unpublished data). In these studies, 43 northern long-eared bat mortalities were documented at 19 of the sites. The northern long-eared bat fatalities comprised less than 1 percent of all documented bat mortalities. In most cases, the level of effort for most post-construction monitoring studies is not sufficient to confidently exclude the possibility that infrequent fatalities are being missed, but finding none or only small numbers over many sites and years can suggest the order of what may be missed. Thus while sustained mortality at particular facilities could potentially cause declines in local populations of the northern long-eared bat, if that is in fact occurring, it does not appear to be wide-spread at least when compared to other bat species which are nearly always found in fatality monitoring at wind facilities. At those sites with a northern long-eared bat fatality where multiple years of monitoring data were also available for review ($n = 12$), fatalities of northern long-eared bats were only reported in multiple years at two of the sites and for the other 10 sites only a single fatality was reported over multiple years of monitoring. For example, one site reported one northern long-eared bat fatality in 2008, but none in 2009, 2010, or 2011. Further, the number of fatalities of northern long-eared bats found at any given site has been relatively small (e.g., most often a single fatality was found, but in all cases no more than six), and typically most sites (62 out of 81) found

no northern long-eared bat fatalities at all. There is a great deal of uncertainty related to extrapolating these numbers to generate an estimate of total northern long-eared bat mortality at wind-energy facilities due to variability in post-construction survey effort and methodology (Huso and Dalthorp 2014, pp. 546–547). Further, bat mortality can vary between years and between sites, and detected carcasses are only a small percentage of total bat mortalities. However, even with those limitations, northern long-eared bats were rarely detected as mortalities, even when they were known to be common on the landscape around the wind-energy facility.

We recognize that several wind energy facilities have completed, or are currently working to complete, habitat conservation plans (HCPs; permit pursuant to section 10(a)(1)(B) of the Act) for other listed bat species where the number of fatalities reported is also very low. When the take of an endangered species is reasonably certain to occur, we recommend that a project proponent secure incidental take coverage pursuant to section 10 of the Act. Over the operational life of a wind energy facility (typically anticipated to be at least 20 to 30 years), the take of listed species may be reasonably certain to occur, even if the level of mortalities annually is anticipated to be quite low. However, this does not mean that prohibiting that incidental take in the case of a threatened species is necessary and advisable for the conservation of such a species. For the northern long-eared bat, we do not anticipate that the fatalities that will be caused by wind energy would meaningfully change the species' status in the foreseeable future.

In addition, the wind industry has recently published best management practices establishing voluntary operating protocols, which they expect "to reduce impacts to bats from operating wind turbines by as much as 30 percent" (AWEA 2015, unpaginated). Given the large numbers of other bat species impacted by wind energy (Hein et al. 2013, p. 12) and the economic importance of bats in controlling agricultural or forest pest species (Boyles et al. 2011, pp. 41–42; Maine and Boyles, 2015, p. 12442), we anticipate that these new standards will be adopted by the wind-energy sector and ultimately required by wind-energy-siting regulators at State and local levels. We recommend that wind facilities adopt these operating protocols.

Our primary reason for not establishing regulatory criteria for wind-energy facilities is that the best available

information does not indicate significant impacts to northern long-eared bats from such operations. We conclude that there may be adverse effects posed by wind-energy development to individual northern long-eared bats; however, there is no evidence suggesting that effects from wind-energy development has led to significant declines in this species, nor is there evidence that regulating the incidental take that is occurring would meaningfully change the conservation or recovery potential of the species in the face of WNS. Furthermore, with the adoption by wind-energy facilities of the new voluntary standards, risk to all bats, including the northern long-eared bat, should be further reduced.

Environmental Contaminants

Environmental contaminants, in particular insecticides, pesticides, and inorganic contaminants, such as mercury and lead, may also have detrimental effects on individual northern long-eared bats. However, across the wide-range of the species, it is unclear whether environmental contaminants, regardless of the source (e.g., pesticide applications, industrial waste-water), would be expected to cause population-level impacts to the northern long-eared bat either independently or in concert with WNS. Historically, the most intensively-studied contaminants in bats have been the organochlorine insecticides (OCs; O'Shea and Clark 2002, p. 238). During wide-spread use of OCs in the 1960s and 1970s, lethal pesticide poisoning was demonstrated in gray bats (*Myotis grisescens*), Mexican free-tailed bats (*Tadarida brasiliensis*), and Indiana bats (*Myotis sodalis*) (O'Shea and Clark 2002, p. 239, 242). Since the phasing out of OCs in the United States, the effects of chemical contaminants on bats have been less well studied (O'Shea and Johnston 2009, p. 501); however, a few recent studies have demonstrated the accumulation of potentially toxic elements and chemicals in North American bats. For instance, Yates et al. (2014, pp. 48–49) quantified total mercury (Hg) levels in 1,481 fur samples and 681 blood samples from 10 bat species captured across 8 northeastern U.S. States and detected the highest Hg levels in tri-colored bats (*Perimyotis subflavus*), little brown bats (*Myotis lucifugus*) and northern long-eared bats. More recently, Secord et al. (2015) analyzed tissue samples from 48 northeastern bat carcasses of four species, including northern long-eared bats, and detected accumulations of several contaminants of emerging concern (CECs), including most

commonly polybrominated diphenyl ethers (PDBEs; 100 percent of samples), salicylic acid (81 percent), thiabendazole (50 percent), and caffeine (23 percent). Digoxigenin, ibuprofen, warfarin, penicillin V, testosterone, and N,N-diethyl-meta-toluamide (DEET) were also present in at least 15 percent of samples. Compounds with the highest concentrations were bisphenol A (397 ng/g), PDBE congeners 28, 47, 99, 100, 153, and 154 (83.5 ng/g), triclosan (71.3 ng/g), caffeine (68.3 ng/g), salicylic acid (66.4 ng/g), warfarin (57.6 ng/g), sulfathiazole (55.8 ng/g), tris(1-chloro-2-propyl) phosphate (53.8 ng/g), and DEET (37.2 ng/g).

Although there is the potential for direct and indirect contaminant-related effects, mortality or other population-level impacts have not been reported for northern long-eared bats. Long-term sublethal effects of environmental contaminants on bats are largely unknown; however, environmentally relevant exposure levels of various contaminants have been shown to impair nervous system, endocrine, and reproductive functioning in other wildlife (Yates et al. 2014, p. 52; Köhler and Triebkorn 2013, p. 761; Colborn et al. 1993, p. 378). Moreover, bats' high metabolic rates, longevity, insectivorous diet, migration-hibernation patterns of fat deposition and depletion, and immune impairment during hibernation, along with potentially exacerbating effects of WNS, likely increase their risk of exposure to and accumulation of environmental toxins (Secord et al. 2015, p. 411, Yates et al. 2014, p. 46, Geluso et al. 1976, p. 184; Quarles 2013, p. 4, O'Shea and Clark 2002, p. 238). Following WNS-caused population declines in northeastern little brown bats, Kannan et al. (2010) investigated whether exposure to toxic contaminants could be a contributing factor in WNS-related mortality. Although high concentrations of polychlorinated biphenyls (PCBs), PBDEs, polybrominated biphenyls (PBBs), and chlordanes were found in the fat tissues of WNS-infected bats in New York, relative concentrations in bats from an uninfected population in Kentucky were also high (Kannan et al. 2010, p. 615). The authors concluded that the study's sample sizes were too small to accurately associate contaminant exposure with the effects of WNS in bats (Kannan et al. 2010, p. 618), but argued that additional research is needed. Despite the lack of knowledge on the effects of various contaminants on northern long-eared bats, we recognize the potential for direct and indirect consequences.

However, contaminant-related mortality has not been reported for northern long-eared bats. Additionally, Ingersoll (2013, p. 9) suggested it was unclear what other threats or combination of threats other than WNS (*e.g.*, changes to critical roosting or foraging habitat, collisions, effects from chemicals) may be responsible for recent bat declines.

Prescribed Fire

Prescribed fire is a useful forest-management tool. However, there are potential negative effects from prescribed burning, including direct mortality to the northern long-eared bat. Therefore, when using prescribed burning as a management tool, fire frequency, timing, location, and intensity all need to be considered to lower the risk of incidental take of bats. Carter et al. (2002, pp. 140–141) suggested that the risk of direct injury and mortality to southeastern forest-dwelling bats resulting from summer prescribed fire is generally low. During warm temperatures, bats are able to arouse from short-term torpor quickly. Northern long-eared bats use multiple roosts, switch roost trees often, and could likely use alternative roosts in unburned areas, should fire destroy the current roost. Non-volant pups are likely the most vulnerable to death and injury from fire. Although most eastern bat species are able to carry their young for some time after they are born (Davis 1970, pp. 187–189), the degree to which this behavior would allow females to relocate their young if fire threatens the nursery roost is unknown. The potential for death or injury resulting from prescribed burning depends largely on site-specific circumstances, *e.g.*, fire intensity near the maternity roost tree and the height above ground of pups in the maternity roost tree. Not all fires through maternity roosting areas will kill or injure all pups present.

Bats are known to take advantage of fire-killed snags and continue roosting in burned areas. Boyles and Aubrey (2006, pp. 111–112) found that, after years of fire suppression, initial burning created abundant snags, which evening bats (*Nycticeius humeralis*) used extensively for roosting. Johnson et al. (2010, pp. 115) found that after burning, male Indiana bats roosted primarily in fire-killed maples. In the Daniel Boone National Forest, Lacki et al. (2009, p. 5) radio-tracked adult female northern long-eared bats before and after prescribed fire, finding more roosts (74.3 percent) in burned habitats than in unburned habitats. Burning may create more suitable snags for roosting through exfoliation of bark (Johnson et al. 2009a, p. 240), mimicking trees in the

appropriate decay stage for roosting bats. In addition to creating snags and live trees with roost features, prescribed fire may enhance the suitability of trees as roosts by reducing adjacent forest clutter. Perry et al. (2007, p. 162) found that five of six species, including northern long-eared bat, roosted disproportionately in stands that were thinned and burned 1 to 4 years prior but that still retained large overstory trees.

The use of prescribed fire, where warranted, will, in any given year, impact only a small proportion of the northern long-eared bat's range during the bats active period. In addition, there are substantial benefits of prescribed fire for maintaining forest ecosystems. For example, the U.S. Forest Service's Southern Region manages approximately 10.9 million acres (4.4 million hectares (ha)) of land, and the maximum estimate of acres where prescribed fire is employed annually during the active period of northern-long eared bats (April through October) was 320,577 acres (129,732 ha), which is less than 3 percent of the National Forest regional lands. Similarly, the Forest Service's Eastern Region manages 15 Forests in 13 States that include about 12.2 million acres (4.88 million ha), of which 11.3 million acres (4.52 million ha) are forested habitat. The U.S. Forest Service anticipates applying prescribed burning to 107,684 acres (43,073 ha) or about 1 percent of the forested habitat across the eastern region annually. In addition, only 17,342 acres (6,937 ha) (*i.e.*, 0.15 percent of the forested habitat) of prescribed burning annually is anticipated to occur during the non-volant period on the eastern forests.

Further, there are substantial benefits of prescribed fire for maintaining forest ecosystems, such as providing the successional and disturbance processes that renew the supply of suitable roost trees (Silvis et al. 2012, pp.6–7), as well as helping to ensure a varied and reliable prey base (Dodd et al. 2012, p. 269). There is no evidence that prescribed fire has led to population-level declines in this species nor is there evidence that regulating the incidental take that might occur would meaningfully change the conservation status or recovery potential of the species in the face of WNS.

Hazardous Tree Removal Is Not Prohibited

Under this final 4(d) rule, incidental take that is caused by removal and management of hazardous trees is not prohibited. The removal of these hazardous trees may be widely

dispersed, but limited, and should result in very minimal incidental take of northern long-eared bats. We recommend, however, that removal of hazardous trees be done during the winter, wherever possible, when these trees will not be occupied by northern long-eared bats. We conclude that the overall impact of removing hazardous trees is not expected to adversely affect conservation and recovery efforts for the species.

Activities Involving Tree Removal

We issued the interim species-specific rule under section 4(d) of the Act in recognition that WNS is the primary threat to the species' continued existence. We further recognized that all other (non-WNS) threats cumulatively were not impacting the species at the population level. Therefore, we apply the take prohibitions only to activities that we have determined may impact the species in its most vulnerable life stages, allowing for management flexibility and a limited regulatory burden.

In this final 4(d) rule, we have determined that the conservation of the northern long-eared bat is best served by limiting the prohibitions to the most vulnerable life stages of the northern long-eared bat (*i.e.*, while in hibernacula or in maternity roost trees) within the WNS zone and to activities, tree removal in particular, that are most likely to affect the species. We have also revised some of the conservation measures. To further simplify the regulation, we have established separate prohibitions for activities involving tree removal and those that do not involve tree removal. Within the WNS zone incidental take outside of hibernacula that results from tree removal is only prohibited when it (1) Occurs within 0.25 miles (0.4 km) of known northern long-eared bat hibernacula; or (2) cuts or destroys known occupied maternity roost trees, or any other trees within a 150-foot (45-meter) radius from the known occupied maternity trees, during the pup season (June 1 through July 31).

Forest Management

Forest management maintains forest habitat on the landscape, and the impacts from management activities are, for the most part, temporary in nature. Forest management is the practical application of biological, physical, quantitative, managerial, economic, social, and policy principles to the regeneration, management, utilization, and conservation of forests to meet specified goals and objectives (Society of American Foresters, http://dictionary.offorestry.org/dict/term/forest_

management). It includes a broad range of silvicultural practices and this discussion specifically addresses tree-removal practices (e.g., timber harvest) associated with forest management. Timber harvesting includes a wide variety of practices from selected removal of individual trees to clearcutting. Impacts to northern long-eared bats from forest management would be expected to range from positive (e.g., maintaining or increasing suitable roosting and foraging habitat within northern long-eared bat home ranges) to neutral (e.g., minor amounts of forest removal, forest management in areas outside northern long-eared bat summer home ranges, forest management away from hibernacula) to negative (e.g., death of adult females or pups or both resulting from the removal of maternity roost trees).

The best available data indicate that the northern long-eared bat shows a varied degree of sensitivity to timber-harvesting practices. For example, Menzel et al. (2002, p. 112) found northern long-eared bats roosting in intensively managed stands in West Virginia, indicating that there were sufficient suitable roosts (primarily snags) remaining for their use. At the same study site, Owen et al. (2002, p. 4) concluded that northern long-eared bats roosted in areas with abundant snags, and that in intensively managed forests in the central Appalachians, roost availability was not a limiting factor. Northern long-eared bats often chose black locust and black cherry as roost trees, which were quite abundant and often regenerate quickly after disturbance (e.g., timber harvest). Similarly, Perry and Thill (2007, p. 222) tracked northern long-eared bats in central Arkansas and found roosts were located in eight forest classes with 89 percent occurring in three classes of mixed pine-hardwood forest. The three classes of mixed pine-hardwood forest that supported the majority of the roosts were partially harvested/thinned, unharvested (50 to 99 years old), and group-selection harvested (Perry and Thill 2007, pp. 223–224).

Certain levels of timber harvest may result in canopy openings, which could result in more rapid development of young bats. In central Arkansas, Perry and Thill (2007, pp. 223–224) found female bat roosts were more often located in areas with partial harvesting than males, with more male roosts (42 percent) in unharvested stands than female roosts (24 percent). They postulated that females roosted in relatively more open forest conditions because they may receive greater solar radiation, which may increase

developmental rates of young or permit young bats a greater opportunity to conduct successful initial flights (Perry and Thill 2007, p. 224). Cryan et al. (2001, p. 49) found several reproductive and non-reproductive female northern long-eared bat roost areas in recently harvested (less than 5 years) stands in the Black Hills of South Dakota in which snags and small stems (diameter at breast height (dbh)) of 2 to 6 inches (5 to 15 centimeters) were the only trees left standing; however, the largest colony (n = 41) was found in a mature forest stand that had not been harvested in more than 50 years.

Forest size and continuity are also factors that define the quality of habitat for roost sites for northern long-eared bats. Lacki and Schwierjohann (2001, p. 487) stated that silvicultural practices could meet both male and female roosting requirements by maintaining large-diameter snags, while allowing for regeneration of forests. Henderson et al. (2008, p. 1825) also found that forest fragmentation affects northern long-eared bats at different scales based on sex; females require a larger unfragmented area with a large number of suitable roost trees to support a colony, whereas males are able to use smaller, more fragmented areas. Henderson and Broders (2008, pp. 959–960) examined how female northern long-eared bats use the forest-agricultural landscape on Prince Edward Island, Canada, and found that bats were limited in their mobility and activities are constrained when suitable forest is limited. However, they also found that bats in a relatively fragmented area used a building for colony roosting, which suggests an alternative for a colony to persist in an area with fewer available roost trees.

In addition to impacts on roost sites, we considered effects of forest-management practices on foraging and traveling behaviors of northern long-eared bats. In southeastern Missouri, the northern long-eared bat showed a preference for contiguous tracts of forest cover (rather than fragmented or wide open landscapes) for foraging or traveling, and different forest types interspersed on the landscape increased likelihood of occupancy (Yates and Muzika 2006, p. 1245). Similarly, in West Virginia, female northern long-eared bats spent most of their time foraging or travelling in intact forest, diameter-limit harvests (70 to 90 year-old stands with 30 to 40 percent of basal area removed in the past 10 years), and road corridors, with no use of deferment harvests (similar to clearcutting) (Owen et al. 2003, p. 355). When comparing use and availability of habitats, northern

long-eared bats preferred diameter-limit harvests and forest roads. In Alberta, Canada, northern long-eared bats avoided the center of clearcuts and foraged more in intact forest than expected (Patriquin and Barclay 2003, p. 654). On Prince Edward Island, Canada, female northern long-eared bats preferred open areas less than forested areas, with foraging areas centered along forest-covered creeks (Henderson and Broders 2008, pp. 956–958). In mature forests in South Carolina, 10 of the 11 stands in which northern long-eared bats were detected were mature stands (Loeb and O'Keefe 2006, p. 1215). Within those mature stands, northern long-eared bats were more likely to be recorded at points with sparse or medium vegetation rather than points with dense vegetation, suggesting that some natural gaps within mature forests can provide good foraging habitat for northern long-eared bats (Loeb and O'Keefe 2006, pp. 1215–1217). However, in southwestern North Carolina, Loeb and O'Keefe (2011, p. 175) found that northern long-eared bats rarely used forest openings, but often used roads. Forest trails and roads may provide small gaps for foraging and cover from predators (Loeb and O'Keefe 2011, p. 175). In general, northern long-eared bats appear to prefer intact mixed-type forests with small gaps (i.e., forest trails, small roads, or forest-covered creeks) in forest with sparse or medium vegetation for forage and travel rather than fragmented habitat or areas that have been clearcut.

Impacts to northern long-eared bats from forest management would be expected to vary depending on the timing of tree removal, location (within or outside northern long-eared bat home range), and extent of removal. While bats can flee during tree removal, removal of occupied roosts (during spring through fall) may result in direct injury or mortality to some percentage of northern long-eared bats. This percentage would be expected to be greater if flightless pups or inexperienced flying juveniles were also present. Forest management outside of northern long-eared bat summer home ranges or away from hibernacula would not be expected to affect the conservation of the species.

Forest management is not usually expected to result in a permanent loss of suitable roosting or foraging habitat for northern long-eared bats. On the contrary, forest management is expected to maintain a forest over the long term for the species. However, localized temporary reductions in suitable roosting and/or foraging habitat can occur from various forest practices (e.g.,

clearcuts). As stated above, northern long-eared bats have been found in forests that have been managed to varying degrees, and as long as there is sufficient suitable roosting and foraging habitat within their home range and travel corridors between those areas, we would expect northern long-eared bat colonies to continue to occur in managed landscapes. However, in areas with WNS, northern long-eared bats may be less resilient to stressors and maternity colonies are smaller. Given the low inherent reproductive potential of northern long-eared bats (one pup per female per year), death of adult females or pups or both during tree felling could reduce the long-term viability of some of the WNS-impacted colonies if they are also in the relatively small percentage of forest habitat directly affected by forest management.

As we documented in the interim 4(d) rule, forestry management and silviculture are vital to the long-term survival and recovery of the species. Based on information obtained during comment periods, approximately 2 percent of forests in States within the range of the northern long-eared bat are impacted by forest management activities annually (Boggett et al., 2014, p.9). Of this amount, in any given year, a smaller fraction of forested habitat would be impacted during the active season when female bats and pups are most vulnerable. Therefore, we have determined that when the prohibitions for the northern long-eared bat included in this final 4(d) rule are applied to forest management activities, the potential impacts will be significantly reduced.

Forest Conversion

In our listing determination for the northern long-eared bat, we noted that current and future forest conversion may have negative additive impacts where the species has been impacted by WNS (80 FR 17991; April 2, 2015). Our assessment was based largely on the species' summer-home-range fidelity and the potential for increased energetic demands for individuals where the loss of summer habitat had been removed or degraded (e.g., fragmentation). We noted that forest conversion "can result in a myriad of effects to the species, including direct loss of habitat, fragmentation of remaining habitat, and direct injury or mortality" (80 FR 17993; April 2, 2015). In the interim 4(d) rule we exempted most forest-management activities except for the conversion of mature hardwood or mixed forest into intensively managed monoculture-pine plantation stands, or non-forested landscape (80 FR 18025; April 2, 2015).

Many of the comments on the proposed and interim 4(d) rules noted that habitat is not limiting for the northern long-eared bat. As we documented in the final listing determination (80 FR 1802; April 2, 2015), the extent of conversion from forest to other land cover types has been fairly consistent with conversion to forest (cropland reversion/plantings). Further, the recent past and projected amounts of forest loss to conversion was, and is anticipated to be, only a small percentage of the total amount of forest habitat. For example by 2060, 4 to 8 percent of the forested area found in 2007 across the conterminous United States is expected to be lost (U.S Forest Service 2012, p. 12). The northern long-eared bat has been documented to use a wide variety of forest types across its wide range. Therefore, we agree that the availability of forested habitat does not now, nor will it likely in the future, limit the conservation of the northern long-eared bat.

We have determined that when the prohibitions for the northern long-eared bat included in this final 4(d) rule are applied to forest-conversion activities, the potential for negative additive impacts to individuals or colonies is significantly reduced. As WNS impacts bat populations, unoccupied, suitable forage and roosting habitat will be increasingly available for remaining bats.

Tree-Removal Conservation Measures

Under this final 4(d) rule, incidental take within the WNS zone involving tree removal is not prohibited if two conservation measures are followed. The first measure is the application of a 0.25 mile (0.4 km) buffer around known occupied northern long-eared bat hibernacula. The second conservation measure is that the activity does not cut or destroy known occupied maternity roost trees, or any other trees within a 150-foot (45-m) radius around the maternity roost tree, during the pup season (June 1 through July 31). The rationale for these measures is discussed below.

Conservation Measure 1: Tree Removal Near Known Northern Long-eared Bat Hibernacula

"Known hibernacula" are defined as locations where one or more northern long-eared bats have been detected during hibernation or at the entrance during fall swarming or spring emergence. Given the documented challenges of surveying for northern long-eared bats in the winter (use of cracks, crevices that are inaccessible to surveyors), any hibernacula with

northern long-eared bats observed at least once, will continue to be considered "known hibernacula" as long as the hibernacula remains suitable for the northern long-eared bat. A hibernaculum remains suitable for northern long-eared bats even when *Pd* or WNS has been detected.

We have adopted the 0.25-mile (0.4-km) buffer around known northern long-eared bat hibernacula for several reasons: (1) It will help to protect microclimate characteristics of the hibernacula; (2) for many known hibernacula, bats use multiple entrances that may not be reflected in the primary location information (e.g., bats may use other smaller entrances that are often spread out from the main entrance accessed for surveys or other purposes) and the hibernacula may have extensive underground features that extend out from known entrances; (3) in the late summer and fall when bat behavior begins to center on hibernacula (swarming), it appears that northern long-eared bats may roost in a widely dispersed area, which may reduce the potential that any activity outside of this buffer would significantly affect the species; (4) outside of the maternity period, northern long-eared bats have demonstrated the ability to adapt to forest-management-related and other types of disturbances; and (5) regardless of the buffer size, bats will remain fully protected from take while in the hibernacula, when they are most vulnerable.

The microclimate, temperature, humidity, and air and water flow within a hibernaculum are all important variables that could potentially be impacted by forest management or other activities when conducted in proximity to a hibernaculum. A 0.25-mile (0.4-km) buffer will protect the hibernaculum's microclimate. Studies that have evaluated the depth of edge influence from forest edge or tree removal on temperature, humidity, wind speed, and light penetration suggest that although highly variable among forest types and other site-specific factors (such as aspect and season), the depth of edge influence can range from 164 feet (50 m) (Matlack 1993, p. 193) to over 1,312 feet (400 m) (Chen et al. 1995, p. 83). However, the hibernacula often selected by northern long-eared bats are "large, with large passages" (Raesly and Gates 1987, p. 20), and may be less affected by relatively minor surficial micro-climatic changes that might result from the limited exempted activities outside of the 0.25-mile (0.4-km) buffer. Further, bats rarely hibernate near the entrances of structures (Grieneisen 2011, p. 10), as these areas can be subject to greater

predation (Grieneisen 2011, p. 10; Kokurewicz 2004, p. 131) and daily temperature fluctuations (Grieneisen 2011, p. 10). Davis et al. (1999, p. 311) reported that partial clearcutting “appears not to affect winter temperatures deep in caves.” Caviness (2003, p. 130) reported that prescribed burns were found to have no notable influence on bats hibernating in various caves in the Ozark National Forest. All bats present in caves at the beginning of the burn were still present and in “full hibernation” when the burn was completed, and bat numbers increased in the caves several days after the burn. There were minute changes in relative humidity and temperature during the burn, and elevated short-term levels of some contaminants from smoke were noted.

Northern long-eared bat hibernacula can be large and complex and, spatially, may not be fully represented in locational information contained in species records by State or Federal agencies or by natural heritage programs. A 0.25-mile (0.4-km) buffer will help protect the spatial extent of many known hibernacula. For example, one limestone mine in Ohio used by northern long-eared bats had approximately 44 miles (71 km) of passages and multiple entrances (Brack 2007, p. 740). In northern Michigan, bats (including northern long-eared bats) occupied mines that were more structurally complex and longer (1,007 ft ± 2,837 ft (307m ± 865 m) than mines that were unoccupied, and the occupied mines had a total length of passages that ranged from 33 feet to 4 miles (10 meters to 6.4 kilometers) (Kurta and Smith 2014, p. 592).

Only a relatively small proportion of the areas where swarming northern long-eared bats may occur are likely to be affected by tree-removal activity. There are over 1,500 known hibernacula for the species in the United States (Service 2015, unpublished data), several known in Canada, and potentially many others yet to be identified. Lowe (2012, p. 58) reported that the roosts of northern long-eared bats were evenly distributed over distances within 4.6 miles (7.3 km) from a swarming site. If the northern long-eared bat's potential swarming habitat (including foraging habitat during that period) can be approximated as the forest habitat within 5 miles (8.1 km) of hibernacula, that equates to a 50,265 acre (20,342 ha) area per hibernaculum. In any given year, only a small proportion of the forest habitat within the potential swarming habitat is likely to be impacted by tree-removal activities (e.g., generally 2 percent of forests are

managed in any given year and over 1,500 hibernacula documented as used by the species). Similarly, forest conversion is anticipated to be relatively small compared to available habitat; therefore, based on our current understanding of potential swarming-habitat, on the scale of 50,000 acres (20,342ha) per hibernaculum, the relatively small foot-print of activities not prohibited by this final rule are unlikely to affect the conservation or recovery potential of the species. Raesly and Gates (1987, p. 24) evaluated external habitat characteristics of hibernacula and reported that for the northern long-eared bat the percentage of cultivated fields within 0.6 miles (1 km) of the hibernacula was greater (52.6 percent) for those caves used by the species, than for those caves not used by the species (37.7 percent), suggesting that the removal of some forest around a hibernacula can be consistent with the species needs.

Outside of the maternity period, northern long-eared bats have demonstrated the ability to respond successfully to forest-management-related and other types of disturbances. Therefore, the limited disturbance associated with incidental-take exceptions outside of the 0.25-mile (0.4-km) buffer on hibernacula is consistent with the conservation of the species. For example, Silvis et al.'s (2015, p.1) experimental removal of roosts suggested that the “loss of a primary roost or 20 percent of secondary roosts in the dormant season may not cause northern long-eared bats to abandon roosting areas or substantially alter some roosting behaviors in the following active season when tree-roosts are used.”

Prior to WNS, the most significant risk identified for northern long-eared bat conservation was direct human disturbance while bats are hibernating (e.g., Olson et al. 2011, p. 228; Bilecki 2003, p. 55; Service 2012, unpublished data). This final 4(d) rule (within the WNS zone) addresses these impacts.

We have prohibited incidental take of northern long-eared bats under specific tree-removal circumstances; however, that does not mean that all activities involving tree-removal activities within the 0.25-mile (0.4-k) buffer of hibernacula will result in take. For example, a timber harvest might be conducted within 0.25 miles (0.4 km) of a hibernaculum at a time when bats are unlikely to be roosting in trees within the buffer (e.g., winter), which fully protects any bats in the hibernaculum as well as the hibernaculum's suitability for bats (i.e., access, microclimate), and does not significantly change the

suitability of the habitat for foraging by northern long-eared bats or perhaps even improves prey availability. In such a case, the timber harvest, although closer than 0.25 miles (0.4 km) to the hibernaculum, is not likely to result in incidental take so we would not recommend that the harvester seek authorization for incidental take pursuant to the Act. For activities planned within 0.25 miles (0.4 km) of hibernaculum, we encourage you to contact the local Ecological Services Field Office (<http://www.fws.gov/offices>) to help evaluate the potential for take of northern long-eared bats.

Conservation Measure 2: Tree Removal Near Known Maternity Roost Trees

Female northern long-eared bats roost communally in trees in the summer (Foster and Kurta 1999, p. 667) and exhibit fission-fusion behavior (Garroway and Broders 2007, p. 961), where members frequently roost together (fusion), but the composition and size of the groups is not static, with individuals frequently departing to be solitary or to form smaller or different groups (fission) (Barclay and Kurta 2007, p. 44). As part of this behavior, northern long-eared bats switch tree roosts often (Sasse and Pekins 1996, p. 95), typically every 2 to 3 days (Foster and Kurta 1999, p. 665; Owen et al. 2002, p. 2; Carter and Feldhamer 2005, p. 261; Timpone et al. 2010, p. 119). In Missouri, the longest time spent roosting in one tree was 3 nights (Timpone et al. 2010, p. 118). Bats switch roosts for a variety of reasons, including temperature, precipitation, predation, parasitism, sociality, and ephemeral roost sites (Carter and Feldhamer 2005, p. 264).

Maternity colonies, consisting of females and young, are generally small, numbering from about 30 (Whitaker and Mumford 2009, p. 212) to 60 individuals (Caceres and Barclay 2000, p. 3); however, one group of 100 adult females was observed in Vermilion County, Indiana (Whitaker and Mumford 2009, p. 212) and Lereculeur (2013, p. 25) documented a colony of at least 116 northern long-eared bats. In West Virginia, maternity colonies in two studies had a range of 7 to 88 individuals (Owen et al. 2002, p. 2) and 11 to 65 individuals, with a mean size of 31 (Menzel et al. 2002, p. 110). Lacki and Schwierjohann (2001, p. 485) found that the number of bats within a given roost declined as the summer progressed. Pregnant females formed the largest aggregations (mean=26) and post-lactating females formed the smallest aggregation (mean=4). Their largest overall reported colony size was 65 bats.

Northern long-eared bats change roost trees frequently, but use roost areas repeatedly and to a lesser extent, reuse specific roosts (e.g., Cryan et al. 2001, p. 50; Foster and Kurta 1999, p. 665). The northern long-eared bat appears to be somewhat flexible in tree-roost selection, selecting varying roost tree species and types of roosts throughout its range. Females tend to roost in more open areas than males, likely due to the increased solar radiation, which aids pup development (Perry and Thill 2007, p. 224). Fewer trees surrounding maternity roosts may also benefit juvenile bats that are starting to learn to fly (Perry and Thill 2007, p. 224). Female roost-site selection, in terms of canopy cover and tree height, changes depending on reproductive stage; relative to pre- and post-lactation periods, lactating northern long-eared bats have been shown to roost higher in tall trees situated in areas of relatively less canopy cover and lower tree density (Garroway and Broders 2008, p. 91).

The northern long-eared bat's tendency for frequent roost switching may help them avoid or respond effectively to disturbance by people outside of the maternity season. The frequent-roost-switching behavior of northern long-eared bat suggests that they are adapted to responding quickly to changes in roost availability (ephemeral roosts), changing environmental conditions (temperature), prey availability, or physiological needs (torpor, reproduction). In a study of radio-tracked northern long-eared bats responding to the disturbance from prescribed fire (Dickinson et al. 2009, pp. 55–57), the bats appeared “to limit their exposure to conditions created by fire. At no point did they fly outside of their typical home range area, nor did they travel far from the burn itself.” While some of the bats soon returned to areas recently burned, by day 6 and 7 post burn, they “appeared to return to pre-burn norms in terms of emergence time, length of foraging bouts, and use of the burn unit and adjacent habitats.” Carter et al. (2000, pp 139–140), noted that “During the summer months, bats are able to arouse quickly as the difference between the ambient temperature and active body temperature of bats is less. Most bat species utilizing trees and snags have multiple roosts throughout the forest (Sasse and Pekins 1996; Callahan et al. 1997; Menzel et al. 1998; Foster and Kurta 1999, Menzel et al. 2001), providing alternate roosts should the current roost be destroyed by fire.” Sparks et al. (2008, pp. 207–208) documented that northern long-eared

bats released in the open during the day demonstrated a successful rapid “flight-to-cover” response.

Adult females give birth to a single pup (Barbour and Davis 1969, p. 104). Birthing within the colony tends to be synchronous, with the majority of births occurring around the same time (Krochmal and Sparks 2007, p. 654). Parturition (birth) likely occurs in late May or early June (Caire et al. 1979, p. 406; Easterla 1968, p. 770; Whitaker and Mumford 2009, p. 213), but may occur as late as July (Whitaker and Mumford 2009, p. 213). Upon birth, the pups are unable to fly, and females return to nurse the pups between foraging bouts at night. In other *Myotis* species, mother bats have been documented carrying flightless young to a new roosting location (Humphrey et al. 1977, p. 341). The ability of a mother to move young may be limited by the size of the growing pup. Juvenile volancy (flight) often occurs by 21 days after birth (Krochmal and Sparks 2007, p. 651; Kunz 1971, p. 480) and has been documented as early as 18 days after birth (Krochmal and Sparks 2007, p. 651). Prior to gaining the ability to fly, juvenile bats are particularly vulnerable to tree-removal activities. Based on this information, we have determined that the most sensitive period to protect pups at maternity roost trees is from June 1 through July 31 (the “pup season”).

Known occupied maternity roost trees are defined as trees that have had female northern long-eared bats or juvenile bats tracked to them or the presence of female or juvenile bats is known as a result of other methods. Once documented, northern-long eared bats are known to continue to use the same roosting areas. Therefore, a tree will be considered to be a “known, occupied maternity roost” as long as the tree and surrounding habitat remain suitable for northern long-eared bats. The incidental take prohibition for known, occupied maternity roosts trees applies only during the during the pup season (June 1 through July 31).

In addition to protecting the known roosts, we have also included in this conservation measure avoiding the cutting or destroying of any other trees within a 150-foot (45-meter) radius from the known, occupied maternity roost tree during the pup season (June 1 through July 31). Leaving a buffer of other trees around the maternity roost tree will help to protect the roost tree from damage or destruction that may be caused by other nearby trees being removed as well as helping protect the roost tree from wind throw and micro-climate changes. O’Keefe (2009 p. 42)

documented that a 39-foot (12-meter) buffer around a maternity roost tree during a harvest in May allowed the roost to be successfully used through late July and that one buffered tree was used 2 years in a row. We have adopted a standard for exception of take that is almost four times that which proved effective in this example, in order to better account for the variation in forest types used by the northern long-eared bat and a variety of slopes that might influence how large a buffer may need to be in order to prove effective. Roost trees used by northern long-eared bats are often in fairly close proximity to each other within the species’ summer home range. For female northern long-eared bats, the mean distance between roosts was reported as 63m to 600m from a variety of studies published 1996 through 2014 (Foster and Kurta 1999 p. 665; Cryan et al. 2001, p. 46; Swier 2003, pp. 58–59; Jackson 2004, p. 89; Henderson and Broders 2008, p. 958; Johnson et al. 2009, p. 240; Badin 2014, p. 76; Bohrman and Fecske, unpublished data). Further, within that data, the distance between roosts was reported as small as 5 meters in one study (Badin 2014, p. 76) and 36 meters in another (Jackson 2004, p. 89). As Sasse 1995, p. 23, noted “some roost sites appeared to be ‘clustered’ together.” Therefore, even this modest additional buffer may also protect other roosts trees used by female northern long-eared bats during the maternity period that have not yet been documented. In addition, because colonies occupy more than one maternity roost in a forest stand and individual bats frequently change roosts, in some cases a portion of a colony or social network is likely to be protected by multiple 150-foot buffers during the maternity season.

Currently, since most States and natural heritage programs do not track roosts and many have not tracked any northern long-eared bat occurrences, we recognize that not all northern long-eared bat maternity roost sites are known. Therefore, this measure will not protect an unknown maternity roosts unless it falls under one of the buffers related to protecting a known roost or hibernaculum.

Although not fully protective of every individual, the conservation measures identified in this final rule help protect maternity colonies. This final species-specific rule under section 4(d) of the Act provides the regulatory flexibility for certain activities to occur that have not been the cause of the species’ imperilment, while allowing us to focus conservation efforts on WNS, promoting

conservation of the species across its range.

Additional Prohibitions and Exceptions

In this final 4(d) rule we carry forward other standard prohibitions and exceptions that are typically applied to threatened species and are currently applicable under the interim rule for the northern long-eared bat. These prohibitions included the possession of and other acts with unlawfully taken northern long-eared bats, as well as import and export. We also included standard exemptions, including all the permitting provisions of 50 CFR 17.32 and the exemption for employees or agents of the Service, of the National Marine Fisheries Service, or of a State conservation agency when acting in the course of their official duties to take northern long-eared bats covered by an approved cooperative agreement to carry out conservation programs.

Summary of Comments and Recommendations on the Proposed and Interim 4(d) Rules

The northern long-eared bat was listed as a threatened species under the Act, with an interim rule under section 4(d) of the Act, on April 2, 2015 (80 FR 17974). At that time, the Service invited public comments on the interim 4(d) rule for 90 days, ending July 1, 2015. The Service had already received comments for 60 days on its proposed 4(d) rule (80 FR 2371, January 16, 2015). In total, the Service received approximately 40,500 comments on the proposed and interim 4(d) rules. We discuss them below.

Peer Reviewer Comments

1. *Comment:* Peer reviewer(s) commented that the 0.25-mile (radius) around hibernacula is an inadequate buffer. There were additional suggestions for alternative buffer distances as well as more detail on how activities might be limited within those buffers. A specific suggestion of a 1.6-mile buffer was made, with a statement that most forest practices could occur within the buffer provided that the trees were not completely removed (conversion). In addition, a suggestion of 0.5-mile buffer was made.

Our Response: We have revised the approach used in this final 4(d) rule to ensure that hibernating northern long-eared bats in the WNS zone are protected from incidental take independent of the buffer size used in the conservation measure. In addition, all northern long-eared bats both in and outside of the WNS zone are protected from purposeful take (e.g., killing or intentionally harassing northern long-

eared bats), including while in the hibernacula where they are most vulnerable. We have retained the 0.25-mile buffer (0.25-mile radius around known hibernacula entrance/access points used by bats) to further protect the hibernaculum and associated forested habitat for several reasons (see discussion above under *Conservation Measure 1: Tree Removal Near Known Northern Long-eared Bat Hibernacula*). Some of the peer-reviewers recommended that within the hibernacula buffer that certain limited activities should be allowed (e.g., timber harvest that only removes a small percentage of the forest habitat when bats are not active). As discussed above under *Conservation Measure 1: Tree Removal Near Known Northern Long-eared Bat Hibernacula*, not all tree-removal activities within the buffer of hibernacula will result in take. For example, a timber harvest might be conducted within the buffer when bats are unlikely to be roosting in trees (e.g., winter) that fully protects any bats in the hibernaculum as well as the hibernaculum's suitability for bats (i.e., access, microclimate), and does not significantly change the suitability of the habitat for foraging by northern long-eared bats or perhaps even improves prey availability. In such a case, the timber harvest, although within the buffer, is not likely to result in incidental take so we would not recommend that the harvester seek authorization for incidental take pursuant to the Act. Because the buffer only applies to actions that result in incidental take of the northern long-eared bat, we determined that there was no need to attempt to exempt activities (e.g., a limited timber harvest) where incidental take is unlikely.

2. *Comment:* Peer reviewer(s) commented that the WNS buffer zone should be removed and protections should occur throughout the range of the species.

Our Response: We have established prohibitions on the purposeful take of northern long eared bats throughout the species range. However, because WNS is the most significant threat known to be imperiling the species, we have determined that in areas where WNS has not been detected, additional prohibitions are not warranted. We recognize that the WNS zone will change over time. We remain committed to regularly updating the WNS zone map as new information about the spread of the *Pd* fungus becomes known.

3. *Comment:* Peer reviewer(s) commented that the WNS buffer zone should be expanded and/or changed to

accommodate a more site-specific approach, based on proximity to hibernacula, for example.

Our Response: We reevaluated the approach to the WNS zone in this final rule and determined that the 150-mile buffer used for the interim 4(d) rule appears to be very effective in capturing counties where new *Pd* detections are reported, in particular when looking at the new occurrences over the last 5 years. For more details of this analysis, please see our discussion in the WNS Zone section of this rule.

4. *Comment:* Peer reviewer(s) commented that the Service's definitions relative to forestry practices should be more precise and should use silviculture terminology.

Our Response: We have revised the prohibitions to no longer use specific forestry practices or silviculture terminology. Take of the northern long-eared bat within the context of forest management is not prohibited provided that conservation measures to protect hibernacula and known maternity roost trees are implemented as described in this rule.

5. *Comment:* Peer reviewer(s) recommended that the seasonal restrictions for the northern long-eared bat "pup season" be expanded and/or based on climate and geography within the species' range.

Our Response: We recognize that in some areas or in some years the period when young northern long-eared bats are non-volant may be earlier or later than the June and July timeframe. The timing of when northern long-eared bats give birth is likely a complex interplay of a variety of factors affecting fetal development (e.g., condition of the mother, temperature, prey availability), and similar factors may also influence the time required for young to develop the ability to fly. In addition, a study in West Virginia documented that the peak pregnancy and lactation dates shifted post WNS (Francl et al. 2012, p. 36). However, looking across a variety of studies, the June and July timeframe appears to generally capture what is typically reported as the non-volant period for northern long-eared bats across much of their range within the United States. We have determined that a single timeframe for implementing the prohibition on maternity roost tree removal provides clarity for the regulated public. In addition, while it does not modify the incidental take prohibition established in these regulations, our local field offices may be able to provide more refined local estimates of the non-volant period for specific areas. Project planners may choose to use these local estimates for

planning purposes where they are available.

6. *Comment:* Peer reviewer(s) recommended year-round protections for maternity roost trees or conversely that we remove entirely the protections for maternity trees because it is ineffective and serves as a disincentive for conducting surveys.

Our Response: Although northern long-eared bats have been documented to use some roost trees over multiple years, in many cases it is because the tree is dead or dying or has structural defects that provides the roosting features attractive to the species. Further, maternity roost trees are used only briefly (e.g., northern long-eared bats typically change roosts every few days, and only a relatively small percentage of those are used more than once in any one season). Given that maternity roosts trees are ephemeral on the landscape and used for very short periods of time in the active season, we determined that year-round protections for known, occupied maternity roost trees are not warranted. We considered removing the protections for known, occupied maternity roosts as recommended by another peer reviewer, but instead modify the protection so as to minimize the disincentive for conducting surveys. In developing this final rule, we kept protections for known, occupied maternity roosts for two reasons: (1) While it may be unlikely, in cases where a tree was about to be removed, but was known to be occupied by northern long-eared bats, they would have some protections while the young could not fly; and (2) we wanted known, occupied maternity roosts to be given consideration because they help to signal to project planners an area that is likely to be used by northern long-eared bats in the future (as this species has a high degree of site fidelity). We refined the protection for known, occupied maternity roosts to make it as practical to implement as possible in order to minimize the disincentive created for conducting surveys. Many forest managers implement similar types of relatively small seasonal buffers to protect other species of sensitive wildlife (e.g., around nesting raptors) and therefore we do not view this provision as a real disincentive to conducting surveys. Please see the *Conservation Measure 2: Tree Removal Near Known Maternity Roost Trees* section of this rule for additional details. We believe that the seasonal restriction helps to protect the most vulnerable life stages, in this case the non-volant pups, and is adequate for the purposes of this rule.

7. *Comment:* Peer reviewer(s) recommended that pregnant females should be protected as part of the seasonal restriction criteria.

Our Response: We recognize that pregnant females may be in torpor or less able to flee in early spring. However, we did not have information on how pregnancy in northern long-eared bats influenced the degree of torpor or their ability to flee from disturbance. As discussed in this rule, we expect only a small percentage of the species' forested habitat to be affected by activities (e.g., tree removal, prescribed fire) that might impact a pregnant northern long-eared bats in torpor and, therefore, we expect only small proportion of the species' population to be potentially exposed to these activities. Because of the relatively small exposure and uncertainty about how pregnancy affects degree of torpor or ability to flee, we have not expanded the seasonal protections for this purpose. We believe that seasonal restrictions help protect the vulnerable pup stage, when young pups cannot fly, and are adequate for the purposes of this rule.

8. *Comment:* Peer reviewer(s) stated that the conservation efforts will not be effective because the natural heritage data are limited with respect to known maternity roost trees and hibernacula.

Our Response: We agree that the data are limited and this can be challenging from the implementation and/or project planning perspective. However, we have purposefully limited protections where possible, to minimize the potential disincentive to continue to survey for the species. However, we anticipate that information in State natural heritage data bases will continue to improve post-listing.

9. *Comment:* Peer reviewer expressed concern with allowing lethal take of northern long-eared bats from human dwellings.

Our Response: We encourage the non-lethal removal of northern long-eared bats from human structures, preferably by excluding them outside of the maternity period, whenever possible. However, because of the potential for human health considerations, we have not required this as part of the exception to the purposeful take prohibition. We have limited this take to houses, garages, barns, sheds, and other buildings designed for human entry.

Public Comments

General

10. *Comment:* Commenters from many development sectors requested that their activities be included in the

suite of exempted activities under the 4(d) rule (specific sectors addressed below).

Our Response: In general, this final rule has been restructured to clarify prohibitions to take rather than to rely on a list of excepted activities. Prohibitions are applied in this final rule where necessary and advisable for the conservation of the species. Therefore, the various "sectors" do not need to be identified or "excepted" to apply rule provisions.

Forest Management

11. *Comment:* Several commenters recommended that forest conversion be included as an excepted activity. Comments were specific to conversion of hardwood forests to pine plantations, managed pine forest, pine ecosystem, and the Service's characterization of pine stands as monoculture stands representing poor bat habitat.

Our Response: Incidental take resulting from forest management, including forest conversion, is not a prohibited action pursuant to this final 4(d) rule provided conservation measures to protect known hibernacula and known, occupied maternity roost trees are employed. Please see sections above titled Forest Management and Forest Conversion.

12. *Comment:* Commenters stated that forest management must occur to avoid habitat deterioration to poor quality bat habitat. They further stated that forest health depends upon active management including tree removal and clearcutting.

Our Response: We agree that forest management can be very important in creating or maintaining forest successional patterns that help to ensure suitable trees are available for roosting northern long-eared bats. Further, forest management can help to increase prey availability or suitability of foraging habitat. Please see our discussion above under Forest Management for additional details. Incidental take resulting from forest management is not prohibited pursuant to this final 4(d) rule provided conservation measures to protect known hibernacula and known maternity roost trees are employed.

13. *Comment:* Commenters suggested that the Service consider exemptions for sustainable forest practices implemented under a sustainable forest management plan or sustainable forestry certificate program.

Our Response: We considered incorporating other possible conservation measures related to forest management and conversion. However, given the overall small percentage of the species' range potentially affected by

these activities in any given year, it was not clear that additional conditions related to incidental take from forest management or conversion would meaningfully change the conservation outlook for the species. Further, adding protections with uncertain benefits, but with large potential public impacts can hinder support for species conservation. Incidental take resulting from forest management is not prohibited pursuant to this final 4(d) rule provided conservation measures to protect known hibernacula and known, occupied maternity roost trees are employed.

14. *Comment:* Commenters stated that the Service should focus on the elimination of WNS rather than regulating timber harvest in summer habitat.

Our Response: Efforts to address the threat posed by WNS are on-going by the Service and many partners across the species range. Incidental take resulting from forest management or forest conversion is not prohibited pursuant to this final 4(d) rule provided conservation measures to protect known hibernacula and known, occupied maternity roost trees are employed.

15. *Comment:* A commenter stated that the Service should halt commercial timber harvest and another commenter suggested restricting the removal of snags and coarse woody debris in areas populated by the species.

Our Response: The northern long-eared bat is not limited in terms of habitat availability for feeding, breeding, and sheltering in the summer (non-hibernating) months. Please see the discussions under Forest Management and Forest Conversion above in this rule. We have carefully considered the value of habitat protection for the species. We have determined that protection of summer habitat is not required for species conservation except where trees may be occupied by young, non-volant (flightless) pups and for areas immediately surrounding hibernacula where they swarm and feed just prior to hibernation and when they emerge from hibernation in the spring. Due to this swarming behavior and the vulnerability of bats when hibernating, we have determined that take prohibitions are necessary and advisable in winter habitat (hibernacula), where bats are subject to the effects of WNS. In addition, we have determined that protection of known, occupied maternity roost trees is necessary and advisable in order to protect young pups.

16. *Comment:* The Service should increase protections to avoid impacts to bats from the point that they emerge from hibernation to the end of the

maternity/pup season. Forest management should only be done in a manner that retains sufficient vegetative cover and protects northern long-eared bats at the maternity colony level.

Our Response: We considered incorporating other possible conservation measures related to forest management and conversion. However, given the overall small percentage of the species' range potentially affected by these activities in any given year, it was not clear that additional conditions related to the incidental take from forest management or conversion would meaningfully change the conservation outlook for the species. Further, adding protections with uncertain benefits, but with large potential public impacts can hinder support for the species conservation. We have determined that protection of known, occupied maternity roost trees during the months of June and July is an adequate conservation measure for the protection of non-volant pups.

17. *Comment:* Commenter(s) suggested an exemption for invasive species management in forested landscapes.

Our Response: Outside of hibernacula, this final rule does not prohibit take from activities other than tree removal. Therefore, incidental take associated with management of invasive species using pesticides or other interventions is not prohibited. Where intervention involves tree removal, conservation measures must be followed to comply with this rule. However, entities that cannot apply the required conservation measures have other means to have take excepted, such as section 10 permits or section 7 incidental take authorization.

Human Structures

18. *Comment:* Commenters suggested expansion of the definition of human structures/dwellings to include bridges, culverts, cattle passes, and other human-made structures.

Our Response: This final rule does not prohibit direct take of northern long-eared bats occupying human structures defined as houses, garages, barns, sheds, and other buildings designed for human entry. While we encourage landowners and project proponents to find other mechanisms to avoid killing or injuring bats that occupy bridges, culverts, and other structures, incidental take is not prohibited by this rule. While bridge and culvert use for the species has been documented, it is relatively uncommon compared to tree or other types of roost sites (e.g., barns) and, therefore, did not warrant specific provisions in this final rule. Within the WNS zone, however,

project proponents must apply conservation measures to avoid habitat removal around hibernacula and to avoid cutting or destroying known, occupied maternity roost trees or any other trees within a 150-foot radius from the maternity roost tree during June and July.

19. *Comment:* Commenters stated that take of northern long-eared bat in human dwellings should not be exempted and requested that the Service provide rationale for determining that this exemption is necessary.

Our Response: We encourage the non-lethal removal of northern long-eared bats from human structures whenever possible, preferably by excluding them from the structure outside of the maternity period. However, because of the potential for human health considerations, we have not required this as part of the exception to the purposeful take prohibition. Please see the discussion under Exceptions to the Purposeful Take Prohibition in this rule for additional details. Take of northern long-eared bats to remove them from human structures is not prohibited.

Hazardous Tree Removal

20. *Comment:* Several comments requested clarification and/or expansion of the exception to take for removal of hazardous trees.

Our Response: Our intent is to provide for the removal of hazardous trees for the protection of human life and property. This is not the same as hazard tree removal within the context of forest management or rights-of-way management where hazard trees are identified as trees that are in danger of falling. Incidental take of northern long-eared bats from hazardous tree removal in the context of rights-of-way management is not prohibited by the final 4(d) rule provided conservation measures to protect known hibernacula and known, occupied maternity roost trees are applied.

Minimal Tree Removal

21. *Comment:* Several commenters requested that minimal tree removal be expanded to a larger acreage.

Our Response: Conversion of forested cover to alternate uses is not prohibited under this final rule, provided that conservation measures are followed when those activities occur within the WNS zone. For a discussion of this issue, please see Forest Conversion section in this rule.

22. *Comment:* Several commenters stated that the exemption for minimal tree removal should be expanded to other (non-forest) industry entities and should include all activities that have a

minimal effect on the northern long-eared bat.

Our Response: Conversion of forested acreages to alternate uses is not prohibited under this final rule, provided that conservation measures are followed. This is applicable to all entities that may engage in activities that remove trees or convert forested acres. See the Forest Conversion section in this rule.

Oil and Gas Industry

23. *Comment:* A number of commenters from the oil and gas industry stated that the industry should be included within exemptions from take prohibitions because: (1) Their impact on northern long-eared bat habitat is small compared to forest management impacts; (2) habitat is re-vegetated following pipeline installation; (3) oil and gas exploration and transport are not the stated primary threat to the species (WNS is the primary threat); and (4) adequate regulatory mechanisms exist for mitigating industry environmental impacts.

Our Response: Take of northern long-eared bats attributable to habitat conversion and habitat loss is not prohibited under this final 4(d) rule, provided that developers and project proponents follow conservation measures described herein when activities occur within the WNS zone. See the Forest Conversion section in this rule.

Rights-of-Way

24. *Comment:* Commenter(s) stated that loss of habitat attributable to clearing for linear projects is miniscule compared to habitat conversion due to forest management.

Our Response: Incidental take attributable to maintenance, development, and rights-of-way expansion is not prohibited by this final 4(d) rule, provided conservation measures contained herein are followed when activities occur within the WNS zone.

25. *Comment:* Commenter(s) stated that the exception, as proposed and implemented via the interim rule, should be expanded to greater than 100-feet and should be clarified.

Our Response: Incidental take attributable to maintenance, development, and rights-of-way expansion is not prohibited by this final 4(d) rule, provided conservation measures contained herein are followed when activities occur within the WNS zone.

26. *Comment:* Commenter(s) stated that the exception for rights-of-way

should be expanded to include new rights-of-way and transmission corridors.

Our Response: Incidental take attributable to maintenance, development, and rights-of-way expansion is not prohibited by this final 4(d) rule, provided conservation measures contained herein are followed when activities occur within the WNS zone.

27. *Comment:* Commenter(s) disagree with the Service's assertion that vegetation removal within or adjacent to rights-of-way is a small-scale alteration of habitat.

Our Response: It is within the context of the species range and potential for available habitat that right-of-way development, maintenance or expansion are small scale alterations of forest habitat. The extent of conversion from forest to other land cover types has been fairly consistent with conversion to forest (cropland reversion/plantings). Further, the recent past and projected amounts of forest loss to conversion from all sources was and is anticipated to be only a small percentage of the total amount of forest habitat. For example by 2060, 4 to 8 percent of forest area found in 2007 across the conterminous United States is expected to be lost (U.S Forest Service 2012, p. 12). We have not broadened the incidental prohibition related to habitat loss because WNS is the predominant threat to the species. Summer habitat does not now or in the future appear likely to be a limiting factor for the species; therefore, we have focused the protections on vulnerable individuals in summer habitat and protecting the winter habitat, where sensitivity to the effects of WNS is heightened.

28. *Comment:* Commenter(s) requested that the Service expand the rights-of-way exemption to include access roads and infrastructure required to deliver services.

Our Response: Incidental take attributable to maintenance, development, and rights-of-way expansion is not prohibited by this final 4(d) rule, provided conservation measures contained herein are followed when activities occur within the WNS zone. This includes related activities such as access road clearing and facilities related to delivery of services. In the case where tree removal is the activity in question, incidental take is not prohibited provided that the conservation measures herein are followed when those activities occur within the WNS zone.

29. *Comment:* Commenter suggested that the final 4(d) rule should prohibit all tree clearing activities related to the

maintenance, repair, and creation of rights-of-way.

Our Response: The northern long-eared bat is not limited in terms of habitat availability for feeding, breeding, and sheltering in the summer (non-hibernating) months. We have carefully considered the value of habitat protection for the species. We have determined that protection of summer habitat is not required for species conservation except where trees are known to be occupied by northern long-eared bats when the young are non-volant (flightless) and for areas immediately surrounding hibernacula where they swarm and feed just prior to hibernation and when they emerge from hibernation in the spring.

Solar Energy

30. *Comment:* Commenter(s) requested that solar energy development be provided an exemption under the 4(d) rule.

Our Response: Solar energy developers will need to consider the impacts of their development and operations in light of the prohibitions of this rule. Incidental take outside of the WNS zone is not prohibited. Incidental take from tree-removal activities within the WNS zone is prohibited under specific conditions related to known hibernacula and known, occupied maternity roost trees (see Activities Involving Tree Removal section above for details).

Agriculture

31. *Comment:* Commenter(s) requested that agricultural activities be included in the suite of exempted activities under the 4(d) rule.

Our Response: We have substantially revised the prohibitions and exceptions in this final rule that may apply to agricultural activities. Agricultural producers/operators will need to consider the impacts of their activities in light of the prohibitions of this rule. Incidental take outside of the WNS zone is not prohibited. Incidental take from tree removal activities within the WNS zone is prohibited under specific conditions related to known hibernacula and known, occupied maternity roost trees (see Activities Involving Tree Removal, above, for details). This final rule has been restructured in a manner that it applies prohibitions where necessary and advisable for conservation of the species. Therefore, agricultural development and operations do not need to be specifically "excepted" in order to apply the rule's provisions.

Caves and Mines

32. *Comment:* Commenter(s) requested an exemption for show caves and cave tours.

Our Response: Hibernating bats are very sensitive to disturbance as discussed in greater detail under the Hibernacula section of this document. This final rule prohibits the incidental take of northern long-eared bats in hibernacula inside the WNS zone as well as the purposeful take (e.g., purposefully harassing or killing) of northern long-eared bats in hibernacula both inside and outside of the WNS zone. When this species occupies caves or mines used by people regardless of the purpose, the provisions of this 4(d) rule apply. Show cave or mine activities inside the WNS zone that do not result in the incidental take of northern long-eared bats are not prohibited. In other words, if northern long-eared bats are not being disrupted from their normal hibernation behaviors (e.g., by avoiding areas with hibernating bats, limiting noise and lighting in areas used by bats), we do not consider human use of the cave or mine to be a “take” of the bats.

33. *Comment:* Commenter(s) stated that an exemption should be made available for mining, mineral exploration, and coal extraction activities.

Our Response: Incidental take of northern long-eared bats that results from tree-removal activity, including mining operations, is prohibited in some circumstances (see Activities Involving Tree Removal, above). However, hibernating bats are very sensitive to disturbance, as discussed in greater detail under the Hibernacula section of this rule. This final rule prohibits the incidental take of northern long-eared bats in hibernacula inside the WNS zone as well as the purposeful take (e.g., purposefully harassing or killing) of northern long-eared bats in hibernacula both inside and outside of the WNS zone. Inside the WNS zone, the take of northern long-eared bats in mines and man-made tunnels for mineral or coal extraction includes any activity that kills, injures, harms, or harasses the species. Mining, mineral exploration, and coal extraction activities will need to work with the Service to find alternative means to authorize take, such as through a section 10 permitting process or section 7 process where applicable. Mining activities inside the WNS zone that do not result in the incidental take of northern long-eared bats are not prohibited. In other words, if northern long-eared bats are not being killed, injured, or otherwise disrupted from

their normal hibernation behaviors by the mining operations, we do not consider those activities to be a “take” of the bats.

34. *Comment:* Commenter(s) suggested that activities designed to reclaim abandoned mines or maintain cave environments for the benefit of wildlife species should be exempt under the 4(d) rule.

Our Response: We agree that beneficial reclamation and maintenance should be encouraged. However, exception from take prohibitions through a species-specific 4(d) rule is not the appropriate mechanism for authorizing this activity. Where abandoned mines and cave environments are in use by northern long-eared bats, take associated with maintenance is prohibited; however, we encourage project proponents to work with the Service to implement best management practices to avoid or minimize the effects of their actions in the interest of habitat improvement. We will work with project proponents to determine alternate ways to authorize activities, such as section 10 permits or section 7 incidental take authorization.

Mosquito Control

35. *Comment:* Commenter challenges the Service’s assertion that chemicals used in mosquito control (malathion and others of comparable risk to mammals) pose a risk to northern long-eared bats; commenter further requests an exemption for mosquito control activities, especially where there is a public health risk.

Our Response: Please see the Environmental Contaminants section of this rule for details concerning our evaluation of the risks from pesticide applications. After careful consideration of the available information, we do not include in this rule a prohibition on the incidental take of northern long-eared bats as result of pesticide application provided the application is a “lawful activity,” that is, it must comply all applicable State laws. Any northern long-eared bat unlawfully taken pursuant to a State pesticide law would be a violation of this final 4(d) rule.

Adequacy and Clarity of 0.25 Mile Hibernacula Buffer

36. *Comment:* Commenter(s) suggested that this buffer is too restrictive for landowners.

Our Response: The Service has determined that a protective buffer around known hibernacula is necessary and advisable for the conservation of the species. Please see the discussion under *Conservation Measure 1: Tree Removal Near Known Northern Long-eared Bat*

Hibernacula of this rule for our explanation of the need for this buffer. As described in that section, we have prohibited incidental take of northern long-eared bats under specific tree-removal circumstances; however, that does not mean that all activities involving tree-removal activities within the 0.25-mile (0.4-km) buffer of hibernacula will result in take. For example, a timber harvest might be conducted within 0.25 miles (0.4 km) of a hibernaculum at a time when bats are unlikely to be roosting in trees within the buffer (e.g., winter) that fully protects any bats in the hibernaculum as well as the hibernaculum’s suitability for bats (i.e., bat’s access, microclimate), and does not significantly change the suitability of the habitat for foraging by northern long-eared bats or perhaps even improves prey availability. In such a case, the timber harvest, although closer than 0.25 miles (0.4 km) to the hibernaculum, is not likely to result in incidental take, so we would not recommend that the timber harvester seek authorization for incidental take pursuant to the Act. Further, while incidental take of northern long-eared bats within that buffer is prohibited (in the WNS zone), it may be authorized on a case-by-case basis with further coordination with the Service at a local level. Take may be authorized through section 10 or section 7 of the Act. In addition, it is our expectation that project modifications may be made that would protect the hibernaculum and allow for the project proponent’s objectives to be met.

37. *Comment:* Commenter(s) seek clarification on whether the buffer and prohibition to clearcutting (within the buffer) is a year-round restriction.

Our Response: Yes, the protection of the hibernaculum and a buffer around it is a year round protective measure and applies to all types of tree-removal activities in the WNS zone.

38. *Comment:* Commenter(s) suggested that the buffer around hibernacula be limited to fall swarming and spring emergence when northern long-eared bats are present.

Our Response: We have determined that protective measures must be considered year-round for several reasons, including that habitat lost outside of the spring emergence and fall swarming period could affect the suitability of those habitats later during spring emergence or fall swarming. Further, we have included the buffer on hibernacula for several reasons beyond protecting foraging habitat during fall swarming and spring emergence. In particular, the buffer will help to protect the micro-climate characteristics of

hibernacula and other entrances used by bats that may not be reflected in the primary location information for hibernacula. For example, many caves or abandoned mines used may have entrances used by bats that are not reflected in the general location information for those sites that are used by people; a buffer helps to protect less prominent features that may be important to bats. Projects may be able to be planned or modified within those buffer areas to retain sufficient habitat and avoid harm; however, the Service considers coordination on a case-by-case basis to be important to assure necessary conservation.

39. *Comment:* Several commenter(s) suggested an increased buffer area around hibernacula would be more appropriate.

Our Response: We have revised the approach used in this final 4(d) rule to ensure that hibernating northern long-eared bats in the WNS zone are protected from incidental take independent of the buffer size used in the conservation measure. In addition, all northern long-eared bats both inside and outside of the WNS zone are protected from purposeful take (e.g., killing or intentionally harassing northern long-eared bats), including while in hibernacula where they are most vulnerable. We have retained the 0.25-mile buffer (0.25-mile radius from known hibernacula entrance/access points used by bats) to further protect the hibernacula and associated forested habitat for several reasons (see discussion above under *Conservation Measure 1: Tree Removal Near Known Northern Long-eared Bat Hibernacula*).

40. *Comment:* Commenter(s) expressed concern with implementing measures when they do not have data/information on known hibernacula.

Our Response: The Service recognizes the challenges associated with data sharing and data management. Many states share data management concerns and guard data carefully. We encourage landowners to continue to work with your State natural resources and natural heritage staff to evaluate your ownership for the presence of these important resources. When seeking information on the presence of hibernacula within your project boundary, our expectation is that a project proponent will complete due diligence to determine available data. However, if information is not available, we recognize that the project proponent that has made reasonable efforts to determine whether there are known hibernacula on the property is in the position of not knowing if no data have been provided.

Maternity Roost Tree Restrictions

41. *Comment:* Commenter(s) expressed concerns about having adequate information to identify maternity roost trees.

Our Response: We recognize the challenges associated with data sharing. Please see response to Comment 40. While not required by this rule, the Service recommends summer surveys to definitively locate maternity roost trees.

42. *Comment:* Commenter(s) requested that we clarify that roost trees means maternity roost trees.

Our Response: We have made this final 4(d) rule specific to maternity roost trees.

43. *Comment:* Commenter(s) expressed disagreement with the 0.25 mile buffer around known, occupied roost trees. Some commented that this buffer was too small, while some commented that it was too large.

Our Response: In the interim 4(d) rule (80 FR 17974; April 2, 2015), the buffer around known, occupied roost trees applied only to some types of tree-removal activities (e.g., forest management, rights-of-ways, prairie management) and excluded only clearcuts (and similar harvest methods). Given the relatively small percent of forest habitat anticipated to be impacted by forest management or conversion (see Forest Management and Forest Conversion, above of this rule for more details), we revised the buffer around the known maternity roost trees. As explained in more detail under *Conservation Measure 2: Tree Removal Near Known Maternity Roost Trees*, we have made the buffer more broadly applicable to all tree-removal activities, but have narrowed it in size to provide protection for the maternity roost tree, while minimizing the potential that the protective measure would serve as impediment to conducting new surveys. We have reduced the buffer around known, occupied maternity roost trees to a radius of 150 feet around the known, occupied maternity roost tree.

44. *Comment:* Commenter(s) stated that the Service should require surveys to determine where roost trees are located.

Our Response: The Act does not require a private landowner to survey his or her property to determine whether endangered or threatened wildlife and plants occupy their land. We encourage landowners to voluntarily seek additional information to conserve natural resources in their land use/land management actions; however, we will not require surveys to locate northern long-eared bats and maternity roost trees on private property.

Residential Housing Development

45. *Comment:* Commenter(s) requested that northern long-eared bat take be excepted for the purposes of residential housing development.

Our Response: Take resulting from removal of summer habitat (tree removal) is not prohibited provided the conservation measures set forth in this rule are followed when the habitat removal occurs within the WNS zone. The provisions of this final rule have been restructured to clarify prohibitions rather than rely on a list of excepted activities.

Wind Energy Development

46. *Comment:* Commenter(s) requested that northern long-eared bat take be excepted for the purposes of renewable energy development and operation (wind energy).

Our Response: Incidental take resulting from wind energy development and operation is not prohibited, provided that the conservation measures set forth in this rule are followed to protect hibernacula and known, occupied maternity roost trees. We strongly encourage voluntary conservation measures and best management practices such as feathering or elevated cut-in speeds to reduce impacts to northern long-eared bats and other bats; however, we have not prohibited incidental take attributable to wind energy in this final rule. Please see the Wind Energy Facilities section of this rule for additional details.

Natural Resource Management

47. *Comment:* Commenter(s) requested that northern long-eared bat take be excepted when activities are included in Department of Defense integrated natural resource management plans, providing for activities such as recreational activities, burns, and other temporary but insignificant effects on the northern long-eared bat.

Our Response: Incidental take resulting from activities described as recreational activities and beneficial wildlife habitat management/maintenance is not prohibited, provided that the conservation measures set forth in this rule are followed when the activity occurs inside the WNS zone. We have completed a section 7 analysis on the provisions of this final 4(d) rule to ensure that actions completed in accordance with the final rule are not likely to jeopardize the continued existence of the species. Where these resource management activities do not fit within the final rule, section 7 consultation would need to be

completed to authorize incidental take of the northern long-eared bat.

Compliance and Monitoring

48. *Comment:* Commenter(s) recommended that surveys be required and that landowners be required to report on their activities in order to receive the benefits of the 4(d) rule.

Our Response: While we welcome landowners' efforts to determine where bats may be located on their property, the Act does not require that a landowner survey his or her property to find species. We are not mandating that surveys be completed as part of this rule.

Alternate Section 4(d) Provisional Language

49. *Comment:* One organization commented on behalf of its members and 14 other environmental organizations (collectively referenced as "the Center") in support of the adoption of a different 4(d) rule and in opposition of the Service's proposed and the interim 4(d) rules.

Our Response: The remaining paragraphs (under the heading Summary of Comments and Recommendations on the Proposed and Interim 4(d) Rules) pertain to the comments we received from the Center. With respect to the overarching comment that our 4(d) rule does not conserve the species, we believe that our final 4(d) rule provides for the "necessary and advisable" conservation of the species, as described herein. For further information, please see our Determination section, below.

With respect to the Center's proposed 4(d) language, we note that the proposed language defines specific prohibitions and would make a regulatory determination of "take" to include a number of actions. These include cave and mine entry without implementing decontamination protocols; transporting equipment into caves and mines or between caves and mines between the WNS zone and non-WNS zone; cave and mine entry during hibernation periods; activities associated with hydraulic fracturing within 5 miles of a hibernaculum, within 1.5 miles of an occupied roost tree, or within 3 miles of an acoustic detection or bat capture record; noise disturbance activities within a 0.5-mile radius of a hibernaculum during the hibernation period; and disruption of water sources within hibernacula. With respect to protection of hibernacula, take of northern long-eared bats is prohibited. Establishing the causal connection between a variety of activities such as those the Center proposed to be defined

as prohibitions is beyond the scope of this rule. We have addressed hibernacula protection provisions in this rule under the section entitled *Conservation Measure 1: Tree Removal Near Known Northern Long-eared Bat Hibernacula*. Protections in this final rule are adequate to protect the species.

In addition to the Center's suggested language for hibernacula prohibitions, they recommended language regarding prohibitions for prescribed burning and aerial spraying. Based on our analysis, we conclude that prescribed burning and aerial spraying do not have a measurable population-level impact on the species and regulation of those activities will not meaningfully impact the species' ability to recover. For further information on prescribed fire impacts, see Prescribed Fire above. For further information on aerial spraying of pesticides, please see the Environmental Contaminants section above.

The final prohibition suggested by the Center was the operation of utility-scale wind projects, specifically during the hours from dusk to sunrise during the fall swarming season, at low wind speeds, and within 5 miles of a hibernaculum. Incidental take resulting from the operation of wind energy facilities is not prohibited by this final 4(d) rule and a complete discussion of known impacts to the species may be found in the Wind Energy Facilities section above.

Finally, the Center provided suggested regulatory text for exemptions from prohibitions that included language for seasonal restrictions, clearing restrictions, mandatory measures for hibernacula protection (gate installation), water quality protection measures, and data collection and reporting requirements. We recognize the effort that has gone into the development of this alternative language. However, we have carefully considered the measures that are necessary for the protection of the species. Our final rule has been developed based on the Service's desire to implement protective measures that will make a meaningful impact on species conservation and recovery. As stated elsewhere in this document (see Determination section, below), we have provided regulatory flexibility while implementing protective measures where we have determined those measures to be necessary and advisable for conservation of the species.

Determination

Section 4(d) of the Act states that "the Secretary shall issue such regulations as she deems 'necessary and advisable to provide for the conservation'" of

species listed as threatened species. Conservation is defined in the Act to mean "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary."

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, the Secretary may find that it is necessary and advisable not to include a taking prohibition, or to include a limited taking prohibition. See *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana v. Verity*, 853 F. 2d 322 (5th Cir. 1988), the rule need not address all the threats to the species. As noted by Congress when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species," or she may choose to forbid both taking and importation but allow the transportation of such species, as long as the prohibitions, and exceptions to those prohibitions, will "serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to violate any regulation pertaining to any threatened species of fish or wildlife listed pursuant to section 4 of the Act and promulgated by the Secretary pursuant to authority provided by the Act. Under this final 4(d) rule, incidental take of the northern long-eared bat will not be prohibited outside the WNS zone. Incidental take also will not be prohibited within the WNS zone, outside of hibernacula, provided that it occurs more than 0.25 miles (0.4 km) from a known hibernacula and does not result from an activity that cuts or destroys known occupied maternity roost trees, or any other trees within a 150-foot (45-m) radius from the maternity tree, during the pup season (June 1 through July 31).

Accordingly, we have determined that this provision is necessary and advisable for the conservation of the northern long-eared bat as explained below.

Although not fully protective of every individual, the conservation measures identified in this final rule help protect maternity colonies. This final species-specific rule under section 4(d) of the Act provides the flexibility for certain activities to occur that have not been the cause of the species' imperilment, while still promoting conservation of the species across its range.

The northern long-eared bat was listed as a threatened species under the Act, with an interim rule under section 4(d), on April 2, 2015 (80 FR 17974). At that time, the Service invited public comment on the interim 4(d) rule for 90 days, ending July 1, 2015. The Service had already received comments for 60 days on its proposed 4(d) rule (80 FR 2371; January 16, 2015). In total, the Service received approximately 40,500 comments on the proposed and interim 4(d) rules. For a complete discussion of the comments, as well as the Service's response to comments, see Summary of Comments and Recommendations on the Proposed and Interim 4(d) Rules, above.

Because the primary threat to the northern long-eared bat is a fungal disease known as WNS, the Service has tailored the final 4(d) rule to prohibit the take of northern long-eared bats from certain activities within areas where they are in decline, as a result of WNS, and within these areas we apply incidental take protection only to known, occupied maternity roost trees and known hibernacula. These protections will help to conserve the northern long-eared bat during its most vulnerable life stages (from birth to flight, or volancy) and during spring and fall swarming (near hibernacula).

In summary, this 4(d) rule is necessary and advisable to provide for the conservation of the northern long-eared bat because it provides for protection of known maternity roost trees and known hibernacula within the WNS zone. In addition, promulgation of this rule allows the conservation community to provide for species conservation where it can affect change, namely during the northern long-eared bat's most vulnerable life stages and where hibernation occurs. This final 4(d) rule allows the regulated public to manage lands in a manner that is lawful and compatible with species' survival, and it allows for protection of the species in a manner that the Secretary deems to be necessary and advisable for the conservation of the northern long-eared bat. By this rule, the Secretary deems that the prohibition of certain take, which is incidental to otherwise lawful activities that take bat habitat, is not necessary for the long-term survival

of the species. Furthermore, she acknowledges the importance of addressing the threat of WNS as the primary measure to arrest and reverse the decline of the species. Nothing in this 4(d) rule affects other provisions of the Act, such as designation of critical habitat under section 4, recovery planning under section 4(f), and consultation requirements under section 7.

Required Determinations

Regulatory Planning and Review

(Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant. Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final 4(d) rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Listing and status determinations under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), and any prohibitions or protective measures afforded the species under the Act are exempt from the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996). However, as this final 4(d) rule is being promulgated following the final listing of the northern long-eared bat, we evaluate whether the Regulatory Flexibility Act applies to this rulemaking.

Under the Regulatory Flexibility Act, whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that

describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). Based on the information that is available to us at this time, we certify that this rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

On April 2, 2015 (80 FR 17974), we published the final determination to list the northern long-eared bat as a threatened species and an interim 4(d) rule. That rule became effective on May 4, 2015, and the interim 4(d) rule will remain in effect until this final rule becomes effective (see **DATES**, above). The interim 4(d) rule generally applies the prohibitions of 50 CFR 17.31 and 17.32 to the northern long-eared bat, which means that the interim rule, among other things, prohibits the purposeful take of northern long-eared bats throughout the species' range, but the interim rule includes exceptions to the purposeful take prohibition. The exceptions for purposeful take are: (1) In instances of removal of northern long-eared bats from human structures (if actions comply with all applicable State regulations); and (2) for authorized capture, handling, and related activities of northern long-eared bats by individuals permitted to conduct these same activities for other bat species until May 3, 2016. Under the interim rule, incidental take is not prohibited outside the WNS zone if the incidental take results from otherwise lawful activities. Inside the WNS zone, there are exceptions for incidental take for the following activities, subject to certain conditions: Implementation of forest management; maintenance and expansion of existing rights-of-way and transmission corridors; prairie management; minimal tree removal; and removal of hazardous trees for the protection of human life and property.

This final 4(d) rule does not generally apply the prohibitions of 50 CFR 17.31 to the northern long-eared bat. This rule continues to prohibit purposeful take of

northern long-eared bats throughout the species' range, except in certain cases, including in instances of removal of northern long-eared bats from human structures and for authorized capture, handling, and related activities of northern long-eared bats by individuals permitted to conduct these same activities for other bat species until May 3, 2016. After May 3, 2016, a permit pursuant to section 10(a)(1)(A) of the Act is required for the capture and handling of northern long-eared bats. Under this rule, incidental take is still not prohibited outside the WNS zone. Within the WNS zone, incidental take is prohibited only if: (1) Actions result in the incidental take of northern long-eared bats in hibernacula; (2) actions result in the incidental take of northern long-eared bats by altering a known hibernaculum's entrance or interior environment if the alteration impairs an essential behavioral pattern, including sheltering northern long-eared bats; or (3) tree-removal activities result in the incidental take of northern long-eared bats when the activity either occurs within 0.25 mile (0.4 kilometer) of a known hibernaculum, or cuts or destroys known, occupied maternity roost trees or any other trees within a 150-foot (45-meter) radius from the maternity roost tree during the pup season (June 1 through July 31). This approach allows more flexibility to affected entities and individuals in conducting activities within the WNS zone. Under this rule, we individually set forth prohibitions on possession and other acts with unlawfully taken northern long-eared bats, and on import and export of northern long-eared bats. These prohibitions were included in the interim 4(d) through the general application of the prohibitions of 50 CFR 17.31 to the northern long-eared bat. Under this rule, take of the northern long-eared bat is also not prohibited for the following: Removal of hazardous trees for protection of human life and property; take in defense of life; and take by an employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service. Regarding these three exceptions, take in defense of life was not included in the interim 4(d) rule, but the other two exceptions were, either through the general application of 50 CFR 17.31 or through a specific exception included in the interim 4(d) rule. Therefore, this final 4(d) rule will result in less restrictive regulations

under the Act than those set forth in the interim 4(d) rule.

We completed an analysis of the forested land area that may be impacted by this rulemaking. There are approximately 400,000,000 acres (161,874,256 ha) of forested habitat across the range of the northern long-eared bat, which includes 37 States and the District of Columbia. This rule may restrict land use activities on approximately 200,000 acres (80,937 ha). This area constitutes less than 0.05 percent of all forested habitat across the extensive range of the northern long-eared bat. Any impact in this very small portion of forested habitat is not expected to affect a substantial number of entities in any given sector, nor result in a significant economic impact on any given entity. For the above reasons, we certify that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, a final regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. For reasons discussed within this final rule, we believe that the rule will not have any effect on energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or [T]ribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State,

local, and [T]ribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

(2) This final 4(d) rule will result in less restrictive regulations under the Act, as it pertains to the northern long-eared bat, than would otherwise exist without a 4(d) rule or under the interim 4(d) rule. As a result, we do not believe that this rule will significantly or uniquely affect small government entities. Therefore, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this final rule will not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because this 4(d) rule will result in less-restrictive regulations under the Act than would otherwise exist. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, this final 4(d) rule does not have significant Federalism effects. A federalism summary impact statement is not required. This rule will not have substantial direct effects on the State, on the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have prepared a final environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969. For information on how to obtain a copy of the final environmental assessment, see **ADDRESSES**, above. The final environmental assessment will also be available on the Internet at <http://www.regulations.gov> and at <http://www.fws.gov/midwest/Endangered>.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

In October 2013, Tribes and multi-tribal organizations were sent letters inviting them to begin consultation and coordination with the service on the proposal to list the northern long-eared bat. In August 2014, several Tribes and multi-tribal organizations were sent an additional letter regarding the Service's intent to extend the deadline for making a final listing determination by 6 months. A conference call was also held

with Tribes to explain the listing process and discuss any concerns. Following publication of the proposed rule, the Service established three interagency teams (biology of the northern long-eared bat, non-WNS threats, and conservation measures) to ensure that States, Tribes, and other Federal agencies were able to provide input into various aspects of the listing rule and potential conservation measures for the species. Invitations for inclusion in these teams were sent to Tribes within the range of the northern long-eared bat and a few tribal representatives participated on those teams. Two additional conference calls (in January and March 2015) were held with Tribes to outline the proposed species-specific 4(d) rule and to answer questions. Through this coordination, some Tribal representatives expressed concern about how listing the northern long-eared bat may impact forestry practices, housing development programs, and other activities on Tribal lands.

References Cited

A complete list of references cited in this document is available on the Internet at <http://www.regulations.gov> and upon request from the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Midwest Region of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.40 by revising paragraph (o) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(o) Northern long-eared bat (*Myotis septentrionalis*). The provisions of this rule are based upon the occurrence of

white-nose syndrome (WNS), a disease affecting many U.S. bat populations. The term “WNS zone” identifies the set of counties within the range of the northern long-eared bat within 150 miles of the boundaries of U.S. counties or Canadian districts where the fungus *Pseudogymnoascus destructans* (*Pd*) or WNS has been detected. For current information regarding the WNS zone, contact your local Service ecological services field office. Field office contact information may be obtained from the Service regional offices, the addresses of which are listed in 50 CFR 2.2.

(1) *Prohibitions*. The following prohibitions apply to the northern long-eared bat:

(i) Purposeful take of northern long-eared bat, including capture, handling, or other activities.

(ii) Within the WNS zone:

(A) Actions that result in the incidental take of northern long-eared bats in known hibernacula.

(B) Actions that result in the incidental take of northern long-eared bats by altering a known hibernaculum's entrance or interior environment if it impairs an essential behavioral pattern, including sheltering northern long-eared bats.

(C) Tree-removal activities that result in the incidental take of northern long-eared bats when the activity:

(1) Occurs within 0.25 mile (0.4 kilometer) of a known hibernaculum; or

(2) Cuts or destroys known occupied maternity roost trees, or any other trees within a 150-foot (45-meter) radius from the maternity roost tree, during the pup season (June 1 through July 31).

(iii) Possession and other acts with unlawfully taken northern long-eared bats. It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any northern long-eared bat that was taken in violation of this section or State laws.

(iv) Import and export.

(2) *Exceptions from prohibitions*. (i) Any person may take a northern long-eared bat in defense of his own life or the lives of others, including for public health monitoring purposes.

(ii) Any person may take a northern long-eared bat that results from the removal of hazardous trees for the protection of human life and property.

(iii) Any person may take a northern long-eared bat by removing it from human structures, but only if the actions comply with all applicable State regulations.

(iv) Purposeful take that results from actions relating to capture, handling, and related activities for northern long-eared bats by individuals permitted to

conduct these same activities for other species of bat until May 3, 2016.

(v) All of the provisions of § 17.32 apply to the northern long-eared bat.

(vi) Any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with

the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take northern long-eared bats covered by an approved cooperative agreement to carry out conservation programs.

* * * * *

Dated: January 7, 2016.

Karen Hyun,
*Acting Principal Deputy Assistant Secretary
for Fish and Wildlife and Parks.*

[FR Doc. 2016-00617 Filed 1-13-16; 8:45 am]

BILLING CODE 4333-15-P

Proposed Rules

Federal Register

Vol. 81, No. 9

Thursday, January 14, 2016

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket ID FFIEC–2014–0001]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1510]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

Correction

In proposed rule document 2015–32312 beginning on page 79724 in the issue of Wednesday, December 23, 2015 make the following corrections:

1. On page 79728 the table heading “Chart A—Categories and Regulations Addressed in this Fourth Federal Register Notice” was omitted.

2. On page 79731, the table heading “Chart B—Newly Listed Rules” preceding the text “1. Applications and Reporting” was omitted.

[FR Doc. C1–2015–32312 Filed 1–13–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 36 and 91

[Docket No.: FAA–2015–3782; Notice No. 15–08]

RIN 2120–AK52

Stage 5 Airplane Noise Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would establish a new noise standard for certain subsonic jet airplanes and subsonic transport category large airplanes. This noise standard, known as Stage 5, would apply to any person submitting an application for a new airplane type design with a maximum certificated takeoff weight of 121,254 pounds (55,000 kg) or more on or after December 31, 2017; or with maximum certificated takeoff weight of less than 121,254 pounds (55,000 kg) on or after December 31, 2020. This change would reduce the noise produced by new airplanes and harmonize the noise certification standards for those airplanes certificated in the United States with the new International Civil Aviation Organization noise standard in Annex 16, Chapter 14, effective July 14, 2014.

DATES: Send comments on or before April 13, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–3782 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 go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Mehmet Marsan, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7703; facsimile (202) 267–5594; email mehmet.marsan@faa.gov.

SUPPLEMENTARY INFORMATION:

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. 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 44715, Controlling aircraft noise and sonic boom. Under that section, the FAA is charged with prescribing regulations to measure and abate aircraft noise. This regulation is within the scope of that authority since it would establish stricter noise limits for certain newly certificated airplanes. Applicants for type certificates and changes in type design made after the dates proposed in this rulemaking would be required to comply with the new regulation when adopted.

I. Executive Summary

A. Summary of the Proposed Rule

The FAA is proposing to amend Title 14, Code of Federal Regulations (14 CFR) parts 36 and 91 to add a new noise standard to be known as Stage 5. This noise standard would apply to any person submitting an application for a new airplane that has a maximum certificated takeoff weight of 121,254 pounds (55,000 kg) or more on or after December 31, 2017; or that has a maximum certificated takeoff weight of less than 121,254 pounds (55,000 kg) on or after December 31, 2020. A certification applicant could choose to use this standard on a voluntary basis after the rule is effective but before the new limits are required.

B. Summary of Costs and Benefits

The FAA anticipates that by the time this proposed rule would become effective (after December 31, 2017 for subsonic transport category large airplanes and subsonic jet airplanes, and after December 31, 2020 for smaller versions of the subject airplanes), existing noise reduction technologies will allow subject airplanes to comply with these proposed requirements. Accordingly, the proposed rule would have minimal, if any, cost.

II. Background

A. Statement of the Problem

In October 2001, the 33rd Session of The International Civil Aviation Organization (ICAO) Assembly adopted Resolution A33-7, which outlined the basic components of a “Balanced Approach” process for managing aircraft noise at international airports. The Balanced Approach to noise mitigation includes (i) the reduction of noise at its source (*i.e.*, the aircraft), (ii) improved land use planning around airports, and (iii) a wider use of aircraft operating procedures and restrictions that abate noise.

As source noise reduction technology evolves, ICAO introduces new standards to encourage its application. In March 2014, ICAO published a new, more stringent noise standard (which it designated Chapter 14) for subsonic jet airplanes and subsonic transport category large airplanes. This new standard became applicable on January 1, 2015 in those countries that use Annex 16 Volume I as the basis for their aircraft noise certification regulations. As an active member of ICAO, the United States supported the development of this quieter, more stringent aircraft noise standard.

Since the new Chapter 14 is effective and can be used by other ICAO member countries when certifying aircraft in the future, delay in harmonizing U.S. regulations with the standards of Chapter 14 could create a situation in which an airplane certification applicant would have to show compliance with two different standards—the Stage 4 requirement in 14 CFR part 36 and the Chapter 14 requirements of countries that have adopted Annex 16. This circumstance could significantly increase the financial burden on applicants without any benefit.

The adoption of the Stage 5 noise standard for new airplane type designs should not be interpreted as signaling the start of an action aimed at phasing out the existing noise standards that apply to the production or operation of

current airplane models. There are no operational restrictions nor production cut-offs on the use of Stage 3 or Stage 4 airplanes in the United States. The adoption of the Stage 5 noise standard for new airplane type designs does not impact either of these existing noise standards that apply to the production or operation of current airplane models in the United States.

B. A Brief History of U.S. Noise Standards

- 1969—The FAA promulgated the first aircraft noise regulations in 14 CFR part 36 (“Noise Standards: Aircraft Type Certification”). The new part 36 became effective on December 1, 1969, and set a limit on noise emissions of large aircraft of new type design by establishing Stage 2 certification standards.

- 1972—The U.S. Congress enacted the Noise Control Act, which gave the FAA authority to set limits for aircraft noise emissions. Under this authority, the FAA amended part 36 in 1973 to give a noise stage designation to all newly produced airplanes.

- 1976—The FAA amended the aircraft operating rules of 14 CFR part 91 by adding a new Subpart E entitled “Operating Noise Limits.” This regulation established a phased compliance program for U.S. domestic operators that required them to achieve compliance with Stage 2 or Stage 3 certification standards for all four-engine jet airplanes by January 1, 1985.

- 1977—The FAA amended part 36 to provide for three stages of aircraft noise, each with specified limits. This regulation required applicants for new type certificates applied for on or after November 5, 1975, to comply with “Stage 3” noise limits, which were stricter than the noise limits then being applied. Airplanes in operation at the time that did not meet the Stage 3 noise limits were designated “Stage 2” airplanes.

- 1980—Congress enacted the Aviation Safety and Noise Abatement Act of 1979 (ASNA). The ASNA required the FAA to promulgate regulations that extended the application of the January 1, 1985, cutoff date for the domestic operation of four-engine Stage 1 jet airplanes to apply to U.S. and foreign operators. In 1980, the 1985 operation deadline was made applicable to both domestic and international operations arriving to or departing from a point in the United States.

- 1990—Recognizing the need to both expand airport capacity and provide relief from aviation noise, Congress enacted the Airport Noise and Capacity

Act of 1990 (ANCA) on November 5, 1990 (now codified at 49 U.S.C. 47521–47533). The statute required that, after December 31, 1999, all jet airplanes over 75,000 pounds operating in the contiguous United States comply with Stage 3. The regulations implementing the part of the ANCA known as the Stage 3 transition rule became effective on September 25, 1991, and are codified in part 91. The 1991 regulations provided two options to transition domestic fleets to meet this requirement. One option allowed an operator to phase out its Stage 2 airplanes to specified percentages at each compliance date. The second option allowed operators to begin with a fleet that was at least 55 percent Stage 3 and increase that percentage at each compliance date. A new entrant operator (one that did not conduct operations on or before November 5, 1990) was required to have a fleet of at least 25 percent Stage 3 airplanes at the first compliance date and increase the percentage thereafter. All operators were required to operate 100 percent Stage 3 fleets after December 31, 1999. The transition percentages did not apply to non-U.S. operators, though they too remain subject to the operating limitation after December 31, 1999.

- 1991—Congress enacted a separate Stage 2 restriction for operations in Hawaii.

- 2005—The FAA amended part 36 to establish a new quieter noise standard to be known as Stage 4. This noise standard applied to any person submitting an application for a new airplane type design on and after January 1, 2006. Previous Stage 2 and Stage 3 stringencies specified reductions at each noise certification measurement point (flyover, lateral, and approach). Stage 4 combined the three traditional measurement points allowing a total cumulative reduction without specifying reductions at any one measurement point.

- 2012—Congress prohibited the operation of jet airplanes weighing less than 75,000 pounds from operating in the contiguous United States after December 31, 2015, unless the airplane met Stage 3 noise levels.

C. Development of the Stage 5 Noise Standard

Much of the background for the development of a Stage 5 noise standard has taken place in the international arena through ICAO. The environmental activities of ICAO are largely undertaken through the Committee on Aviation Environmental Protection (CAEP), which was established by ICAO in 1983, and which superseded the

Committee on Aircraft Noise and the Committee on Aircraft Engine Emissions. The CAEP assists ICAO in formulating new policies and adopting new standards on aircraft noise and aircraft engine emissions. The United States is an active member in the CAEP activities, with at least one U.S. representative participating on each of the five working groups of CAEP.

In 2010, the CAEP Working Group for Noise (WG1) was tasked to develop options to further reduce airplane noise levels. The WG1 met several times over two years to accomplish the task. Representatives of Working Group 2 for Airports and Operations, the Modeling and Databases Group, and the Forecast Economic Analysis Support Group participated in the WG1 meetings to acquaint themselves with noise stringency options and to help WG1 define noise data requirements.

The WG1 considered five more stringent noise certification options for analysis. The new stringency options for analysis were based on the “cumulative” concept of Chapter 4, rather than the “traditional” option with specified reductions at each noise certification measurement point (flyover, lateral, and approach) of Stage 2 and Stage 3. The five cumulative options analyzed were 3, 5, 7, 9 and 11 decibel reductions from the Chapter 4/ Stage 4 levels respectively.

In reaching a recommendation for a new ICAO noise standard for subsonic jet and large transport airplanes, the CAEP considered estimates of comprehensive costs and benefits associated with the five options. The technical working groups charged by the CAEP to conduct the costs and benefits analysis used several supporting studies conducted by other CAEP working groups.¹

A CAEP Steering Group met in July 2012 to review the results of the analysis prepared by the CAEP working groups and to formulate specific recommendations on the new standard and on applicability options that were to be forwarded to the full CAEP.

In February of 2013, the comprehensive costs and benefits analyses of the five stringency options that were prepared by the working groups and the parallel analysis prepared by the United States were

¹ The U.S. also conducted a cost/benefit analysis to assess the interdependencies associated with the noise stringency options under consideration by CAEP. The analysis took into consideration the environmental impacts of the stringency options (including assessing the health and welfare impacts) and, quantified interdependencies in terms of physical and monetary impacts for aircraft-related noise, fuel burn and emissions.

presented at the ninth meeting of CAEP (CAEP9) in February 2013. After lengthy discussions, the CAEP9 agreed to approve an amendment to Annex 16, Volume I that included an increase in stringency of 7 EPNdB (cumulative) relative to the current Chapter 4 levels. In addition, the CAEP9 approved the WG1 recommendation to increase the stringency for takeoff weights less than 19,000 pounds (8618Kg).

At the 201st Session of the ICAO Council on March 3, 2014, the new Chapter 14 noise standard in Annex 16 was adopted. The new noise standard, which became effective July 14, 2014, applies to any application for new type designs submitted on or after December 31, 2017 for aircraft weighing 55,000Kg or more; for aircraft weighing less than 55,000Kg at takeoff, the applicability date is December 31, 2020.

III. Discussion of the Proposal

The FAA is proposing to establish a new Stage 5 noise standard in part 36 for subsonic jet airplanes and subsonic transport category large airplanes. This new noise standard would ensure that the noise from new airplane designs continues to decline, and anticipates the incorporation of the latest available noise reduction technology. The proposed Stage 5 noise standard mirrors the ICAO Annex 16, Chapter 14 noise standard. The following is a discussion of the specific proposed changes to the certification standards in part 36 and its appendices and the operating rules of part 91 that are necessary to establish the proposed Stage 5 noise standard.

A. Definitions (§ 36.1 and § 91.851)

The FAA is proposing to add the following three terms to both § 36.1(f) and § 91.851: “Stage 5 noise level”, “Stage 5 airplane” and “Chapter 14 noise level.” In § 36.1(f), these terms would be designated as paragraphs (f)(12), (f)(13), and (f)(14) respectively. In § 91.851, the defined terms are listed alphabetically and these three new terms would be inserted accordingly.

The first term, Stage 5 Noise Level, is the designation for maximum permitted noise levels for the proposed standard. The second term, Stage 5 airplane, is the designation given to an airplane that complies with the proposed standard. The third term, “Chapter 14 noise level”, is the ICAO Annex 16, Volume 1 designation that corresponds to the Stage 5 noise level.

B. Incorporation by Reference (§ 36.6)

The FAA is proposing to add a new paragraph (c)(4) to § 36.6 to incorporate by reference ICAO Annex 16, Volume 1, Aircraft Noise, Seventh Edition, July

2014, Amendment 11–B. This change allows full reference to the 2014 version of the ICAO document that includes the Chapter 14 requirements for noise measurement and evaluation and the maximum acceptable noise levels. Amendment 11–B introduced the more stringent standard designated Chapter 14 (proposed here as Stage 5 in the United States) and includes a new Chapter 13 for tiltrotor aircraft noise standards. The Annex 16 documents are available for purchase by any interested person from ICAO.

C. Acoustical Changes (§ 36.7)

The FAA is proposing to amend § 36.7 to include the Stage 5 designation. The regulation prohibits certificated airplanes from adopting a design change that increases noise to the point that a lower noise stage designation is needed.

Accordingly, a new paragraph (e)(5) is proposed to specify that a Stage 3 airplane that becomes a Stage 5 airplane would have to remain a Stage 5 airplane. Paragraph (f) would be redesignated (f)(1), and a new paragraph (f)(2) would be added to specify that a Stage 4 airplane that becomes a Stage 5 airplane would have to remain a Stage 5 airplane. A new paragraph (g) would be added to specify that a Stage 5 airplane that underwent a change in type design would have to remain a Stage 5 airplane. Each of these sections apply when an applicant proposes a change to a type design that would increase noise levels under the acoustical change process described in 14 CFR 21.93(b).

D. Date New Noise Limits Apply (§ 36.103)

The date the proposed Stage 5 noise limits would apply differs depending on the maximum certificated take-off weight of airplane for which type certification is sought:

- For airplanes with a maximum certificated takeoff weight of 121,254 pounds (55,000 kg) or more, the new noise limits would apply to applications made on and after December 31, 2017;
- For airplanes with a maximum certificated takeoff weight less than 121,254 pounds (55,000 kg), the new noise limits would apply to applications made on and after December 31, 2020.

As the dates for the new Stage 5 standard approaches, an applicant may find that its airplane meets the Stage 5 noise limits before they are required. Once the Stage 5 standard is effective, the applicant may choose to have the airplane certificated to Stage 5 earlier than required. The FAA is proposing to amend § 36.103(c) to indicate that Stage 4 certification will end on the dates

specified for Stage 5. We are also proposing two new paragraphs, § 36.103(d) and (e), stating the dates on which Stage 5 noise limits are applicable, depending on the weight of the airplane for which certification is sought.

E. Equivalency Statement in Flight Manual (§ 36.106)

The FAA is proposing to add new § 36.106 entitled “Flight Manual statement of Chapter 14 noise level equivalency”. The need for a noise level equivalency statement evolved from problems experienced by U.S. operators when they were operating outside the United States. Because the FAA does not issue noise certificates, some foreign entities were confused as to the noise status of U.S. aircraft, and questioned whether Stage 3 references in the flight manual were sufficient to meet Chapter 3 requirements (especially since the two standards were not identical). When the FAA adopted Stage 4 in 2005, we included in § 36.105 a requirement to include a statement in the manual that the noise levels represent compliance with Stage 4. It then states that the FAA considered Stage 4 noise levels to be equivalent to the Chapter 4 noise levels required by ICAO countries. It is an important distinction that the FAA was not making a finding of compliance with Chapter 4, as we have no authority to do so. The statement acknowledges that the noise levels are considered by the FAA to be the same for the two certification bases.

Accordingly, we are proposing a similar statement for Chapter 5 noise levels being the equivalent to the noise levels of Chapter 14. Users of the information are encouraged to provide feedback on how often this statement has been referenced, and whether any other information that might be useful could be included, as a comment to this action.

F. Alternative Measurement Procedures (Appendix A to Part 36)

Appendix A to part 36 prescribes the conditions under which airplane noise certification tests must be conducted and describes the measurement procedures that must be used in the measurement of airplane noise during certification testing. The most recent published ICAO measurement procedures that correspond to part 36, Appendix A are in Appendix 2 to ICAO Annex 16, Environmental Protection, Volume I, Aircraft Noise, Third Edition, July 2014, Amendment 11–B, that became applicable January 1, 2015. Before this version was adopted by ICAO earlier this year, there had been

no substantive changes to the measurement procedures in either document since their harmonization in 2002.

To account for the changes to Annex 16, the FAA is proposing to add a new paragraph to Appendix A, A36.1.5, that would specify Appendix 2 to ICAO Annex 16, Environmental Protection, Volume I, Aircraft Noise, Third Edition, July 2014, Amendment 11–B, effective July 14, 2014, as an acceptable alternative for noise measurement and evaluation for Stage 5 airplanes. Specifying this acceptable alternative will harmonize the noise certification measurement procedures of part 36 with Annex 16, Volume 1 for Stage 5 airplanes. Since 2002, the FAA has allowed the Annex 16 noise measurement and evaluation procedures as an alternative to those in part 36 for subsonic jet airplanes and subsonic transport category large airplanes in part 36. This use creates a nearly uniform noise certification standard for airplanes certified both in the United States and in the countries that recognize the Annex as their national standard.

G. Stage 5 Maximum Noise Levels (Appendix B to Part 36)

Appendix B to Part 36 contains the maximum noise levels for transport category and jet airplanes, and the noise certification test reference procedures and conditions. To comply with Appendix B, an applicant must show that noise levels were measured and evaluated using the procedures of Appendix A of this part, or an approved equivalent procedure.

In 2005 when the Stage 4 requirements were adopted, section B36.1 was amended to include the ICAO Annex 16 requirements for noise measurement and evaluation as an alternative. We are now proposing to amend section B36.1 to include an acceptable alternative for Stage 5 noise measurement and evaluation. The proposed alternative is Appendix 2 to ICAO Annex 16, Environmental Protection, Volume I, Aircraft Noise, Third Edition, July 2014, Amendment 11–B, applicable January 1, 2015.

The maximum noise levels for each stage airplane are specified in Section B36.5. The FAA is proposing to add the maximum noise levels for Stage 5 airplanes as paragraph B36.5(e).

H. Operational Restrictions (Part 91 Subpart I)

The Airport Noise and Capacity Act of 1990 prohibited the operation of civil subsonic jet airplanes over 75,000 pounds in the contiguous United States after December 31, 1999, unless they

complied with Stage 3 noise levels. This restriction was codified in the operating rules in § 91.853. That section was amended in 2005 to include the operation of Stage 4 airplanes when that standard was adopted. The FAA is proposing to add the phrase “or Stage 5” to include airplanes certificated to the new standard.

Similarly, in 2012, Congress prohibited the operation of civil subsonic jet airplanes weighing less than 75,000 pounds from operating in the contiguous United States after December 31, 2015, unless they comply with Stage 3 noise levels. That restriction was codified in § 91.881, to which the FAA now proposes to add the phrase “Stage 4 or Stage 5 noise levels” to include airplanes certificated to the quieter standards.

Similar changes to account for newer certifications are proposed for §§ 91.855, 91.858, 91.859, 91.881, and 91.883.

This proposed rule would add a definition to § 81.851 for “Chapter 14 noise levels” to incorporate by reference the definition found in ICAO Annex 16, (details). That document is described in section III B, above. A change to the format of § 91.851 is being made to account for the addition of a second incorporation by reference within the definitions. The section will now include the definitions themselves in paragraph (a) and the references for the incorporated documents in paragraph (b).

I. Chapter 14 Stringencies

The noise limits adopted by ICAO for Chapter 4 were 10dB lower at every weight than the then-existing Chapter 3. However, Chapter 14 imposes the stringency requirements at different times for different aircraft weights it identifies. In addition, for aircraft less than 8618kgs, the stringencies adopted are not parallel to the Stage 4 standards.

The FAA understands the Chapter 14 requirements, proposed here as Stage 5, as follows:

- a. An airplane’s maximum flyover, lateral and approach noise levels are each subtracted from the maximum permitted noise levels for Chapter 3 airplanes defined in Annex 16. The differences obtained are the noise limit margins which must be 17 EPNdB or greater when added together; and
- b. An airplane’s maximum noise levels (flyover, lateral, and approach) have to be at least 1 EPNdB less than the maximum permitted noise levels for Chapter 3 airplanes.

The new standard would apply to new airplane types submitted for certification after December 31, 2017 (or December 31, 2020, for airplanes

weighing less than 55,000 kilograms). In addition, the new standard includes another condition to the cumulative stringency requirement, to require a margin of not less than 1.0 dB below Chapter 3 limits at each certification point. Chapter 14 includes a change in the noise limits applicable to subsonic jet airplanes with takeoff masses less than 8,618kg, and added a second “knee point” at 8,618kg, to use the same gradient of the limit line at lower masses as the higher masses and the constant limit line for airplanes with masses less than 2,000kg.

Annex 16 includes a second applicability date of December 31, 2020, for airplanes with a takeoff weight less than 55,000kg. The later compliance date was adopted to accommodate regional jet and propeller driven aircraft manufacturer’s request for time to improve their products to meet the new stringency. The manufacturers asserted to CAEP that the technologies available for larger aircraft were not available for their lighter products because of technical constraints or economical unfeasibility. The 2020 applicability date is intended to account for the delayed changes in technology for lighter airplanes.

IV. 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, the 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 the base year of 1995).

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it being included in the preamble of a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for that determination follows.

This proposed rule would establish a new Stage 5 noise standard for subsonic jet airplanes and subsonic transport category large airplanes. The proposed noise standard would apply to new type designs for which application is made on or after December 31, 2017, for airplanes with a maximum certificated takeoff weight of 121,254 pounds (55,000 kilograms) or more, and December 31, 2020, for airplanes with a maximum certificated takeoff weight of less than 121,254 pounds (55,000 kilograms).

The proposed noise standard would provide more stringent noise certification standards for Stage 5 airplanes certificated in the United States and would be consistent with those for airplanes certificated under the new International Civil Aviation Organization (ICAO) Annex 16 Chapter 14 noise standards.

The development of the new ICAO rule was summarized above. Additional documents describing the development of the new ICAO rule in more detail, including cost analyses used by ICAO, are available in the docket. These documents include:

1. Cost-benefit Analysis of CAEP9 Noise Stringency Options, presented by U.S. CAEP Member, COMMITTEE ON AVIATION ENVIRONMENTAL PROTECTION (CAEP), NINTH MEETING, Montreal, 4 to 15 February 2013.

2. Report of the Ninth Meeting, COMMITTEE ON AVIATION ENVIRONMENTAL PROTECTION (CAEP), NINTH MEETING, Montreal, 4 to 15 February 2013.

Several airplanes currently in production that have a maximum certificated takeoff weight of more than 121,254 pounds already meet the proposed Stage 5 noise limits. These airplanes include the Airbus A–380 and A–350, and the Boeing 747–8 and 787 models.

The applicability date of December 31, 2020, for airplanes with a maximum certificated takeoff weight of less than 121,254 pounds was adopted by the ICAO to accommodate the requests of

the manufacturers of lighter jet and propeller-driven airplanes for more time to meet the new requirements. These manufacturers asserted that the technologies available for heavier airplanes were not available for their products because of technical restraints or economic unfeasibility.

Aerospace technology is continually evolving. As performance improvements are introduced in airplanes for competitive reasons, they often result in less noise. For many of the new airplane programs announced prior to CAEP9 (2013), analyses show that such airplanes will be able to meet the proposed Stage 5 standard without any additional cost.

Recently, there have been technological advances in the lower weight classes such as the geared turbofan engine and the development of quieter control surfaces. Given these recent technological advances in lighter airplanes, the FAA expects all manufacturers to be able meet the new standards by the December 31, 2020, date. As this expectation is crucial to the minimal cost determination, the FAA requests comments regarding whether the existing and expected technological advancements will be sufficient to allow the manufacturers to achieve compliance with the provisions of the proposed rule by 2020.

In 2017 and 2020, when the proposed rule would become effective, all new type design subsonic transport category large airplanes, followed by smaller airplanes, will be able to meet the Stage 5 noise limits by using then-current available noise reduction technologies. Therefore, the proposed rule would have minimal, if any, cost.

B. Initial 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 objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, 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.

In 2017 and 2020, when the proposed rule would become effective, all new type design subsonic transport category large airplanes, followed by smaller airplanes, will be able to meet the Stage 5 noise limits by using then-current available noise reduction technologies. Therefore, the proposed rule would have minimal, if any, cost.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605 (b), the head of the FAA certifies that this rulemaking would not result in a significant economic impact on a substantial number of small entities.

The FAA invites industry comments on this determination and requests that all comments be accompanied with clear and detailed supporting data.

C. International Trade Impact Assessment

The Trade Agreement 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 proposed rule and determined that it would reduce impediments to international traded by

aligning United States standards with ICAO standards.

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 \$155 million in lieu of \$100 million.

For the reasons stated above regarding the expected minimal cost of this proposed standard, this proposed 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 noise stringency requirement proposed here would not require any new collection of information and none is associated with this proposed rule. The FAA has determined that there would be no new requirement for information collection associated with this proposed 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 differences with these proposed regulations.

Executive Order (E.O.) 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609, Promoting International Regulatory Cooperation. The agency has determined that this action would adopt the same regulatory standards as ICAO

has adopted for Stage 5 (ICAO Chapter 14) noise certification, preventing any unnecessary difference in requirements between the United States and countries that use ICAO standards as their regulatory requirements.

G. Environmental Analysis

FAA Order 1050.1E 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 312d of the Order and involves no extraordinary circumstances.

H. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying 14 CFR regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to all newly certificated airplanes after the dates specified, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would 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, would not have Federalism implications.

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

The FAA analyzed this proposed 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 would not be a “significant energy action” under the executive order and would not be

likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. 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 the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

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 proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. 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.

C. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's Web page at <http://www.gpo.gov/fdsys/>.

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

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 36

Aircraft, Aviation safety, Life-limited parts, Incorporation by reference, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Aviation safety, Life-limited parts, Incorporation by reference, Reporting and recordkeeping requirements.

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

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

- 1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Public Law 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

- 2. Amend § 36.1 by adding paragraphs (f)(12) through (14) to read as follows:

§ 36.1 Applicability and definitions.

* * * * *

(f) * * *

(12) A “Stage 5 noise level” means a noise level at or below the Stage 5 noise limit prescribed in section B36.5(e) of Appendix B of this part.

(13) A “Stage 5 airplane” means an airplane that has been shown under this

part not to exceed the Stage 5 noise limit prescribed in section B36.5(e) of Appendix B of this part.

(14) A “Chapter 14 noise level” means a noise level at or below the Chapter 14 maximum noise level prescribed in Chapter 14 of the International Civil Aviation Organization (ICAO) Annex 16, Volume I, Amendment 11–B, applicable January 1, 2015. (Incorporated by reference, see § 36.6).

* * * * *

- 3. Amend § 36.6 by adding paragraph (c)(4) to read as follows:

§ 36.6 Incorporation by reference.

* * * * *

(c) * * *

(4) International Standards and Recommended Practices entitled “Environmental Protection, Annex 16 to the Convention on International Civil Aviation, Volume I, Aircraft Noise”, Seventh Edition, July 2014, amendment 11–B, effective July 14, 2014.

* * * * *

- 4. Amend § 36.7 by adding paragraph (e)(5), redesignating paragraph (f) as (f)(1) and adding paragraphs (f)(2) and (g) to read as follows:

§ 36.7 Acoustical change: Transport category large airplanes and jet airplanes.

* * * * *

(e) * * *

(5) If an airplane is a Stage 3 airplane prior to a change in type design, and becomes a Stage 5 airplane after the change in type design, the airplane must remain a Stage 5 airplane.

(f)(1) * * *

(2) If an airplane is a Stage 4 airplane prior to a change in type design, and becomes a Stage 5 airplane after the change in type design, the airplane must remain a Stage 5 airplane.

(g) *Stage 5 airplanes:* If an airplane is a Stage 5 airplane prior to a change in type design, the airplane must remain a Stage 5 airplane after the change in type design.

- 5. Amend § 36.103 by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 36.103 Noise limits.

* * * * *

(c) Type certification applications between January 1, 2006, and the date specified in paragraph (d) or (e) of this section, as applicable for airplane weight. If application is made on or after January 1, 2006, and before the date specified in paragraph (d) or (e) of this section (as applicable for airplane weight), it must be shown that the noise levels of the airplane are no greater than the Stage 4 noise limit prescribed in section B36.5(d) of appendix B of this

part. If an applicant chose to voluntarily certificate an airplane to Stage 4 prior to January 2006, then the requirements of § 36.7(f) of this part apply to that airplane.

(d) For airplanes with a maximum certificated takeoff weight of 121,254 pounds (55,000 kg) or more, type certification applications on or after December 31, 2017. If application is made on or after December 31, 2017, it must be shown that the noise levels of the airplane are no greater than the Stage 5 noise limit prescribed in section B36.5(e) of Appendix B of this part. Prior to December 31, 2017, an applicant may seek voluntary certification to Stage 5. If Stage 5 certification is chosen, the requirements of § 36.7(g) of this part will apply.

(e) For airplanes with a maximum certificated take-off weight of less than 121,254 pounds (55,000 kg), type certification applications on or after December 31, 2020. If application is made on or after December 31, 2020, it must be shown that the noise levels of the airplane are no greater than the Stage 5 noise limit prescribed in section B36.5(e) of Appendix B of this part. Prior to December 31, 2020, an applicant may seek voluntary certification to Stage 5. If Stage 5 certification is chosen, the requirements of § 36.7(g) of this part will apply.

■ 6. Add § 36.106 to read as follows:

§ 36.106 Flight Manual statement of Chapter 14 noise level equivalency.

For each airplane that meets the requirements for Stage 5 certification, the Airplane Flight Manual or operations manual must include the following statement: “The following noise levels comply with part 36, Appendix B, Stage 5 maximum noise level requirements and were obtained by analysis of approved data from noise tests conducted under the provisions of part 36, Amendment [insert part 36 amendment number to which the airplane was certificated]. The noise measurement and evaluation procedures used to obtain these noise levels are considered by the FAA to be equivalent to the Chapter 14 noise levels required by the International Civil Aviation Organization (ICAO) in Annex 16, Volume 1, Appendix 2, Amendment 11–B, applicable January 1, 2015.” (Incorporated by reference, see § 36.6).

■ 7. Amend section A36.1 of Appendix A by adding paragraph A36.1.5 to read as follows:

Appendix A to Part 36—Aircraft Noise Measurement and Evaluation Under § 36.101

* * * * *

A36.1.5 For Stage 5 airplanes, an acceptable alternative for noise measurement and evaluation is Appendix 2 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume I, Aircraft Noise, Seventh Edition, July 2014, Amendment 11–B, effective July 14, 2014. (Incorporated by reference, see § 36.6).

■ 8. In appendix B, in section B36.1, revise paragraph (b) and add paragraph (c), and in section B36.5, add paragraph (e) to read as follows:

Appendix B to Part 36—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

* * * * *

(b) For Stage 4 airplanes, an acceptable alternative to paragraph (a) of this section for noise measurement and evaluation is Appendix 2 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume I, Aircraft Noise, Third Edition, July 1993, Amendment 7, effective March 21, 2002. (Incorporated by reference, see § 36.6).

(c) For Stage 5 airplanes, an acceptable alternative to paragraph (a) of this section for noise measurement and evaluation is Appendix 2 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume I, Aircraft Noise, Seventh Edition, July 2014, Amendment 11–B., effective July 14, 2014. (Incorporated by reference, see § 36.6).

* * * * *

(e) For any Stage 5 airplane, the flyover, lateral, and approach maximum noise levels are prescribed in Chapter 14, Paragraph 14.4, Maximum Noise Levels, of the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume I, Aircraft Noise, Seventh Edition, July 2014, Amendment 11–B, effective July 14, 2014. (Incorporated by reference, see § 36.6).

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 9. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 10. Amend § 91.851 by:

■ a. Designating the introductory text as paragraph (a);

■ b. Revising the definition for the term “Chapter 4 noise level” and adding, in alphabetical order, definitions for the terms “Chapter 14 noise level”, “Stage 5 airplane” and “Stage 5 noise level”; and

■ c. Adding paragraph (b).

The revisions and additions read as follows:

§ 91.851 Definitions.

(a) * * *

Chapter 4 noise level means a noise level at or below the maximum noise level prescribed in Chapter 4, Paragraph 4.4, Maximum Noise Levels, of the ICAO Annex 16, Volume I, Amendment 7.

Chapter 14 noise level means a noise level at or below the Chapter 14 maximum noise level prescribed in Chapter 14 of the ICAO Annex 16, Volume I, Amendment 11–B. Airplanes certificated to Chapter 14 are considered equivalent to Stage 5, and comply with all of the applicable noise operating rules of this part.

* * * * *

Stage 5 airplane means an airplane that has been shown not to exceed the Stage 5 noise limit prescribed in part 36 of this chapter. A Stage 5 airplane complies with all of the applicable noise operating rules of this part.

Stage 5 noise level means a noise level at or below the Stage 5 noise limit prescribed in part 36 of this chapter.

(b) The Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 approved the incorporation by reference of these documents. Copies may be reviewed at the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(1) International Civil Aviation Organization (ICAO), Document Sales Unit, 999 University Street, Montreal, Quebec H3C 5H7, Canada, <http://www.ICAO.int/eshop/index.cfm>;

(i) ICAO Annex 16, Volume I, Amendment 7, effective March 21, 2002.

(ii) ICAO Annex 16, Volume I, Seventh Edition, July 2014, Amendment 11–B, effective July 14, 2014.

(2) [Reserved]

■ 11. Revise § 91.853 to read as follows:

§ 91.853 Final compliance: Civil subsonic airplanes.

Except as provided in § 91.873, after December 31, 1999, no person shall operate to or from any airport in the contiguous United States any airplane subject to § 91.801(c) of this subpart, unless that airplane has been shown to comply with Stage 3, Stage 4, or Stage 5 noise levels.

■ 12. Amend § 91.855 by revising paragraph (a) to read as follows:

§ 91.855 Entry and nonaddition rule.

* * * * *

(a) The airplane complies with Stage 3, Stage 4, or Stage 5 noise levels.

* * * * *

■ 13. Amend § 91.858 by revising paragraph (a)(2) to read as follows:

§ 91.858 Special flight authorizations for non-revenue Stage 2 operations.

(a) * * *

(2) Obtain modifications to meet Stage 3, Stage 4, or Stage 5 noise levels.

* * * * *

■ 14. Revise § 91.859 to read as follows:

§ 91.859 Modification to meet Stage 3 or Stage 4 noise levels.

For an airplane subject to § 91.801(c) of this subpart and otherwise prohibited from operation to or from an airport in the contiguous United States by § 91.855, any person may apply for a special flight authorization for that airplane to operate in the contiguous United States for the purpose of obtaining modifications to meet Stage 3, Stage 4, or Stage 5 noise levels.

■ 15. Revise § 91.881 to read as follows:

§ 91.881 Final compliance: Civil subsonic jet airplanes weighing 75,000 pounds or less.

Except as provided in § 91.883, after December 31, 2015, a person may not operate to or from an airport in the contiguous United States a civil subsonic jet airplane subject to § 91.801(e) of this subpart that weighs less than 75,000 pounds unless that airplane has been shown to comply with Stage 3, Stage 4, or Stage 5 noise levels.

■ 16. Amend § 91.883 by revising paragraph (a)(3) to read as follows:

§ 91.883 Special flight authorizations for jet airplanes weighing 75,000 pounds or less.

(a) * * *

(3) To obtain modifications to the airplane to meet Stage 3, Stage 4, or Stage 5 noise levels.

* * * * *

Issued under authority provided by 49 U.S.C. 44715 in Washington, DC, on December 21, 2015.

Curtis Holsclaw,

Acting Executive Director, Office of Environment and Energy.

[FR Doc. 2015–32500 Filed 1–13–16; 8:45 am]

BILLING CODE 4910–13–P

POSTAL REGULATORY COMMISSION**39 CFR Parts 3000, 3001, and 3008**

[Docket No. RM2016–4; Order No. 3005]

Ex Parte Communications

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing rules which amend the existing Commission rules concerning ex parte communications. The proposed rules are brought up to date to be consistent with the recommended approach to agency treatment of ex parte communications and reorganized for clarity. The Commission invites public comment on the proposed rules.

DATES: *Comments are due:* February 16, 2016. *Reply comments are due:* February 29, 2016.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Background
- III. Section-by-Section Analysis of Proposed Rule Changes
- IV. Internal Policy and Library Reference
- V. Public Representative
- VI. Solicitation of Comments
- VII. Ordering Paragraphs

I. Introduction

This rulemaking is initiated by the Postal Regulatory Commission (Commission) to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006). The proposed rules amend existing Commission rules concerning ex parte communications¹ and obsolete rules no longer applicable under the PAEA are removed. Existing rules are brought up to date to be consistent with the recommended approach to agency treatment of ex parte communications² and are further reorganized for clarity.

The ex parte communications rules currently appear in three areas of the Commission's applicable Code of

¹ Rules concerning ex parte communications control all interactions, oral or in writing (including electronic), between Commission decision-making personnel, and the United States Postal Service (Postal Service) or public stakeholders in matters before the Commission.

² See Esa L. Sferra-Bonistalli, *Ex Parte Communications in Informal Rulemaking*, May 1, 2014, (prepared for consideration of the Administrative Conference of the United States) (Sferra-Bonistalli Report); Administrative Conference of the United States, *Administrative Conference Recommendation 2014–4*, June 6, 2014, (Recommendation 2014–4).

Federal Regulations (CFR). This rulemaking proposes to replace, in their entirety, the rules currently appearing at 39 CFR, part 3000, subpart B. This rulemaking also proposes to reorganize the rules currently appearing at § 3001.7, including a definition appearing at § 3001.5(o), and moves this material to a new 39 CFR part 3008.

II. Background

Applying ex parte communications principles promotes transparency and openness in government concerning its interactions with public stakeholders. See Recommendation 2014–4 at 2. These principles help prevent the perception that an entity may gain an unfair advantage over another by communicating inappropriately with the Commission on an ex parte basis. *Id.* at 3. These principles also reduce the risk that Commission decisions will be challenged in court based on alleged reliance on information obtained through inappropriate ex parte communications. Sferra-Bonistalli Report at 77–78.

By statute, the Commission is only required to place restrictions on ex parte communications where the Commission must provide an opportunity for hearing on the record pursuant to 5 U.S.C. 556–557. Under the PAEA, this is limited to nature of postal service cases pursuant to 39 U.S.C. 3661.

Historically, the Commission's regulations also extended restrictions on ex parte communications to post office appeal cases pursuant 39 U.S.C. 404(d)(5,6) and complaint cases pursuant to 39 U.S.C. 3662. The Commission views this as appropriate because of the potential impact on participants and their associated rights that may result under these types of proceedings. The proposed rules continue to impose restrictions on ex parte communications for the same statutorily required and historical proceedings described above. See proposed 39 CFR part 3008.

Many other types of proceedings come before the Commission other than nature of service, post office closing, and complaint proceedings that are mentioned above.³ But there is no statutory requirement to impose ex parte communications restrictions in these other proceeding types. However, the Commission believes that the aforementioned ex parte principles suggest that all proceedings before the

³ For example, the Commission administers the Annual Compliance Report (ACR), Competitive Product (CP), Mail Classification (MC), Market Test (MT), Public Inquiry (PI), Rate/Request (R), Rulemaking (RM), and Annual Tax Computation (T) proceedings.

Commission should be treated the same. A consistent policy applicable to all docket types is the simplest to understand and the most efficient to administer. Therefore, concomitant with the publishing of the final rules on ex parte communications concerning nature of service, post office closing, and complaint proceedings, the Commission will implement an internal policy requiring all docket types to adhere to nearly identical ex parte communications restrictions. The internal policy will be referenced in proposed 39 CFR part 3000, subpart B.

The proposed rules and the internal policy will be identical as far as prohibiting ex parte communications for matters before the Commission. They also will be identical in requiring a remedy of disclosure when an ex parte communication occurs. Because of the statutory requirements, there are differences in the types of sanctions, as will be explained below, that may be imposed when an ex parte communication occurs in a nature of service, post office closing, or complaint proceeding versus other types of proceedings. The Commission files the internal policy as Library Reference PRC-LR-RM2016-4/1 for comparison purposes.

III. Section-by-Section Analysis of Proposed Rule Changes

The rules in 39 CFR part 3000 are applicable only to Commission personnel.

Section 3000.735-501 Ex parte communications prohibited. Existing rule 735-501 prohibits ex parte communications by Commission decision-making personnel in certain contested matters before the Commission. The instant rulemaking attempts to address several issues with the existing rule. First, there is significant redundancy between this requirement and the requirements of existing § 3001.7. Second, it is difficult to identify who qualifies as Commission decision-making personnel without referring to other unrelated sections of the CFR. Third, the rule currently refers to rate and classification cases under 39 U.S.C. 3624, which were eliminated under the PAEA. Fourth, no guidance is offered to Commission personnel on how to treat ex parte communications outside the scope of the specific docket types mentioned under the existing rule.

The proposed rule addresses these concerns by restructuring § 3000.735-501. First, the substance of existing § 3000.735-501 is moved to proposed part 3008 and consolidated with

material from existing § 3001.7.⁴ Existing § 3000.735-501 is revised to inform Commission personnel of the Commission's general policy concerning ex parte communications. See proposed § 3000.735-501(a). This policy requires uniform treatment for ex parte communications in all proceeding types before the Commission. There is a general prohibition on ex parte communications on matters before the Commission with disclosure as the primary remedy for inadvertent ex parte communications. The proposed rule also provides notice that the internal Commission policy is available on the Commission's public Web site. The intent of making the policy public is to make external stakeholders aware of how Commission personnel will treat ex parte communications for all proceeding types.

Finally, Commission personnel are directed to proposed part 3008. See proposed § 3000.735-501(b). This part provides the specific requirements concerning nature of service proceedings, post office closing, and complaint proceedings. Except for the differences in potential sanctions for violation of the rule, the internal policy (applicable to all case types) and the requirement of part 3008 (applicable to a subset of case types) are intended to be consistent.

Section 3000.735-502 Public record of ex parte communications. The existing rule requires Commission personnel to disclose all ex parte communication in certain matters before the Commission. This rulemaking proposes to move the substance of the disclosure requirement to proposed rule 3008.6 and reserves § 3000.735-502 for future use.

Section 3001.5(o) Definitions. Ex parte communication. The existing rule provides the current definition of ex parte communications. This rulemaking proposes to move the definition to § 3008.2. The definition will be updated consistent with the recommended agency treatment of ex parte communications. The updated definition adds that electronic communications qualify as ex parte communications. The definition also provides a detailed list of exceptions to the otherwise broad scope of covered communications. Existing § 3001.5(o) is reserved for future use.

Section 3001.7 Ex parte communications. The Commission's ex parte communications rules (applicable to the pre-PAEA subset of case types)

are currently located in § 3001.7. The Commission proposes to move the substance of these rules to new part 3008. The amended rules will address the requirements for nature of service proceedings, post office closing, and complaint proceedings that come before the Commission. The rules will be applicable to Commission personnel, the Postal Service, and all outside entities that interact with the Commission.

Section 3008.1 Applicability. Proposed § 3008.1 specifies that the rules provided within part 3008 are applicable to nature of service, post office closing, and complaint proceedings. It also provides the Commission with discretion to impose ex parte communication restrictions concerning other matters that come before the Commission, where appropriate.

Section 3008.2 Definition of ex parte communications. Proposed § 3008.2 begins with a broad definition of ex parte communications and then limits the scope of the definition through a series of exceptions. The broad definition includes all communications, oral or written (including electronic), between Commission decision-making personnel, and the Postal Service or public stakeholders regarding matters before the Commission. The exceptions limit the scope of the definition to exclude: (1) Documents filed using the Commission's docketing system; (2) communications during widely publicized Commission meetings, hearings, or other publicly noticed events for which a summary of the meeting, hearing or event is provided for the record; (3) communications during off-the-record technical conferences or publicly noticed pre-filing conferences for nature of service cases; (4) questions and replies concerning Commission procedures and uncontested status inquiries; and (5) communications not material to the matter before the Commission. The approach to this rule is intended to be consistent with the Sferra-Bonistalli Report and the Administrative Conference's Recommendation 2014-4 with tailoring to the Commission's operations.

Section 3008.3 Definition of a matter before the Commission. Proposed § 3008.3 defines when a matter is or is not "before the Commission" for purposes of determining when the ex parte communication rules apply. The proposed rule provides the Commission with discretion to apply ex parte communications restrictions at any time, but no later than when a request to initiate a proceeding is received or

⁴ Proposed part 3008 in part identifies the applicable decision-making personnel and removes references to previous rate and classification cases.

when the Commission notices a proceeding. It also imposes ex parte communication restrictions when there is an affirmative action announcing, or active preparation of, an actual request with intent to file in a reasonable period of time. The effect of this rule is to limit the application of the ex parte communications rules to exclude most, if not all, communications until a matter has actually been initiated by an outside entity or noticed by the Commission (or either of these actions is imminent).

Section 3008.4 Definitions of persons subject to ex parte communications rules. Proposed § 3008.4 defines “Commission decision-making personnel,” the “Postal Service,” “public stakeholders,” and “Commission non-decision-making personnel,” for the purposes of the ex parte communications rules. The proposed rule incorporates the definitions of “Commission decision-making personnel,” and “Commission non-decision-making personnel,” from existing § 3001.7(a), and broadens the definition to include contractors, consultants, and others hired to assist with analysis and decisions. The proposed rule, for the first time, includes definitions for Postal Service personnel and other public stakeholders.

Section 3008.5 Prohibitions. Proposed § 3008.5(a) imposes a general prohibition of ex parte communications between Commission decision-making personnel and the Postal Service or other public stakeholders. The proposed rule adds that Commission decision-making personnel are prohibited from relying upon any information obtained through ex parte communications. See proposed § 3008(b). Finally, proposed § 3008(c) clarifies that proposed § 3008(a) does not constitute authority to withhold information from Congress.

Section 3008.6 Required action upon ex parte communications. Proposed § 3008.6 mirrors existing § 3001.7(b)(3) through (5) setting forth the actions required when ex parte communications occur. Three steps are outlined. Commission decision-making personnel are first required to decline to listen to ex parte communications. If ex parte communications occur regardless of efforts to prevent such communications, the communications must be disclosed. Finally, under certain circumstances, there may be an opportunity for others to rebut the contents of the ex parte communications.

Section 3008.7 Penalty for violation of ex parte communication rules. Proposed § 3008.7 mirrors existing § 3001.7(d)(1) and (2), outlining the

penalties for violations of the ex parte communications rules. This includes providing possible violators of the rules with an opportunity to show cause why their claim should not be dismissed, denied, disregarded, or otherwise adversely affect the outcome of the proceeding.

IV. Internal Policy and Library Reference

Library Reference PRC–LR–RM2016–4/1 is a copy of the Commission’s written employee policy regarding ex parte communications. The Commission intends to adopt this policy to further its goal of transparency and openness in all dockets. Though ex parte restrictions are only statutorily required by regulation for nature of service, post office appeals, and complaint matters, the Commission seeks to alleviate any real or perceived unfairness in its communications with stakeholders in all cases and thus creates this new ex parte policy.

The policy will be posted to the Commission Web site at www.prc.gov if and when the Commission adopts final rules pursuant to this proceeding. Although the attached employee policy will not be binding on persons outside of the Commission, public disclosure of the document will better inform outside entities concerning the Commission’s treatment of ex parte communications in all proceeding types that may come before the Commission. The Commission welcomes public comment on the policy to identify problems and to ensure consistency with the proposed rules discussed herein and with the Commission’s regulatory scheme as a whole.

V. Public Representative

Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is appointed the officer of the Commission (Public Representative) to represent the interests of the general public in the captioned docket.

VI. Solicitation of Comments

Interested persons are invited to comment on the rules proposed in this rulemaking. Interested persons may also comment on the attached internal Commission policy concerning ex parte communications to ensure consistency with the proposed rules. Comments are due no later than 30 days, and reply comments no later than 45 days, after publication of this Notice in the **Federal Register**.

VII. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2016–4 for the purpose of considering changes to the

Commission’s rules governing ex parte communications.

2. The Commission proposes to amend existing ex parte communications rules appearing at 39 CFR part 3000, subpart B, and to move and amend existing ex parte communications rules previously appearing at § 3001.5(o) and § 3001.7 into new 39 CFR part 3008.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Patricia A. Gallagher to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. Interested persons may submit initial comments no later than 30 days from the date of publication of this Notice in the **Federal Register**.

5. Reply Comments may be filed no later than 45 days from the date of publication of this Notice in the **Federal Register**.

6. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,
Secretary.

List of Subjects

39 CFR Part 3000

Conflicts of interests, Ex parte communications.

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Ex parte communications, Freedom of information, Sunshine Act.

39 CFR Part 3008

Administrative practice and procedure, Ex parte communications.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3000—STANDARDS OF CONDUCT

■ 1. The authority citation for part 3000 is revised to read as follows:

Authority: 39 U.S.C. 503; 504, 3603; E.O. 12674; 54 FR 15159; 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 56 FR 42547, 3 CFR, 1990 Comp., p. 396, 5 CFR parts 2634 and 2635.

■ 2. Revise subpart B of part 3000 to read as follows:

Subpart B—Ex Parte Communications

Sec.

3000.735–501 Ex parte communications prohibited.

3000.735–502 [Reserved]

§ 3000.735–501 Ex parte communications prohibited.

(a) The Commission maintains a written employee policy regarding ex parte communications applicable to all interactions, oral or in writing (including electronic), between Commission decision-making personnel, and the United States Postal Service or public stakeholders in matters before the Commission. It is the responsibility of all Commission personnel to comply with this policy, including the responsibility to inform persons not employed by the Commission of this policy when required. The policy is available for review on the Commission's Web site at www.prc.gov.

(b) Additional ex parte communications requirements, applicable to specific docket types, are described in part 3008 of this chapter.

§ 3000.735–502 [Reserved]**PART 3001—RULES OF PRACTICE AND PROCEDURE**

■ 3. The authority citation of part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

§ 3001.5 [Amended]

■ 4. Amend § 3001.5 by removing and reserving paragraph (o).

§ 3001.7 [Removed and reserved]

■ 5. Remove and reserve § 3001.7.

■ 6. Add part 3008 to read as follows:

PART 3008—EX PARTE COMMUNICATIONS

Sec.

3008.1 Applicability.

3008.2 Definition of ex parte communications.

3008.3 Definition of a matter before the Commission.

3008.4 Definitions of persons subject to ex parte communication rules.

3008.5 Prohibitions.

3008.6 Required action upon ex parte communication.

3008.7 Penalty for violation of ex parte communication rules.

Authority: 39 U.S.C. 404(d)(5); 503; 504; 3661(c); 3662.

§ 3008.1 Applicability.

(a) The rules in this section are applicable to the Commission proceedings identified in paragraphs (b) through (e) of this section.

(b) The nature of postal service proceedings conducted pursuant to 39 U.S.C. 3661(c).

(c) The appeals of Postal Service decisions to close or consolidate any

post office conducted pursuant to 39 U.S.C. 404(d)(5).

(d) Rate or service complaints conducted pursuant to 39 U.S.C. 3662.

(e) Any other matter in which the Commission, in its discretion, determines that it is appropriate to apply the rules of this section.

§ 3008.2 Definition of ex parte communications.

(a) Subject to the exceptions specified in paragraph (b) of this section, ex parte communications include all communications, oral or written (including electronic), between Commission decision-making personnel, and the Postal Service or public stakeholders regarding matters before the Commission.

(b) Ex parte communications do not include:

(1) Documents filed using the Commission's docketing system;

(2) Communications during the course of Commission meetings or hearings, or other widely publicized events where the Commission provides advance public notice of the event indicating the matter to be discussed, the event is open to all persons participating in the matter before the Commission, and a summary of the event is provided for the record;

(3) Communications during the course of off-the-record technical conferences associated with a matter before the Commission, or the pre-filing conference for nature of service cases required by § 3001.81 of this chapter, where advance public notice of the event is provided indicating the matter to be discussed, and the event is open to all persons participating in the matter before the Commission;

(4) Questions concerning Commission procedures, the status of a matter before the Commission, or the procedural schedule of a pending matter, where these issues are not contested matters before the Commission; and

(5) Communications not material to the matter before the Commission.

§ 3008.3 Definition of a matter before the Commission.

(a) A matter is before the Commission at such time as the Commission may designate, but in no event later than the earlier of the filing of a request to initiate a proceeding or the Commission noticing a proceeding.

(b) A matter is also before the Commission at such time as the person responsible for the communication has knowledge that a request to initiate a proceeding is expected to be filed.

(c) The following explanations apply:

(1) A matter is no longer before the Commission upon the issuance of the

final order or decision in the docketed matter;

(2) A matter is again before the Commission upon the filing of a request for reconsideration. The matter remains before the Commission until resolution of the matter under reconsideration;

(3) A matter is again before the Commission upon the remand of a Commission's final decision or order by an appellate court. The matter remains before the Commission until resolution of the matter under remand; and

(4) The mere potential that a request may be filed does not place a matter before the Commission. An affirmative action announcing, or actively preparing, an actual request with the intent to file within a reasonable period of time must be present.

§ 3008.4 Definitions of persons subject to ex parte communication rules.

(a) Commission decision-making personnel include:

(1) The Commissioners and their staffs;

(2) The General Counsel and staff;

(3) The Director of the Office of Accountability and Compliance and staff;

(4) Contractors, consultants, and others hired by the Commission to assist with the Commission's analysis and decision; and

(5) Any other employee who may reasonably be expected to be involved in the decisional process.

(b) The Postal Service includes all Postal Service employees, contractors, consultants, and others with an interest in a matter before the Commission. Any interaction between the Postal Service and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(c) Public stakeholders include all other persons not previously described, with an interest in a matter before the Commission. This includes the Commission non-decision-making personnel identified in paragraph (d) of this section. Any interaction between a public stakeholder and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(d) Commission non-decision-making personnel include:

(1) All Commission personnel other than decision-making personnel;

(2) Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 of this chapter regarding no participation by investigative or prosecuting officers;

(3) The Public Representative and other Commission personnel assigned to

represent the interests of the general public pursuant to 39 U.S.C. 505 in the specific case or controversy at issue (regardless of normally assigned duties); and

(4) Contractors, consultants, and others hired by the Commission to provide an independent analysis of issues before the Commission (and Commission employees assigned thereto).

§ 3008.5 Prohibitions.

(a) Ex parte communications between Commission decision-making personnel, and the Postal Service or public stakeholders is prohibited.

(b) Commission decision-making personnel shall not rely upon any information obtained through ex parte communications.

(c) Paragraph (a) of this section does not constitute authority to withhold information from Congress.

§ 3008.6 Required action upon ex parte communications.

(a) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that the communication will not be considered, and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(b) Commission decision-making personnel who receive, or who make or knowingly cause to be made, ex parte communications prohibited by this part shall promptly place, or cause to be placed, on the public record of the proceeding:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in (b)(1) and (2) of this section.

(c) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. In lieu of actually receiving rebuttal material, the Commission may in its discretion direct that the alleged

factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

§ 3008.7 Penalty for violation of ex parte communication rules.

(a) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of § 3008.5(a), the Commission or presiding officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a violation of § 3008.5(a) sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

[FR Doc. 2016-00544 Filed 1-13-16; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2015-0647; FRL-9941-20-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Crittenden County Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Arkansas State Implementation Plan (SIP) submitted to meet the Clean Air Act (CAA) emissions inventory (EI) requirement for the Crittenden County ozone nonattainment area. EPA is approving the SIP revision because it satisfies the CAA EI requirement for Crittenden County under the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The inventory includes emission data for Nitrogen Oxides (NOx) and Volatile Organic Compounds (VOCs). EPA is approving the revisions pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments should be received on or before February 16, 2016.

ADDRESSES: Comments may be mailed to Ms. Mary Stanton, Chief, State Implementation B, Ozone and Infrastructure Section (6MM-AB), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Colin Schwartz, (214) 665-7262, Schwartz.Colin@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: December 30, 2015.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2016-00560 Filed 1-13-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2015-0587; FRL 9940-98-Region 7]

Approval of Missouri's Air Quality Implementation Plans; Early Progress Plan of the St. Louis Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of

Missouri consisting of the Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) for the St. Louis Nonattainment area under the 2008 8-hour National Ambient Air Quality Standard (NAAQS). On August 26, 2013, EPA received from the Missouri Department of Natural Resources (MDNR) an Early Progress Plan for the St. Louis area showing progress toward attainment under the 2008 Ozone NAAQS. This submittal was developed to establish MVEBs for the St. Louis 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the St. Louis 8-hour ozone nonattainment area fulfills EPA's requirement to act on the MDNR SIP submission and to formalize that the MVEB is approved, and when considered with the emissions from all sources, demonstrates progress toward attainment from the 2008 base year through a 2015 target year. EPA found these MVEBs adequate for transportation conformity purposes in an earlier action on March 5, 2014.

DATES: Comments on this proposed action must be received in writing by February 16, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2015-0587, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment

received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit.

FOR FURTHER INFORMATION CONTACT:

Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7718, or by email at brown.steven@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action,

no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**. Again, please note that EPA found these MVEBs adequate for transportation conformity purposes in an earlier action (March 5, 2014, 79 FR 12504).

List of Subjects in 40 CFR Part 52

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

Dated: December 23, 2015.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016-00426 Filed 1-13-16; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 81, No. 9

Thursday, January 14, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: January 20, 2016, 1:00 p.m. EST.

PLACE: U.S. Chemical Safety Board, 1750 Pennsylvania Ave. NW., Suite 910, Washington, DC 20006.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on January 20, 2016, starting at 1:00 p.m. EST in Washington, DC, at the CSB offices located at 1750 Pennsylvania Avenue NW., Suite 910. The Board will discuss ongoing investigations and operational activities, the status of the FY 2016 Action Plan, and agency deployment procedures. An opportunity for public comment will be provided.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the "Contact Person for Further Information," at least three (3) business days prior to the meeting.

A conference call line will be provided for those who cannot attend in person. Please use the following dial-in number to join the conference: 1 (888) 862-6557, confirmation number 41610699.

The CSB is an independent federal agency charged with investigating accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry

standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

Contact Person for Further Information

Amy McCormick, Board Affairs Specialist, public@csb.gov or (202) 261-7630. Further information about this public meeting can be found on the CSB Web site at: www.csb.gov.

Dated: January 11, 2016.

Kara A. Wenzel,

Acting General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2016-00671 Filed 1-12-16; 11:15 am]

BILLING CODE 6350-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina (State) Advisory Committee (SAC) for a Meeting To Discuss Potential Project Topics

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the North Carolina (State) Advisory Committee will hold a meeting on Friday, January 29, 2016, for the purpose of continuing discussion of potential project topics.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888-576-4387, conference ID: 644751. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any

incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also invited and welcomed to make statements at the end of the conference call. In addition, members of the public are entitled to submit written comments; the comments must be received in the regional office by February 29, 2016. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562-7005, or emailed to Regional Director, Jeffrey Hinton at jhinton@usccr.gov. Persons who desire additional information may contact the Southern Regional Office at (404) 562-7000. Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at: <http://facadatabase.gov/committee/meetings.aspx?cid=266> and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
Matty Lazo-Chadderton, Chair
North Carolina Advisory Committee discussion of potential project topics (Coal Ash)
Matty Lazo-Chadderton, Chair
Open Comment
Staff/Advisory Committee
Public Participation
Adjournment

DATES: The meeting will be held on Friday, January 29, 2016, 12:00 p.m. EST.

Public Call Information

Toll-free call-in number: 888-576-4387, conference ID: 644751.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at 404-562-7006 or jhinton@usccr.gov.

Dated: January 8, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016-00584 Filed 1-13-16; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kentucky Advisory Committee for a Continuation of the Meeting To Discuss Potential Project Topics

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the South Carolina (State) Advisory Committee will hold a meeting on Wednesday, January 27, 2016, at 12:00 p.m. CST for the purpose of continuing committee and discussing potential voting rights project.

The meeting will take at the Hilary J. Boone Center, 500 Rose St, Lexington, KY 40508. This meeting is free and open to the public. Individuals with disabilities requiring reasonable accommodations should contact the Southern Regional Office a minimum of ten days prior to the meeting to request appropriate arrangements.

Members of the public can also listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 1-888-438-5453, conference ID: 2362145. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also invited and welcomed to make statements at the end of the meeting in person or via

conference call. In addition, members of the public are entitled to submit written comments; the comments must be received in the regional office by February 27, 2016. Written comments may be mailed to the Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. They may also be faxed to the Commission at (404) 562-7005, or emailed to Regional Director, Jeffrey Hinton at jhinton@usccr.gov. Persons who desire additional information may contact the Southern Regional Office at (404) 562-7000.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at: <http://facadatabase.gov/committee/meetings.aspx?cid=250> and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda:

Welcome and Introductions of new advisory committee members

Dr. Betty Griffin, Chairman

Kentucky Advisory Committee update/discussion of potential project topics

Dr. Betty Griffin, Chairman

Project Sub chairmen

Open Comment

Advisory Committee

Public Participation

Adjournment

DATES: The meeting will be held on Wednesday, January 27, 2016, from 12:00 p.m.-1:00 p.m. CST.

ADDRESSES: Hilary J. Boone Center, 500 Rose St., Lexington, KY 40508.

Public Call Information: Toll-free call-in number: 1-888-438-5453.

Conference ID: 2362145.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at 404-562-7000 or jhinton@usccr.gov.

Dated: January 8, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016-00583 Filed 1-13-16; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-816]

Certain Oil Country Tubular Goods From Turkey: Rescission of Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain oil country tubular goods from Turkey covering the period February 25, 2014, through August 31, 2015.

DATES: Effective date: January 14, 2016.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5760.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2015, we published a notice of opportunity to request an administrative review of the antidumping duty order on certain oil country tubular goods from Turkey covering the period February 25, 2014, through August 31, 2015.¹ On November 9, 2015, in response to timely requests from the petitioners² and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on certain oil country tubular goods from Turkey³ with respect to Borusan Mannesmann Boru Sanayi ve Ticaret A.Ş. and Borusan İstikbal Ticaret (collectively, Borusan),⁴ Çayırova Boru Sanayi ve

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 52741 (September 1, 2015).

² Maverick Tube Corporation; Energex Tube, a division of JMC Steel Group; TMK IPSCO; Vallourec Star LP; Welded Tube USA Inc.; and United States Steel Corporation (collectively the petitioners). See the petitioners' review request dated September 29, 2015, as corrected in the letter from Schagrin Associates dated January 6, 2016.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 69193 (November 9, 2015), as corrected in *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 74755 (November 30, 2015) (collectively *Initiation Notice*).

⁴ We treated these companies as a single entity in *Certain Oil Country Tubular Goods From the*

Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş. (collectively, Yücel),⁵ Çayırova Boru San A.Ş., HG Tubulars Canada Ltd., Tosçelik Profil ve Sac Endustrisi A.Ş., Tosalı Dış Ticaret A.Ş., and Yücelboru İhracat, İthalat.⁶ On January 6, 2016, the petitioners withdrew their review request in its entirety.⁷ No other party requested a review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, “in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.” The petitioners withdrew their request for review within the 90-day time limit. Because we received no other requests for review of the companies identified above and no other requests for the review of the order on certain oil country tubular goods from Turkey with respect to other companies subject to the order, we are rescinding the administrative review of the order in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of certain oil country tubular goods from Turkey. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP within 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to

Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part, 79 FR 41971, 41973 (July 18, 2014) (Final Determination). See also Initiation Notice, 80 FR at 69198, n.4 for our explanation on the initiation of review for Borusan.

⁵ We treated these companies as a single entity in the *Final Determination*. See *Initiation Notice*, 80 FR at 69198, n.5.

⁶ See *Initiation Notice*, 80 FR at 69197.

⁷ See the petitioners' withdrawal of the review request dated January 6, 2016.

comply with this requirement may result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: January 8, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016-00638 Filed 1-13-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective date: January 14, 2016.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) (202) 482-1690.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2015, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China

(PRC) for the period of review (POR) August 1, 2014, through July 31, 2015.¹

On August 31, 2015, the petitioners, the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation, requested an administrative review of the order with respect to Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa).² On September 30, 2014, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on PRCBs from the PRC with respect to Nozawa.³ On December 10, 2015, the petitioners timely withdrew their request for an administrative review of Nozawa.⁴ No other party requested a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, “in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.” The petitioners withdrew their request for review within the 90-day time limit. Because we received no other requests for review of Nozawa and no other requests for the review of the order on PRCBs from the PRC with respect to other companies subject to the order, we are rescinding the administrative review of the order in full, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of PRCBs from the PRC during the POR at rates equal to the cash deposit or bonding rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 45952 (August 3, 2015).

² See Letter from the petitioners to the Department, “Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Administrative Review” (August 31, 2015).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 60356 (October 6, 2015).

⁴ See Letter from the petitioners to the Department, “Polyethylene Retail Carrier Bags from the People's Republic of China: Withdrawal of Request for Administrative Review” (December 10, 2015).

instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: January 8, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016-00635 Filed 1-13-16; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE385

Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for February 1, 2016, 3–4:30 p.m., Eastern Standard Time.

ADDRESSES: Conference call. Public access is available at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to attend may contact Heidi Lovett, (301) 427–8034; email: heidi.lovett@noaa.gov.

SUPPLEMENTARY INFORMATION: The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The charter and other information are located online at <http://www.nmfs.noaa.gov/ocs/mafac/>.

Matters To Be Considered

The Committee is convening to discuss and finalize two items for submission to the NOAA Fisheries Assistant Administrator: The findings of the retrospective analysis of endangered species recovery actions and factors that contribute to their success, and the continuation of the Aquaculture Task Force for a second year to complete its ongoing work. Other administrative matters may be considered. This agenda is subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Lovett, 301–427–8034 by January 25, 2016.

Dated: January 8, 2016.

Samuel D. Rauch III,

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

[FR Doc. 2016-00590 Filed 1-13-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting Requirements for Commercial Fisheries Authorization

under Section 118 of the Marine Mammal Protection Act.

OMB Control Number: 0648–0292.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 200.

Average Hours Per Response: 15 minutes.

Burden Hours: 50.

Needs and Uses: This request is for an extension of a currently approved information collection.

Reporting injury to and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impacts of commercial fishing on marine mammal populations. This information is also used to categorize commercial fisheries into Categories I, II, or III. Participants in the first two categories must be authorized to take marine mammals, while those in Category III are exempt from that requirement. All categories must report injuries or mortalities on a National Marine Fisheries Service form.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA_Submission@omb.eop.gov or fax to (202) 395–5806.

Dated: January 8, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016-00576 Filed 1-13-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE399

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet February 1, 2016 through February 9, 2016.

DATES: The Council will begin its plenary session at 8 a.m. in the Mayfair Ballroom on Monday February 1st, continuing through Tuesday February 9, 2016. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. in the Cambridge/Oxford room on Monday February 1st, and continue through Wednesday February 3rd, 2016. The Council's Advisory Panel (AP) will begin at 8 a.m. in the Crystal Ballroom on Tuesday February 2nd, and continue through Saturday February 6th, 2016. The Ecosystem Committee will meet on Tuesday February 2, 2016 at 1 p.m. (room to be determined). The Legislative Committee will meet on February 2, 2016 at 1 p.m. (room to be determined).

ADDRESSES: The meeting will be held at the Benson Hotel, 309 Southwest Broadway, Portland, OR 97205.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone (907) 271-2809.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271-2809.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, February 1, 2016, Through Tuesday, February 9, 2016

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

- (1) Executive Director's Report
- (2) NMFS Management Report (Including Stock Assessment Prioritization Report, SSL Critical Habitat Redesignation update (T), Climate Science Strategy/Climate Vulnerability Assessment)
- (3) ADF&G Report
- (4) USCG Report
- (5) USFWS Report
- (6) IPHC Report
- (7) Protected Species Report
- (8) NEPA Training
- (9) Bering Sea TLAS Yellowfin Sole Fishery Limited Entry—Discussion Paper
- (10) GOA Trawl Bycatch Management—Discussion paper
- (11) Crab Plan Team Report; Norton Sound RKC OFL/ABC Catch Specifications
- (12) Halibut Management Framework—Review
- (13) Halibut Deck Sorting Scales 2016 Exempted Fishing Permit,

- Implementation Industry Workgroup Report
- (14) Observer coverage on BSAI trawl CVs—Final Action
- (15) Electronic Monitoring Analysis: Review Alternatives and Methods
- (16) GOA Tending Activity—Annual Review
- (17) Observer Tending—Review Alternatives
- (18) BSAI Snow Crab Bycatch Data Evaluation: Discussion Paper
- (19) Remove Western Aleutian Islands RKC Stocks from FMP—Discussion Paper
- (20) Halibut/Sablefish IFQ program review—Review Workplan
- (21) Groundfish Policy and Workplan: Ecosystem Committee Report

The Advisory Panel will address most of the same agenda issues as the Council except B reports.

The SSC agenda will include the following issues:

- (1) Halibut Framework
- (2) Norton Sound Red King Crab Catch Specifications
- (3) Crab Modeling Workgroup Report
- (4) Crab/Groundfish Economic SAFE Climate Science Strategy
- (5) Climate Vulnerability
- (6) Stock Assessment Prioritization
- (7) NEPA Training
- (8) Halibut/Sablefish Individual Fishing Quota
- (9) Deck Sorting
- (10) Electronic Monitoring
- (11) Snow Crab Bycatch

In addition to providing ongoing scientific advice for fishery management decisions, the SSC functions as the Council's primary peer review panel for scientific information as described by the Magnuson-Stevens Act section 302(g)(1)(e), and the National Standard 2 guidelines (78 FR 43066). The peer review process is also deemed to satisfy the requirements of the Information Quality Act, including the OMB Peer Review Bulletin guidelines.

The Agenda is subject to change, and the latest version will be posted at <http://www.npfmc.org/>.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271-2809 at least 7 working days prior to the meeting date.

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

Dated: January 11, 2016.

Tracey L. Thompson,

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

[FR Doc. 2016-00593 Filed 1-13-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE382

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2016 Research Fishery

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

ACTION: Notice of public meeting.

SUMMARY: On November 4, 2015, NMFS published a notice inviting qualified commercial shark permit holders to submit applications to participate in the 2016 shark research fishery. The shark research fishery allows for the collection of fishery-dependent data for future stock assessments and cooperative research with commercial fishermen to meet the shark research objectives of the Agency. Every year, the permit terms and permitted activities (*e.g.*, number of hooks and retention limits) specifically authorized for selected participants in the shark research fishery are designated depending on the scientific and research needs of the Agency, as well as the number of NMFS-approved observers available. In order to inform selected participants of this year's specific permit requirements and ensure all terms and conditions of the permit are met, NMFS is holding a mandatory permit holder meeting (via conference call) for selected participants. The date and time of that meeting is announced in this notice.

DATES: A conference call will be held on January 15, 2016.

ADDRESSES: A conference call will be conducted. See **SUPPLEMENTARY INFORMATION** for information on how to access the conference call.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Delisse Ortiz, or Guý DuBeck at (301) 427-8503.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The final rule for Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008) established, among other things, a shark research fishery to maintain time-series data for

stock assessments and to meet NMFS' research objectives. On August 18, 2015, NMFS implemented Amendment 6 to the 2006 Consolidated HMS FMP (80 FR 50074) which, among other things, established a new base annual quota for the sandbar shark research fishery as 90.7 mt dw (199,943 lb dw). The shark research fishery gathers important scientific data and allows selected commercial fishermen the opportunity to earn more revenue from selling the sharks caught, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land/harvest sandbar sharks subject to the sandbar quota available each year. The selected shark research fishery participants also have access to the research large coastal shark, small coastal shark, and pelagic shark quotas subject to retention limits and quotas per §§ 635.24 and 635.27, respectively.

On November 4, 2015 (80 FR 68513), NMFS published a notice inviting qualified commercial shark directed and incidental permit holders to submit an application to participate in the 2016 shark research fishery. NMFS received 16 applications, of which 11 applicants were determined to meet all the qualifications. NMFS selected five qualified participants after considering how to meet research objectives in particular regions. NMFS expects to invite qualified commercial shark permit holders to submit an application for the 2017 shark research fishery later in 2016.

As with past years, the 2016 permit terms and permitted activities (e.g., number of hooks and retention limits) specifically authorized for selected participants in the shark research fishery were designated depending on the scientific and research needs of the Agency, as well as the number of NMFS-approved observers available. In order to inform selected participants of this year's specific permit requirements and ensure all terms and conditions of the permit are met, per the requirements of § 635.32 (f)(4), NMFS is holding a mandatory permit holder meeting via conference call.

Conference Call Date, Time, and Dial-in Number

The conference call will be held on January 15, 2016, from 2 to 4 p.m. (EST). Participants and interested parties should call 1-888-324-3180 and use the passcode 9803191. Selected participants who do not attend will not be allowed to participate in the shark research fishery. While the conference call is mandatory for selected

participants, other interested parties may call in and listen to the discussion. Selected participants are encouraged to invite their captain, crew, or anyone else who may assist them in meeting the terms and conditions of the shark research fishery permit.

Dated: January 11, 2016.

Emily H. Menashes,

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

[FR Doc. 2016-00596 Filed 1-13-16; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 18, 2016 from 3:30 p.m. to 4:30 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Michael Li, Policy Advisor, Office of Energy Efficiency and Renewable Energy, US Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202-287-5718, and email michael.li@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

Tentative Agenda: Receive STEAB Task Force updates on action items and revised objectives for FY 2016, discuss follow-up opportunities and engagement with EERE and other DOE staff as needed to keep Task Force work moving forward, continue engagement with DOE, EERE and EPSA staff regarding energy efficiency and renewable energy projects and initiatives, and receive updates on member activities within their states.

Discuss plans for next live STEAB meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: <http://www.energy.gov/eere/steab/state-energy-advisory-board>.

Issued at Washington, DC, on January 8, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016-00685 Filed 1-13-16; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16-34-000.

Applicants: CPV Towantic, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CPV Towantic, LLC.
Filed Date: 1/7/16.

Accession Number: 20160107-5194.

Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: EG16-35-000.

Applicants: CPV Valley, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of CPV Valley, LLC.
Filed Date: 1/7/16.

Accession Number: 20160107-5195.

Comments Due: 5 p.m. ET 1/28/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16-168-001.

Applicants: New York Independent System Operator, Inc.

Description: Tariff Amendment: Response to Deficiency Letter re Penalty Gas Cost to be effective 12/31/9998.

Filed Date: 1/7/16.

Accession Number: 20160107-5178.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: ER16–694–000.

Applicants: Wabash Valley Power Association, Inc.

Description: § 205(d) Rate Filing: Amendments to Rate Schedules—Noble County REMC to be effective 3/7/2016.

Filed Date: 1/7/16.

Accession Number: 20160107–5163.

Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–695–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule No. 321, SRSG Participation Agreement to be effective 3/9/2016.

Filed Date: 1/8/16.

Accession Number: 20160108–5053.

Comments Due: 5 p.m. ET 1/29/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–00601 Filed 1–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–66–000]

Martha Coakley, Massachusetts Attorney General; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumer Group, v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company d/b/a National Grid; New Hampshire Transmission LLC d/b/a NextEra; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Unil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Transco, LLC; Notice of Filing

Take notice that on January 8, 2016, Emera Maine submitted tariff filing per: Refund Report to be effective N/A, pursuant to the Commission's Opinion No. 531–A, issued on October 16, 2014.¹

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. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>.

¹ *Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531–A, 149 FERC ¶ 61,032 (2014) (Opinion No. 531–A).

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 electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 29, 2016.

Dated: January 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–00603 Filed 1–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–29–000]

North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency Number 1, Piedmont Municipal Power Agency, City of Concord, NC, City of Kings Mountain, NC v. Duke Energy Carolinas, LLC; Notice of Complaint

Take notice that on January 7, 2016, pursuant to Sections 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and 825h (2012), and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212 (2015), North Carolina Electric Membership Corporation, North Carolina Municipal Power Agency Number 1, Piedmont Municipal Power Agency, the City of Concord, North Carolina, and the City of Kings Mountain, North Carolina (Complainants) filed a formal complaint against Duke Energy Carolinas, LLC (DEC—Respondent) alleging that the 10.2% base return on common equity currently used to calculate DEC's annual transmission revenue requirement pursuant to Attachment H of the Joint Open Access Transmission Tariff of DEC, Duke Energy Florida, LLC, and Duke Energy Progress, LLC is unjust and unreasonable.

Complainants certify that copies of the complaint were served on the contacts for DEC as listed on the Commission's list of Corporate Officials as well as the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 27, 2016.

Dated: January 8, 2016.
Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016-00604 Filed 1-13-16; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16-360-000.
Applicants: Venice Gathering System, LLC.

Description: Motion for Extension of Time to Comply with Certain Requirements of Order Nos. 587-W and 809 of Venice Gathering System, L.L.C. under RP16-360.

Filed Date: 1/5/16.

Accession Number: 20160105-5412.

Comments Due: 5 p.m. ET 1/15/16.

Docket Numbers: RP16-361-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 01/06/16 Negotiated Rates—Consolidated Edison Energy Inc. (HUB) 2275-89 to be effective 1/5/2016.

Filed Date: 1/6/16.

Accession Number: 20160106-5144.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: RP16-362-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 01/06/16 Negotiated Rates—Mercuria Energy Gas Trading LLC (HUB) 7540-89 to be effective 1/5/2016.

Filed Date: 1/6/16.

Accession Number: 20160106-5145.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: RP16-363-000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: MNUS Open Season Process for Sale of Available Capacity to be effective 2/6/2016.

Filed Date: 1/6/16.

Accession Number: 20160106-5155.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: RP16-364-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Update to Service Request Procedures Filing to be effective 2/8/2016.

Filed Date: 1/6/16.

Accession Number: 20160106-5314.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: RP16-365-000.

Applicants: Enable Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—LER 1005896 to be effective 1/6/2016.

Filed Date: 1/6/16.

Accession Number: 20160106-5317.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: RP16-366-000.

Applicants: Paiute Pipeline Company.

Description: § 4(d) Rate Filing: Non-conforming TSA 49-A to be effective 1/7/2016.

Filed Date: 1/6/16.

Accession Number: 20160106-5328.

Comments Due: 5 p.m. ET 1/19/16.

Docket Numbers: RP16-367-000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: Neg Rate 2016-01-06 2 Koch Ks to be effective 1/6/2016.

Filed Date: 1/6/16.

Accession Number: 20160106-5329.

Comments Due: 5 p.m. ET 1/19/16.

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: RP16-240-001.

Applicants: Alliance Pipeline L.P.

Description: Compliance filing Reinstatement BP Contract to be effective 12/1/2015.

Filed Date: 1/6/16.

Accession Number: 20160106-5326.

Comments Due: 5 p.m. ET 1/19/16.

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: January 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-00607 Filed 1-13-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16-438-000.

Applicants: Marshall Wind Energy LLC.

Description: Supplement to December 1, 2015 Marshall Wind Energy LLC tariff filing.

Filed Date: 1/7/16.

Accession Number: 20160107–5267.

Comments Due: 5 p.m. ET 1/21/16.

Docket Numbers: ER16–612–000.

Applicants: Greeley Energy Facility, LLC.

Description: Clarification to December 22, 2015 Greeley Energy Facility, LLC tariff filing.

Filed Date: 1/8/16.

Accession Number: 20160108–5201.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–696–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–01–08 Attachment X Funding Options Filing to be effective 6/24/2015.

Filed Date: 1/8/16.

Accession Number: 20160108–5150.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–697–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revised ISA Service Agreement No. 3577, Queue No. Y1–086 per Assignment to be effective 12/9/2015.

Filed Date: 1/8/16.

Accession Number: 20160108–5151.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–698–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: AECC Farmington Delivery Point Agreement to be effective 12/9/2015.

Filed Date: 1/8/16.

Accession Number: 20160108–5164.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–699–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: NCEMC NITSA SA 210 Amendment to be effective 1/1/2016.

Filed Date: 1/8/16.

Accession Number: 20160108–5166.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–700–000.

Applicants: CPV Towantic, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 3/9/2016.

Filed Date: 1/8/16.

Accession Number: 20160108–5175.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–701–000.

Applicants: CPV Valley, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 3/9/2016.

Filed Date: 1/8/16.

Accession Number: 20160108–5177.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–702–000.

Applicants: PJM Interconnection, L.L.C., American Transmission Systems, Incorporated, Metropolitan Edison Company, Pennsylvania Electric Company, The Potomac Edison Company.

Description: § 205(d) Rate Filing: Americans Transmission Systems, Inc. et al. Filing- New & Revised Service Agrmnts to be effective 3/8/2016.

Filed Date: 1/8/16.

Accession Number: 20160108–5222.

Comments Due: 5 p.m. ET 1/29/16.

Docket Numbers: ER16–703–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Address Adjustments to the SPP Criteria to be effective 3/8/2016.

Filed Date: 1/8/16.

Accession Number: 20160108–5225.

Comments Due: 5 p.m. ET 1/29/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–00602 Filed 1–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Second Supplemental Notice of Technical Conference

	Docket Nos.
PJM Interconnection, L.L.C.	ER15–2562–000
Consolidated Edison Company of New York, Inc. v. PJM Interconnection, L.L.C.	ER15–2563–000
	EL15–18–001

	Docket Nos.
Linden VFT, LLC v. PJM Interconnection, L.L.C.	EL15–67–000
Delaware Public Service Commission and Maryland Public Service Commission v. PJM Interconnection, L.L.C.	EL15–95–000
PJM Interconnection, L.L.C.	ER14–972–003
PJM Interconnection, L.L.C.	ER14–1485–005
	Not Consolidated

As noticed on December 4, 2015, the Commission has directed Commission staff to conduct a technical conference in the above-referenced proceedings. The technical conference is scheduled for January 12, 2016, at the Commission's headquarters at 888 First Street NE., Washington, DC 20426 between 10:00 a.m. and 4:00 p.m. (Eastern Time).

In an order dated November 24, 2015,¹ the Commission found that the assignment of cost allocation for the projects in the filings and complaints listed in the caption using PJM's solution-based distribution factor (DFAX) cost allocation method had not been shown to be just and reasonable and may be unjust, unreasonable, or unduly discriminatory or preferential. The Commission directed its staff to establish a technical conference to explore both whether there is a definable category of reliability projects within PJM for which the solution-based DFAX cost allocation method may not be just and reasonable, such as projects addressing reliability violations that are not related to flow on the planned transmission facility, and whether an alternative just and reasonable *ex ante* cost allocation method could be established for any such category of projects.

A revised agenda with an updated list of selected Speakers is attached and will be available on the web calendar on the Commission's Web site, www.ferc.gov. A schedule for post-technical conference comments will be established at the technical conference.

The technical conference is open to the public. The Chairman and Commissioners may attend and participate in the technical conference.

Pre-registration through the Commission's Web site <https://www.ferc.gov/whats-new/registration/01-12-16-form.asp> is encouraged, to help ensure sufficient seating is available.

¹ *PJM Interconnection, L.L.C., et al.*, 153 FERC ¶ 61,245 (2015) (November 2015 Order).

This conference will also be transcribed. Interested persons may obtain a copy of the transcript for a fee by contacting Ace-Federal Reporters, Inc. at (202) 347-3700.

In addition, there will be a free audio cast of the conference. Anyone wishing to listen to the meeting should send an email to Sarah McKinley at sarah.mckinley@ferc.gov, to request call-in information. Please reference "call information for PJM cost allocation technical conference" in the subject line of the email. The call-in information will be provided prior to the meeting.

Persons listening to the technical conference may participate by submitting questions, either prior to or during the technical conference, by emailing PJMDFAXconfDL@ferc.gov.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-502-8659 (TTY); or send a fax to 202-208-2106 with the required accommodations.

For more information about this technical conference, please contact PJMDFAXconfDL@ferc.gov; or Sarah McKinley, 202-502-8368, sarah.mckinley@ferc.gov, regarding logistical issues.

Dated: January 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-00606 Filed 1-13-16; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16-30-000]

North Carolina Electric Membership Corporation, North Carolina Eastern Municipal Power Agency, Fayetteville Public Works Commission, Complainant v. Duke Energy Progress, LLC, Respondents; Notice of Complaint

Take notice that on January 7, 2016, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA), 16 U.S.C. 824e, 825e, and 825h (2012), and Rules 206 and 212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.212 (2015), North Carolina Electric Membership Corporation, North Carolina Eastern Municipal Power Agency, and the Fayetteville Public Works Commission

(Complainants) filed a formal complaint against Duke Energy Progress, LLC (Respondent or DEP) alleging that the 10.8 percent base return on common equity currently used to calculate DEP's annual transmission revenue requirement pursuant to Attachment H of the Joint Open Access Transmission Tariff of Duke Energy Carolinas, LLC, Duke Energy Florida, LLC, and DEP is unjust and unreasonable, as more fully explained in the complaint.

Complainants certify that copies of the complaint were served on the contacts for DEP as listed on the Commission's list of Corporate Officials as well as the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 27, 2016.

Dated: January 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016-00605 Filed 1-13-16; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9935-76-OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Delaware's request to revise its National Primary Drinking Water Regulations Implementation EPA-authorized program to allow electronic reporting.

DATES: EPA's approval is effective February 16, 2016 for the State of Delaware's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT:

Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566-1175, seeh.karen@epa.gov.

SUPPLEMENTARY INFORMATION: On

October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient

legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 5, 2015, the Delaware Division of Public Health (DE DPH) submitted an application titled "Electronic Sample Entry Verify" for revision to its EPA-approved drinking water program under title 40 CFR to allow new electronic reporting. EPA reviewed DE DPH's request to revise its EPA-authorized program and, based on this review, EPA determined that the application met the standards for approval of authorized program revision set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Delaware's request to revise its Part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting under 40 CFR part 141 is being published in the **Federal Register**.

DE DPH was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Delaware's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or

rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Delaware's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2016-00612 Filed 1-13-16; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2015-0443; FRL-9941-23]

Pesticide Product Registration; Fluopyram Receipt of Applications for New Food Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing an active ingredient, fluopyram included in currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before February 16, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2015-0443 and the Registration Number of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: RDfrNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. Registration Applications

EPA has received applications to register pesticide products containing an active ingredient, fluopyram included in currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and

opportunity to comment on these applications. Notice of receipt of 264–1078; 264–1084; 264–1085; 264–1090; 264–1091(end-use); 264–1077 (technical).

Docket ID number: EPA–HQ–OPP–2015–0443. *Applicant:* Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. These applications do not imply a decision by the Agency on these applications. *Active ingredient:* Fluopyram. *Product type:* Fungicide. *Proposed uses:* Artichoke, globe; aspirated grain fractions; peanut hay; hops; root vegetables, except beet, sugar, root, crop subgroup 1B; tuberous and corm vegetables, crop subgroup 1C; potato wet peel; vegetables, leaves of root and tuber, crop group 2; bulb vegetables, bulb onion (crop subgroup 3–07A); bulb vegetables, green onions (crop subgroup 3–07B); leafy greens (crop subgroup 4A), without spinach; leafy greens (crop subgroup 4A) spinach; leafy petioles subgroup, celery (crop subgroup 4B); brassica leafy vegetables: Head and stem (crop subgroup 5A); brassica leafy vegetables: Leafy greens (crop subgroup 5B); soybean forage; soybean hay; legume vegetables: Edible podded (crop subgroup 6A); legume vegetables: Succulent shelled peas and beans (crop subgroup 6B); legume vegetables: Dried shelled peas and beans (crop subgroup 6C); vegetable, foliage of legume vegetables, forage, hay and vines, forage (crop group 7); fruiting vegetables, tomato subgroup (crop subgroup 8–10A); fruiting vegetables, pepper/eggplant subgroup (crop subgroup 8–10B); cucurbit vegetables (crop group 9A), melon subgroup; cucurbit vegetables (crop group 9B), cucumber/squash subgroup; citrus fruits (crop group 10–10); citrus oil; pome fruit (crop group 11–10); stone fruit (crop group 12–12A), cherry subgroup; stone fruit (crop group 12–12B), peach subgroup; stone fruit (crop group 12–12C), plum subgroup; berries and small fruit: Caneberry (crop subgroup 13–07A); berries and small fruit: Bushberry (crop subgroup 13–07B); raisins at 4.0 ppm; berries and small fruit, small fruit vine climbing, except fuzzy kiwi (crop subgroup 13–07F); berries and small fruit: Low growing berry (crop subgroup 13–07G); sorghum, grain; wheat milled by-products; grass forage, fodder and hay: Forage (crop group 17); herb crop (subcrop group 19A); dill seed; herbs, dried; oilseeds, rapeseed, canola (crop subgroup 20A); oilseeds, sunflower, seed (crop subgroup 20B); oilseeds: Cottonseed (crop subgroup 20C); chicken, meat byproducts; chicken, fat; chicken, meat; goat, fat; goat, meat;

sugarcane, cane (indirect or inadvertent residues).

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 7, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–00535 Filed 1–13–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 29, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *David L. Friedrichsen, Palm Harbor, Florida, and Robin R. Hanson, as trustees of The Friedrichsen DLF Irrevocable Inheritance Trust dated December 8, 2015; The Friedrichsen KEF Irrevocable Inheritance Trust dated December 8, 2015; The Friedrichsen KMC Irrevocable Inheritance Trust dated December 8, 2015; and The Friedrichsen RRH Irrevocable Inheritance Trust dated December 8, 2015*, all of Farmington, Minnesota, and as members of the Friedrichsen family shareholder group acting in concert; to acquire voting shares of Citizens Investment Co., Inc., and thereby indirectly acquire voting shares of Citizens State Bank of Glenville, both in Glenville, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–00598 Filed 1–13–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

[Docket No. 1530 RIN 7100 AE 44]

Regulation Q; Regulatory Capital Rules: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is providing this notice pursuant to the Board's rule regarding risk-based capital surcharges for global systemically important bank holding companies (GSIB surcharge rule). The GSIB surcharge rule provides that the Board will publish each year the aggregate global indicator amounts for purposes of a calculation required under the rule. Accordingly, and pursuant to the GSIB surcharge rule, the Board is hereby publishing the aggregate global indicator amounts for 2015.

DATES: *Effective:* January 14, 2016.

FOR FURTHER INFORMATION CONTACT:

Anna Lee Hewko, Deputy Associate Director, (202) 530–6260, Constance M. Horsley, Assistant Director, (202) 452–5239, Juan C. Climent, Manager, (202) 872–7526, or Holly Kirkpatrick, Supervisory Financial Analyst, (202) 452–2796, Division of Banking Supervision and Regulation; or Benjamin McDonough, Special Counsel, (202) 452–2036, or Mark Buresh, Senior Attorney, (202) 452–5270, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board's GSIB surcharge rule establishes a methodology to identify global systemically important bank holding companies in the United States (GSIBs) based on indicators that are correlated with systemic importance.¹ Under the GSIB surcharge rule, a firm must calculate its GSIB score using a specific formula (Method 1). Method 1 uses five equally-weighted categories that are correlated with systemic importance—size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity—and subdivided into twelve systemic indicators. For each indicator, a firm divides its own measure of each systemic indicator by an aggregate global indicator amount.

¹ See 12 CFR 217.402, 217.404.

The firm's Method 1 score is the sum of its weighted systemic indicator scores. The GSIB surcharge for the firm is then the higher of the GSIB surcharge determined under Method 1 and a second method that weights size, interconnectedness, cross-jurisdictional activity, complexity, and reliance on wholesale funding (instead of substitutability).²

The aggregate global indicator amounts used in the score calculation

under Method 1 are based on data collected by the Basel Committee on Banking Supervision (BCBS). The BCBS amounts are determined based on the sum of the systemic indicator scores of the 75 largest U.S. and foreign banking organizations as measured by the BCBS, and any other banking organization that the BCBS includes in its sample total for that year. The BCBS publicly releases these values in euros each year. To account for changes in currency values,

the GSIB surcharge rule indicates that the Board will publish the aggregate global indicator amounts each year in U.S. dollars.³

The aggregate global indicator amounts for purposes of the Method 1 score calculation under the GSIB surcharge rule for 2015, which were calculated as part of the end-2014 GSIB assessment, are:

AGGREGATE GLOBAL INDICATOR AMOUNTS IN U.S. DOLLARS (USD) FOR 2015

Category	Systemic indicator	Aggregate global indicator amount in USD (end-2014 assessment)
Size	Total exposures	89,657,702,623,292
Interconnectedness	Intra-financial system assets	9,553,265,287,432
	Intra-financial system liabilities	10,766,503,932,080
	Securities outstanding	14,829,559,920,658
Substitutability/financial institution infrastructure.	Payments activity	2,588,833,244,898,340
	Assets under custody	141,055,159,810,929
	Underwritten transactions in debt and equity markets	6,457,421,866,621
Complexity	Notional amount of over-the-counter (OTC) derivatives	773,613,780,418,221
	Trading and available-for-sale (AFS) securities	3,983,442,843,602
Cross-jurisdictional activity	Level 3 assets	799,000,645,785
	Cross-jurisdictional claims	20,924,671,362,004
	Cross-jurisdictional liabilities	19,029,188,523,805

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

By order of the Board of Governors of the Federal Reserve System, January 11, 2016.

Robert deV. Frierson,
Secretary of the Board.

[FR Doc. 2016–00589 Filed 1–13–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2016.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204, or *BOS.SRC.Applications.Comments@bos.frb.org*:

1. *Spencer MHC, and Spencer Mid-Tier Holding Company*, both in Spencer, Massachusetts; to merge with Green Valley Bancorp, MHC, and Green Valley Bancorp, Inc., and thereby indirectly acquire voting shares of Southbridge

Savings Bank, all in Southbridge, Massachusetts.

Board of Governors of the Federal Reserve System, January 11, 2016.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2016–00599 Filed 1–13–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–15BM]

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

² The second method (Method 2) uses similar inputs to those used in Method 1, but replaces the substitutability category with a measure of a firm's

use of short-term wholesale funding. In addition, Method 2 is calibrated differently from Method 1.

³ 12 CFR 217.404(b)(1)(i)(B); 80 FR 49082, 49086–87 (August 14, 2015).

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

Assessing the Impact of Organizational and Personal Antecedents on Proactive Health/Safety Decision Making—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH, under Public Law 91-596, Sections 20 and 22 (Section 20-22, Occupational Safety and Health Act of 1977) has the responsibility to conduct research relating to innovative methods, techniques, and approaches dealing with occupational safety and health problems.

This research relates to the interplay of personal, organizational, and cultural influences on risk-taking and proactive decision-making behaviors among mine workers. The antecedents, or characteristics, that impact these behaviors are not well understood in mining. Understanding the degree to which antecedents influence decisions can inform the focus of future health and safety management interventions.

NIOSH proposes a project that seeks to empirically understand the following: What are the most important organizational antecedent characteristics needed to support worker health and safety (H&S) performance behaviors in the mining industry?

What are the most important personal antecedent characteristics needed to support worker health and safety (H&S) performance behaviors in the mining industry?

To answer the above questions, NIOSH researchers developed a psychometrically supported survey. Researchers identified seven worker perception-based ‘organizational values’ and four ‘personal characteristics’ that are presumed to be important in fostering H&S knowledge, motivation, proactive behaviors, and safety outcomes. Because these emergent, worker perception-based constructs have a theoretical and empirical history, psychometrically tested items exist for each of them.

NIOSH researchers will administer this survey at mine sites to as many participating mine workers as possible to answer the research questions. Upon data collection and analysis NIOSH researchers will revalidate each scale to ensure that measurement is valid. A quantitative approach, via a short survey, allows for prioritization, based on statistical significance, of the antecedents that have the most critical influence on proactive behaviors. Data collection will take place with approximately 1800 mine workers over three years. The respondents targeted for this study include any active mine worker at a mine site, both surface and underground. All participants will be

between the ages of 18 and 75, currently employed, and living in the United States. Participation will require no more than 20 minutes of workers’ time (5 minutes for consent and 15 minutes for the survey). There is no cost to respondents other than their time.

Upon collection of the data, it will be used to answer what organizational/ personal characteristics have the biggest impact on proactive and compliant health and safety behaviors. Dominance and relative weights analysis will be used as the data analysis method to statistically rank order the importance of predictors in numerous regression contexts. Safety proactive and safety compliance will serve as the dependent variables in these regression analyses, with the organizational and personal characteristics as independent variables.

Findings will be used to improve the safety and health organizational values and focus of mine organizations, as executed through their health and safety management system for mitigating health and safety risks at their mine site. Specifically, if organizations are lacking in values that are of high importance among employees, site leadership knows where to focus new, innovative methods, techniques, and approaches to dealing with their occupational safety and health problems. Finally, the data can be directly compared to data from other mine organizations that administered the same standardized methods to provide broader context for areas in which the mining industry can focus more attention if trying to encourage safer work behavior.

An estimated sample of up to 1,800 mine employees will be collected from various mining operations which have agreed to participate. In order to reach a sample of 1,800, researchers will try to secure participation from approximately twenty-one mine operations. It is estimated that it will take about 5 minutes to recruit a particular mine and 5 minutes to consent the individual workers. The amount of time to complete the survey data collection instrument is about 15 minutes. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Safety/health Mine Operator	Mine Recruitment Script	7	1	5/60
Mine Worker	Individual Miner Recruitment Script	600	1	5/60
Mine Worker	Survey	600	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office,
Office of Scientific Integrity, Office of the
Associate Director for Science, Office of the
Director, Centers for Disease Control and
Prevention.

[FR Doc. 2016-00562 Filed 1-13-16; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Centers for Disease Control and
Prevention**

[30Day-16-15ARG]

**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. Direct written comments and/or suggestions regarding the items contained in this notice 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

Prevent Hepatitis Transmission among Persons Who Inject Drugs—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Hepatitis C virus (HCV) infection is the most common chronic blood borne infection in the United States; approximately three million persons are chronically infected. Identifying and reaching persons at risk for HCV infection is critical to prevent transmission and treat and cure if infected. CDC monitors the national incidence of acute hepatitis C through passive surveillance of acute, symptomatic cases of laboratory confirmed hepatitis C cases. Since 2006, surveillance data have shown a trend toward reemergence of HCV infection mainly among young persons who inject drugs (PWID) in nonurban counties. Of the cases reported in 2013 with information on risk factors 62% indicated injection drug use as the primary risk for acute hepatitis C. The prevention of HCV infection among PWIDs requires an integrated approach including harm reduction interventions, substance abuse treatment, and prevention of other blood borne infections, and care and treatment of HCV infection.

The purpose of the proposed study is to address the high prevalence of HCV infection by developing and implementing an integrated approach for detection, prevention, care and treatment of infection among persons aged 18–30 years who reside in non-urban counties. Awardees will develop and implement a comprehensive strategy to enroll young non-urban PWID, collect epidemiological information, test for viral hepatitis and HIV infection and provide linkage to primary care services, prevention

interventions, and treatment for substance abuse and HCV infection. In addition to providing HCV testing, participants will be offered testing for the presence of co-infections with hepatitis B virus (HBV) and HIV. Adherence to prevention services and retention in care will be assessed through follow up interviews. Furthermore, re-infection with HCV will be evaluated through follow-up blood tests.

The project will recruit an estimated total of 995 young PWIDs to enroll 895 PWIDs. The participants will be recruited from settings where young PWIDs obtain access to care and treatment services. Recruitment will be direct and in-person by partnering with local harm reduction sites. Recruiters will enroll subjects across recruitment sites primarily through drug treatment programs and syringe exchange programs, as well as persons referred to these sites as a result of referral from other programs and respondent driven sampling. Those who consent to participate will be administered an eligibility interview questionnaire by trained field staff. If found eligible, the participant will take an interviewer-administered survey that includes information on initiation of drug use, injection practices, HCV, HBV and HIV infection status, access to prevention and medical care, desire to receive and barriers to receiving HCV treatment, and missed opportunities for hepatitis prevention. Participants will receive counselling regarding adherence to medical and/or drug treatment services and prevention services. Participants will be interviewed for a maximum of 5 times within any 12-month interval during the course of the study: consent and interview at enrollment/baseline for an estimated 60 minutes, and 30-minute follow-up interviews every 3 months thereafter. Participants will be interviewed throughout the study during the 3-year project. However, most of the recruitment will be spread over first two years to allow for one year follow up period of the later recruits.

Participation in interviews and responses to all study questions are totally voluntary and there is no cost to respondents other than their time. The annualized burden to participants is 974 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Young PWIDs	Screener	332	1	10/60
Eligible young PWIDs	Initial Survey	298	1	60/60
Eligible young PWIDs	Follow-up survey	298	4	30/60

Leroy A. Richardson,
Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.
 [FR Doc. 2016-00561 Filed 1-13-16; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-16-16JD; Docket No. CDC-2016-0004]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).
ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the proposed information collection entitled “Young Men who have Sex with Men (YMSM) Study Thailand”. CDC is requesting a three-year approval for this new project.

DATES: Written comments must be received on or before March 14, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2016-0004 by any of the following methods:

- *Federal eRulemaking Portal: Regulation.gov.* Follow the instructions for submitting comments.

- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and

Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information

technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Cohort Study of HIV, STIs and Preventive Interventions among Young MSM in Thailand—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a new information collection request for 3 years of data collection. In Thailand, there is a very high HIV incidence in men who have sex with men (MSM) and transgender women (TGW). It is estimated that over 50% of all new HIV infections are occurring in MSM and TGW. At Silom Community Clinic @Tropical Medicine (SCC @TropMed), there is a reported average HIV prevalence of 28% and HIV incidence of 8 per 100 person-years in young men.

An area with gaps of understanding regarding the HIV epidemic in Thailand, as well as globally, is the epidemiology, risk factors, and HIV beliefs and knowledge of gay identified and transgender youth. In 2013, UNAIDS reported that 95% of new HIV infections were in low- and middle-income countries, where more than one third were in young people (<18 years) who were unaware of their HIV status. Adolescents living with HIV are more

likely to die from AIDS, and there is little tracking of the HIV epidemic and outcomes in adolescents.

We propose a study of males aged 15–29 years at risk for HIV. The SCC @TropMed, the clinical site of the activity, is a Clinical Research Site (CRS) and that conducts HIV prevention research in network clinical trials supported by National Institute of Health (NIH). The data will be collected from young MSM and TGW in Bangkok,

Thailand through the CRS that serves MSM and transgender women (TGW). Although there are other MSM and TGW clinic settings in Bangkok, there is no cohort data providing information on incidence and risk factors for HIV incidence in the young. Therefore, this study also includes a longitudinal assessment (cohort) to assess HIV and sexually transmitted infection incidence and prevalence. This study also includes a qualitative component to

assess adolescent and key leaders HIV prevention knowledge and practices. A study of young men at risk in Thailand is urgently needed to provide needed data to assess and implement prevention strategies and inform policies for HIV prevention in Thailand, as well as globally. There is no cost to participants other than their time.

The total estimated annualized burden hours are 814.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses	Average burden per response (in hours)	Total burden hours
Community members	FGD Consent Assent	10	1	30/60	5
Community members	FGD	10	1	2	20
Community members	KII Consent Assent	4	1	30/60	2
Community members	KII	4	1	2	8
Community members	Screening checklist	300	1	15/60	75
Potential Participant	Screening Consent Assent	300	1	30/60	150
Potential Participant	Screening CASI	300	1	15/60	75
HIV-positive at screening	HIV CASI	60	1	2/60	2
Participants	Enrollment Consent Assent	167	1	30/60	84
Participants	Follow-up CASI	167	4	15/60	167
Participants	YMSM Clinical Form	167	4	20/60	223
HIV-positive Participants	HIV CASI Cohort	46	4	1/60	3
Total					814

Leroy A. Richardson,
Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–00564 Filed 1–13–16; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0650]

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

Prevention Research Centers Program National Evaluation Reporting System (OMB No. 0920–0650, exp. 5/31/2016)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1984, Congress passed Public Law 98–551 directing the Department of Health and Human Services (DHHS) to establish Centers for Research and Development of Health Promotion and Disease Prevention. In 1986, the CDC received lead responsibility for this program, referred to as the Prevention Research Centers (PRC) Program. PRC Program awardees are managed as a CDC cooperative agreement with awards made for five years.

In 2013, the CDC published program announcement DP14–001 for the current PRC Program funding cycle (September 30, 2014–September 29, 2019). Twenty-six PRCs were selected through a competitive, external, peer-review process; the program is currently in its second year of the five year funding cycle.

Each PRC is housed within an accredited school of public health or an accredited school of medicine or osteopathy with a preventive medicine residency program. The PRCs conduct outcomes-oriented, applied prevention research on a broad range of topics using a multi-disciplinary and community-engaged approach. Each PRC receives funding from the CDC to establish its core infrastructure and functions and support a core research project. In addition to core research projects, most PRCs are awarded funding to complete special interest projects (SIPs) and conduct other research projects.

The DP14-001 program announcement included language that was used to develop and operationalize a set of 25 PRC Program evaluation indicators. The PRC Program logic model identifies program inputs, activities, outputs, and outcomes. The list of indicators was revised to better reflect program needs and capture PRCs' center and research activities, outputs, and outcomes.

The CDC is currently approved to collect information from the PRCs through a structured telephone interview and a web-based survey hosted by a third-party. The web-based survey is designed to collect information on the PRCs' collaborations with health departments; formal training programs and other training activities; and other-funded research

projects conducted separate from their core projects or SIP research. Structured telephone interviews with key PRC informants allow PRC Program staff to collect indicator data that do not lend themselves to a survey-based methodology and require a qualitative approach.

CDC requests OMB approval to revise the information collection plan as follows:

(1) The content of the web-based survey will be updated to more closely align with revised evaluation indicators. In addition, the web-based survey will be migrated from a third party platform to a web-based data collection system hosted on CDC servers. Although the estimated burden per response will increase, the revised data collection system will be comprehensive and will reduce the need for follow-up clarification by PRC Program awardees.

(2) CDC will discontinue telephone interviews and conduct key informant interviews (KII) every other year to capture qualitative information about PRC Network formation and cohesion.

CDC will continue to use the information reported by PRCs to identify training and technical assistance needs, respond to requests for information from Congress and other sources, monitor grantees' compliance with cooperative agreement requirements, evaluate progress made in achieving goals and objectives, and describe the impact and effectiveness of the PRC Program.

The CDC currently funds 26 PRCs. Each PRC will annually report the required information to the CDC. The annualized estimated burden is expected to increase. This increase equates to an estimated weekly burden of one hour per respondent and more fully accounts for the burden of preparing responses, as well as the burden of reporting responses. Web-based data collection will occur on an annual basis. The KIIs will take place in 2016 and 2018. This equates to two PRC Network KIIs per PRC Program awardee during the three year OMB approval period. Responses are annualized in the burden table below.

The proposed web-based data collection system will allow data entry during the entire year, which will enable respondents to distribute burden throughout each funding year. Response burden is expected to decrease in funding years 2 through 5, since the web-based data collection system will replicate a number of data elements from year-to-year, and respondents will only need to enter changes.

OMB approval is requested for three years. CDC plans to implement revised reporting requirements in March 2016. PRC Program awardees are required to participate in information collection. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,299.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Prevention Research Center ..	Web-based Data Collection	26	1	48
	Key Informant Interview: PRCs Network	17	1	3

Leroy A. Richardson,
*Chief, Information Collection Review Office,
 Office of Scientific Integrity, Office of the
 Associate Director for Science, Office of the
 Director, Centers for Disease Control and
 Prevention.*

[FR Doc. 2016-00563 Filed 1-13-16; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970-0410]

Proposed Information Collection Activity; Comment Request

Title: Tribal PREP Implementation Plan.

Description: This request to collect information for the Tribal PREP Implementation Plan, is due by July 1,

2017. This plan will contain the description of how the grantee intends to structure, measure and evaluate the implementation of the project. Information contained in this Implementation Plan will enable the Program Office to provide the necessary technical assistance to help ensure that grantees are structuring Tribal PREP projects within the framework of PREP design guidance, including mandated adult preparation subjects, Positive Youth Development and evidence-based programming.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal PREP Plan	10	1	40	400

Estimated Total Annual Burden Hours: 400.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,
Reports Clearance Officer.

[FR Doc. 2016-00595 Filed 1-13-16; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2015-N-4809]

Patient and Medical Professional Perspectives on the Return of Genetic Test Results and Interpretations; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled "Patient and Medical Professional Perspectives on the Return of Genetic Test Results." The purpose of this public workshop is to understand patient and provider perspectives on receiving potentially medically relevant genetic test results. The topic(s) to be discussed will focus on better defining the specific information patients and providers prefer to receive, with an emphasis on the type(s) and amount of evidence available to interpret the results for medical purposes, how those results should be returned, and what information is needed to understand the results in the event that they could effectively aid in medical decision making.

DATES: The public workshop will be held on March 2, 2016, from 8 a.m. to 4 p.m. Submit either electronic or written comments on the public workshop by March 31, 2016.

ADDRESSES: The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to <http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2015-N-4809 for "Patient and Medical Professional Perspectives on the Return of Genetic Test Results; Public Workshop; Request for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including

the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cara Tenenbaum, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5563, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301-796-8456, cara.tenenbaum@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In his State of the Union address on January 20, 2015, President Obama launched the Precision Medicine Initiative (PMI),¹ in order to empower health care providers to tailor treatment and prevention strategies to an individual’s unique characteristics. This may include analysis of genetic information, including information gathered through Next Generation Sequencing (NGS). As part of PMI, FDA is considering new approaches in its regulation of NGS. FDA is interested in promoting innovation while ensuring that patients have access to cutting edge technologies that are accurate and provide meaningful information to inform their health care decisions.

NGS produces significant amounts of information, including some that may be difficult for patients and health care professionals to interpret with presently available scientific knowledge. In some cases, the evidence for association of many genetic variants with particular diseases is limited because of the rarity of the variant or because it partially contributes to a disease in combination with other factors. In other cases, the evidence may be contradictory or not be available currently, but may be clearer in the future. Additionally, some findings may be unexpected or incidental to what a physician is looking for. FDA seeks to learn, when results are generated in a CLIA-compliant laboratory, which results are of importance to patients and providers, how those results should be returned, and how much and what types of evidence supporting interpretation of those results is necessary. Thus, FDA is seeking public input from patients and health care professionals to inform its approach regarding the return of results of genetic tests.

II. Topics for Discussion at the Public Workshop

In response to President Obama’s PMI, the public workshop will consider the different uses of genetic testing. For example, tests that determine the risk of developing a condition, tests that diagnose hereditary genetic disorders, and tests that can guide treatment or therapeutic interventions. Additionally, the workshop and invited speakers will cover various topics, including which results (*e.g.*, variants or mutations) and interpretations are useful to patients when undergoing genetic testing; what types of results patients would want to receive when there is no medical action that can be taken; how best can results of genetic test be presented; patients’ preference in receiving results that are supported by limited or conflicting evidence and how best such results should be presented; how information can be best presented to ease integration into clinical care and health care provider workflow; what providers want to know about results that are supported by limited or conflicting evidence; what information should be included in test reports and how it should be presented; and what specific information providers can do without.

FDA will present case studies as a starting point for discussion, which will be available on the meeting Web page in advance of the public meeting. Furthermore, the following will be considered in the context of different uses of genetic testing: Health literacy/ numeracy of patients; genetics/genomics

literacy of health care practitioners; the personal utility of knowing about the presence of a mutation or variant whether it is actionable or not; that a mutation or variant may have limited evidence at the time the test is initially run but evidence may be gathered that changes the interpretation of the mutation or variant; privacy concerns; demographic information and subpopulations; undiagnosed patients; and underserved populations.

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by February 24, 2016, 4 p.m. Early registration is recommended because space is limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, email: susan.monahan@fda.hhs.gov, phone: 301-796-5661, no later than February 20, 2016.

To register for the public workshop, please visit FDA’s Medical Devices News & Events—Workshops & Conferences calendar at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this meeting/public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Susan Monahan to register (see contact for special accommodations). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. If you have never attended a Connect Pro event before, test your connection at https://collaboration.fda.gov/common/help/en/support/meeting_test.htm. To get a quick overview of the Connect Pro program, visit http://www.adobe.com/go/connectpro_overview. FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Requests for Oral Presentations: This public workshop includes public comment and topic-focused sessions. During online registration you may indicate if you wish to present during a public comment session. FDA has

¹ The Precision Medicine Initiative found on the White House’s Web site at: <https://www.whitehouse.gov/precision-medicine>.

included general topics for discussion in this document. If you do request to present public comments, please list which topics you wish to address. FDA will do its best to accommodate requests to make public comment. Following the close of registration, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by February 24, 2016. All requests to make oral presentations must be received by the close of registration on February 24, 2016, at 4 p.m. If selected for presentation, any presentation materials must be emailed to Cara Tenenbaum (see **FURTHER INFORMATION CONTACT**) no later than February 26, 2016. No commercial promotional material will be permitted to be presented or distributed at the public workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at <http://www.fda.gov>. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this public workshop from the posted events list.)

Dated: January 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-00540 Filed 1-13-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-D-0307]

Revised Preventive Measures To Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is

announcing the availability of a document entitled "Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products; Guidance for Industry." The guidance document provides blood collecting establishments and manufacturers of plasma derivatives with comprehensive recommendations intended to minimize the possible risk of transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) from blood and blood products. The guidance amends the guidance document entitled "Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease (CJD) and Variant Creutzfeldt-Jakob Disease (vCJD) by Blood and Blood Products" dated May 2010 (2010 guidance) by finalizing and incorporating the recommendations from the draft document entitled "Draft Guidance for Industry: Amendment to 'Guidance for Industry: Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products'" dated June 2012 (2012 draft guidance).

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <http://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a

written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2012-D-0307 for Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products; Guidance for Industry. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Tami Belouin, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products; Guidance for Industry." The guidance document provides blood collecting establishments and manufacturers of plasma derivatives with comprehensive recommendations intended to minimize the possible risk of transmission of CJD and vCJD from blood and blood products. The guidance is the latest in a series of guidances addressing the risk of CJD and vCJD transmission by blood and blood products.

The guidance amends the 2010 guidance (May 27, 2010; 75 FR 29768) and finalizes the 2012 draft guidance (June 11, 2012; 77 FR 34390) by providing revised labeling recommendations for plasma-derived products, including albumin and products containing plasma-derived albumin. The guidance also provides manufacturers of plasma-derived

products with recommendations on how to report the labeling changes to FDA under 21 CFR 601.12. Additional changes to the guidance include adding information in the background section relevant to the new labeling recommendations; providing updated information on the global vCJD and Bovine Spongiform Encephalopathy epidemics; clarifying the reentry criteria for a donor with a family history of CJD; clarifying the requirements related to biological product deviation reporting; and, updating, adding, and removing certain footnotes and references. FDA received four comments on the 2012 draft guidance, and those comments were considered in the finalization of the draft guidance.

This guidance does not address potential changes to the geographic exposure based deferrals for risk of vCJD. FDA discussed such potential changes with its Transmissible Spongiform Encephalopathies Advisory Committee in June 2015 and intends to address revised recommendations for geographic donor deferrals in future guidance documents.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products; Guidance for Industry. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910-0338; the collections of information in 21 CFR 606.100 have been approved under OMB control number 0910-0116; and the collections of information in 21 CFR 600.14 and 606.171 have been approved under OMB control number 0910-0458.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/>

[default.htm](http://www.regulations.gov) or <http://www.regulations.gov>.

Dated: January 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-00536 Filed 1-13-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Self-Affirmation Construct Validity (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used; (3) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact*: Rebecca Ferrer, Program Director, Basic Biobehavioral and Psychological Sciences Branch, Behavioral Research Program, Division of Cancer Control and Population Sciences, National Cancer Institute, 9609 Medical Center Dr., Rockville MD 20852. or call non-toll-free number (240) 276-6914 or Email your request, including your address to: ferrerra@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Self-affirmation Construct Validity, 0925-NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This information collection, seeks to refine a theory about how self-competence and values play a role in defensive responses to health communications. Although theoretically-driven research has shown that self-affirmation—a process by which individuals reflect on values that are important to them—can improve responses to health and cancer

communications, the “active ingredient” (or mechanisms underlying effectiveness) of self-affirmations is unknown. Self-affirmation is a potent means of augmenting the effectiveness of threatening health communications. Individuals tend to be defensive against information suggesting their behavior puts them at risk for disease or negative health. Previous evidence suggests that self-affirmation may reduce defensiveness to threatening health information, increasing openness to the message and resulting in increased disease risk perceptions, disease-related worry, intentions to engage in preventive behavior, and actual behavioral change. Understanding the mechanisms that explain these robust

effects would yield evidence important for dissemination, including ways to refine self-affirmation interventions and make them more potent, which could change the ways that public health messages are constructed. This research can inform NCI scientific priorities and investments in self-affirmation research. The results of the information collection will be used to further develop and improve self-affirmation theory. These findings may allow future researchers to develop and test cancer prevention interventions.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 717.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Types of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total hour burden
Screener	General Public	10,000	1	1/60	167
Study	General Public	1,100	1	30/60	550

Dated: January 7, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016-00545 Filed 1-13-16; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0085]

Agency Information Collection Activities: Administrative Rulings

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Administrative Rulings. CBP is proposing that this information collection be extended with a change to the burden hours but no change to the information required. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before March 14, 2016 to be assured of consideration.

ADDRESSES: Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the

annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Administrative Rulings.

OMB Number: 1651-0085.

Abstract: The collection of information in 19 CFR part 177 is necessary in order to enable Customs and Border Protection (CBP) to respond to requests by importers and other interested persons for the issuance of administrative rulings. These rulings pertain to the interpretation of applicable laws related to prospective and current transactions involving classification, marking, and country of origin. The collection of information in Part 177 of the CBP Regulations is also necessary to enable CBP to make proper decisions regarding the issuance of binding rulings that modify or revoke prior CBP binding rulings. This collection of information is authorized by 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States). The application to obtain an administrative ruling is accessible at: <https://apps.cbp.gov/erulings>.

Action: CBP proposes to extend the expiration date of this information

collection with a change to the burden hours based on updated estimates, but no change to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Rulings:

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 30,000.

Appeals:

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 8,000.

Dated: January 11, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016-00621 Filed 1-13-16; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Temporary Mailing Address for the National Commodity Specialist Division, Regulations and Rulings, Office of International Trade

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of temporary change of office location.

SUMMARY: The mail room servicing the Director, National Commodity Specialist Division, Regulations and Rulings, in the Office of International Trade, of U.S. Customs and Border Protection is relocating within New York and a temporary location has been established to receive correspondence. Until further notice, beginning on January 28, 2016, non-electronic correspondence should be sent to the Director, National Commodity Specialist Division, Regulations and Rulings, Office of International Trade, 1100 Raymond Boulevard, Newark, New Jersey 07102. Please note that e-rulings procedures will remain the same and will not be affected by the temporary change in office location.

DATES: Effective date: January 28, 2016.

FOR FURTHER INFORMATION CONTACT:

Deborah Marinucci, Acting Director, National Commodity Specialist Division, Regulations and Rulings, Office of International Trade, (646) 733-3070.

SUPPLEMENTARY INFORMATION:

Background

The National Commodity Specialist Division (NCSA), Regulations and Rulings, in the Office of International Trade, U.S. Customs and Border Protection (CBP), is relocating. While the relocation process is underway, the address provided for the Director, National Commodity Specialist Division, Regulations and Rulings, in the Office of International Trade, at section 177.2(a) of title 19 of the Code of Federal Regulations (19 CFR 177.2(a)), will be inaccurate. Until the relocation process is complete, a temporary mailing location has been established and all correspondence to the NCSA should be sent to the following address: Director, National Commodity Specialist Division, Regulations and Rulings, Office of International Trade, 1100 Raymond Boulevard, Newark, New Jersey 07102. Mail received at this temporary location will be delivered to the appropriate NCSA location. Please note that e-rulings procedures will remain the same and will not be affected by the temporary change in office location.

When the relocation process is complete and a permanent address is established, CBP will publish in the **Federal Register** amendments to the regulations to reflect the new mailing address (*see* 19 CFR 177.2(a)) and announce the cessation of mail forwarding operations through the address provided in this notice.

Dated: January 8, 2016.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of International Trade.

[FR Doc. 2016-00622 Filed 1-13-16; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4248-DR; Docket ID FEMA-2015-0002]

Mississippi; 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 Mississippi (FEMA-4248-DR), dated January 4, 2016, and related determinations.

DATES: *Effective date:* January 4, 2016.

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 January 4, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of December 23-28, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Mississippi.

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 Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance 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 time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Joe M. Girot, of

FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this major disaster:

Benton, Coahoma, Marshall, Quitman, and Tippah Counties for Individual Assistance.

Benton, Marshall, and Tippah Counties for Public Assistance.

All areas within the State of Mississippi are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016-00553 Filed 1-13-16; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3374-EM; Docket ID FEMA-2015-0002]

Missouri; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Missouri (FEMA-3374-EM), dated January 2, 2016, and related determinations.

DATES: *Effective Date:* January 2, 2016.

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 January 2, 2016, the President issued an emergency declaration under the authority of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Missouri resulting from severe storms, tornadoes, straight-line winds, and flooding beginning on December 22, 2015, and continuing, are of sufficient severity and magnitude to warrant an emergency 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 an emergency exists in the State of Missouri.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. 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 emergency assistance and administrative expenses.

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, Department of Homeland Security, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Missouri have been designated as adversely affected by this declared emergency:

The counties of Audrain, Barry, Barton, Bollinger, Boone, Butler, Callaway, Camden, Cape Girardeau, Carter, Cedar, Christian, Clark, Cole, Cooper, Crawford, Dallas, Dent, Douglas, Dunklin, Franklin, Gasconade, Greene, Hickory, Howard, Howell, Iron, Jasper, Jefferson, Laclede, Lawrence, Lewis, Lincoln, Madison, Maries, Marion, McDonald, Miller, Mississippi, Moniteau, Montgomery, Morgan, New Madrid, Newton, Oregon, Osage, Ozark, Pemiscot, Perry, Phelps, Pike, Polk, Pulaski, Ralls, Reynolds, Ripley, Scott, Shannon, St. Charles, St. Clair, St. Francois, St. Louis, Ste. Genevieve, Stoddard, Stone, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, and Wright and the Independent City of St. Louis for debris removal and emergency protective measures (Categories A and B), limited to

direct federal assistance, under the Public Assistance 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. 2016-00547 Filed 1-13-16; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2015-0022; OMB No. 1660-0054]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants—Grant Application Supplemental Information

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before February 16, 2016.

ADDRESSES: 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 the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to oira.submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address FEMA-Information-Collections-Management@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

This proposed information collection previously published in the **Federal Register** on October 6, 2015 at 80 FR 60398 with a 60 day public comment period. FEMA received one comment requesting a copy of the proposed information collection, and a draft of the proposed information collection was subsequently forwarded to the requester. The Agency responded to this comment and provided the most up-to-date copy of the proposed information collection to the requester. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Assistance to Firefighters Grant Program and Fire Prevention and Safety Grants—Grant Application Supplemental Information.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0054.

Form Titles and Numbers: FEMA Form 080–0–2, Assistance to Firefighters Grants (AFG) Application (General Questions and Narrative); FEMA Form 080–0–2a, Activity Specific Questions for AFG Vehicle Applicants; FEMA Form 080–0–2b, Activity Specific Questions for AFG Operations and Safety Applications; FEMA Form 080–0–3, Activity Specific Questions for Fire Prevention and Safety (FP&S) Applicants; FEMA Form 080–0–3a, Fire Prevention and Safety; FEMA Form 080–0–3b, Research and Development.

Abstract: The FEMA forms for this collection are used to objectively evaluate each of the anticipated applicants to determine which applicants' submission in each of the AFG activities are close to the established program priorities. FEMA also uses the information to determine eligibility and whether the proposed use of funds meets the requirements and

intent of the Federal Fire Prevention and Control Act of 1974, as amended.

Affected Public: State, Local or Tribal Government; Not-for-profit Institutions.

Estimated Number of Respondents: 22,000.

Estimated Total Annual Burden Hours: 158,590 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is \$7,849,130.00. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is \$3,319,699.04.

Dated: December 23, 2015.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2016–00543 Filed 1–13–16; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3374–EM; Docket ID FEMA–2015–0002]

Missouri; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Missouri (FEMA–3374–EM), dated January 2, 2016, and related determinations.

DATES: *Effective Date:* January 4, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of January 2, 2016.

Dade County for debris removal and emergency protective measures (Categories A and B), limited to direct federal assistance, under the Public Assistance 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. 2016–00549 Filed 1–13–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4245–DR; Docket ID FEMA–2015–0002]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4245–DR), dated November 25, 2015, and related determinations.

DATES: *Effective Date:* December 9, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 25, 2015.

Cameron County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016-00550 Filed 1-13-16; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[16XD0120AF.DT12000000.DST000000.82C000]

Privacy Act of 1974, as Amended; Notice To Delete an Existing System of Records

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of deletion of an existing system of records.

SUMMARY: The Department of the Interior is issuing public notice of its intent to delete the Office of the Special Trustee for American Indians Privacy Act system of records, “Accounting Reconciliation Tool (ART)—Interior, OS-11,” from its existing inventory.

DATES: This deletion will be effective on January 14, 2016.

FOR FURTHER INFORMATION CONTACT: Veronica Herkshan, Privacy Act Officer, Office of the Special Trustee for American Indians (OST), 4400 Masthead Street NE., Albuquerque, New Mexico 87109; by telephone at (505) 816-1645; or by email at veronica_herkshan@ost.doi.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Department of the Interior (DOI) Office of the Special Trustee for American Indians (OST) is deleting, “Accounting Reconciliation Tool (ART)—Interior, OS-11,” from its system of records inventory. A **Federal Register** notice was last published for this system of records on July 31, 2008 (73 FR 44759). On January 8, 2015, OST published an amended Privacy Act system notice for “Individual Indian Money (IIM) Trust Funds—Interior, OS-02” (80 FR 1043), which combined the two Privacy Act system of records, “Individual Indian Money (IIM) Trust Funds—Interior, OS-02” and “Accounting Reconciliation Tool (ART)—Interior, OS-11”, into one system of records as the two systems are managed by the same system manager within OST, and have the same authorities and purpose to manage the

collection, distribution, and disbursement of Indian Trust land income. DOI did not receive any comments on the publication of the amended “Individual Indian Money (IIM) Trust Funds—Interior, OS-02” system of records notice.

Deleting the “Accounting Reconciliation Tool (ART)—Interior, OS-11” system of records notice will have no adverse impacts on individuals as the records are covered under the OST “Individual Indian Money (IIM) Trust Funds—Interior, OS-02” system of records notice. Individuals may continue to seek access or correction to their records under the “Individual Indian Money (IIM) Trust Funds—Interior, OS-02” system of records notice. This deletion will also promote the overall streamlining and management of Department of the Interior Privacy Act systems of records.

Dated: January 8, 2016.

Teri Barnett,

Departmental Privacy Officer.

[FR Doc. 2016-00572 Filed 1-13-16; 8:45 am]

BILLING CODE 4310-2W-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000-L1610000.DP0000-LXSSH0930000-16XL1109AF; HAG-16-0025]

Notice of Realty Action: Classification of Lands as Suitable for Recreation and Public Purposes Act Lease, WA

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification and lease to the City of Port Angeles under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 16.91 acres of public land in Clallam County, Washington, more commonly known as Ediz Hook. The City of Port Angeles proposes to use the area for public recreation and other public purposes.

DATES: Interested parties may submit written comments regarding the proposed classification and lease of public lands on or before February 29, 2016.

ADDRESSES: Written comments concerning this notice should be addressed to Linda Coates-Markle, Wenatchee Field Office Manager, BLM, Wenatchee Field Office, 915 Walla Walla Avenue, Wenatchee, WA 98801.

FOR FURTHER INFORMATION CONTACT:

Linda Coates-Markle, Wenatchee Field Manager, 915 Walla Walla Avenue, Wenatchee, WA; by phone at 509-665-2100, or by email at lcmarkle@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. Responses will occur during normal business hours.

Additional information pertaining to this action can be reviewed in case file WAOR-41737 located in the Wenatchee Field Office at the above address.

SUPPLEMENTARY INFORMATION: In accordance with the “Elwha River Ecosystem and Fisheries Restoration Act” (Pub. L. 102-495, 106 Stat. 3173.3177), the Secretary of the Interior is authorized by the U.S. Congress to issue a 99 year lease to the City of Port Angeles for the following described public lands, using the provisions of the R&PP Act, as amended (43 U.S.C. 969 *et seq.*).

Willamette Meridian

T. 31 N., R. 6 W.,

Out lots 4, 5, 14, and out lot 7 except the easterly 4.63 acres contained in the U.S. Coast Guard Lighthouse Reservation.

The area described contains approximately 16.91 acres, more or less, in Clallam County, Washington.

The lease to be issued by the BLM will replace an expired 99 year lease that was authorized by the U.S. Coast Guard. The subject lands will continue to be used by the City for public recreation and other public purposes. Classification of the land prior to the BLM's issuance of a lease is a requirement of the R&PP Act, as amended (43 U.S.C. 969 *et seq.*).

The lease, when issued, will be subject to the following terms and conditions:

1. Provisions of the R&PP Act, as amended (43 U.S.C. 969 *et seq.*), and to all applicable regulations of the Secretary of the Interior.

2. Requirement for lessee to have an approved, qualified Archaeologist on site during any new excavation activities to monitor potential effects to cultural resources.

3. Requirement for lessee to comply with navigable airspace obstruction standards established by the Federal Aviation Administration (FAA), commonly known as the “Federal Aviation Regulations,” which can be found in Part 77 of Title 14 of the Code of Federal Regulations (14 CFR 77), as

amended; and in FAA "Advisory Circulars." Also, the lessee shall not construct, place, install, nor allow to be constructed, placed, or installed, any building, structure, or other object that interferes, obstructs, or otherwise creates a hazard to air navigation for the U.S. Coast Guard's Runway 07/25 at Coast Guard Air Station Port Angeles, located adjacent to the leased premises on Ediz Hook. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the R&PP Act, as amended (43 U.S.C. 969 *et seq.*) and leasing under the mineral leasing laws.

Application Comments: Only written comments submitted via the U.S. Postal Service or other delivery service, or hand delivered to the BLM Wenatchee Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed. 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.

Any adverse comments will be reviewed by the BLM Oregon/Washington State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective March 14, 2016. The land will not be available for lease until after the classification becomes effective.

Linda Coates-Markle,

Wenatchee Field Office Manager.

[FR Doc. 2016-00631 Filed 1-13-16; 8:45 am]

BILLING CODE 4310-33-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint

entitled *Certain Surgical Stapler Devices and Components Thereof*, DN 3112; the Commission is soliciting comments on any public interest issues raised by the complainant or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,¹ and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.² The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.³ Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Covidien LP on January 8, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain surgical stapler devices and components thereof. The complaint names as a respondent Chongqing QMI Surgical Co., Ltd of China. The complainant requests that the Commission issue a limited exclusion order and a cease and desist order.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments

¹ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

² United States International Trade Commission (USITC): <http://edis.usitc.gov>.

³ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3112") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures⁴). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential

⁴ Handbook for Electronic Filing Procedures: http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.⁵

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: January 8, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-00582 Filed 1-13-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-981]

Certain Electronic Devices Containing Strengthened Glass and Packaging Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 10, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Saxon Glass Technologies, Inc. of Alfred, New York. An amended complaint was filed on December 24, 2015. The amended complaint alleges violations of section 337 based upon the importation into the United States, or in the sale of certain electronic devices containing strengthened glass and packaging thereof, by reason of common law trademark infringement and dilution, the threat or effect of which is to destroy or substantially injure an industry in the United States. The amended complaint further alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices containing strengthened glass and packaging thereof by reason of infringement of U.S. Trademark

Registration No. 2,639,419 ("the '419 Mark"). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on January 7, 2016, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(A) of section 337 based upon the importation into the United States, or in the sale of certain electronic devices containing strengthened glass and packaging thereof, by reason of common law trademark infringement or dilution, the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(b) whether there is a violation of subsection (a)(1)(C) of section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after

importation of certain electronic devices containing strengthened glass and packaging thereof by reason of infringement of the '419 Mark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Saxon Glass Technologies, Inc., 200 N. Main Street, Alfred, NY 14802.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the amended complaint is to be served: Apple Inc., 1 Infinite Loop, Cupertino, CA 95014.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

⁵ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

Issued: January 8, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-00577 Filed 1-13-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-470-471 and 731-TA-1169-1170 (Review)]

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From China and Indonesia; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping and countervailing duty orders on certain coated paper suitable for high-quality print graphics using sheet-fed presses from China and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: *Effective Date:* January 4, 2016.

FOR FURTHER INFORMATION CONTACT:

Justin Enck (202-205-3363), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On January 4, 2016, the Commission

determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). With respect to the orders on subject merchandise from Indonesia, the Commission found that both the domestic and respondent interested party group responses to its notice of institution (80 FR 59189, October 1, 2015) were adequate and determined to proceed to full reviews of the orders. With respect to the orders on subject merchandise from China, the Commission found that the domestic group response was adequate and the respondent interested party group response was inadequate, but that circumstances warranted conducting full reviews. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-00594 Filed 1-13-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-469 and 731-TA-1168 (Review)]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty and countervailing duty orders on seamless carbon and alloy steel standard, line, and pressure pipe from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATE: *Effective Date:* January 4, 2016.

FOR FURTHER INFORMATION CONTACT:

Angela Newell (202) 708-5409), Office of Investigations, U.S. International

Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On January 4, 2016, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 59183, October 1, 2015) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of these reviews will be placed in the nonpublic record on January 29, 2016, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the review may file written comments with

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

² The Commission has found the responses submitted by TMK IPSCO, United States Steel Corp., and Vallourec Star, L.P. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before February 3, 2016 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by February 3, 2016. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. See 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at <http://edis.usitc.gov>.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-00600 Filed 1-13-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-249 and 731-TA-262, 263, and 265 (Fourth Review)]

Iron Construction Castings From Brazil, Canada, and China; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing duty order on heavy

iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and the antidumping duty orders on iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: *Effective date:* January 4, 2016.

FOR FURTHER INFORMATION CONTACT:

Keysha Martinez (202-205-2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On January 4, 2016, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). With respect to the orders on subject imports from Brazil, the Commission concluded that both the domestic and the respondent interested party group responses to its notice of institution (80 FR 59192, October 1, 2015) were adequate. With respect to the orders on subject imports from Canada and China, the Commission concluded that the domestic interested party group response was adequate and the respondent interested party group responses were inadequate, but that circumstances warranted full reviews. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-00609 Filed 1-13-16; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1174-1175 (Review)]

Seamless Refined Copper Pipe and Tube From China and Mexico; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930, as amended, to determine whether revocation of the antidumping duty orders on seamless refined copper pipe and tube from China and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: *Effective Date:* January 4, 2016.

FOR FURTHER INFORMATION CONTACT:

Carolyn Carlson (202-205-3002), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On January 4, 2016, the Commission determined that it should proceed to

full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses to its notice of institution (80 FR 59186, October 1, 2015) were adequate with respect to each order under review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016-00597 Filed 1-13-16; 8:45 am]

BILLING CODE 7020-02-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Federal Advisory Committee on International Exhibitions (FACIE) Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions (FACIE) Panel will be held by teleconference 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): *Federal Advisory Committee on International Exhibitions* (application review): This meeting will be by teleconference and will be closed.

DATES: February 9, 2016—11:30 a.m. to 1:30 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: January 11, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016-00587 Filed 1-13-16; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Music (review of nominations): This meeting will be closed.

Date and time: February 16, 2016; 3:00 p.m. to 5:00 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC, 20506.

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: January 11, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016-00588 Filed 1-13-16; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on February 19, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to public attendance with the exception of portions that will be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Friday, February 19, 2016—8:30 a.m. until 5:00 p.m.

The Subcommittee will discuss Group 2 Fukushima Tier 2 and 3 closure plans that are due by March 2016. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kathy Weaver (Telephone: 301-415-6236 or Email: Kathy.Weaver@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and

participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO.

Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone: 240-888-9835) to be escorted to the meeting room.

Dated: January 6, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016-00670 Filed 1-13-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Research and Test Reactors; Notice of Meeting

The ACRS Subcommittee on Research and Test Reactors will hold a meeting on February 3, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Wednesday, February 3, 2016-8:30 a.m. Until 5:00 p.m.

The Subcommittee will review the Research and Test Reactor (RTR) License Renewal Process Rulemaking. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant

issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301-415-5844 or Email: Quynh.Nguyen@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: January 7, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016-00668 Filed 1-13-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-416; NRC-2016-0008]

Entergy Nuclear Operations, Inc.; Grand Gulf Nuclear Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Entergy Nuclear Operations, Inc. (Entergy, the licensee), to withdraw its application dated June 26, 2014, for a proposed amendment to Facility Operating License No. NPF-29, for the Grand Gulf Nuclear Station, Unit 1 (GGNS). The proposed amendment would have revised GGNS Technical Specifications (TSs) Surveillance Requirements (SRs) for safety-related battery resistances in TS SRs 3.8.4.2 and 3.8.4.5 for batteries 1A3, 1B3, and 1C3.

DATES: January 14, 2016.

ADDRESSES: Please refer to Docket ID NRC-2016-0008 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2016-0008. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *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 that document is available in ADAMS) is provided the first time that a document is referenced.

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

FOR FURTHER INFORMATION CONTACT: James Kim, Office of Nuclear Reactor

Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4125; email: James.Kim@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Entergy to withdraw its application dated June 26, 2014 (ADAMS Accession No. ML14177A270), for a proposed amendment to Facility Operating License No. NPF-29, for GGNS, located in Claiborne County, Mississippi. The proposed amendment would have revised safety-related battery resistances in GGNS TS SRs 3.8.4.2 and 3.8.4.5 for batteries 1A3, 1B3, and 1C3.

The NRC published a Biweekly Notice in the **Federal Register** on February 17, 2015 (80 FR 8360), that gave notice that this proposed amendment was under consideration by the NRC. However, by letter dated December 14, 2015 (ADAMS Accession No. ML15348A407), the licensee requested to withdraw the proposed amendment.

Dated at Rockville, Maryland, this 5th day of January 2016.

For the Nuclear Regulatory Commission.

Meena K. Khanna,

Chief, Plant Licensing Branch IV-2 and Decommissioning Transition Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016-00683 Filed 1-13-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on February 17, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 17, 2016—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review draft documents for Subsequent License Renewal. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301-415-2989 or Email: Kent.Howard@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: January 7, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016-00666 Filed 1-13-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on February 2, 2016, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 2, 2016—8:30 a.m. until 5:00 p.m.

The Subcommittee will discuss the State-of-the-Art Reactor Consequence Analyses Project (SOARCA) Uncertainty Analysis of the Unmitigated Short-Term Station Blackout of the Surry Nuclear Power Plant. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Hossein Nourbakhsh (Telephone 301-415-5622 or Email: Hossein.Nourbakhsh@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to

present oral statements can be obtained from the Web site cited above or by contacting the identified DFO.

Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: January 6, 2016.

Mark L. Banks, Chief,

Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016-00667 Filed 1-13-16; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 3, 2016, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, February 3, 2016—12:00 p.m. until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301-415-5844 or Email: Quynh.Nguyen@nrc.gov) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five

hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting.

Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240-888-9835) to be escorted to the meeting room.

Dated: January 7, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016-00669 Filed 1-13-16; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76856; File No. 4-694]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and the National Stock Exchange, Inc.

January 8, 2016.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 17d-2 thereunder,² notice is hereby given that on December 23, 2015, the National Stock Exchange, Inc. (“NSX”) and the Financial Industry

Regulatory Authority, Inc. (“FINRA”) (together with NSX, the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a plan for the allocation of regulatory responsibilities, dated December 22, 2015 (“17d-2 Plan” or the “Plan”). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”) for compliance with certain rules that are substantially identical across multiple SROs. Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁵ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁷ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁵ 15 U.S.C. 78q(d)(1).

⁶ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁷ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

rules.⁸ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.⁹ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The proposed 17d-2 Plan is intended to reduce regulatory duplication for firms that are common members of both NSX and FINRA.¹⁰ Pursuant to the proposed 17d-2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the "National Stock Exchange ("NSX") Rules Certification for 17d-2 Agreement

with FINRA," referred to herein as the "Certification") that lists every NSX rule, and select federal securities laws, rules, and regulations, for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to NSX members that are also members of FINRA and the associated persons therewith ("Dual Members").

Specifically, under the 17d-2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of NSX that are substantially similar to the applicable rules of FINRA,¹¹ as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification ("Common Rules"). In the event that a Dual Member is the subject of an investigation relating to a transaction on NSX, the plan acknowledges that NSX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.¹²

Under the Plan, NSX would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving NSX's own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d-1 under the Act; and any NSX rules that are not Common Rules.¹³

The text of the proposed 17d-2 Plan is as follows:

Agreement Between Financial Industry Regulatory Authority, Inc. and National Stock Exchange, Inc. Pursuant to Rule 17d-2 Under the Securities Exchange Act of 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. ("FINRA") and the National Stock Exchange, Inc. ("NSX"), is made this 22nd day of December, 2015 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 17d-2 thereunder, which permits agreements between self-regulatory organizations to allocate

regulatory responsibility to eliminate regulatory duplication. FINRA and NSX may be referred to individually as a "party" and together as the "parties."

This Agreement replaces and restates the agreement entered into between the parties on June 20, 1977 as amended, entitled "Agreement Between the National Association of Securities Dealers, Inc. and the Cincinnati Stock Exchange Pursuant to SEC Rule 17d-2 Under the Securities Exchange Act of 1934," and any subsequent amendments thereafter.

WHEREAS, FINRA and NSX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and NSX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and NSX hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) "NSX Rules" or "FINRA Rules" shall mean: (i) The rules of NSX or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) "Common Rules" shall mean NSX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule; provided, however Common Rules shall not include the application of the SEC, NSX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among the NSX Exchange, Inc., NSX Y-Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock

⁸ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

⁹ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹⁰ The proposed 17d-2 Plan refers to these common members as "Dual Members." See Paragraph 1(c) of the proposed 17d-2 Plan.

¹¹ See paragraph 1(b) of the proposed 17d-2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d-2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either NSX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that NSX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

¹² See paragraph 6 of the proposed 17d-2 Plan.

¹³ See paragraph 2 of the proposed 17d-2 Plan.

Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and NYSE Regulation, Inc., approved by the SEC on December 16, 2011 as the same may be amended from time to time.

(c) “*Dual Members*” shall mean those NSX members that are also members of FINRA and the associated persons therewith.

(d) “*Effective Date*” shall be the date this Agreement is approved by the Commission.

(e) “*Enforcement Responsibilities*” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA’s Code of Procedure and sanctions guidelines.

(f) “*Regulatory Responsibilities*” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, NSX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are NSX Rules are substantially similar to the corresponding FINRA Rules (the “*Certification*”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of NSX or FINRA, NSX shall submit an updated list of Common Rules to FINRA for review which shall add NSX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete NSX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of

Common Rules continue to be NSX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “*Regulatory Responsibilities*” does not include, and NSX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “*Retained Responsibilities*”) the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving NSX’s own marketplace;

(b) registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any NSX Rules that are not Common Rules.

3. Dual Members. Prior to the Effective Date, NSX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to NSX by FINRA for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide NSX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to NSX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, NSX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA’s Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Applicability of Certain Laws, Rules, Regulations or Orders. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such statute, rule, order or action is inconsistent with this Agreement, the statute, rule, order or action shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any NSX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify NSX of those apparent violations for such response as NSX deems appropriate.

(b) In the event that NSX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, NSX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement.

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on NSX, NSX may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance.

(a) FINRA shall make available to NSX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish NSX any information it obtains about Dual Members which reflects adversely on their financial condition. NSX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Statutory Disqualifications. When FINRA becomes aware of a statutory

disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep NSX advised of its actions in this regard for such subsequent proceedings as NSX may initiate.

9. Customer Complaints. NSX shall forward to FINRA copies of all customer complaints involving Dual Members received by NSX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by NSX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, NSX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and

until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. Separate Agreement. This Agreement is wholly separate from the following agreements: (1) The multiparty agreement for insider trading activities, which is covered by a separate 17d-2 Agreement by and among NSX Exchange, Inc., NSX-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange Inc., EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Amex LLC, and NYSE Arca Inc. effective December 16, 2011, as may be amended from time to time and (2) the multiparty 17d-2 agreement relating to Regulation NMS rules by and among NSX Exchange, Inc., NSX-Y Exchange, Inc., BOX Options Exchange LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., FINRA, International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BOX, Inc., NASDAQ OMX PHLX, Inc., National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. effective October 29, 2015 as may be amended from time to time.

15. Notification of Members. NSX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

17. Limitation of Liability. Neither FINRA nor NSX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as

shall have been suffered by one or the other of FINRA or NSX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or NSX with respect to any of the responsibilities to be performed by each of them hereunder.

18. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and NSX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve NSX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By Name: _____

Title:

NATIONAL STOCK EXCHANGE, INC.

By Name: _____

Title:

EXHIBIT 1

National Stock Exchange ("NSX") Rules Certification for 17d-2 Agreement With FINRA

NSX hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA Rule, NASD Rule, Exchange Act provision or SEC rule identified ("Common Rules").

<i>NSX Rule:</i>	<i>Finra Rule, NASD Rule, Exchange Act Provision or SEC Rule:</i>
Rule 3.1 Business Conduct of Members*	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade.* ¹
Rule 3.2 Violations Prohibited*	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and FINRA Rule 3110 Supervision.* ²
Rule 3.3 Use of Fraudulent Devices*	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device.*
Rule 3.5(a) Advertising Practices	FINRA Rule 2210(d)(1)(B) Communications with the Public.
Rule 3.5(c) Advertising Practices	FINRA Rule 2210(d)(1) Communications with the Public.
Rule 3.5(g) Advertising Practices	FINRA Rule 2210(d)(1)(B) Communications with the Public.
Rule 3.5(h) Advertising Practices	FINRA Rule 2210(d)(1)(B) Communications with the Public.
Rule 3.6 Fair Dealing with Customers	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Device and FINRA Rule 2111 Suitability. ³
Rule 3.7(a) and .01 Recommendations to Customers	FINRA Rule 2111 Suitability.
Rule 3.8(a) The Prompt Receipt and Delivery of Securities	FINRA Rule 11860 COD Orders.
Rule 3.9 Charges for Services Performed	FINRA Rule 2122 Charges for Services Performed.
Rule 3.10 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity.
Rule 3.11 Publication of Transactions and Quotations	FINRA Rule 5210 Publication of Transactions and Quotations. ⁴
Rule 3.12 Offers at Stated Prices	FINRA Rule 5220 Offers at Stated Prices.
Rule 3.13 Payment Designed to Influence Market Prices, Other than Paid Advertising.	FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security. ⁵
Rule 3.14 Disclosure on Confirmations	FINRA Rule 2232(a) Customer Confirmations and SEC Rule 10b-10 Confirmation of Transactions.
Rule 3.15 Disclosure of Control	FINRA Rule 2262 Disclosure of Control Relationship With Issuer.
Rule 3.16 Discretionary Accounts	NASD Rule 2510 Discretionary Accounts. ⁶
Rule 3.17 Customer's Securities or Funds	FINRA Rule 2150(a) Customers' Securities or Funds—Improper Use.
Rule 3.18 Prohibition Against Guarantees	FINRA Rule 2150(b) Customers' Securities or Funds—Prohibition Against Guarantees.
Rule 3.19 Sharing in Accounts; Extent Permissible	FINRA Rule 2150(c)(1) Customers' Securities or Funds—Sharing in Accounts; Extent Permissible.
Rule 3.21 Telephone Solicitation	FINRA Rule 3230 Telemarketing.
Rule 4.1 Requirements*	FINRA Rule 4511 General Requirements.* ⁷
Rule 4.3 Record of Written Complaints	FINRA Rule 4513 Records of Written.
Rule 5.1 Written Procedures*	FINRA Rule 3110(b) Supervision—Written Procedures.* ⁸
Rule 5.2 Responsibility of Members	FINRA Rule 3110(a) and (b)(7) Supervision.*
Rule 5.3 Records*	FINRA Rule 3110(a) Supervision.*
Rule 5.4 Review of Activities	FINRA Rule 3110(c) and (d) Supervision—Internal Inspections/Review of Transactions and Correspondence.* ⁹
Rule 5.6 Anti-Money Laundering Compliance Program	FINRA Rule 3310 Anti-Money Laundering Compliance Program. ¹⁰
Rule 5.7 Annual Certification of Compliance and Supervisory Processes.	FINRA Rule 3130 Annual Certification of Compliance and Supervisory Processes. ¹¹
Rule 11.1(c) Hours of Trading	FINRA Rule 2265 Extended Hours Trading Risk Disclosure.
Rule 11.21(b) Short Sales	FINRA Rule 6182 Trade Reporting of Short Sales. ¹¹
Rule 11.22 Locking or Crossing Quotations in NMS Stocks	FINRA Rule 6240 Prohibition from Locking or Crossing Quotation in NMS Stocks.
Rule 11.24 Limit Up-Limit Down	FINRA Rule 6190(a)(1) and (2) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility.
Rule 12.10 Best Execution	FINRA Rule 5310 Best Execution and Interpositioning. ¹²
Rule 13.2 Failure to Deliver and Failure to Receive ¹³	Regulation SHO Rule 200 and 203.

¹ FINRA shall not have Regulatory Responsibilities regarding .01 of NSX Rule 3.1.

² FINRA shall only have Regulatory Responsibilities regarding the first phrase of the NSX rule regarding prohibitions from violating the Securities Exchange Act of 1934 and the rules and regulations thereunder; responsibility for the remainder of the rule shall remain with NSX.

³ FINRA shall not have Regulatory Responsibilities regarding .01 of NSX Rule 3.6.

⁴ FINRA shall not have Regulatory Responsibilities with regard to the requirement to report to NSX.

⁵ FINRA shall not have Regulatory Responsibilities with regard to the prohibitions set forth under subsection (a) of FINRA Rule 5230 to the extent subsections (b)(2) or (b)(3) of the rule apply.

⁶ FINRA shall not have Regulatory Responsibilities for the NSX rule to the extent the exception in FINRA Rule 2510(d)(2) applies.

⁷ FINRA shall not have Regulatory Responsibilities regarding requirements to keep records "in conformity with . . . Exchange Rules;" responsibility for such requirement remains with NSX.

⁸ FINRA shall not have Regulatory Responsibilities regarding requirements to assure compliance with Exchange Rules; responsibility for such requirement remains with NSX.

⁹ FINRA shall not have Regulatory Responsibilities regarding the NSX requirement to annually inspect each office of the ETP Holder (other than as required by the FINRA rule to annually inspect each OSJ and any branch office that supervises one or more non-branch locations).

¹⁰ FINRA shall not have Regulatory Responsibilities regarding notification to NSX.

¹¹ FINRA shall not have Regulatory Responsibilities regarding certification as to compliance with NSX rules, the requirement that the certification be delivered to NSX, and the requirement that the report is titled in a manner indicating that it is responsive to NSX Rule 5.7.

¹² FINRA shall not have Regulatory Responsibilities regarding .01 of NSX Rule 12.10.

¹³ FINRA shall only have Regulatory Responsibilities regarding Rules 200 and 203 of Regulation SHO.

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among NSX Exchange, Inc., EDGA Exchange, Inc., NSX-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Amex LLC, and NYSE Arca Inc. effective December 16, 2011, as may be amended from time to time.

In addition, the following provisions shall be part of this 17d-2 Agreement: *Securities Exchange Act of 1934*: Section 15(f)

* * * * *

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act¹⁴ and Rule 17d-2 thereunder,¹⁵ after January 29, 2016, the Commission may, by written notice, declare the plan submitted by NSX and FINRA, File No. 4-694, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve NSX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number 4-694 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number 4-694. 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/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating

to the proposed plan 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of NSX and FINRA. 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 4-694 and should be submitted on or before January 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-00567 Filed 1-13-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76858; File No. SR-Phlx-2015-109]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Permit Fees

January 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 30, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Section VI, entitled "Membership Fees." The Exchange also proposes to correct a

reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule.

The Exchange proposes to increase certain permit fees. The Exchange's permit fees remain competitive with those of other options Exchanges. While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to become operative on January 4, 2016.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase permit fees to allocate its costs to various options market participants, specifically floor participants. The Exchange assesses Permit Fees by market participant. Today, the Exchange assesses the same monthly Permit Fees of \$2,300 to Floor Brokers,³ Specialists⁴ and Market Makers.⁵ All other market

³ A "Floor Broker" is defined in Phlx Rule 1060 as "[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations."

⁴ A "Specialist" is an Exchange member who is registered as an options specialist. See Phlx Rule 1020(a).

⁵ A "Market Maker" includes Registered Options Traders ("ROTs") (see Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders ("SQTs") (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders ("RSQTs") (see Rule 1014(b)(ii)(B)). An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an Remote Streaming Quote Trader Organization or "RSQTO" with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A RSQTO, which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in

¹⁴ 15 U.S.C. 78q(d)(1).

¹⁵ 17 CFR 240.17d-2.

¹⁶ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

participants (Professionals,⁶ Firms⁷ and Broker-Dealers,⁸ collectively “Other Market Participants”) are assessed a Permit Fee of \$4,000 in a given month, unless the member or member organization or those member organizations under Common Ownership,⁹ execute at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee is \$2,300 for that month. The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee. Also, today, option members and member organizations pay an additional Permit Fee for each sponsored options participant, which fee is the Permit Fee that is assessed to the member or member organization sponsoring the options participant,¹⁰ of either \$2,300 or \$4,000.

The Exchange is not amending the Permit Fees for Other Market Participants or the criteria of the lower Permit Fee of \$2,300 per month for members and member organizations that execute a certain amount of volume on the Exchange.¹¹

good standing that satisfies the RSQTO readiness requirements in Rule 507(a). An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁶ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁷ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

⁸ The term “Broker-Dealer” applies to any transaction that is not subject to any of the other transaction fees applicable within a particular category.

⁹ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control. See Preface to Exchange’s Pricing Schedule.

¹⁰ See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

¹¹ A Series A–1 permit shall only be issued to an individual who is a natural person of at least twenty-one (21) years of age. A Series A–1 permit shall only be issued to a corporation who meets the eligibility and application requirements set forth in the By-Laws and Rules, including, without limitation, Rule 972, and no individual shall hold more than a single Series A–1 permit. See Rule 908. All members are required to have a permit. A

The Exchange also proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule. The amendments are detailed below.

Permit Fee Amendments

- The Exchange proposes to increase the Floor Broker Permit Fee from \$2,300 to \$3,000 per month.

- The Exchange proposes to increase the Floor Specialist¹² and Floor Market Maker¹³ Permit Fee from \$2,300 to \$4,500 per month.

- The Exchange proposes to increase the Permit Fee for Remote Specialists and Remote Market Makers¹⁴ from \$2,300 to \$4,000¹⁵ and offer Remote Specialists and Remote Market Makers an opportunity to lower the Permit Fee to \$2,300 provided the member or member organization, or member organizations under Common Ownership, executes at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month.

The Exchange believes that these increased fees will raise revenue for the Exchange. The Exchange believes that these Permit Fees remain competitive with fees at other options exchanges¹⁶ and reasonably allocate costs based on Exchange resources consumed by these market participants.

Name Change

- The Exchange proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule to newly named Nasdaq, Inc.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹⁸ in particular, in that it provides for the equitable allocation of

member organization will be billed for each permit that is affiliated with the member organization. Each Floor Brokers must obtain a permit to transact business on the trading floor. Each Market Maker must obtain a permit to transact business either electronically or on the trading floor. Each member organization must have at least one member qualifying the firm and that one member will be billed a permit.

¹² A Floor Specialist is a Specialist that does have a physical presence on the Exchange’s trading floor.

¹³ A Floor Market Maker is a Market Maker that does have a physical presence on the Exchange’s trading floor.

¹⁴ Remote Specialists and Remote Market Makers do not have a physical presence on an Exchange floor.

¹⁵ While this Permit fee for Remote Specialists and Remote Market Makers is being increased, today all Remote Specialists and Remote Market Makers qualify for the lower Permit Fee of \$2,300.

¹⁶ See note 25 below.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹ Likewise, in *NetCoalition v. NYSE Arca, Inc.* [sic]²⁰ (“NetCoalition”) the DC Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²²

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’. . . .”²³ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Amendments to Permit Fees

The Exchange’s proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker Permit Fees from \$2,300 to \$4,500 is reasonable because the

¹⁹ Securities Exchange Act Release No. 51808 [sic] at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

²⁰ *NetCoalition v. NYSE Arca, Inc.* [sic] 615 F.3d 525 (D.C. Cir. 2010).

²¹ See *NetCoalition*, at 534.

²² *Id.* at 537.

²³ *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782–74783).

Exchange incurs costs in operating and maintaining a trading floor that are unique to a floor operation. The Exchange believes it is reasonable to allocate the Exchange's expenses, among the market participants on the trading floor, and raise the floor Permit Fees because of the unique resources consumed by each category of floor market participant and additional floor services. The proposed increase covers the rising facility costs and staffing expenses required to service the floor community, process trading tickets and service the trading floor. The Exchange has not increased these fees in two years.

Floor Specialists and Floor Market Makers benefit from the access they have to interact with orders which are made available in open outcry on the trading floor. These market participants may choose to conduct their business either electronically or on the trading floor, unlike Floor Brokers, who have a business model that is naturally tied to the physical trading space. The Exchange offers Specialists and Market Makers a choice on how to conduct business, electronic or floor. The Exchange believes that it is reasonable to assess Floor Specialists and Floor Market Makers the higher floor permits because it is offering different trading experiences to these market participants.

The Exchange notes that assessing different Permit Fee rates to different types of market participants is not novel.²⁴ Both CBOE and NYSE Arca have different fixed and transaction fees for floor as compared to electronically transmitted orders. Also, the proposed Permit Fees are competitive with fees at other options exchanges. Both CBOE and NYSE Arca assess different fees to Floor Brokers and Market Makers.²⁵

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to

\$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 is equitable and not unfairly discriminatory because the Exchange seeks to allocate the costs in a fair and equitable manner by assessing fees consistent with the consumption of resources. The differentiation in fees as between electronic trading and floor trading recognizes these different business models. For example, Floor Brokers are registered with the Exchange for the purpose, while on the options floor, of accepting and executing options orders received from members and member organizations.²⁶ This type of business model is distinct from that of an electronic trader. Additionally, Floor Specialists and Floor Market Makers have the opportunity to interact with Floor Broker order flow on the Exchange floor and to provide liquidity to the Exchange. The proposed Permit Fee structure recognizes the resources consumed by these market participants on the trading floor. The Exchange is one of only four options exchanges that offer a trading floor environment in addition to the electronic environment. The Exchange is required to staff the trading floor with regulatory personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment. The floor environment offers floor market participants the choice of transacting certain complex transactions, *i.e.* a Complex Order²⁷ with multiple legs, on the trading floor in open outcry or the electronic market. Certain FLEX transactions,²⁸ transfers²⁹ or accommodation transactions³⁰ also lend themselves to the trading floor environment and the Exchange.

The Exchange believes that the increased Permit Fees to Floor Brokers, Floor Specialists and Floor Market Makers is equitable and not unfairly discriminatory because the Exchange is allocating the additional floor cost to the market participants that benefit from the trading floor. Further, the Exchange believes that it is equitable and not

unfairly discriminatory to assess Floor Specialists and Floor Market Makers the higher floor Permit Fees among all floor participants because Specialists and Market Makers may decide to stream remotely or conduct their business on the trading floor in open outcry. These market participants are offered the opportunity to also avail themselves of both means to access the Exchange, whereby they may interact with order floor in the electronic Order Book and/or interact with order floor in the trading crowd on the Exchange's trading floor. This opportunity to conduct their business on the trading floor and access the Exchange through both avenues comes at a cost to the Exchange,³¹ which costs is being allocated to Floor Specialists and Floor Market Makers through higher Permit Fees as compared to Floor Brokers.

The Exchange's proposal to increase Permit Fees for Remote Specialists and Remote Market Makers from \$2,300 to \$4,000 is reasonable because the Exchange is allocating costs differently as between electronic and floor trading. The differentiation in fees as between electronic trading and floor trading recognizes the distinctions in these business models. The Exchange's proposal will also offer Remote Specialists and Remote Market Makers the opportunity to reduce the Permit Fee from \$4,000 to \$2,300 by directing at least 100 option contracts to the Exchange in a given month.³² This proposal allocates costs to each market participant based on their chosen business model.

The Exchange's proposal to increase Permit Fees for Remote Specialists and Remote Market Makers that conduct an electronic business from \$2,300 to \$4,000 is equitable and not unfairly discriminatory as all electronic market participants will uniformly be assessed a \$4,000 a month Permit Fee and will uniformly be offered an opportunity to decrease that Permit Fee to \$2,300 by directing at least 100 option contracts in a given month to the Exchange. This liquidity benefits all market participants and in turn brings revenue to the Exchange through transaction fees assessed to these orders. The Exchange believes that assessing different rates for

²⁴ The Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE") and Miami International Securities Exchange LLC ("MIAX") assess different Trading Permit Fees to different market participants. See CBOE's Fees Schedule, ISE's Fee Schedule and MIAX's Fee Schedule.

²⁵ See CBOE's Fees Schedule. A Market-Maker Trading Permit is \$5,500 per month, except for ETH only permits which are \$1,000 per month. A Floor Broker Trading Permit is \$9,000 per month. An Electronic Access Permit is \$1,600 per month, except for ETH only which is \$500 per month. There are also other permits for SPX and VIX trading and some waivers apply to ETH for the first permit. See also NYSE Arca, Inc.'s ("NYSE Arca") Options Trading Participation Rights in NYSE Arca Options Fees and Charges. Floor Brokers on NYSE Arca are assessed a \$1,000 per month options trading participant rights ("OTP") fee for the first OTP and \$250 for each additional OTP. NYSE Arca Market Makers are assessed \$6,000 for the first OTP and then the OTP fee declines on a scale down to \$1,000 for additional OTPs.

²⁶ See Exchange Rule 1060.

²⁷ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

²⁸ See Phlx Rule 1079.

²⁹ See Phlx Rule 1058.

³⁰ See Phlx Rule 1059.

³¹ As noted herein, the Exchange staffs the trading floor with regulatory personnel and provides a physical infrastructure for the trading floor. Surveillances for the floor and electronic environment may also differ. For example, the Exchange monitors Specialist and Market Maker quoting obligations separately for electronic quoting versus floor quoting.

³² The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee.

floor market participants as compared to electronic market participants for Permit Fees is equitable and not unfairly discriminatory because of the increasing costs incurred by the Exchange in operating and maintaining the trading floor, which costs have increased over the years. The Exchange believes that it is equitable and not unfairly discriminatory to assess Remote Specialists and Remote Market Makers a lower rate than Floor Specialists and Floor Market Makers. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to Floor Brokers, who have a business model that is naturally tied to the physical trading space. Floor Specialists and Floor Market Makers desiring to interact with the order flow generated by these Floor Brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange which is being equitably allocated to the consumers of this resource.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group, Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc.³³ is reasonable, equitable and not unfairly discriminatory because the amendment simply updates the name.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their

order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 does not impose an undue burden on intra-market competition because the Exchange proposes to allocate the costs to floor participants because they consume a greater amount of Exchange resources. The Exchange is required to staff the trading floor with regulatory personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment. The Exchange has incurred increasing costs in operating and maintaining the trading floor, which costs have increased over the years. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to Floor Brokers, who have a business model that is naturally tied to the physical trading space.

Floor Specialists and Floor Market Makers desiring to interact with the order flow generated by these Floor Brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange. The Exchange believes that the increased fee to Floor Specialists and Floor Market Makers does not impose an undue burden on intra-market competition because the Exchange is allocating the additional floor cost to the participants that benefit from such a dual structure.

The Exchange's proposal to increase Permit Fees for Remote Specialists and Remote Market Makers from \$2,300 to \$4,000 does not impose an undue burden on intra-market competition because all electronic market participants will uniformly be assessed a \$4,000 a month Permit Fee and will uniformly be offered an opportunity to decrease that fee by directing at least 100 option contracts in a given month. This liquidity benefits all market participants and in turn brings revenue to the Exchange through transaction fees assessed to these orders. The Exchange believes that assessing Remote Specialists and Remote Market Makers a lower rate than Floor Specialists and Floor Market Makers does not impose an undue burden on intra-market competition because Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to Floor Brokers, who have a business model that is

naturally tied to the physical trading space. Specialists and Market Makers desiring to interact with the order flow generated by these Floor Brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange.

The proposed Permit Fees are competitive with fees at other options exchanges.³⁴ If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group, Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc. does not impose any undue burden on intra-market competition because the amendment simply updates the name.

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.³⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

³³ See Securities Exchange Act Release No. 75421 (July 16, 2015), 80 FR 42136 (July 10, 2015) (SR-BSECC-2015-001; SR-BX-2015-030; SR-NASDAQ-2015-058; SR-Phlx-2015-46; SR-SCCP-2015-01).

³⁴ See note 25 above.

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-Phlx-2015-109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2015-109. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2015-109, and should be submitted on or before February 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Robert W. Errett, Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76857; File No. SR-CBOE-2016-003]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Limit Order Price Protections for Stock-Option Orders

January 8, 2016.

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 January 5, 2016, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 seeks to amend Exchange rules related to limit order price protections for stock-option orders. The text of the proposed rule change is provided below. (additions are italicized; deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

Rule 6.12. CBOE Hybrid Order Handling System

This rule describes the process for routing orders through the Exchange’s order handling system in classes designated for trading on the CBOE Hybrid System. The order handling system is a feature within the Hybrid System to route orders for automatic execution, book entry, open outcry, or further handling by a broker, agent, or PAR Official, in a manner consistent with Exchange Rules and the Act (e.g.,

resubmit the order to the Hybrid System for automatic execution, route the order from a booth to a PAR workstation, cancel the order, contact the customer for further instructions, and/or otherwise handle the order in accordance with Exchange Rules and the order’s terms.).

(a) Orders may route through the order handling system for electronic processing in the Hybrid System or to a designated order management terminal or PAR Workstation in any of the circumstances described below. Routing designations may be established based on various parameters defined by the Exchange, order entry firm or Trading Permit Holder, as applicable.

* * * * *

(5) *Limit Order Price Parameter for Stock-Option Orders: Limit orders received after a series is opened will be cancelled if the order is priced at a net debit that is more than an acceptable tick distance above the opposite side derived net market using the Exchange’s best bid or offer in the individual series leg and the national best bid or offer of the stock component comprising the stock-option order or the order is priced at a net credit that is more than an acceptable tick distance below the opposite side derived net market based on the Exchange’s best bid or offer in the individual series leg and the national best bid or offer of the stock component comprising the stock-option order.*

For purposes of this subparagraph (a)(5): An “acceptable tick distance” (which is also referred to as an “ATD”), as determined by the Exchange on a class by class and net premium basis and announced to the Trading Permit Holders via Regulatory Circular, shall be no less than 5 minimum net price increment ticks for stock-option orders. The Exchange may determine on a class by class basis and announce via Regulatory Circular whether to apply paragraph (a)(5) to immediate-or-cancel complex orders. The limit order price parameter will take precedence over another routing parameter to the extent that both are applicable to an incoming limit order.

[(5)] (6) Direct Routing: Orders may route directly from an order entry firm for electronic processing or to an order management terminal or a PAR workstation based on parameters prescribed by the order entry firm.

[(6)] (7) System Disruptions or Malfunctions: Orders will route to an order management terminal designated by the order entry firm or Trading Permit Holder, or a terminal designated and maintained by the Exchange as a

¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ 15 U.S.C. 78s(b)(3)(A)(iii).
⁴ 17 CFR 240.19b-4(f)(6).

³⁶ 17 CFR 200.30-3(a)(12).

back-up to order entry firms' and Trading Permit Holders' designated order management terminals, in the event of certain system disruptions or malfunctions that affect the ability of orders to reach or be processed at their intended designation.

* * * * *

. . . Interpretations and Policies:

.01 For purposes of subparagraphs (a)(3), [and] (4) and (5): the senior official on the Exchange Help Desk or two Floor Officials may grant intra-day relief by widening or inactivating one or more of the applicable ATD parameter settings in the interest of a fair and orderly market.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 6.12—CBOE Hybrid Order Handling System in order to institute limit order price protections for stock-option orders.

Background

The CBOE Hybrid System⁵ is a trading platform that allows automatic

⁵ The CBOE "Hybrid System" or "Hybrid Trading System" refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. The "Hybrid 3.0 Platform" is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in a series for the trading crowd. Classes authorized by the Exchange for trading on the Hybrid Trading System shall be referred to as Hybrid classes. Classes authorized by the Exchange for trading on

executions to occur electronically and open outcry trades to occur on the floor of the Exchange. To operate in this "hybrid" environment, the Exchange has made available to Trading Permit Holders ("TPHs") a dynamic order handling system, also referred herein as OHS, that has the capability to route orders to the Hybrid System for automatic execution and book entry, to PAR workstations located in the trading crowds for open outcry and other manual handling by TPHs and Exchange PAR Officials, and/or to other order management terminals generally located in booths on the trading floor for manual handling. Where an order is routed for processing by the Exchange order handling system depends on various parameters configured by the Exchange and the order entry firm itself. Thus, the OHS provides TPHs with some flexibility to determine how to process their orders in the CBOE Hybrid System.

In February 2015, the Exchange adopted Rule 6.12 to, among other things, describe existing OHS operations.⁶ One of the operations described in Rule 6.12 is the Exchange's limit order price parameter for complex orders.⁷ The limit order price parameter is a price protection parameter that helps mitigate potential risks associated with orders executing at potentially erroneous prices. However, the limit order price parameter applied to complex orders does not apply to stock-option orders.⁸

Proposal

The Exchange seeks to adopt limit order price protections applicable to stock-option orders. To that end, the Exchange proposes to add the following provisions to Rule 6.12:

- Limit Order Price Parameter for Stock-Option Orders: Limit orders received after a series is opened will be cancelled⁹ if the order is priced at a net

the Hybrid 3.0 Platform shall be referred to as Hybrid 3.0 classes. References to "Hybrid," "Hybrid System," or "Hybrid Trading System" in the Exchange's Rules shall include all platforms unless otherwise provided by rule. *See, e.g.*, Rule 1.1(aaa).

⁶ Securities Exchange Act Release No. 74351 (February 23, 2015), 80 FR 10738 (February 27, 2015) (SR-CBOE-2015-021).

⁷ *See* Rule 6.12(a)(4).

⁸ Rule 6.12(4)(i) and (ii) explicitly excludes stock-option orders from the limit order price protections applicable to complex orders.

⁹ Although the current limit order price check parameter for simple and complex orders provides that orders not meeting the price check parameter are routed to an order management terminal ("OMT"), the Exchange believes market participants prefer such orders not be routed to an OMT. The Exchange also believes order entry firms have sophisticated technology that allows the firms to manage their orders, including orders rejected or

debit that is more than an acceptable tick distance above the opposite side derived net market using the Exchange's best bid or offer in the individual series leg and the national best bid or offer of the stock component comprising the stock-option order or the order is priced at a net credit that is more than an acceptable tick distance below the opposite side derived net market based on the Exchange's best bid or offer in the individual series leg and the national best bid or offer of the stock component comprising the stock-option order.¹⁰ For purposes of this subparagraph (a)(5): An "acceptable tick distance" (which is also referred to as an "ATD"), as determined by the Exchange on a class by class and net premium basis and announced to the Trading Permit Holders via Regulatory Circular, shall be no less than 5 minimum net price increment ticks for stock-option orders.¹¹ The Exchange may determine on a class by class basis and announce via Regulatory Circular whether to apply paragraphs (a)(5) to immediate-or-cancel complex orders. The limit order price parameter will take precedence over another routing parameter to the extent that both are applicable to an incoming limit order. In addition, the senior official on the Exchange Help Desk or two Floor

cancelled by the Exchange. The proposal essentially provides that an order may be cancelled and sent back to the order entry firm's order management system instead of the Exchange's order management system (*i.e.*, OMT).

¹⁰ The Exchange notes that this proposal does not affect stock-option orders entered prior to the opening of a series (including before a series is opened following a halt). Stock-option orders entered prior to the opening of a series (including before a series is opened following a halt) are entered into the complex order book and do not flow through this limit order price protection after the series is opened.

¹¹ *See* CBOE Regulatory Circular RG13-145 for the current price check parameters, which is available at <http://www.cboe.com/publish/RegCir/Reg13-145.pdf>. The senior official in the Help Desk or two Floor Officials may also widen or inactivate one or more of these price check parameters on an intra-day basis in the interest of a fair and orderly market. For example, if an underlying stock is high priced or volatile and is experiencing significant price movement and the existing parameters would result in an inordinate number of limit orders not being accepted, the senior official in the Help Desk may determine to widen the parameters on an intra-day basis in the overlying or related options series. As another example, if the overall market is experiencing significant volatility, the senior official in the Help Desk or two Floor Officials may determine to widen the parameters for a group of series or classes. The Exchange notes that these examples are non-exhaustive and for illustrative purposes only. (For example, *see also* CBOE Regulatory Circular RG14-019, which is available at <http://www.cboe.com/publish/RegCir/Reg14-019.pdf> and which sets forth limit order price parameters settings for certain option classes on volatility index product settlement days.) The Exchange also notes that it may determine for the parameters to differ among classes and between pre-open and intra-day.

Officials may widen or inactivate the applicable ATD parameter settings on an intra-day basis in the interest of a fair and orderly market.

The Exchange believes this proposal will help the maintenance of fair and orderly markets and help to mitigate potential risks associated with orders executing at potentially erroneous prices.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes these routing parameters assist with the maintenance of fair and orderly markets and help to mitigate potential risks associated with orders executing at potentially erroneous prices.

Furthermore, the Exchange believes the proposed rule change furthers the objective of Section 6(b)(5) of the Act in that it permits the Exchange to address the entry stock-option limit orders that are priced significantly away from the market that may likely have resulted from human or operational error. By being able to quickly and efficiently address orders that likely resulted from such error, the proposed use of the limit order price parameter checks would promote a fair and orderly market. Additionally, by having the flexibility to determine the series or classes where the limit order price parameter checks would be applied (or not applied) and the levels at which the ATD settings

would be applied, and to grant relief on an intra-day basis, the Exchange is able to effectively structure and efficiently react to particular option characteristics and market conditions—including (without limitation) price, volatility, and significant price movements—which contributes to its ability to maintain a fair and orderly market. Accordingly, the Exchange believes that this proposal is designed to promote just and equity principles of trade, remove impediments to, and perfect the mechanism of, a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will promote competition in that the routing parameters assist with the maintenance of a fair and orderly market and help to mitigate potential risks associated with orders executing at potentially erroneous prices. The Exchange believes this, again, promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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 Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2016-003 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-CBOE-2016-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ *Id.*

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

should refer to File Number SR-CBOE-2016-003 and should be submitted on or before February 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-00568 Filed 1-13-16; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 9406]

In the Matter of the Designation of ISIL Khorasan also known as Islamic State's Khorasan Province also known as ISIS Wilayat Khorasan also known as ISIL's South Asia Branch also known as South Asian Chapter of ISIL as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA") (8 U.S.C. 1189), exist with respect to ISIL Khorasan also known as Islamic State's Khorasan Province also known as ISIS Wilayat Khorasan also known as ISIL's South Asia Branch also known as South Asian chapter of ISIL.

Therefore, I hereby designate the aforementioned organization and its aliases as a foreign terrorist organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: December 31, 2015.

John F. Kerry,
Secretary of State.

[FR Doc. 2016-00614 Filed 1-13-16; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice 9407]

Review of Foreign Terrorist Organizations Designation for Liberation Tigers of Tamil Eelam

Pursuant to section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)), the Department of State is undertaking a review of the designation of the

Liberation Tigers of Tamil Eelam as a Foreign Terrorist Organization. In making its determination, the Department of State will accept a written statement or other documentary materials submitted on behalf of interested parties and the above-named organization by its representatives. Such materials must be submitted February 1, 2016, to: The Coordinator for Counterterrorism, United States Department of State, 2201 C Street NW., Washington, DC 20520.

This notice shall be published in the **Federal Register**.

Dated: January 7, 2016.

Tina Kaidanow,
Coordinator for Counterterrorism.

[FR Doc. 2016-00615 Filed 1-13-16; 8:45 am]

BILLING CODE 4710-AD-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35987]

BD Highspire Holdings, LLC—Acquisition and Operation Exemption—Mittal Steel USA-Railways Inc.

BD Highspire Holdings, LLC (BDHH),¹ a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, from Mittal Steel USA-Railways Inc. (Mittal Railways), and to operate approximately 47 miles of rail line, which includes all of the rail assets that formerly comprised the Steelton & Highspire Railroad Company, LLC (the Line).² BDHH states that the Line consists mainly of yard and switching tracks that do not have any designated mileposts. The Line connects at the east end with the Norfolk Southern Railway Company (NSR) at the NSR/Highspire Interchange, and on the west end with NSR at the NSR/Steelton Interchange, all located within Dauphin County, Pa.

According to BDHH, BDCM and ArcelorMittal USA LLC, the parent company of Mittal Railways, have reached an agreement which, when consummated, will result in BDHH purchasing the Line from Mittal Railways and operating it. BDHH states that a letter of intent covering the transaction was signed on November 13, 2015, and the parties expect to finalize a sale and purchase agreement shortly.

BDHH states that the proposed transaction does not include any interchange commitment that prohibits

BDHH from interchanging traffic with a third party or that limits BDHH's ability to interchange with a third party.

BDHH certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and states that its projected annual revenues will not exceed \$5 million.

The transaction is expected to be consummated on or after January 28, 2016, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 21, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35987, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

According to BDHH, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at WWW.STB.DOT.GOV.

Decided: January 11, 2016.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Raina S. Contee,
Clearance Clerk.

[FR Doc. 2016-00613 Filed 1-13-16; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Commercial Space Transportation

¹ BDHH is owned and controlled by BDCM Opportunity Fund IV, L.P. (BDCM), a noncarrier holding company.

² See *Steelton & Highspire R.R. Co., LLC—Acquisition and Operation Exemption—Steelton & Highspire R.R. Co.*, FD 34158 (STB served Jan. 10, 2002).

¹⁷ 17 CFR 200.30-3(a)(12).

Advisory Committee (COMSTAC). The Teleconference will take place on Wednesday, January 27, 2016 starting at 3:00 p.m. Eastern Standard Time and will last approximately one hour. The agenda and call-in number will be posted at least one week in advance at <http://www.faa.gov/go/ast>.

The purpose of this teleconference is to review the International Space Policy Working Group findings and recommendations regarding a potential modification of current U.S. policy on the launching of U.S. technology on Indian launch vehicles.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Michael Beavin, COMSTAC Executive Director, (the Contact Person listed below) in writing (mail or email) by January 22, 2016, so that the information can be made available to COMSTAC members for their review and consideration before the January 27 teleconference. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy via email.

An agenda will be posted on the FAA Web site at www.faa.gov/go/ast.

Individuals who plan to participate and need special assistance should inform the Contact Persons listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Michael Beavin, telephone (202) 267-9051; email Michael.beavin@faa.gov, FAA Office of Commercial Space Transportation (AST-3), 800 Independence Avenue SW., Room 331, Washington, DC 20591.

Complete information regarding COMSTAC is available on the FAA Web site at: http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.

Issued in Washington, DC, January 8, 2016.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2016-00620 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighth Meeting: RTCA Special Committee (231) Terrain Awareness Warning Systems (TAWs)

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

ACTION: Notice of eighth RTCA Special Committee 231 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Eighth RTCA Special Committee 231 meeting.

DATES: The meeting will be held February 9–12, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at Hilton Garden Inn, Phoenix North/Happy Valley, 1940 W. Pinnacle Peak Road, Phoenix, AZ 85027, Tel: (202) 330-0654.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org> or Harold Moses, Program Director, RTCA, Inc., hmoses@rtca.org, (202) 330-0654.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 231. The agenda will include the following:

Tuesday, February 9, 2016 (9:00 a.m.–5:00 p.m.)

1. Welcome/Introduction
2. Administrative Remarks
3. Agenda Review
4. Summary of Working Group activities
5. Other Business
6. Date and Place of Next Meeting

Wednesday, February 10, 2016 (9:00 a.m.–5:00 p.m.)

1. Continuation of Plenary or Working Group Session

Thursday, February 11, 2016 (9:00 a.m.–5:00 p.m.)

1. Continuation of Plenary or Working Group Session

Friday, February 12, 2016 (9:00 a.m.–4:00 p.m.)

1. Continuation of Plenary or Working Group Session

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary

information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 11, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016-00625 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting: RTCA Special Committee (232) Airborne Selective Calling Equipment

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

ACTION: Notice of sixth RTCA Special Committee 232 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Sixth RTCA Special Committee 232 meeting.

DATES: The meeting will be held January 26–27, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330-0654.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org> or Harold Moses, Program Director, RTCA, Inc., hmoses@rtca.org, (202) 330-0654.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 232. The agenda will include the following:

Tuesday–Wednesday, January 26–27, 2016

1. Welcome/Introductions/
Administrative Remarks
2. Agenda Overview
3. Review/Approval of Minutes from Plenary #5
4. Status of Other SELCAL Industry Activities/Committees
5. Review of Selective Calling (SELCAL) Action Items

6. Review/Approval of Draft MOPS for Airborne Selective Calling Equipment
7. Other Business
8. Date and Place of Next Meetings
9. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 11, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division Federal Aviation Administration.

[FR Doc. 2016-00623 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Fifth Meeting: RTCA Special Committee (217) Aeronautical Databases (Joint With EUROCAE WG-44)

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

ACTION: Notice of twenty-fifth RTCA Special Committee 217 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Twenty-Fifth RTCA Special Committee 217 meeting.

DATES: The meeting will be held February 9–11, 2016 from 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at Jeppesen Office, Frankfurter Str. 233, 63263 Neu-Isenburg, Germany, Tel: (202) 330-0662.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833-9339, fax at (202) 833-9434, or Web site at <http://www.rtca.org> or Jennifer Iversen, Program Director, RTCA, Inc., jiversen@rtca.org, (202) 330-0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 217. The agenda will include the following:

Tuesday, February 9, 2016 (Opening Plenary Session)

1. Co-Chairmen's remarks and introductions
2. Approve minutes from 24th meeting
3. Review and approve meeting agenda for 25th meeting
4. Schedule for this week

Tuesday–Thursday, February 9–11, 2016 (WG Sessions)

1. Review of WG-44/SC-217 ToR and discussion on the scope of the work
2. Review of current ED-77/DO-201A
- a. Other related standards and initiatives
3. ICAO-FAA-EU SES—EUROCAE/RTCA standards—ARINC 424
4. Summary and conclusions on the updates to be made
5. Organization of the updating effort, working arrangements and implementation

Thursday, February 11, 2016 (Closing Plenary Session)

1. Review of the ISRA with SC-206
2. Meeting wrap-up: main conclusions and way forward
3. Review of action items and next meetings
4. Any other business and adjourn

Attendance is open to the interested public but limited to space availability. Use <https://jeppesen.wufoo.com/forms/z1chez21oitnrp/> to register to attend. With the approval of the chairman, members of the public may present oral statements at the meeting. Plenary information will be provided upon request. Persons who wish to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 11, 2016.

Latasha Robinson,

Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.

[FR Doc. 2016-00624 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal

agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project (TIP# U-5526A, Federal-Aid Project No. FSTRNHPP-0074(153)), U.S. 74 (Independence Boulevard) Managed Toll Lanes, from I-277 (Brookshire/Belk Freeway) to Wallace Lane, Mecklenburg County, North Carolina. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 13, 2016. If this date falls on a Saturday, Sunday, or legal holiday, parties are advised to file their claim no later than the business day preceding this date. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence W. Coleman, P.E., Preconstruction and Environment Director, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601-1418; Telephone: (919) 747-7014; email: clarence.coleman@dot.gov. FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). Mr. Richard W. Hancock, Project Development and Environmental Analysis Unit Manager, North Carolina Department of Transportation (NCDOT), 1548 Mail Service Center, Raleigh, North Carolina 27699-1548; Telephone: (919) 707-6000, email: rwhancock@ncdot.gov. NCDOT—Project Development and Environmental Analysis Unit's Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: U.S. 74 (Independence Boulevard) Managed Toll Lanes, Federal Aid No. FSTRNHPP-0074(153), from I-277 (Brookshire/Belk Freeway) to Wallace Lane in the City of Charlotte in Mecklenburg County, North Carolina. The project is also known as State Transportation Improvement Program (STIP) Project U-5526A. The project is approximately 5.8 miles long and includes the following actions:

- (1) Convert existing bus lanes to managed toll lanes from I-277 to NC 27 (Albemarle Road).

(2) Convert under-construction bus lanes to managed toll lanes from NC 27 (Albemarle Road) to Wallace Lane.

(3) Designation of the managed toll lanes as HOT 3+.

Additional information can be found on the project Web site: <http://www.ncdot.gov/projects/U-5526>.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Categorical Exclusion (CE) for the project, approved on August 21, 2015, and in other documents in the FHWA administrative record. The CE and other documents in the FHWA administrative record file are available by contacting the FHWA or NCDOT at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

4. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

5. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

6. *Wetlands and Water Resources*: Clean Water Act [33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319)]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic

Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

7. *Hazardous Materials*: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

8. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(I)(1).

Issued on: January 5, 2016.

Clarence W. Coleman, Jr.,
Preconstruction and Environment Director,
Federal Highway Administration, Raleigh,
North Carolina.

[FR Doc. 2016–00497 Filed 1–13–16; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0346]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 100 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has

concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, III, Director, Carrier, Driver and Vehicle Safety Standards, (202) 366–4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds “such an exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such an exemption.” The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 100 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency’s recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 14 applicants had no experience operating a CMV:

Charles A. Bell
William R. J. Brown
Reginald Davis, Jr.
Ian S. Gunning
Lionel J. Kelley Jr.
Nina Y. Lenthe
Armando Moronez, Jr.
Daryl S. Payton
Michael Picklesimer
Andre A. Taft
Mark O. Teeter
Caitlin Teves
William D. Wright
Laura L. Zomlot

The following 24 applicants did not have 3 years of experience driving a CMV on public highways with their vision deficiencies:

Shawn T. Cobbs
 Glen D. Crawford
 David Dibb
 Armando Duval Sr.
 Jamie A. Edson
 Roger Ferry
 Robert C. Findley
 Jose A. Flores
 Karl D. Graves
 William A. Lamkie
 Runger H. Langston
 Bradley W. Lovelace
 Tyrone Marrs
 Edmund R. Morrison, IV
 Alan L. Ofstad
 John N. Pozworski
 Stanley Reed
 Tyrone M. Reese
 Phillip A. Reilly
 Walter A. Robidoux
 Rodger L. Shaver
 Monty W. Torrance
 Scott A. Van Zandt
 Neil D. Wangsness

The following 10 applicants did not have three years of recent experience driving a CMV with the vision deficiency:

Jason L. Cash
 Stanley L. Gordon
 John A. Gwinn
 Terry L. Haggerty
 Ryan A. Hale
 Trish A. Melvin
 Michele L. Mickelson
 Daniel G. Vaughan
 Orlando K. Welsey
 Leonard F. Wood

The following 3 applicants did not have sufficient driving experience during the past three years under normal highway operating conditions:

Michael E. Jones
 Robert C. Lemke
 Eric R. Padgett

The following applicant, Mark L. Julin, was charged with a moving violation(s) in conjunction with a CMV accident(s).

The following applicant, Randall K. Robertson, does not have sufficient peripheral vision in the better eye to qualify for an exemption.

The following 6 applicants had their commercial driver's licenses suspended during the previous 3-year period:

Charles E. Calhoun
 Darrin G. Coffee
 Jason Lennon
 Mark Matthews
 Christopher W. Moore
 Carlton Yuille

The following applicant, Kenton D. McCullough, contributed to an accident(s) while operating a CMV.

The following 11 applicants were denied for multiple reasons:

Keith J. Berger
 Matthew R. Carricaburu
 Bill Castillo
 Randal A. Ferguson
 Scott A. Hambleton
 Melvin Nelson
 Luis R. Olivas
 Benajmin M. Pirner
 Russell T. Snorek
 Blake E. Spires
 Gerard R. Talbot

The following 2 applicants did not have stable vision for the entire three-year period:

Trent C. McCain
 William D. Wallace

The following applicant, Jakob Dueck, is a Canadian citizen.

The following 2 applicants do not meet the vision standard in the better eye:

Michael S. Watson
 WM C. White, Jr.

The following 8 applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision:

Paul Blanford
 Joel C. Conrad
 Dillon R. Dupont
 Christopher S. Fant
 Michael J. Hinkle
 Byron C. Pratt
 John E. Reiter
 Jerry L. Vandervegt

The following 14 applicants were denied because they will not be driving interstate, interstate commerce, or are not required to carry a DOT medical card:

Gary Bridgewater, Jr.
 Robert W. Dunn
 Lawrence S. Frick
 William D. Hauser
 Jesus Hernandez, Jr.
 Steven E. Herrick
 Gina M. Kiser
 Travis McCoy
 Roy R. Owens
 William D. Robinson
 Luis Romero
 Jonathan A. Slatten
 Raymond Stonaker
 Tammy S. Whitford

Finally, the following 2 applicants perform transportation for the federal government, state, or any political subdivision of the state.

Scott A. Lamb
 Richard M. Marti

Issued on: January 6, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016-00657 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0341]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 40 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before February 16, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2015-0341 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want

acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT:

Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-113, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 40 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Kevin D. Aaron

Mr. Aaron, 53, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Aaron understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Aaron meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Juan Acevedo

Mr. Acevedo, 47, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Acevedo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Acevedo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

Philip K. Allen

Mr. Allen, 52, has had ITDM since 1997. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Allen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Allen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Marvin L. Attaway

Mr. Attaway, 63, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Attaway understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Attaway meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Lewis M. Belcher

Mr. Belcher, 48, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Belcher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Belcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Walter E. Boles

Mr. Boles, 47, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Boles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Eugene O. Carr, Jr.

Mr. Carr, 59, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Carr understands

diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carr meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Delaware.

Tracy R. Clark

Ms. Clark, 45, has had ITDM since 2009. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Clark understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Clark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Kentucky.

Jerry L. Coward

Mr. Coward, 57, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Coward understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coward meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Wesley N. Cubby

Mr. Cubby, 40, has had ITDM since 1982. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in

the last 5 years. His endocrinologist certifies that Mr. Cubby understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cubby meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Robert C. Davis

Mr. Davis, 74, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

Michael G. Deschenes

Mr. Deschenes, 57, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Deschenes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Deschenes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

James C. Detwiler

Mr. Detwiler, 66, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Detwiler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Detwiler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Jay E. Diller

Mr. Diller, 53, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Diller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Diller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Thomas M. Ellis

Mr. Ellis, 23, has had ITDM since 2003. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ellis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ellis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Jose N. Escobar

Mr. Escobar, 61, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Escobar understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Escobar meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

James C. Gilkerson

Mr. Gilkerson, 28, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gilkerson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gilkerson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Frank J. Gogno

Mr. Gogno, 55, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gogno understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gogno meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Michael D. Hashem

Mr. Hashem, 58, has had ITDM since 2013. His endocrinologist examined him

in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hashem understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hashem meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

George W. Hauck

Mr. Hauck, 61, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hauck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hauck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Louisiana.

Aseneka K. Igambi

Mr. Igambi, 35, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Igambi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Igambi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Texas.

Hayward G. Jinright

Mr. Jinright, 57, has had ITDM since 1974. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jinright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jinright meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

James S. Kauffman

Mr. Kauffman, 55, has had ITDM since 1994. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kauffman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kauffman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Kevin M. Kemp

Mr. Kemp, 46, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kemp understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kemp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that

he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Anthony M. Lopez

Mr. Lopez, 63, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lopez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lopez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Carlos A. Montano

Mr. Montano, 53, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Montano understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Montano meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Patrick O. Parent

Mr. Parent, 51, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Parent understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Parent meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Delaware.

Michael J. Payne

Mr. Payne, 54, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Payne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Payne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Maryland.

Charles B. Perry

Mr. Perry, 50, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Perry understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perry meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Oregon.

Christopher M. Seals

Mr. Seals, 35, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Seals understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Seals meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Mississippi.

Robert Sienkiewicz

Mr. Sienkiewicz, 66, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sienkiewicz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sienkiewicz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

Craig A. Sines

Mr. Sines, 58, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sines understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sines meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Oregon.

Joel K. Spencer

Mr. Spencer, 45, has had ITDM since 1987. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in

the last 5 years. His endocrinologist certifies that Mr. Spencer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Spencer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Alabama.

Michael J. Sweeney

Mr. Sweeney, 59, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sweeney understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sweeney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Kendall W. Unruh

Mr. Unruh, 28, has had ITDM since 1996. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Unruh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Unruh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

Daniel R. Vilart

Mr. Vilart, 58, has had ITDM since 1976. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or

resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vilart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vilart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Washington.

Billy F. Wallace

Mr. Wallace, 77, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wallace understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wallace meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Travis J. Womack

Mr. Womack, 30, has had ITDM since 1993. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Womack understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Womack meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from North Carolina.

Logan D. Yoder

Mr. Yoder, 30, has had ITDM since 1995. His endocrinologist examined him

in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yoder understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yoder meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Landon L. Zimmerman

Mr. Zimmerman, 22, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zimmerman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zimmerman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).¹ The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent

¹ Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2015-0341 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number FMCSA-2015-0341 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to the proposed rulemaking.

Issued on: January 6, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016-00653 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

DATES: *Time and Date:* The meeting will be held on February 2, 2016, from 9:00 a.m. to 12:00 noon Mountain Standard Time.

PLACE: The meetings will be open to the public at the Saguaro Scottsdale, 4000 North Drinkwater Blvd., Scottsdale, AZ 85251 and via conference call. Those not attending the meetings in person may call 1-877-422-1931, passcode 2855443940, to listen and participate in the meetings.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Issued on: January 11, 2016.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2016-00711 Filed 1-12-16; 11:15 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2015-0036; Notice 2]

Graco Children's Products, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Graco Children's Products, Inc., (Graco) has determined that certain Graco child restraints do not fully comply with paragraph S5.5.2(g)(1)(iii) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems*. Graco filed a report dated March 13, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Graco then submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on the decision contact Zachary Fraser, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5754, facsimile (202) 366-5930.

SUPPLEMENTARY INFORMATION:

I. Overview

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Graco submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the Graco's petition was published, with a 30-day public comment period, on June 4, 2015 in the **Federal Register** (80 FR 31968). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management Systems (FDMS) Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2015-0036."

II. Child Restraints Involved

Affected are approximately 31,838 Graco ComfortSport, Graco Classic Ride, and Graco Ready Ride child restraints manufactured between March 1, 2014 and February 28, 2015.

III. Noncompliance

Graco explains that the noncompliance is due to a labeling issue. The labels on the subject child restraints do not contain the instructional statement required by paragraph S5.5.2(g)(1)(iii) of FMVSS No. 213.

IV. Rule Text

Paragraph S5.5.2(g)(1)(iii) of FMVSS No. 213 requires, in pertinent part:

S5.5.2 The information specified in paragraphs (a) through (m) of this section shall be stated in the English language and lettered in letters and numbers that are not smaller than 10 point type. . . .

(g) The statements specified in paragraphs (1) and (2)

(1) A heading as specified in S5.5.2(k)(3)(i), with the statement "WARNING! DEATH or SERIOUS INJURY can occur," capitalized as written and followed by bulleted statements in the following order . . .

(iii) Follow all instructions on this child restraint and in the written instructions located (insert storage location on the restraint for the manufacturer's installation instruction booklet or sheet).

V. Summary of Graco's Analyses

Graco stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) Graco observed that many child seats are sold with their instruction manual placed in an appropriate long-term storage location. Graco believes that in such cases the statement required by paragraph S5.5.2(g)(1)(iii) of FMVSS No. 213 is intended to remind consumers that the child restraint was sold with instructions and to inform them where to find those instructions. Graco believes that, because the subject child restraints are sold with the instruction manual in a plastic pouch on the child restraint's harness strap, the original consumer must initially interact with the instructions in order to properly install the child seat. Therefore, Graco believes the same result intended by the subject label statement is achieved, *i.e.*, the consumer is made aware of the instructions without the statement required by S5.5.2(g)(1)(iii). Graco believes that, being thereby made aware of the instructions, the consumer can then place the instructions directly into the storage location for future access.

(B) In a case of subsequent users, Graco believes the location of a properly stored manual, near the top of the seat back, is readily visible and obvious due to the size, shape and color contrast between the instruction manual and the seat back.

(C) Graco considers the risk that a consumer does not place the instruction manual into the proper storage location to be no different from the risk where that a user does not replace the instructions into the storage location after use.

(D) Graco further notes that installation instructions are also readily available on Graco's Web site or by calling its customer hotline.

For the reasons given above, Graco believes that the described noncompliance of the subject child restraints is inconsequential to motor vehicle safety, and that its petition, to exempt Graco from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA's Decision

NHTSA's Analysis: The label text required by S5.5.2(g)(1)(iii) of FMVSS No. 213 that Graco omitted is intended to instruct a person using the child seat to follow all instructions mounted on the child restraint as well as additional written instructions provided with the restraint. The text also describes the instruction's storage location on the restraint. The text is required to be placed under a larger label heading stating, "WARNING! DEATH or SERIOUS INJURY can occur." The importance of the statement omitted by Graco is underscored by the requirement that it be located under this warning heading on the label.

The agency does not concur with Graco's contention that the missing statement is inconsequential. Even though the subject child restraints are sold new with the owner's manual in a plastic pouch on the child restraint's harness strap, the original consumer may not necessarily know that the manual has important installation instructions and other safety information. In addition, without the label, the owner is not informed about the existence of a storage location for the instructions. NHTSA required a storage location to better ensure that the manual is stored with the child seat so that the document will be easily available for reference and will be passed on to subsequent owners of the restraint.¹ Thus, the same result intended by the subject label statement (making consumers aware—and reminding them through the lifetime use of the child seat—that there is a manual with important operational information that should be followed, that there is a storage location for the manual on the

child seat for storage of the manual) would not be achieved.

Graco also maintains that the risk of the original consumer not placing the instruction manual into the proper storage location to be no different from the risk where a user does not replace the instructions into the storage location after use. We do not agree with this argument. With the required statement, the consumer understands there is a place to store the instruction manual. The statement increases the likelihood that the user will store the manual with the restraint. Without the statement, the consumer is made to find the storage location on his or her own and has to surmise that the manual should be kept there.

The agency is concerned about how subsequent owners could be affected by the missing label. Child safety seats are often used secondhand. Without the label, these owners would not be informed to locate and review the instruction manual for important information. The agency is especially concerned that subsequent owners of the affected child restraints will not even be aware of the existence of an owner's instruction manual, especially if the owner's instruction manual is missing when subsequent owners obtain the child restraint.

Graco further contends that installation instructions are also readily available on Graco's Web site or by calling its customer hotline. The agency believes that omitting the statement directing the user to the instruction manual may result in the original owner forgetting there is a manual and/or subsequent owners not even being aware of the existence of an instruction manual. Thus, the owner would not know to check Graco's Web site or call its customer hotline. With the statement, consumers will be alerted that a manual exists and can contact Graco if the manual is missing.

For the above reasons, the agency disagrees with Graco that the noncompliance is inconsequential to motor vehicle safety because the subject noncompliance can negatively impact the operational safety of the child restraints.

NHTSA's Decision: In consideration of the foregoing, NHTSA determined that Graco has not met its burden of persuasion that the FMVSS No. 213 noncompliance is inconsequential to motor vehicle safety. Accordingly, Graco's petition is hereby denied and Graco is obligated to provide notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

¹ 44 FR 72131, 72137 (December 13, 1979).

Authority: 49 U.S.C. 30118, 30120; Delegations of authority at 49 CFR 1.95 and 501.8.

Frank S. Borris,
Acting Associate Administrator for Enforcement.

[FR Doc. 2016-00531 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT-NHTSA-2015-0110]

Notice and Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Written comments should be submitted by March 14, 2016.

ADDRESSES: You may submit comments [identified by Docket No. DOT-NHTSA-2015-0110] through one of the following methods:

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

- *Fax:* 1-202-493-2251

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Sauers, (202) 366-0144, Director, Office of Grants Management and Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the PRA, before an agency submits a proposed collection of information to OMB for approval, it must first publish

a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including 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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

OMB Control Number: 2127-0597.

Title: State Observational Surveys of Seat Belt Use.

Type of Review: Reinstatement of an information collection.

Abstract: The "Uniform Criteria for State Observational Surveys of Seat Belt Use," requires States re-select observation sites for their annual seat belt survey. States would use an updated roadway segment database to assist with the site selection and then re-select sites utilizing their currently approved seat belt survey design. Section 402 of title 23, United States Code provides that the Secretary of Transportation may not approve a State highway safety program for grant funding which does not provide satisfactory assurances that the State will implement an annual statewide seat belt use survey in accordance with criteria established by the Secretary to ensure that the measurements of seat belt use are accurate and representative. The seat belt use survey rates are verified by the National Highway Traffic Safety Administration's National Center for Statistics and Analysis. The verified seat belt use rates also determine whether a State is eligible for an occupant protection grant as a high seat belt use rate State having a seat belt use

rate of at least 90 percent or as a lower seat belt use rate State having a seat belt use rate below 90 percent.

Affected Public: State Highway Safety Offices

Estimated Number of Respondents: 56

Estimated Total Annual Burden

Hours: 19,040

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 23 U.S.C. 402 and 405; and 49 CFR 1.94 and 1.95.

Mary D. Gunnels,

Associate Administrator, Office of Regional Operations and Program Delivery.

[FR Doc. 2016-00655 Filed 1-13-16; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of change of meeting date.

SUMMARY: In the **Federal Register** notice that was originally published on December 28, 2015, (Volume 80, Number 248, Page 80878), the meeting date is now changed. The new dates for the meeting are, Thursday, March 3, 2016 and Friday, March 4, 2016.

DATES: The meeting will be held Thursday, March 3, 2016 and Friday, March 4, 2016.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1-888-912-1227 or 916-974-5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Thursday,

March 3, 2016, from 8:00 a.m. to 4:30 p.m. Mountain Time and Friday, March 4, 2016, from 8:00 a.m. until 12:00 p.m. Mountain Time at the IRS Office, 5338 Montgomery Blvd., Albuquerque, New Mexico 87109-1338. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Kim Vinci. For more information please contact Kim Vinci at 1-888-912-1227 or 916-974-5086, or write TAP Office, 4330 Watt Ave Sacramento, CA 95821-7012 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: January 7, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016-00558 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8910

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8910, Alternative Motor Vehicle Credit.

DATES: Written comments should be received on or before March 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, room 6129, 1111 Constitution Ave. NW., Washington DC 20224, or through the internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Alternative Motor Vehicle Credit.

OMB Number: 1545-1998.

Form Number: 8910.

Abstract: Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.

Current Actions: There is no change to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, Not-for-profit institutions, farms, Federal Government and State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 8 hours, 52 minutes.

Estimated Total Annual Burden Hours: 88,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016-00578 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning information collection requirements related to arbitrage restrictions on tax-exempt bonds.

DATES: Written comments should be received on or before March 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545-1490.

Regulation Project Number: FI-28-96 (TD 8801).

Abstract: This regulation provides guidance concerning the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments and contains rules regarding the use of proceeds of state and local bonds to acquire higher yielding investments. The regulation provides safe harbors for establishing the fair market value of all investments purchased for yield restricted defeasance escrows. Further, the regulation requires that issuers must retain certain records and information with the bond documents. The recordkeeping requirements are necessary for the IRS to determine that an issuer of tax-exempt bonds has not paid more than fair market value for nonpurpose investments under section 148 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,425.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016-00580 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of change of meeting date.

SUMMARY: In the *Federal Register* notice that was originally published on December 28, 2015, (Volume 80, Number 248, Page 80880), the meeting date is now changed. The new dates for the meeting are, Thursday, March 3, 2016 and Friday, March 4, 2016.

DATES: The meeting will be held Thursday, March 3, 2016 and Friday, March 4, 2016.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1-888-912-1227 or 202-317-3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Project Committee will be held Thursday, March 3, 2016, from 8:00 a.m. to 4:30 p.m. Central Time and Friday, March 4, 2016, from 8:00 a.m. until 12:00 p.m. Central Time at the IRS Office, 55 North Robinson Avenue, Oklahoma City, OK 73102. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Otis Simpson. For more information please contact Otis Simpson at 1-888-912-1227 or 202-317-3332, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: January 7, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016-00556 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974

AGENCY: Internal Revenue Service, Treasury.

ACTION: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended,

and Office of Management and Budget (OMB) Guidelines on the conduct of Matching Programs, notice is hereby given that the Internal Revenue Service (IRS) intends to continue matching computerized data within its systems of records for the purpose of detecting and deterring breaches of security policy by IRS personnel and/or contractors. This notice is intended to comply with the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988, Public Law 100-503, and the Computer Matching and Privacy Protection Amendments of 1990, Public Law 101-508, as well as OMB guidelines.

SUMMARY: The IRS is continuing its program of reviewing detections of potential violations of security policies to determine whether there has been an actual violation. This review includes matching data from existing IRS systems of records such as:

- I. Treasury Payroll and Personnel System [Treasury/DO.001]
- II. Subsidiary Accounting Files [Treasury/IRS 22.054]
- III. Automated Non-Master File (ANMF) [Treasury/IRS 22.060]
- IV. Information Return Master File (IRMF) [Treasury/IRS 22.061]
- V. CADE Individual Master File (IMF) [Treasury/IRS 24.030]
- VI. CADE Business Master File (BMF) [Treasury/IRS 24.046]
- VII. Audit Trail and Security Records [Treasury/IRS 34.037]
- VIII. General Personnel and Payroll Records [Treasury/IRS 36.003]

This review may include using data elements such as:

- I. Employee name, Social Security number (SSN), standard employee identification number (SEID), address, email addresses
- II. Employee spouse's name, SSN, address
- III. Taxpayer entity information, including prior and current name, taxpayer identification number, address, tax return/account information
- IV. Electronic transmission specifics, such as sender's email address, recipient's email address, recipient's internet service provider, transmission date and time, IP address, computer machine name, terminal identification

Reporting: A report describing this proposal has been provided to OMB and the Congressional committees responsible for oversight of the Privacy Act in accordance with the Privacy Act of 1974, OMB Guidelines on the Conduct of Matching Programs (54 FR 25818, June 19, 1989), OMB Bulletin 89-22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," and OMB Circular No. A-130, (rev. Nov. 28,

2000), "Management of Federal Information Resources."

Notice Procedures: IRS employees, contractors, and other individuals who have been granted access to IRS information, or to IRS equipment and resources, are notified regularly that their computer activity is monitored. This information is also publicized in the System of Records Notice "Audit Trail and Security Records—Treasury/IRS 34.037" (77 FR 155 (August 10, 2012)).

Security: All information obtained and/or generated as part of the IRS computer matching program will be safeguarded in accordance with the provisions of 5 U.S.C. 552a, 26 U.S.C. 6103, as well as IRS record safeguarding requirements, which conform to Treasury Directive (TD) 80-05, Records and Information Management, and TD P 71-10, Department of the Treasury Security Manual, and are no less restrictive than the standards prescribed in IRS Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies. Matches under this program will comply with the standards of OMB policy M-06-16, Protection of Sensitive Agency Information, requiring that sensitive information, including all Personally Identifiable Information be protected at all times.

Records Usage, Duplication And Disclosure: The information generated and/or obtained during these computer matches will be used by IRS employees in the performance of their official responsibilities. Access to this information is limited to those individuals who have a need to know the information in the performance of their official duties. These individuals are subject to criminal and civil penalties for the unauthorized inspection and/or disclosure of this information. During the execution of this program of computer matches and resulting analyses or investigations, IRS employees may duplicate the records used only to perform their official duties. The information collected or generated as part of this program of computer matches may only be disclosed in accordance with the provisions of 5 U.S.C. 552a, 26 U.S.C. 6103, and any other applicable federal privacy provisions.

Legal And Regulatory Authority: The IRS must safeguard information to comply with the Internal Revenue Code, the Privacy Act of 1974, the Bank Secrecy Act, Title 18 of the United States Code, the Federal Information Security Management Act (FISMA), and other applicable laws. Sending confidential information without

sufficient protection violates IRS security policy. This matching program will assist the IRS in protecting that sensitive information from unauthorized use or disclosure.

DATES: Comments must be received no later than February 16, 2016. The matching program became effective May 22, 2015, and the renewal will become effective February 23, 2016 unless the IRS receives comments which cause reconsideration of this action.

ADDRESSES: Comments should be sent to the Office of Privacy, Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Comments will be available for inspection and copying in the IRS Freedom of Information Reading Room (Room 1621) at the above address. The telephone number for the Reading Room is (202) 622-5164 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: David Silverman, Management and Program Analyst, IRS Office of Privacy, Governmental Liaison and Disclosure, (202) 622-5625 (not a toll-free number).

Dated: January 8, 2016.

Ryan Law,

Director for FOIA and Transparency, U.S. Department of the Treasury.

[FR Doc. 2016-00570 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of change of meeting date.

SUMMARY: In the **Federal Register** notice that was originally published on December 28, 2015, (Volume 80, Number 248, Page 80879), the meeting date is now changed. The new dates for the meeting are, Monday, February 29, 2016 and Tuesday, March 1, 2016.

DATES: The meeting will be held Monday, February 29, 2016 and Tuesday, March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1-888-912-1227 or 202-317-3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer

Advocacy Panel Toll-Free Phone Line Project Committee will be held Monday, February 29, 2016, from 1:00 p.m. to 4:30 p.m. Central Time and Tuesday, March 1, 2016, from 8:15 a.m. until 4:30 p.m. Central Time at the IRS Office, 55 North Robinson Avenue, Oklahoma City, OK 73102. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Linda Rivera at 1-888-912-1227 or 202-317-3337, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: January 7, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016-00552 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of change of meeting date.

SUMMARY: In the **Federal Register** notice that was originally published on December 28, 2015, (Volume 80, Number 248, Page 80880), the meeting date is now changed. The new dates for the meeting are, Monday, February 29, 2016 and Tuesday, March 1, 2016.

DATES: The meeting will be held Monday, February 29, 2016 and Tuesday, March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1-888-912-1227 or 954-423-7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Monday, February 29, 2016, from 1:00 p.m. to 4:30 p.m. Mountain time and Tuesday, March 1, 2016, from 8:00 a.m. until 4:30 p.m. Mountain Time at the 5338 Montgomery Blvd. Albuquerque, New Mexico 87109-1338. The public is invited to make oral

comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Donna Powers. For more information please contact Donna Powers at 1-888-912-1227 or 954-423-7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: January 7, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016-00555 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of change of meeting date.

SUMMARY: In the **Federal Register** notice that was originally published on December 28, 2015, (Volume 80, Number 248, Page 80879), the meeting date is now changed. The new dates for the meeting are, Monday, February 29, 2016 and Tuesday, March 1, 2016.

DATES: The meeting will be held Monday, February 29, 2016 and Tuesday, March 1, 2016.

FOR FURTHER INFORMATION CONTACT: Theresa Singleton at 1-888-912-1227 or 202-317-3329.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Monday, February 29, 2016, from 1:00 p.m. to 4:30 p.m. and Tuesday, March 1, 2016, from 8:00 a.m. until 4:30 p.m. Eastern Time at the Charles Bennett Federal Building, 400 West Bay Street, Jacksonville, FL 32202. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Theresa Singleton. For more information please contact Theresa Singleton at 1-888-912-1227 or 202-317-3329, or write TAP Office, 1111 Constitution Ave. NW., Room 1509,

Washington, DC 20224 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: January 7, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016-00551 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of change of meeting date.

SUMMARY: In the **Federal Register** notice that was originally published on December 28, 2015, (Volume 80, Number 248, Page 80881), the meeting date is now changed. The new date for the meeting is, Wednesday, March 30, 2016.

DATES: The meeting will be held Wednesday, March 30, 2016.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1-888-912-1227 or 916-974-5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, March 30, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Kim Vinci at 1-888-912-1227 or 916-974-5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: January 7, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016-00565 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4136

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4136, Credit for Federal Tax Paid on Fuels.

DATES: Written comments should be received on or before March 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durballa at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317-5746, or through the Internet at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Credit for Federal Tax Paid on Fuels.

OMB Number: 1545-0162.

Form Number: 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. Form 4136 is used to figure the amount of income tax credit. The data is used by IRS to verify the validity of the claim for the type of nontaxable or exempt use.

Current Actions: There are currently no changes to Form 4136 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 2,441,858.

Estimated Time per Response: 36 hr., 56 min.

Estimated Total Annual Burden Hours: 4,122,076.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 6, 2016.

Allan Hopkins,
Tax Analyst.

[FR Doc. 2016-00579 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Change of Meeting Date.

SUMMARY: In the **Federal Register** notice that was originally published on December 28, 2015, (Volume 80, Number 248, Page 80879), the meeting date is now changed. The new dates for the meeting are, Thursday, March 3, 2016 and Friday, March 4, 2016.

DATES: The meeting will be held Thursday, March 3, 2016 and Friday, March 4, 2016.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1-888-912-1227 or 202-317-4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be held Thursday, March 3, 2016, from 8:00 a.m. to 4:30 p.m. Eastern Time and Friday, March 4, 2016, from 8:00 a.m. until 12:00 p.m. Eastern Time at the Charles Bennett Federal Building, 400 West Bay Street, Jacksonville, FL 32202. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1-888-912-1227 or 202-317-4110, or write TAP Office, 1111 Constitution Ave. NW., Room 1509, Washington, DC 20224 or contact us at the Web site: <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: January 7, 2016.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016-00554 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5316

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5316, Application for Group or Pooled Trust Ruling.

DATES: Written comments should be received on or before March 14, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at Allan.M.Hopkins@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Group or Pooled Trust Ruling.

OMB Number: 1545-2166.

Form Number: Form 5316.

Abstract: Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81-100, 1981-1 C.B. 326 as modified and clarified by Rev. Rul. 2004-67, 2004-28 I.R.B. 28.

Current Actions: There is no change to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local, or tribal governments, and not-for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time per Respondent: 19 hours.

Estimated Total Annual Burden Hours: 3,800 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information maintenance, and purchase of services
technology; and (e) estimates of capital to provide information.
or start-up costs and costs of operation,

Approved: January 6, 2016.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2016-00581 Filed 1-13-16; 8:45 am]

BILLING CODE 4830-01-P



FEDERAL REGISTER

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No. 9

January 14, 2016

Part II

Environmental Protection Agency

40 CFR Part 52

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Partial Approval and Partial Disapproval of Air Quality Implementation Plans and Federal Implementation Plan; Utah; Revisions to Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R08-OAR-2015-0463; FRL-9939-43-Region 8]

Approval, Disapproval and Promulgation of Air Quality Implementation Plans; Partial Approval and Partial Disapproval of Air Quality Implementation Plans and Federal Implementation Plan; Utah; Revisions to Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take action pursuant to section 110 of the Clean Air Act (CAA or Act) on State Implementation Plan (SIP) revisions submitted by the State of Utah on June 4, 2015, and October 20, 2015 to implement the regional haze program. The State's SIP revisions establish an alternative to best available retrofit technology (BART) controls that would otherwise be required to control nitrogen oxides (NO_x) at PacifiCorp's Hunter and Huntington power plants. The June 2015 SIP revision also includes BART determinations for particulate matter with an aerodynamic diameter of less than 10 micrometers (PM₁₀) at these power plants and provisions for making the NO_x and PM₁₀ BART emission limits federally enforceable. The CAA requires states to prevent any future and remedy any existing man-made impairment of visibility in national parks and wilderness areas designated as Class I areas. Air emissions from the four electric generating units (EGUs) at the two plants affected by this action cause or contribute to visibility impairment at nine Class I areas including Grand Canyon, Arches, Bryce Canyon and Zion National Parks. The EPA is issuing two co-proposals in order to fully evaluate the State's submittals and the public's input thereon. The EPA would work with the State on a revised State plan should a partial disapproval and FIP be finalized.

DATES: *Comments:* Written comments must be received on or before March 14, 2016.

Public Hearing: A public hearing for this proposal is scheduled to be held on Tuesday, January 26, 2016, at the Salt Lake City Public Library, Main Library, from 1 p.m. until 5 p.m., and again from 6 p.m. until 8 p.m. (local time).

ADDRESSES: The public hearing will be held at the Salt Lake City Public Library, Main Library, 210 East 400 South, Salt Lake City, Utah 84111.

Submit your comments, identified by Docket ID No. EPA-R08-OAR-2015-0463, to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2015-0463. The EPA's policy is that all comments received will be included in the public docket 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 www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

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 in www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Gail Fallon, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6281, Fallon.Gail@epa.gov.

SUPPLEMENTARY INFORMATION:**Public Hearing**

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. 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. The hearing officer may limit the time available for each commenter to address the proposal to 5 minutes or less if the hearing officer determines it to be appropriate. The limitation is to ensure that everyone who wants to make a comment has the opportunity to do so. 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 transcripts, in English, of the hearings and written statements will be included in the rulemaking docket.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to 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 EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD ROM the specific

information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register**, date, and page number);
- Follow directions and organize your comments;
 - Explain why you agree or disagree;
 - Suggest alternatives and substitute language for your requested changes;
 - Describe any assumptions and provide any technical information and/or data that you used;
 - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
 - Provide specific examples to illustrate your concerns, and suggest alternatives;
 - Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
 - Make sure to submit your comments by the comment period deadline identified.

II. Overview of Proposed Actions

The State of Utah submitted SIP revisions on June 4, 2015, and October 20, 2015, to fulfill the CAA requirement to meet the requirements for the Best Available Retrofit Technology (BART) in the Regional Haze Rule (RHR) for the pollutants NO_x and PM₁₀. As described more fully in Section III, the purpose of the RHR is to remedy and prevent impairment of visibility in Class I areas resulting from anthropogenic air pollution. Instead of establishing BART controls for NO_x, Utah's SIP revisions contain an alternative to BART. The revisions also include BART controls for PM₁₀. The idea of a BART alternative, which can take into account (and even encourage) plans that take into account state specific situations is a reasonable one, and one EPA supports where consistent with the CAA and RHR.

The State's SIP contains a NO_x BART Alternative and metrics to evaluate the BART Alternative. In light of the variety of metrics Utah used, this is a complicated analysis and EPA considered the State's BART Alternative in the context of other previous decisions we and the states have made.

EPA carefully analyzed the SIP revisions and the supporting information submitted by the State. We also conducted additional analyses, which are included with this proposal. Based on a careful consideration of all of this information, EPA is proposing and soliciting comments on two different actions: A proposal to approve the State SIP in its entirety,¹ and a proposal to partially approve and partially disapprove the State SIP and propose a FIP.² EPA takes seriously its decision to co-propose these two actions (disapprove part of the State's plan, alongside proposing to approve it), as it is preferable that the regional haze program be implemented through state plans. As part of its oversight responsibilities, EPA must be able to find that the state plan is consistent with the requirements of the Act. In this instance, we developed analyses and rationale supporting both a proposed approval and a proposed partial approval and partial disapproval, and we solicit input on each proposal. EPA intends to finalize only one proposal, although the details of our final action may differ somewhat from what is presented here based on any comments and additional information we receive.

Deciding whether to approve the State SIP entails an evaluation of Utah's SIP revision with respect to three elements in the RHR: (1) “[a] demonstration that the emissions trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program”;³ (2) “[a] requirement that all necessary emission reductions take place during the period of the first long-term strategy for regional haze”;⁴ and (3) “[a] demonstration that the emissions reductions resulting from the alternative

measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.”⁵

For the first element, the determination that the alternative measure will achieve greater reasonable progress than BART, the State must provide the following: (1) A list of all BART-eligible sources within the State; (2) a list of all BART-eligible sources and all BART source categories covered by the alternative program; (3) an analysis of BART and associated emission reductions; (4) an analysis of the projected emission reductions achievable through the BART alternative; and (5) a determination that the alternative achieves greater reasonable progress than would be achievable through the installation and operation of BART. A State has several options for making the greater reasonable progress determination;⁶ in this instance, the State elected to use two separate approaches.

EPA's evaluation of the BART Alternative therefore entails consideration of both of the State's analyses. As described in our 2006 revisions to the RHR, concerning BART alternatives, “[t]he State's discretion in this area is subject to the condition that it must be reasonably exercised and that its decisions be supported by adequate documentation of its analyses.”⁷ As presented in section V, several of the metrics in the State's analyses appear to support a determination that a BART Alternative presented by the State achieves greater reasonable progress than BART. However, several other metrics in the State's analyses do not appear to support a conclusion that the BART Alternative achieves greater reasonable progress. The complexity of our evaluation leads us to propose and solicit comment on two conclusions and courses of action: (1) The State's submittal meets the test above and we approve the BART Alternative; or (2) the State's submittal falls short of meeting this test and we disapprove the BART Alternative and promulgate a FIP for NO_x BART. We request comment on all aspects of each proposal.

Given the complexities in evaluating these co-proposals, EPA wants to ensure that our final decision is based on the best and most currently available data and information, and is taken with the fullest possible consideration of public input. Therefore, in addition to seeking comments on the co-proposals, we are

¹ Our proposed approval for one element, reporting for PM BART limits, is a conditional approval based on a commitment from Utah to provide a SIP revision to address this element. See section V.D of this document for a more detailed explanation.

² In March 2015, conservation groups sued EPA in the U.S. District Court for the District of Colorado alleging that EPA failed to promulgate a regional haze FIP for Utah within the two-year period allowed by CAA section 110(c). See *Wildearth Guardians v. McCarthy*, Case No. 1:15-cv-00630-MSK-KLM, at *1-2 (D. Colo. Mar. 27, 2015). EPA entered into a consent decree resolving this dispute requiring EPA to sign notices of proposed and final rulemaking for the regional haze requirements for Utah by December 16, 2015 and June 1, 2016, respectively. The signing of this proposed rule partially fulfills EPA's obligations under the consent decree. See *id.* (Doc. 60, Motion to Enter Consent Decree filed on December 8, 2015).

³ 40 CFR 51.308(e)(2)(i).

⁴ 40 CFR 51.308(e)(2)(iii).

⁵ 40 CFR 51.308(e)(2)(iv).

⁶ 40 CFR 51.308(e)(2)(i)(E); 40 CFR 51.308(e)(3).

⁷ 71 FR 60612, 60621 (Oct. 13, 2006).

also asking if interested parties have additional information or analysis on the co-proposals, for example, analysis related to the modeled visibility benefits of the BART Alternative compared to BART. In light of any such information, we are asking whether interested parties think the Agency should consider BART Alternatives or BART control technology options that are related to what we propose and that could be finalized as our FIP (if we disapprove the Utah SIP submittal in our final action). The Agency is also asking if interested parties have additional information or comments on the proposed timing of compliance.

The Agency will take the comments and testimony received, as well as any further SIP revisions received from the State prior to our final action, into consideration in our final promulgation. As noted above, additional information and comments may lead the Agency to adopt final SIP and/or FIP regulations that differ somewhat from the co-proposals presented here regarding the BART Alternative, BART control technology option or emission limits, or impact other proposed regulatory provisions. EPA's final action will fully consider these complex issues and the comments received, which will result in the selection of a final action that meets the CAA and regulatory requirements requiring development and implementation of plans to ensure reasonable progress toward improving visibility in mandatory Class I areas by reducing emissions that cause or contribute to regional haze.

A. Brief Description of These Co-Proposals

1. Summary of Proposal To Approve the SIP

As explained more fully later, we are proposing to approve these aspects of the State's June 4, 2015 SIP submittal:

- NO_x BART Alternative, including NO_x emission reductions from Hunter Units 1, 2, and 3, Huntington Units 1 and 2, and Carbon Units 1 and 2, and sulfur dioxide (SO₂) and PM₁₀ emission reductions from Carbon Units 1 and 2.
- BART determinations and emission limits for PM₁₀ at Hunter Units 1 and 2 and Huntington Units 1 and 2.
- Monitoring, recordkeeping, and reporting requirements for units subject to the BART Alternative and the PM₁₀ emission limits.

We are proposing to approve these elements of the State's October 20, 2015 SIP submittal:

- Enforceable commitments to revise SIP section XX.D.3.c and state rule R307–150 by March 2018 to clarify

emission inventory requirements for tracking compliance with the SO₂ milestone and properly accounting for the SO₂ emission reductions due to the closure of the Carbon plant.

2. Summary of Proposal to Partially Approve and Partially Disapprove the SIP and Propose a FIP

We are proposing to approve these elements of the State's SIP submittals:

- BART determinations and emission limits for PM₁₀ at Hunter Units 1 and 2, and Huntington Units 1 and 2.
- Monitoring, recordkeeping, and reporting requirements for units subject to the PM₁₀ emission limits.

We are proposing to disapprove these aspects of the State's June 4, 2015 SIP:

- NO_x BART Alternative, including NO_x emission reductions from Hunter Units 1, 2, and 3, Huntington Units 1 and 2, and Carbon Units 1 and 2, and SO₂ and PM₁₀ emission reductions from Carbon Units 1 and 2.

We are proposing to disapprove the State's October 20, 2015 SIP submittal.

We are proposing promulgation of a FIP to address the deficiencies in the Utah regional haze SIPs that are identified in this notice. The proposed FIP includes the following elements:

- NO_x BART determinations and emission limits for Hunter Units 1 and 2 and Huntington Units 1 and 2.
- Monitoring, recordkeeping, and reporting requirements for NO_x at Hunter Units 1 and 2, and Huntington Units 1 and 2.

If we partially disapprove the SIP, and promulgate a FIP, the State may submit a SIP revision to supersede the FIP. If we determine that the SIP revision is approvable, regardless of whether or not its terms match those of our final FIP, we would propose to approve such a SIP revision. If we issue a final FIP, we encourage the State to submit a SIP revision to replace the FIP.

III. Background and Requirements for Regional Haze SIPs and Utah Submittals

A. Statutory and Regulatory Background

1. Regional Haze

Regional haze is visibility impairment that is produced by numerous sources that are located across a broad geographic area and emit fine particles (PM_{2.5}) (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., SO₂, NO_x, and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Coarse PM also impairs visibility. Fine particle precursors react in the atmosphere to form PM_{2.5}, which impairs visibility by scattering and

absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see, PM_{2.5} can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication. Coarse PM also can cause adverse health effects.

Data from the existing visibility monitoring network, the "Interagency Monitoring of Protected Visual Environments" (IMPROVE) monitoring network, show that at the time the regional haze rule was finalized in 1999, visibility impairment caused by air pollution occurred virtually all the time at most national parks and wilderness areas. The average visual range⁸ in many Class I areas (i.e., national parks, wilderness areas, and international parks meeting certain size criteria) in the western U.S. was 62–93 miles, but in some Class I areas, these visual ranges may have been impacted by natural wildfire and dust episodes.⁹ In most of the eastern Class I areas of the U.S., the average visual range was less than 19 miles, "or about one-fifth of the visual range that would exist under estimated natural conditions."¹⁰

2. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

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 manmade air pollution."¹¹ On

⁸ Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

⁹ 64 FR 35715, 35716 (July 1, 1999).

¹⁰ *Id.*

¹¹ 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). 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. 44 FR 69122 (Nov. 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(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." 42 U.S.C. 7602(i). When we use the term "Class I area" in this section, we mean a "mandatory Class I Federal area."

December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that are “reasonably attributable” to a single source or small group of sources, *i.e.*, reasonably attributable visibility impairment.¹² These regulations represented the first phase in addressing visibility impairment. EPA 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 were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999.¹³ The RHR revised the existing visibility regulations to integrate into the regulation 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 EPA’s visibility protection regulations at 40 CFR 51.300 through 309. Some of the main elements of the regional haze requirements are summarized later in section III.C of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.¹⁴

Once EPA has found that a state has failed to make a required submission, EPA is required to promulgate a FIP within two years unless the state submits a SIP and the Agency approves it within the two-year period.¹⁵

3. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program requires long-term regional coordination among states, tribal governments, and various federal agencies. As noted previously, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one

jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were created to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of pollutants that lead to regional haze.

The Western Regional Air Partnership (WRAP) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the western United States. WRAP member state governments include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

4. Development of the Requirements for 40 CFR 51.309

EPA’s RHR provides two paths to address regional haze. One is 40 CFR 51.308, requiring states to perform individual point source BART determinations and evaluate the need for other control strategies. These strategies must be shown to make “reasonable progress” in improving visibility in Class I areas inside the state and in neighboring jurisdictions. The other method for addressing regional haze is through 40 CFR 51.309, and is an option for nine states termed the “Transport Region States,” which include: Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming. By meeting the requirements under 40 CFR 51.309, states can be deemed to be making reasonable progress toward the national goal of achieving natural visibility conditions for the 16 Class I areas on the Colorado Plateau.

Section 309 requires participating states to adopt regional haze strategies

that are based on recommendations from the Grand Canyon Visibility Transport Commission (GCVTC) for protecting the 16 Class I areas on the Colorado Plateau.¹⁶ The EPA established the GCVTC on November 13, 1991. The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around the 16 Class I areas on the Colorado Plateau and to provide policy recommendations to EPA to address such impacts. Section 169B of the CAA called for the GCVTC to evaluate visibility research, as well as other available information, pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the region. The GCVTC determined that all Transport Region States could potentially impact the Class I areas on the Colorado Plateau. The GCVTC submitted a report to EPA in 1996 with its policy recommendations for protecting visibility for the Class I areas on the Colorado Plateau. Provisions of the 1996 GCVTC report include: Strategies for addressing smoke emissions from wildland fires and agricultural burning; provisions to prevent pollution by encouraging renewable energy development; and provisions to manage clean air corridors (CACs), mobile sources, and wind-blown dust, among other things. The EPA codified these recommendations as an option available to states as part of the 1999 RHR.¹⁷

EPA determined that the GCVTC strategies would provide for reasonable progress in mitigating regional haze if supplemented by an annex containing quantitative emission reduction milestones and provisions for a trading program or other alternative measure.¹⁸ Thus, the 1999 RHR required that western states submit an annex to the GCVTC report with quantitative milestones and detailed guidelines for an alternative program in order to establish the GCVTC recommendations as an alternative approach to fulfilling the section 308 requirements for compliance with the RHR. In September

¹⁶ The Colorado Plateau is a high, semi-arid tableland in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are as follows: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Parks Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

¹⁷ 64 FR 35714, 35749 (July 1, 1999).

¹⁸ 64 FR 35714, 35749, 35756.

¹² 45 FR 80084, 80084 (Dec. 2, 1980).

¹³ 64 FR 35714, 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

¹⁴ EPA’s RHR requires subsequent updates to the regional haze SIPs. 40 CFR 51.308(g) through (i).

¹⁵ 42 U.S.C. 7410(c)(1).

2000, the WRAP, which is the successor organization to the GCVTC, submitted an annex to EPA. The annex contained SO₂ emissions reduction milestones and detailed provisions of a backstop trading program to be implemented automatically if voluntary measures failed to achieve the SO₂ milestones. EPA codified the annex on June 5, 2003 at 40 CFR 51.309(h).¹⁹

Five western states, including Utah, submitted implementation plans under section 309 in 2003. EPA was challenged by the Center for Energy and Economic Development (CEED) on the validity of the annex provisions. In *CEED v. EPA*, the DC Circuit Court of Appeals vacated EPA approval of the WRAP annex.²⁰ In response to the court's decision, EPA vacated the annex requirements adopted under 40 CFR 51.309(h), but left in place the stationary source requirements in 40 CFR 51.309(d)(4).²¹ The requirements under 40 CFR 51.309(d)(4) contain general requirements pertaining to stationary sources and market trading, and allow states to adopt alternatives to the point source application of BART.

5. SIP and FIP Background

The CAA requires each state to develop plans to meet various air quality requirements, including protection of visibility.²² The plans developed by a state are referred to as SIPs. A state must submit its SIPs and SIP revisions to EPA for approval. Once approved, a SIP is enforceable by EPA and citizens under the CAA, which is also known as being federally enforceable. If a state fails to make a required SIP submittal or if we find that a state's required submittal is incomplete or not approvable, then we must promulgate a FIP to fill this regulatory gap.²³ As discussed elsewhere in this preamble, one of the proposals would disapprove aspects of Utah's regional haze SIP and promulgate a FIP to address the deficiencies in Utah's regional haze SIP, should we disapprove the SIP in our final action.

B. Requirements for Regional Haze SIPs Applicable to This Proposal

1. The CAA and the Regional Haze Rule

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas.

Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail later on.

2. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric or unit for expressing visibility.²⁴ This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithmic function. The dv is a more useful measure for tracking progress in improving visibility than light extinction itself because each dv change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one dv.²⁵

The dv is used in expressing reasonable progress goals (RPGs, which are interim visibility goals towards meeting the national visibility goal), in defining baseline, current, and natural conditions; and in tracking changes in visibility. The regional haze SIPs must contain measures that ensure "reasonable progress" toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic emissions that cause or contribute to regional haze. The national goal is a return to natural conditions, *i.e.* to reach a state at which anthropogenic sources of air pollution no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program,²⁶ and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the

time of each regional haze SIP submittal and review progress every five years, midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average 20 percent least impaired ("best") and 20 percent most impaired ("worst") visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. In 2003, EPA provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.²⁷ Subsequently, the Natural Haze Levels II Committee developed updated estimates of natural haze for average natural conditions and for the averages of the best 20% and worst 20% natural condition days²⁸ that have been used by states and EPA in visibility assessments.

For the first regional haze SIPs that were due by December 17, 2007, "baseline visibility conditions" were the starting points for assessing "current" visibility impairment. Baseline visibility conditions represent the five-year averages of the degree of visibility impairment for the 20 percent least impaired days and the 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the

²⁷ *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule*, EPA-454/B-03-005, available at http://www3.epa.gov/ttn/caaa/t1/memoranda/rh_envcurhr_gd.pdf, (hereinafter referred to as "our 2003 Natural Visibility Guidance") (Sept. 2003) (documents identified with Internet addresses are available in the docket); *Guidance for Tracking Progress Under the Regional Haze Rule*, EPA-454/B-03-004, available at <http://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf> (hereinafter referred to as our "2003 Tracking Progress Guidance") (Sept. 2003).

²⁸ "Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates", Final Report by the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup, power point presentation included in the docket.

¹⁹ 68 FR 33764, 33767 (June 5, 2003).

²⁰ *Ctr. for Energy & Econ. Dev. v. EPA*, 398 F.3d 653, 654 (D.C. Cir. 2005).

²¹ 71 FR 60612, 60612 (Oct. 13, 2006).

²² 42 U.S.C. 7410(a), 7491, and 7492(a), 169A, and 169B.

²³ 42 U.S.C. 7410(c)(1).

²⁴ See 70 FR 39104, 39118 (July 6, 2005).

²⁵ The preamble to the RHR provides additional details about the deciview (dv) scale. 64 FR 35714, 35725 (July 1, 1999).

²⁶ 40 CFR 81.401-437.

amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

3. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources²⁹ built between 1962 and 1977 procure, install, and operate the “Best Available Retrofit Technology” as determined by the state. Under the RHR, states are directed to conduct BART determinations for such “BART-eligible” sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the “Guidelines for BART Determinations Under the Regional Haze Rule” at appendix Y to 40 CFR part 51 (hereinafter referred to as the “BART Guidelines”) to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source.³⁰ In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. Regardless of source size or type, a state must meet the requirements of the CAA and our regulations for selection of BART, and the state’s BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.

The process of establishing BART emission limitations can be logically broken down into three steps: First,

states identify those sources that meet the definition of “BART-eligible source” set forth in 40 CFR 51.301;³¹ second, states determine which of such sources “emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area”³² (a source that fits this description is “subject-to-BART”); and third, for each source subject-to-BART, states then identify the best available type and level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO₂, NO_x, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH₃ compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources’ impacts. Any exemption threshold set by the state should not be higher than 0.5 dv.³³

In their SIPs, states must identify the sources that are subject-to-BART and document their BART control determination analyses for such sources. In making their BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors when evaluating potential control technologies: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may

reasonably be anticipated to result from the use of such technology.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject-to-BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP.³⁴ As noted previously, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART.

4. Monitoring, Recordkeeping and Reporting

The CAA requires that SIPs, including the regional haze SIP, contain elements sufficient to ensure emission limits are practically enforceable. CAA section 110(a)(2) requires in part that the monitoring, recordkeeping and reporting (MRR) provisions of states’ SIPs must include enforceable emission limitations, control measures, and compliance timeframes. It also requires SIPs to provide for enforcement of these measures, installation, maintenance, and replacement of equipment, emissions monitoring, periodic emissions reports and availability of emissions reports for public inspection.

Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in it, including “[p]eriodic testing and inspection of stationary sources,”³⁵ and “legally enforceable procedures” for recordkeeping and reporting.³⁶ Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: “(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels”; and “(h) Compliance/enforcement strategies, including how compliance will be determined in practice.”

5. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs.³⁷ States must

²⁹ See 42 U.S.C. 7491(g)(7) (listing the set of “major stationary sources” potentially subject-to-BART).

³⁰ 70 FR 39104, 39104 (July 6, 2005).

³¹ BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

³² 42 U.S.C. 7491(b)(2)(A).

³³ 40 CFR part 51, appendix Y, § III.A.1.

³⁴ 42 U.S.C. 7491(g)(4); 40 CFR 51.308(e)(1)(iv).

³⁵ 40 CFR 51.212(a).

³⁶ 40 CFR 51.211.

³⁷ 40 CFR 51.308(i).

provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessments of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

C. Requirements for Regional Haze SIPs Submitted Under 40 CFR 51.309

The following is a summary and basic explanation of the regulations covered under section 51.309 of the RHR that are addressed in this notice.³⁸

1. Projection of Visibility Improvement

For each of the 16 Class I areas located on the Colorado Plateau, the SIP must include a projection of the improvement in visibility expressed in deciviews.³⁹ An explanation of the deciview metric is provided in section III.C.2. States need to show the projected visibility improvement for the best and worst 20 percent days through the year 2018, based on the application of all section 309 control strategies.

2. Stationary Source Reductions

a. Sulfur Dioxide Emission Reductions

Rather than requiring source-specific BART controls as explained previously in section III.C.4, states have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress than would be achieved by the application of BART pursuant to 40 CFR 51.308(e)(2). Under 40 CFR 51.309, states can satisfy the SO₂ BART requirements by adopting SO₂ emission milestones and a backstop trading program.⁴⁰ Under this approach,

states must establish declining SO₂ emission milestones for each year of the program through 2018. The milestones must be consistent with the GCVTC's goal of 50 to 70 percent reduction in SO₂ emissions by 2040.

Pursuant to 40 CFR 51.309(d)(4)(ii) through (iv), states must include requirements in the SIP that allow states to determine whether the milestone has been exceeded. These requirements include documentation of the baseline emission calculation, monitoring, recordkeeping, and reporting of SO₂ emissions, and provisions for conducting an annual evaluation to determine whether the milestone has been exceeded. SIPs must also contain requirements for implementing the backstop trading program in the event that the milestone is exceeded and the program is triggered.⁴¹

The WRAP, in conjunction with EPA, developed a model for a backstop trading program. In order to ensure consistency between states, states opting to participate in the 309 program needed to adopt rules that are substantively equivalent to the model rules for the backstop trading program to meet the requirements of 40 CFR 51.309(d)(4). The trading program must also be implemented no later than 15 months after the end of the first year that the milestone is exceeded, require that sources hold allowances to cover their emissions, and provide a framework, including financial penalties, to ensure that the 2018 milestone is met.

b. Provisions for Stationary Source Emissions of Nitrogen Oxides and Particulate Matter

Pursuant to 40 CFR 51.309(d)(4)(vii), a section 309 SIP must contain any necessary long term strategies and BART requirements for PM and NO_x. These requirements, including the process for conducting BART determinations either based on the consideration of the five statutory factors or based on an alternative program, are explained previously in section III.C.4 and in section III.E, respectively.

D. General Requirements for PM₁₀ and NO_x Alternative Programs Under the Regional Haze Rule and the "Better-Than-BART Demonstration"

States opting to submit an alternative program must meet requirements under 40 CFR 51.308(e)(2) and (e)(3). These requirements for alternative programs relate to the "better-than-BART" test

and fundamental elements of any alternative program.

In order to demonstrate that the alternative program achieves greater reasonable progress than source-specific BART, a state must demonstrate that its SIP meets the requirements in 40 CFR 51.308(e)(2)(i) through (v). States submitting section 309 SIPs or other alternative programs are required to list all BART-eligible sources and categories covered by the alternative program. States are then required to determine which BART-eligible sources are "subject-to-BART." The SIP must provide an analysis of the best system of continuous emission control technology available and the associated reductions for each source subject-to-BART covered by the alternative program, or what is termed a "BART benchmark." Where the alternative program has been designed to meet requirements other than BART, states may use simplifying assumptions in establishing a BART benchmark.

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the State must also provide a determination that the alternative program achieves greater reasonable progress than BART under 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence. 40 CFR 51.308(e)(3), in turn, provides a specific test for determining whether the alternative achieves greater reasonable progress than BART. If the distribution of emissions for the alternative program is not substantially different than for BART, and the alternative program results in greater emission reductions, then the alternative program may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, the differences in visibility between BART and the alternative program, must be determined by conducting dispersion modeling for each impacted Class I area for the best and worst 20 percent of days. The modeling would demonstrate "greater reasonable progress" if both of the two following criteria are met: (1) Visibility does not decline in any Class I area, and (2) there is overall improvement in visibility when comparing the average differences between BART and the alternative program over all of the affected Class I areas.

Alternately, pursuant to 40 CFR 51.308(e)(2) States may show that the BART alternative achieves greater reasonable progress than the BART benchmark "based on the clear weight of evidence" determinations, which "attempt to make use of all available information and data which can inform a

³⁸ Utah addressed some of the requirements of 40 CFR 51.309 in 2008 and 2011 SIP submissions. EPA took final action on some of the provisions in the 2008 and 2011 SIP submissions in earlier notices. See 40 CFR 51.309 for a complete listing of the regulations under which the 2008 and 2011 SIP submissions were evaluated.

³⁹ 40 CFR 51.309(d)(2).

⁴⁰ 40 CFR 51.309(d)(4).

⁴¹ 40 CFR 51.309(d)(4)(v).

decision while recognizing the relative strengths and weaknesses of that information in arriving at the soundest decision possible. Factors which can be used in a weight of evidence determination in this context may include, but not be limited to, future projected emissions levels under the program as compared to under BART, future projected visibility conditions under the two scenarios, the geographic distribution of sources likely to reduce or increase emissions under the program as compared to BART sources, monitoring data and emissions inventories, and sensitivity analyses of any models used. This array of information and other relevant data may be of sufficient quality to inform the comparison of visibility impacts between BART and the alternative program. In showing that an alternative program is better than BART and when there is confidence that the difference in visibility impacts between BART and the alternative scenarios are expected to be large enough, a weight of evidence comparison may be warranted in making the comparison. The EPA will carefully consider the evidence before us in evaluating any SIPs submitted by States employing such an approach.”⁴²

Finally, in promulgating the final regional haze program requirements and responding to concerns regarding “impermissibly vague” language in § 51.308(e)(3) that would allow a State to “approve alternative measures that are less protective than BART,” we explained that “[t]he State’s discretion in this area is subject to the condition that it must be reasonably exercised and that its decisions be supported by adequate documentation of its analyses.”⁴³

Under 40 CFR 51.308(e)(2)(iii) and (iv), all emission reductions for the alternative program must take place by 2018, and all the emission reductions resulting from the alternative program must be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. Pursuant to 40 CFR 51.309(e)(2)(v), states have the option of including a provision that the emissions trading program or other alternative measure include a geographic enhancement to the program to address the requirement under 40 CFR 51.302(c) related to BART for reasonably attributable visibility impairment from the pollutants covered under the emissions trading program or other alternative measure.

E. Summary of State Regional Haze Submittals and EPA Actions

1. 2008 and 2011 Utah RH SIPs

On May 26, 2011, the Governor of the State of Utah submitted to EPA a Regional Haze SIP under 40 CFR 51.309

of the RHR (“2011 Utah RH SIP”). This submittal included BART determinations for NO_x and PM₁₀ at Utah’s four subject-to-BART sources: PacifiCorp’s Hunter Units 1 and 2 and Huntington Units 1 and 2. All four units are tangentially fired fossil fuel fired EGUs each with a net generating capacity of 430 MW, permitted to burn bituminous coal. This submittal also included a backstop trading program under 40 CFR 51.309 intended to meet the requirement for controlling SO₂ by establishing a cap on emissions. The trading program covers Utah, Wyoming, New Mexico and the City of Albuquerque.

Utah also submitted SIPs on December 12, 2003, August 8, 2004 and September 9, 2008, to meet the requirements of the RHR. These submittals were, for the most part, superseded and replaced by the May 26, 2011 submittal as further explained in the next section discussing our action on these submittals.

2. 2012 EPA Action on 2011 and 2008 Utah RH SIPs

On December 14, 2012, EPA partially approved and partially disapproved the 2011 Utah RH SIP.⁴⁴ We approved all sections of the 2011 Utah RH SIP as meeting the requirements of 40 CFR 51.309, with the exception of the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to NO_x and PM₁₀ BART. EPA’s partial disapproval action was based on the following: (1) Utah did not take into account the five statutory factors in its BART analyses for NO_x and PM₁₀; and (2) the 2011 Utah RH SIP did not contain the provisions necessary to make the BART limits practically enforceable as required by section 110(a)(2) of the CAA and 40 CFR 51, appendix V.⁴⁵

We also approved two sections of the 2008 Utah RH SIP. Specifically, we approved UAR R307–250—*Western Backstop Sulfur Dioxide Trading Program* and R307–150—*Emission Inventories*. We took no action on the rest of the 2008 submittal as the 2011 submittal superseded and replaced the remaining sections of the 2008 submittal. We also took no action on the December 12, 2003 and August 8, 2004 submittals as these were superseded by the 2011 submittal.

On November 8, 2011, we separately proposed approval of Section G—Long-Term Strategy for Fire Programs of the May 26, 2011 submittal and finalized

our approval of that action on January 18, 2013.⁴⁶

3. 2013 Litigation

In 2013, conservation groups sued EPA in the U.S. Court of Appeals for the Tenth Circuit on our approval of the SO₂ backstop trading program as an alternative to BART. On October 21, 2014, the court upheld EPA’s finding that the trading program was better than BART.⁴⁷

4. 2015 Utah RH SIPs

On June 4, 2015, the Governor of the State of Utah submitted to EPA a revision to its Regional Haze SIP under 40 CFR 51.309 of the RHR (“June 2015 Utah RH SIP”), specifically to address the requirements under 40 CFR 51.309(d)(4)(vii) pertaining to NO_x and PM₁₀ BART. Utah developed the June 2015 Utah RH SIP in response to EPA’s December 14, 2012 partial disapproval of the 2011 Utah RH SIP. The June 2015 Utah RH SIP evolved from a draft SIP on which Utah sought public comment in October 2014. After receiving extensive public comments, Utah decided to pursue a BART alternative (“Utah BART Alternative,” “BART Alternative,” or “Alternative”) under 40 CFR 51.308(e)(2) that takes credit for early NO_x reductions due to combustion controls installed at PacifiCorp’s Hunter and Huntington power plants in addition to NO_x, SO₂, and PM₁₀ reductions from the August 2015 retirement of PacifiCorp’s nearby Carbon power plant. The June 2015 Utah RH SIP also includes measures to make the SIP requirements practically enforceable and includes additional information pertaining to the PM₁₀ BART determinations for Hunter and Huntington to address deficiencies identified by EPA in our December 2012 partial disapproval.

On October 20, 2015, Utah submitted to EPA an additional revision to its Regional Haze SIP under 40 CFR 51.309 of the RHR (“October 2015 Utah RH SIP”). This SIP includes an enforceable commitment to provide an additional SIP revision by mid-March 2018 to address concerns raised in public comments that the State would be double counting certain emissions reductions under the Utah BART Alternative in respect to milestone reporting for the SO₂ backstop trading program.

Sections 110(a)(2) and 110(l) of the CAA require that a state provide reasonable notice and public hearing

⁴² 71 FR 60612, 60622 (Oct. 13, 2006).

⁴³ 71 FR 60612, 60621.

⁴⁴ 77 FR 74355, 74357 (Dec. 14, 2012).

⁴⁵ *Id.*

⁴⁶ 78 FR 4071, 4072 (Jan. 18, 2013).

⁴⁷ *Wildearth Guardians v. United States EPA*, 728 F.3d 1075, 1083–84 (10th Cir. 2013).

before adopting a SIP revision and submitting it to us. Utah, after providing notice, accepted comments on the June 2015 Utah RH SIP in April 2015 and accepted comments on the October 2015 Utah RH SIP in mid-August through mid-September 2015. Following the comment period and legal review by the Utah Attorney General’s Office, the Utah Air Quality Board adopted the June 2015 Utah RH SIP on June 3, 2015 and the October 2015 Utah RH SIP on October 7, 2015. The Governor submitted the SIP revisions to EPA on June 4, 2015 and October 20, 2015.

IV. Utah’s Regional Haze SIP

A. Summary of Elements Under EPA’s Previous Actions Upon Which We Are Relying

Several SIP elements that we previously approved in our December 2012 final rule and upon which we are relying in our current action include the following:

1. Affected Class I Areas

Utah provided two maps in Section XX of its 2011 RH SIP, one showing the locations of the 16 Class I areas on the Colorado Plateau and one showing the locations of the five in Utah (Arches National Park, Bryce Canyon National Park, Canyonlands National Park,

Capitol Reef National Park, and Zion National Park).⁴⁸ Utah also provided a comparison of the monitored 2000–2004 baseline visibility conditions in deciviews for the 20 percent best and 20 percent worst days to the projected visibility improvement for 2018 for the 16 Class I areas.⁴⁹

We determined that the State’s SIP satisfies the requirements of 40 CFR 51.309(d)(2) for this element in our December 14, 2012 rulemaking.

2. BART-Eligible Sources

Pursuant to 40 CFR 51.308(e)(2)(i)(A), the 2011 Utah RH SIP listed the BART-eligible sources covered by the backstop trading program (see Table 1). The State identified the following BART-eligible sources in Utah: PacifiCorp Hunter Units 1 and 2 and PacifiCorp Huntington Units 1 and 2.

PacifiCorp’s Hunter Power Plant (Hunter), is located in Castle Dale, Utah and consists of three electric utility steam generating units. Of the three units, only Units 1 and 2 are subject to BART. Hunter Units 1 and 2 have a nameplate generating capacity of 488.3 MW each.⁵⁰ The boilers are tangentially fired pulverized coal boilers, burning bituminous coal from the Deer Creek Mine in Utah.

PacifiCorp’s Huntington Power Plant (Huntington), is located in Huntington

City, Utah, and consists of two electric utility steam generating units. Huntington Units 1 and 2 have a nameplate generating capacity of 498 MW each.⁵¹ The boilers are tangentially fired pulverized coal boilers, burning bituminous coal from the nearby Deer Creek Mine.

We determined that the State’s SIP satisfies the requirements of 40 CFR 51.309(e)(2)(i)(A) in our December 14, 2012 rulemaking.

3. Sources Subject-to-BART

Pursuant to 40 CFR 51.308(e)(2)(i)(B), the 2011 Utah RH SIP described the State’s source modeling that determined which of the BART-eligible sources within Utah cause or contribute to visibility impairment and are thus subject-to-BART (more information on subject-to-BART sources and modeling can be found in Section XX.D.6 of the 2011 Utah RH SIP and section V.F of our May 16, 2012 proposed rulemaking).

Table 1 shows Utah’s BART-eligible sources covered by the 309 SO₂ backstop program, Hunter Units 1 and 2, and Huntington Units 1 and 2, and indicates that all are subject-to-BART.

We determined that the State’s SIP satisfies the requirements of 40 CFR 51.308(e)(2)(i)(B) in our December 14, 2012 rulemaking.

TABLE 1—SUBJECT-TO-BART STATUS FOR UTAH’S SECTION 309 BART-ELIGIBLE SOURCES

Company	Source	Unit ID	Service date	BART Category	Generating capacity (MW)	Coal type	Boiler type	Subject-to-BART?
PacifiCorp	Hunter	1	1978	Fossil Fuel EGU ...	430	Bituminous	Tangential	Yes.
PacifiCorp	Hunter	2	1980	Fossil Fuel EGU ...	430	Bituminous	Tangential	Yes.
PacifiCorp	Huntington	1	1977	Fossil Fuel EGU ...	430	Bituminous	Tangential	Yes.
PacifiCorp	Huntington	2	1974	Fossil Fuel EGU ...	430	Bituminous	Tangential	Yes.

We note that Section XX.D.6 in the June 2015 Utah RH SIP supersedes Section XX.D.6 in the 2011 Utah RH SIP and that some reformatting occurred. As Utah did not make substantive revisions to the SIP provisions addressing BART-eligible sources and subject-to-BART sources, XX.D.6.b and XX.D.6.c, in the 2011 SIP, we are not proposing any additional action on these provisions in this preamble.

B. Summary of Utah’s BART Alternative and PM₁₀ BART SIP Revision

Utah’s June 2015 RH SIPs include the following SIP provisions:

- Revised R307–110–17, General Requirements: State Implementation Plan. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits (incorporates by reference most recently amended SIP Section IX, Part H into state rules)
- Revised R307–110–28, General Requirements: State Implementation Plan, Regional Haze (incorporates by reference most recently amended SIP Section XX into state rules)
- Revised SIP Section XX.D.6 Regional Haze. Long-Term Strategy for Stationary Sources. Best Available Retrofit Technology (BART) Assessment

for NO_x and PM (supersedes Section XX.D.6 in the 2011 Utah RH SIP)

- New SIP Section IX.H.21 General Requirements: Control Measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements
- New SIP Section IX.H.22 Source Specific Emission Limitations: Regional Haze Requirements, Best Available Retrofit Technology.

The June 2015 Utah RH SIP, including the five SIP revisions listed previously, consists of the following three components: (1) a NO_x BART alternative that includes NO_x and SO₂, and PM₁₀ emission reductions from

⁴⁸ See Utah Regional Haze State Implementation Plan, § XX.B.8, pp. 8–9 (Figures 1 and 2) (2011).

⁴⁹ See *id.*, at § XX.K.2, p. 116 (Table 24).

⁵⁰ See U.S. Energy Information Administration, Electric Generating Capacity for 2011 (taken from Form EIA–860). See “EIA existing generating units 2011.xls” spreadsheet in the docket.

⁵¹ *Id.*

Hunter Units 1–3, Huntington Units 1 and 2, and Carbon Units 1 and 2 and PM₁₀ emission reductions from Carbon Units 1 and 2; (2) BART determinations for PM₁₀ at Hunter Units 1 and 2 and Huntington Units 1 and 2 based on a

streamlined analysis; and (3) monitoring, recordkeeping and reporting requirements for the Utah BART Alternative and PM₁₀ BART emission limits to make the SIP requirements practically enforceable.

The emission limits in the June 2015 Utah RH SIP are provided in Table 2. We further explain the three components of the SIP.

TABLE 2—EMISSION LIMITS AND SHUTDOWN IN UTAH’S BART ALTERNATIVE AND PM₁₀ SIP¹

Source	Unit	PM ₁₀ Limit ² (lb/MMBtu, three-run test average)	NO _x Limit ³ (lb/MMBtu, 30-Day Rolling Average)	SO ₂ Limit
Hunter	1	0.015	0.26	NA.
	2	0.015	0.26	NA.
	3	NA	0.34	NA.
Huntington	1	0.015	0.26	NA.
	2	0.015	0.26	NA.
Carbon	1	Shutdown by August 15, 2015	Shutdown by August 15, 2015	Shutdown by August 15, 2015.
	2	Shutdown by August 15, 2015	Shutdown by August 15, 2015	Shutdown by August 15, 2015.

¹ Obtained from the June 2015 Utah RH SIP, Section IX.H.22.

² Based on annual stack testing.

³ Based on continuous emission monitoring system (CEMS) measurement.

1. Utah BART Alternative

Utah has opted to establish an alternative measure for NO_x under 40 CFR 51.308(e)(2). The State compared the Utah BART Alternative against a BART Benchmark of selective catalytic reduction (SCR) on all four BART units at Hunter and Huntington (Units 1 and 2 at both plants). Utah’s BART Alternative consists of the shutdown of Carbon Units 1 and 2 and the installation of upgraded NO_x combustion controls (new low-NO_x burners [LNB] and overfire air [OFA]) on Hunter Unit 3 (all non-BART units). The Utah BART Alternative also includes the NO_x reductions from installation of upgraded combustion controls (new LNB and separated overfire air [SOFA]) at Hunter Units 1 and 2 and Huntington Units 1 and 2 (all BART units). The BART Benchmark includes the four BART units with combustion controls and SCR. Carbon’s baseline emissions, and Hunter Unit 3’s emissions with original combustion controls. The Utah BART Alternative is generally described in SIP Section XX.D.6 with a detailed demonstration included in Chapter 1 of Utah’s Technical Support Document (TSD) to support the State’s assertion that the alternative achieves greater reasonable progress than BART. The State’s demonstration is also described in more detail in section IV.C.

A summary of the State’s estimates of emissions for the Utah BART Alternative and the BART Benchmark is provided in Table 3. EPA developed a summary of the emissions reductions based on Utah’s emission estimates and this is presented in Table 4.

Utah indicated that PacifiCorp announced plans to shut down the Carbon Power Plant in 2015 due to the

high cost to control mercury to meet the requirements of EPA’s Mercury and Air Toxics Standards (MATS).⁵² The State noted that the MATS rule was finalized in 2011, and the Utah RH SIP contains the requirement for the Carbon Power Plant to shut down in August 2015. Therefore, the emission reductions occur after the 2002 base year for Utah’s RH SIP and thus, Utah asserts, the reductions may be considered as part of an alternative strategy under 40 CFR 51.308(e)(2)(iv).

2. PM₁₀ BART Determinations

Utah included a streamlined analysis for PM₁₀ BART determinations in accordance with section D.9 of the BART Guidelines for the BART units at Hunter and Huntington in the SIP TSD in Chapter 1, Section III and referenced this analysis in SIP Section XX.D.6. In the TSD, Utah summarized the BART analysis submitted by PacifiCorp in an August 5, 2014 report.⁵³

PacifiCorp’s analysis identified three available technologies: Upgraded ESP and flue gas conditioning (0.040 lb/MMBtu); polishing fabric filter (0.015 lb/MMBtu); and replacement fabric filter (0.015 lb/MMBtu). The 2008 Utah RH SIP and BART determination had required PacifiCorp to install a fabric filter baghouse with a PM₁₀ emission limit of 0.015 lb/MMBtu at the Hunter and Huntington BART units. Utah staff reviewed PacifiCorp’s 2012 analysis and determined that the baghouse technology required in 2008 is still the most stringent technology available and that 0.015 lb/MMBtu represents the most stringent emission limit. Utah

cited EPA’s BART Guidelines and regional haze actions in Colorado, Wyoming, North Dakota and Montana to support these assertions.

Utah determined that the PM₁₀ BART emission limit for Hunter Units 1 and 2 and Huntington Units 1 and 2 was 0.015 lb/MMBtu based on a three-run test average. Utah noted that because the most stringent technology is in place at these units and that the PM₁₀ emission limits have been made enforceable in the SIP, no further analysis was required.

3. Monitoring, Recordkeeping and Reporting

To address EPA’s partial disapproval of the 2011 Utah RH SIP for lack of enforceable measures and monitoring, recordkeeping and reporting requirements for the Utah BART Alternative and the PM₁₀ BART determinations, Utah added two new subsections to SIP Sections IX, General H.21 and 22. Under H.21, Utah has detailed general requirements for sources subject to its regional haze program. Under H.22, Utah has listed source-specific regional haze requirements for Hunter, Huntington and Carbon.

Specifically, under H.21, Utah added a new definition for boiler operating day. Utah noted that state rules R307–107–1 and R307–107–2 (applicability, timing and reporting of breakdowns) apply to sources subject to regional haze requirements under H.22. Utah required that information used to determine compliance shall be recorded for all periods when the source is in operation, and that such records shall be kept for a minimum of five years. Under H.21, Utah specified that emission limitations listed in H.22 shall apply at all times

⁵² Utah Regional Haze State Implementation Plan, p. 7 (TSD Chapter 1) (2011).

⁵³ For PacifiCorp BART analyses reports, see TSD Chapter 2 of the SIP.

and identified stack testing requirements to show compliance with those emission limitations. Finally, under H.21, Utah also specified the requirements for continuous emission monitoring by listing the requirements and cross-referencing the State's rule for continuous emission monitoring system requirements, R307–170 as well as 40 CFR part 13 and 40 CFR part 60, appendix B—Performance Specifications. Utah included the requirements to calculate hourly average NO_x concentrations for any hour in which fuel is combusted and a new 30-day rolling average emission rate at the end of each boiler operating day. Utah also noted that the hourly average NO_x emission rate is valid only if the minimum number of data points specified in R307–170 is acquired for both the pollutant concentration monitor and diluent monitor.

Under H.21, Utah did not provide for reporting of violations of PM₁₀ emissions limitations for instances other than breakdowns (e.g., stack test violations). However, the State provided a commitment letter on December 10, 2015 to address this deficiency with a SIP revision within one year of EPA's final action on the June 4, 2015 RH SIP.⁵⁴

Under H.22, Utah provided the NO_x and PM₁₀ emission limitations for Hunter Units 1 through 3 and Huntington Units 1 and 2, a requirement to perform annual stack testing for PM₁₀, and a requirement to measure NO_x via continuous emission monitoring for the sources covered under the Utah BART Alternative. Under H.22, Utah also listed the enforceable conditions related to closing Carbon Units 1 and 2 by

August 15, 2015 including PacifiCorp's and Utah's notification and permit rescission obligations.

C. Summary of Utah's Demonstration for Alternative Program

As discussed previously in background section III.A, a state may opt to implement an alternative measure rather than to require sources subject to BART to install, operate, and maintain BART. Utah has included the following information in its June and October 2015 RH SIPs to address the regulatory criteria for an alternative program:

1. A List of All BART-Eligible Sources Within the State

Pursuant to 40 CFR 51.308(e)(2)(i)(A) and (B), the SIP must include a list of all BART-eligible sources within the State. Utah included a list of BART-eligible sources and noted the following sources are all covered by the alternative program:

- PacifiCorp Hunter, Unit 1
- PacifiCorp Hunter, Unit 2
- PacifiCorp, Huntington, Unit 1
- PacifiCorp, Huntington, Unit 2

Utah provided the same list of BART-eligible sources in the 2011 RH SIP. We determined that the State's SIP satisfies the requirements of 40 CFR 51.309(e)(2)(i)(A) in our December 14, 2012 rulemaking.

2. A List of All BART-Eligible Sources and All BART Source Categories Covered by the Alternative Program

Pursuant to 40 CFR 51.308(e)(2)(i)(B), each BART-eligible source in the State must be subject to the requirements of the alternative program or have a federally enforceable emission

limitation determined by the State and approved by EPA as meeting BART. In this instance, the alternative program covers all the BART-eligible sources in the state, Hunter Units 1 and 2 and Huntington Units 1 and 2, in addition to three non-BART units, PacifiCorp's Hunter Unit 3 and Carbon Units 1 and 2.

Utah provided the same list of BART sources subject to an alternative program in the 2011 RH SIP. We determined that the State's SIP satisfies the requirements of 40 CFR 51.309(e)(2)(i)(B) in our December 14, 2012 rulemaking.

3. Analysis of BART and Associated Emission Reductions Achievable

Pursuant to 40 CFR 51.308(e)(2)(i)(C), the SIP must include an analysis of BART and associated emission reductions at Hunter and Huntington. In the June 2015 Utah RH SIP, the State compared the Utah BART Alternative to a BART Benchmark that included the most stringent NO_x BART controls, SCR plus new LNBs and SOFA, at the four BART units.

4. Analysis of Projected Emissions Reductions Achievable Through the BART Alternative

Pursuant to 40 CFR 51.308(e)(2)(D), the SIP must include “[a]n analysis of the projected emissions reductions achievable through the . . . alternative measure.” A summary of the State's estimates of emissions in tons per year (tpy) for the Utah BART Alternative and the BART Benchmark is provided in Table 3. A summary of the emissions reductions based on those emission estimates is presented in Table 4.

TABLE 3—ESTIMATED EMISSIONS UNDER UTAH'S BART BENCHMARK AND THE BART ALTERNATIVE⁵⁵

Units	NO _x emissions (tpy)		SO ₂ emissions (tpy)		PM ₁₀ emissions (tpy) ⁴		Combined	
	Benchmark ²	Alternative ³	Benchmark ²	Alternative ³	Benchmark	Alternative	Benchmark	Alternative
Carbon 1	1,408	0	3,388	0	221	0	5,016	0
Carbon 2	1,940	0	4,617	0	352	0	6,909	0
Hunter 1 ¹	775	3,412	1,529	1,529	169	169	2,473	5,100
Hunter 2	843	3,412	1,529	1,529	169	169	2,541	5,110
Hunter 3	6,530	4,622	1,033	1,033	122	122	7,685	5,777
Huntington 1	809	3,593	1,168	1,168	176	176	2,153	4,937
Huntington 2	856	3,844	1,187	1,187	200	200	2,243	5,231
Total	13,161	18,882	14,451	6,446	1,409	836	29,020	26,164

¹ Hunter 1 controls were installed in the spring of 2014, therefore Hunter 2 actual emissions are used as a surrogate.

² Most stringent NO_x rate for BART-eligible units (see email and spreadsheet, “Attachment to Utah September 16, 2015 email, BART Analysis.pdf” in the docket, inadvertently omitted from Utah TSD), 2012–2013 actual emissions Carbon, 2001–2003 actual emissions Hunter 3 (EPA Acid Rain Program).

³ Average actual emissions 2012–13 for Hunter and Huntington units, EPA Acid Rain Program.

⁴ Actual emissions for 2012, Utah Department of Air Quality annual inventory.

⁵⁴ Letter from Department of Environmental Quality, State of Utah to EPA, DAQP–120–15 (Dec. 10, 2015).

⁵⁵ Utah Regional Haze State Implementation Plan, Technical Support Document, Ch. 1 (Reference Table 2) (2015).

TABLE 4—EPA SUMMARY OF EMISSION REDUCTIONS ACHIEVABLE WITH THE UTAH BART ALTERNATIVE AS COMPARED TO THE BART BENCHMARK

Description	Combined emissions for all units (tpy)			
	NO _x	SO ₂	PM ₁₀	Combined
BART Benchmark	13,161	14,451	1,409	29,020
BART Alternative	18,882	6,446	836	26,164
Emission Reduction (BART Benchmark minus BART Alternative) ¹	−5,721	8,005	573	2,856

¹ A negative value indicates the BART Alternative results in more emissions of the specified pollutant in comparison to the BART Benchmark.

5. A Determination That the Alternative Achieves Greater Reasonable Progress Than Would Be Achieved Through the Installation and Operation of BART

Pursuant to 40 CFR 51.308(e)(2)(i)(E), the State must provide a determination under 40 CFR 51.308(e)(3) or otherwise based on the clear weight of evidence that the alternative achieves greater reasonable progress than BART. 40 CFR 51.308(e)(3), in turn, provides two different tests for determining whether the alternative achieves greater reasonable progress than BART.

Utah first used the “greater emission reductions” test in 40 CFR 51.308(e)(3) to support its assertion that the BART Alternative achieves greater reasonable progress. In the June 2015 Utah RH SIP, the State noted that the Hunter, Huntington and Carbon plants are all located within 40 miles of each other in Central Utah. Utah stated that because of the close proximity of the three plants, the distribution of emissions would not be substantially different under the Utah BART Alternative than under BART. With the alternative measure resulting in greater aggregate emission reductions by 2,856 tons/year (tpy) (described in Table 4), Utah

asserted that the alternative measure may be deemed to achieve greater reasonable progress than BART under 51.308(e)(3).

Utah also chose to conduct a weight-of-evidence analysis under 51.308(e)(2) based on emissions from the Hunter, Huntington, and Carbon power plants and considered the following evidence:⁵⁶

a. Annual Emissions Comparison for Visibility-impairing Pollutants

The emissions of visibility-impairing pollutants from both the Utah BART Alternative and the BART Benchmark, as estimated by the State, are summarized in Table 3. Compared with the Utah BART Benchmark, the State projects that the Utah BART Alternative will result in 5,721 tpy more NO_x emissions, 8,005 tpy fewer SO₂ emissions and 573 tpy fewer PM₁₀ emissions. Utah also found that the combined emissions of NO_x, SO₂ and PM₁₀ will be 2,856 tpy lower under the Utah BART Alternative.

b. Improvement in the Number of Days With Significant Visibility Impairment

Utah provided modeling results to assess the improvement in the number

of days with significant visibility impairment—that is, the improvement in the number of days with impacts that either cause (> 1.0 dv) or contribute (> 0.5 dv) to visibility impairment. The State presented this information in a number of ways, including: (1) the average number of days per year for three years modeled (2001–2003) with impacts above the cause and contribute thresholds for the nine affected Class I areas under the BART Alternative as compared to under the BART Benchmark; and (2) the total number of days for the three years modeled with impacts above the thresholds for the nine Class I areas under the two scenarios.⁵⁷

On average for the three years modeled, the Utah BART Alternative causes visibility impairment (>1.0 dv) on fewer days than the BART Benchmark (258 days vs. 264 days, for the nine affected Class I areas). Similarly, on average for the three years modeled, the Utah BART Alternative also contributes to visibility impairment (>0.5 dv) on fewer days than the BART Benchmark (441 days vs. 499 days for the nine affected Class I areas). See Tables 5 and 6.

TABLE 5—AVERAGE (2001–2003) NUMBER OF DAYS >1.0 dv IMPACT⁵⁸

Class I area	Basecase	BART alternative	BART benchmark
Arches	128	68	77
Black Canyon of the Gunnison	36	10	9
Bryce Canyon	19	9	8
Canyonlands	141	87	87
Capitol Reef	68	42	41
Flat Tops	46	13	15
Grand Canyon	22	11	10
Mesa Verde	40	13	12
Zion	11	6	6

⁵⁶ Utah referenced that greater reasonable progress can be demonstrated using one of two methods: (1) greater emission reductions than under BART (40 CFR 51.308(e)(3)); or (2) based on the clear weight of evidence (40 CFR 51.308(e)(2)(i)(E)). Utah further explained that: As the U.S. Circuit Court of Appeals for the 10th Circuit recently observed, the state is free to choose one method or the other. *WildEarth Guardians v. E.P.A.*, 770 F.3d

919, 935–37 (10th Cir. 2014). Finally, Utah noted that the court characterized the former approach as “quantitative” and the latter as “qualitative,” and specifically sanctioned the use of qualitative factors under the clear weight of evidence.

⁵⁷ Utah noted that EPA has proposed approval of an Alternative Measure for the Apache Generating Station in Arizona on similar “weight of evidence” grounds. 79 FR 56322, 56327 (Sept. 19, 2014). Utah

also noted that EPA has approved a similar Alternative Measure in Washington, based in part on a reduction in the number of days of impairment greater than 0.5 dv and 1.0 dv. 79 FR 33438, 33440–33442 (June 11, 2014).

⁵⁸ Utah Regional Haze State Implementation Plan, Technical Support Document, Ch. 1 (Reference Table 5) (2015).

TABLE 5—AVERAGE (2001–2003) NUMBER OF DAYS >1.0 dv IMPACT⁵⁸—Continued

Class I area	Basecase	BART alternative	BART benchmark
Total	511	258	264

TABLE 6—AVERAGE (2001–2003) NUMBER OF DAYS >0.5 dv IMPACT⁵⁹

Class I area	Basecase	BART alternative	BART benchmark
Arches	176	109	130
Black Canyon of the Gunnison	75	27	34
Bryce Canyon	36	17	19
Canyonlands	178	131	140
Capitol Reef	96	63	65
Flat Tops	93	34	44
Grand Canyon	38	19	20
Mesa Verde	71	32	37
Zion	21	10	10
Total	784	441	499

As for the total number of days over the course of the three modeled years, the Utah BART Alternative causes visibility impairment (> 1.0 dv) on fewer days than the BART Benchmark

(775 days vs. 793 days for the nine affected Class I areas). Similarly, in total for the three years modeled, the Utah BART Alternative also contributes to visibility impairment (> 0.5 dv) on

fewer days than the BART Benchmark (1,323 days vs. 1,498 days for the nine affected Class I areas). See Tables 7 and 8.

TABLE 7—TOTAL (2001–2003) NUMBER OF DAYS >1.0 dv IMPACT⁶⁰

Class I area	Basecase	BART alternative	BART benchmark
Arches	383	203	230
Black Canyon of the Gunnison	108	31	28
Bryce Canyon	57	26	25
Canyonlands	422	260	260
Capitol Reef	204	126	124
Flat Tops	138	38	44
Grand Canyon	67	34	30
Mesa Verde	121	40	35
Zion	32	17	17
Total	1,532	775	793

TABLE 8—TOTAL (2001–2003) NUMBER OF DAYS >0.5 dv IMPACT⁶¹

Class I area	Basecase	BART alternative	BART benchmark
Arches	529	327	391
Black Canyon of the Gunnison	224	81	103
Bryce Canyon	107	50	57
Canyonlands	533	393	420
Capitol Reef	288	188	194
Flat Tops	280	101	133
Grand Canyon	115	56	59
Mesa Verde	213	97	110
Zion	63	30	31
Total	2,352	1,323	1,498

⁵⁹ See *id.*, at Technical Support Document, Ch. 1 (Reference Table 6).

⁶⁰ See *id.*, at Technical Support Document, Chapter 6.b (Summary of Visibility Modeling).

c. 98th Percentile Impact (dv)

Utah explained that the only metric it evaluated that showed greater improvement for the BART Benchmark in comparison to the BART Alternative was the 98th percentile metric when visibility impacts were averaged across all Class I areas and meteorological years modeled. Utah’s comparison of the modeled visibility impacts on the 98th percentile day (8th highest impacted day in a given meteorological year) for the most impacted year shows that the BART Benchmark would result in greater visibility improvement at five of the nine Class I areas, and is better on average across all nine Class I areas (0.11 dv difference). At two of the most impacted Class I areas, Canyonlands and Capitol Reef, Utah found that the 98th percentile metric indicates the BART Benchmark has 0.76 dv and 0.57 dv, respectively, greater improvement than the Utah BART Alternative. At other Class I areas, Utah found that the 98th percentile metric indicates that the BART Alternative provides greater visibility improvement (for example, 0.44 dv at Flat Tops).

Utah noted that because high nitrate values occur primarily in the winter months, the BART Benchmark achieved greater modeled visibility improvement on certain winter days with high nitrate impacts. Utah stated its position that there is greater uncertainty regarding the effect of NO_x reductions on wintertime nitrate values, and thus on visibility, because past NO_x emission reductions have not resulted in corresponding reductions in monitored nitrate values during the winter months. Utah noted it has greater confidence in the visibility improvement due to reductions of SO₂ because past reductions have resulted in corresponding reductions in monitored sulfate values throughout the year.

d. Annual Average Impact (dv)

As modeled by Utah, which used CALPUFF modeling results, the average annual dv impact is better under the Utah BART Alternative at five of the nine Class I areas, and is better on average across all the Class I areas. The average impact was calculated by averaging all daily modeling results for each year and then calculating a three-year average from the annual average. Utah’s information shows that the BART Alternative is better than the BART Benchmark by 0.009 dv on average across all nine Class I areas.

e. 90th Percentile Impact (dv)

Utah’s comparison of the modeled visibility impacts at the 90th percentile

(the 110th highest day across three years) dv impact shows that the Utah BART Alternative is better at seven of the nine Class I areas and is better averaged both across three years and across nine Class I areas by 0.006 dv.

f. Timing for the Emissions Reductions

Utah provided the schedule for installation of controls as noted in Table 9. Utah discussed that NO_x reductions at Hunter Units 1 and 2 and Huntington Units 1 and 2 occurred between 2006 and 2014, earlier than was required by the Regional Haze Rule, providing a corresponding early and on-going visibility improvement. Utah cited the 2014 10th Circuit Court of Appeals decision regarding the 309 program to support that such early reductions are properly included as weight of evidence in the State’s analysis.

TABLE 9—INSTALLATION SCHEDULE

Source/Unit	Timing of control installation or shutdown
Hunter 1	New LNB and SOFA—Spring 2014.
Hunter 2	New LNB and SOFA—Spring 2011.
Hunter 3	New LNB and OFA—Summer 2008.
Huntington 1 ..	New LNB and SOFA—Fall 2010.
Huntington 2 ..	New LNB and SOFA—December 2006.
Carbon 1	Shutdown August 2015.
Carbon 2	Shutdown August 2015.

The reductions under the Utah BART Alternative are required under the State SIP by August 2015, as noted in Table 5, providing an early and on-going visibility benefit as compared to BART.⁶² Installation and operation of the combustion control upgrades at Hunter and Huntington were made enforceable under Administrative Orders DAQE—AN0102370012—08 and DAQE—AN0102380021—10.⁶³

g. IMPROVE Monitoring Data

Utah’s SIP presents sulfate and nitrate monitoring data at the Canyonlands IMPROVE monitor that shows that “sulfates are the dominant visibility

impairing pollutant”⁶⁴ and that sulfate levels have decreased,⁶⁵ and references similar results at other Class I areas in the TSD.⁶⁶ Utah also presents data on trends in emissions from EGUs showing substantial reductions in emissions of both SO₂ and NO_x.⁶⁷ Based on these data, Utah indicates it “has confidence that the SO₂ reductions will achieve meaningful visibility improvement,” under the Utah BART Alternative, while “the visibility improvement during the winter months due to NO_x reductions is much more uncertain.”⁶⁸ Utah makes this point even though nitrate concentrations are highest in the winter, explaining that while there has been a reduction in NO_x, the ammonium nitrate values do not show similar improvement in the winter months.⁶⁹ Utah offers several possible explanations for the results, but does not provide any definitive conclusions.⁷⁰

Utah also presents data on the seasonality of park visitation and monitoring data for nitrate and sulfates. The data show that the highest measured nitrate concentrations occur in winter during the period of lowest park visitation, and that sulfates affect visibility throughout the year and are the dominant visibility impairing pollutant from anthropogenic sources during the high visitation period of March through November. Utah concludes that it has greater confidence that reductions in SO₂ will be reflected in improved visibility for visitors to the Class I areas, while reductions in NO_x will have a more uncertain benefit for visitors to Class I areas.

h. Energy and Non-Air Quality Benefits

Utah stated that energy and non-air quality environmental impacts are one of the factors listed in CAA section 169A(g)(2) that must be considered when determining BART. The State noted that the Utah BART Alternative would avoid the energy penalty due to operating SCR units. PacifiCorp included the energy penalty in its BART analysis as part of the total cost for installing SCR on each of the units. The energy penalty costs are provided in Table 10.

⁶² Conforming permit amendments for the Carbon plant are due under the SIP by December 15, 2015. Section IX.H.22 of Utah’s SIP requires PacifiCorp to cease operation of Carbon by August 15, 2015, notify the State of the permanent closure by September 15, 2015, and request rescission of Operating Permit #700002004 and Approval Order DAQE—AN0100810005—08 by September 15, 2015. The State is then required to rescind the operating permit and approval order by December 15, 2015.

⁶³ Copies of Administrative Orders DAQE—AN0102370012—08 and DAQE—AN0102380021—10 are included in the docket.

⁶⁴ Utah Regional Haze State Implementation Plan, Technical Support Document, Ch. 1, p. 12 (2015).

⁶⁵ *Id.* at p. 15.

⁶⁶ *Id.* at p. 12.

⁶⁷ *Id.* at p. 14.

⁶⁸ *Id.* at p. 13.

⁶⁹ *Id.*

⁷⁰ *Id.* at pp. 16–19.

⁷¹ PacifiCorp quantified the energy penalty associated with SCR in its August 4, 2014 BART Analysis Update, Appendix A. *See id.* at p. 26 (Table 13 presents this information).

⁶¹ *See id.*

TABLE 10—SCR ENERGY PENALTY ⁷¹

Source/unit	Energy penalty	
	kW	\$/year
Hunter Unit 1	2,090	494,247
Hunter Unit 2	2,090	494,247
Huntington Unit 1	2,182	516,098
Huntington Unit 2	2,182	516,098
Total	8,544	2,020,690

Utah presented additional non-air quality benefits associated with the closure of the Carbon plant. First, it noted that solid wastes in the form of fly ash from the electrostatic precipitators and bottom ash conveyors which clean the residuals from the two steam generating units (the boilers), would be eliminated. These wastes are currently landfilled. The Carbon plant also runs water through the boilers as well as two cooling towers. This uses water and has associated wastewater discharge. Hauling the ash to the landfill requires additional fuel use and water or chemical dust suppression for minimization of fugitive dust. Finally, for maintenance and emergency purposes, Utah noted that the plant has a number of emergency generators, fire pumps, and ancillary equipment—all of which must be periodically operated, tested and maintained—with associated air emissions, fuel use, painting, and the like. Utah suggests that all of these non-air quality impacts are reduced as the result of closing the Carbon plant.

i. Cost

Utah cited PacifiCorp's comments on the State's proposed SIP revision that the BART Alternative not only produces greater reasonable progress, including lower emissions and improved visibility, but that it does so at a significant capital cost savings to PacifiCorp and its customers as compared to the BART Benchmark. Utah acknowledged that it did not officially determine the cost of installing SCR on the four BART units, but that it believed the cost of installing SCR would be significant. On the other hand, Utah noted that the Carbon plant has already been closed due to the high cost of complying with the MATS rule. Utah explained that the costs to Utah rate payers (and those in other states served by PacifiCorp) to replace the power generated by the Carbon Plant have already occurred; there will be no additional cost to achieve the co-benefit of visibility improvement. As a result,

Utah asserted that the BART Alternative not only achieves better visibility improvements than would be achieved by requiring SCR as BART at the four EGUs, but at a significantly lower cost. The State believed this presents a classic "win/win" scenario—the BART Alternative results in greater reasonable progress that is achieved at a much lower price compared to SCR. The State also noted that cost is one of the factors listed in CAA section 169A(g)(2) that should be considered when determining BART.

6. Requirement That Emission Reductions Take Place During Period of First Long-Term Strategy

Pursuant to 40 CFR 51.308(e)(2)(iii), the State must ensure that all necessary emission reductions take place during the period of the first long-term strategy for regional haze, *i.e.*, by December 31, 2018. The RHR further provides that, "[t]o meet this requirement, the State must provide a detailed description of the . . . alternative measure, including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement." ⁷²

As noted previously, the Utah SIP revision incorporates the revisions to R307–110–17, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, which includes provisions for implementing the Utah BART Alternative. In addition to the emission limitations for NO_x and PM₁₀, and the requirement for shutdown of the Carbon Plant listed in Table 2, the SIP includes compliance dates, operation and maintenance requirements, and monitoring, recordkeeping, and reporting requirements.

7. Demonstration That Emissions Reductions From Alternative Program Will Be Surplus

Pursuant to 40 CFR 51.308(e)(2)(iv), the SIP must demonstrate that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. The baseline date for regional haze SIPs is 2002.⁷³ Utah developed the 2002

baseline inventory in the 2008 RH SIP for regional modeling, evaluating the impact on Class I areas outside of the Colorado Plateau, and BART as outlined in EPA Guidance and the July 6, 2005 BART Rule. Utah noted that 2002 is the baseline inventory that was used by other states throughout the country when evaluating BART under the provisions of 40 CFR 51.308 and that any measure adopted after 2002 is considered "surplus" under 40 CFR 51.308(e)(2)(iv). Utah referenced other EPA actions that are consistent with this interpretation.⁷⁴ Utah stated that the BART Benchmark scenario includes measures required before the baseline date of the SIP but does not include later measures that are credited as part of the BART Alternative scenario.

To address potential concerns with double counting SO₂ emissions reductions from the Carbon plant closure under both the 308 and 309 programs, in addition to providing the explanation in the June 2015 SIP (discussed in TSD Chapter 1, Section X), Utah's October 7, 2015 SIP also includes enforceable commitments to address these concerns. The State explained how the WRAP modeling done to support the Utah RH backstop trading program SIP included regional SO₂ emissions based on the 2018 SO₂ milestone and also included NO_x and PM₁₀ emissions from the Carbon plant. Actual emissions in the three-state region are calculated each year and compared to the milestones. Utah provided Table 11 to show that in 2011 emissions were below the 2018 milestone (141,849 tpy). Utah noted that the most recent milestone report for 2013 demonstrates that SO₂ emissions are currently 26 percent lower than the 2018 milestone. Utah stated that the Carbon plant was fully operational in the years 2011–2013 when the emissions were below the 2018 milestone. The State noted that the SO₂ emission reductions from the closure of the Carbon plant are surplus to what is needed to meet the 2018 milestone established in Utah's RH SIP.

SIP Planning: 8-hr Ozone, PM_{2.5}, and Regional Haze Programs (Nov. 18, 2002), available at http://www3.epa.gov/ttnchie1/eidocs/2002baseinven_102502new.pdf.

⁷⁴ 79 FR 33438, 33441–33442 (June 11, 2014); 79 FR 56322, 56328 (Sept. 9, 2014).

⁷⁵ See Utah Regional Haze State Implementation Plan, Technical Support Document, Ch. 1 (Reference Table 15) (2015).

⁷² 40 CFR 51.308(e)(2)(iii).

⁷³ See Memorandum from Lydia Wegman and Peter Tsirigotis, 2002 Base Year Emission Inventory

TABLE 11—SO₂ MILESTONE TRENDS ⁷⁵

Year	Milestone (tpy)	Three-Year average SO ₂ emissions ¹ (tpy)	Carbon plant SO ₂ emissions (tpy)
2003	303,264	214,780	5,488
2004	303,264	223,584	5,642
2005	303,264	220,987	5,410
2006	303,264	218,499	6,779
2007	303,264	203,569	6,511
2008	269,083	186,837	5,057
2009	234,903	165,633	5,494
2010	200,722	146,808	7,462
2011	200,722	130,935	7,740
2012	200,722	115,115	8,307
2013	185,795	105,084	7,702
2014	170,868		
2015	155,940		
2016	155,940		
2017	155,940		
2018	141,849		

¹ The three-year average is based on the emissions averaged for the current and two preceding years.

For Hunter Unit 3, Utah also explained that PacifiCorp upgraded the LNB controls in 2008 and that the upgrade was not required under the requirements of the CAA as of the 2002 baseline date of the SIP; the emission reductions from the upgrade are therefore considered surplus and creditable for the BART Alternative under 40 CFR 51.308(e)(2)(iv). Utah noted that prior to the 2008 upgrade, the emission rate for Hunter Unit 2 was 0.46 lb/MMBtu heat input for a 30-day rolling average as required by Phase II of the Acid Rain Program.⁷⁶

D. Summary of Utah’s Enforceable Commitment SIP Revision

To address potential concerns that Utah would be double counting SO₂ emissions reductions for the Carbon plant closure under both the 40 CFR 51.308 and 309 programs, on October 7, 2015 the State adopted an enforceable commitment into the Utah RH SIP at Chapter XX, Section N. Utah submitted this SIP revision to EPA on October 20, 2015. In this commitment, the State explained that it will continue to report the historical emissions for the Carbon plant in the annual milestones reports from 2016 through the life of the backstop trading program. In addition, the State has committed to making revisions as necessary to SIP Section XX.D.3.c (“Triggering the Trading Program”) and State rule R307–150 (“Emission Inventories Program”) as well as any other applicable provisions

to implement the requirement for reporting Carbon’s historical emissions under the 309 program. The State notes it will follow its SIP adoption process when making these SIP revisions. The SIP will be adopted by the Governor-appointed Air Quality Board through a rulemaking process that includes public participation. Once approved into the SIP, the commitment will be enforceable by both EPA and citizens under the CAA.

The State noted that EPA has historically recognized that, under certain circumstances, issuing full approval may be appropriate for a SIP submission that consists of, in part, an enforceable commitment. Utah explained that its October 2015 submission satisfies EPA’s requirements for enforceable commitments because it has adopted such a commitment for what is a small portion of its regional haze program in relation to its regional haze obligations as a whole. In addition, Carbon’s 8,005 tpy SO₂ emissions reductions is small in comparison to the 2018 milestone of 141,849 tpy described in Table 7.

On the matter of timing, the State has committed to providing the required subsequent SIP submittal by mid-March 2018.

E. Consultation With FLMs

Utah’s SIPs do not specifically discuss how it addressed the requirements of 40 CFR 308(i)(2) for providing the FLMs with an opportunity for consultation at least 60 days prior to holding the public hearing for the June 2015 RH SIP. However, we are aware that Utah consulted with the FLMs and explain those efforts here. The State held an initial public comment period for

proposed SIP amendments from November 1 through December 22, 2014. The State provided the opportunity for the FLMs to review the preliminary draft SIP documents via email approximately 68 days prior to the public hearing that was held on a December 1, 2014. Copies of the email correspondence documenting this effort are included in the docket.

Utah received a number of comments during the public comment period in late 2014. After reviewing the comments and consulting with EPA, Utah determined additional work was needed to develop a BART alternative measure that would take credit for emission reductions from the Carbon plant shutdown among other things. Utah held an additional public comment period from April 1 through April 30, 2015. One of the FLMs, the National Park Service, provided extensive public comments to Utah during this second public comment period and Utah included responses to these comments, along with responses to other commenters, in the June 2015 RH SIP submittal along with other administrative documentation.

The October 2015 Utah RH SIP was provided for public comment August 15 through September 14, 2015, and we are not aware of any prior FLM consultation on this SIP. The FLMs did not submit comments during this public comment period.

V. EPA’s Evaluation and Proposed Approval of Utah’s Regional Haze SIP

As explained in section II.A, EPA is soliciting comments on two alternative proposals: A proposal to approve the State SIP in its entirety, and a proposal to partially approve and partially

⁷⁶ There is a typographical error in Chapter 1, section X.C, PacifiCorp Hunter Unit 3, p. 31. The reference to Hunter Unit 2 should be Unit 3 based on the section heading as well as confirmed emission limits in Utah Approval Order DAQE-AN0102370012–08.

disapprove the State SIP and to issue a FIP. The co-proposals detailed in this section and Section VI represent different conclusions regarding Utah's NO_x BART Alternative and the metrics the State has proposed to support this alternative. As described in this section, EPA is proposing to approve the two Utah 2015 RH SIP revisions.

Alternatively, as discussed in section VI, EPA is co-proposing to disapprove the Utah's June 2015 and October 2015 RH SIP revisions and promulgate a FIP.

This document is written as two separate proposals in order to clearly present the options and solicit comment on each. EPA intends to finalize only one of these co-proposals; however, we also acknowledge that additional information and comments may also lead the Agency to adopt final SIP and/or FIP regulations that differ somewhat from the co-proposals presented here regarding the BART Alternative, BART control technology option or emission limits, or impact other proposed regulatory provisions.

A. Basis for Proposed Approval

For the reasons described later on, EPA proposes to approve the two Utah 2015 RH SIP revisions. Our proposed action is based on an evaluation of Utah's regional haze SIP submittals against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this proposed action is to ensure compliance with these requirements and to provide additional rationale to support our conclusions.

B. Utah BART Alternative

1. Summary of Utah BART Alternative

Utah has opted to establish an alternative measure (or program) for NO_x in accordance with 40 CFR 51.308(e)(2). A description of the Utah BART Alternative is provided in section IV.B.1. The RHR requires that a SIP revision establishing a BART alternative include three elements as listed later. We have evaluated the Utah BART Alternative with respect to each of these elements.

- A demonstration that the emissions trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program.⁷⁷

- A requirement that all necessary emissions reductions take place during the period of the first long-term strategy for regional haze.⁷⁸

- A demonstration that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.⁷⁹

2. Demonstration of Greater Reasonable Progress for the Alternative Program

As discussed previously in section III.E.1, pursuant to 40 CFR 51.308(e)(2)(i), Utah must demonstrate that the alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program. This demonstration, primarily included in Chapter 1 of the TSD of the Utah RH SIP,⁸⁰ must be based on five criteria which are addressed later.

a. A List of All BART-Eligible Sources Within the State

As discussed previously in section IV.A.2, Utah included a list of BART-eligible sources and noted the following sources are all covered by the alternative program:

- PacifiCorp Hunter, Unit 1
- PacifiCorp Hunter, Unit 2
- PacifiCorp, Huntington, Unit 1
- PacifiCorp, Huntington, Unit 2

EPA previously approved Utah's BART eligibility determinations in our 2012 rulemaking.⁸¹

b. A List of All BART-Eligible Sources and All BART Source Categories Covered by the Alternative Program

As discussed previously in section IV.A.3, the Utah BART Alternative covers all the BART-eligible sources in the state, Hunter Units 1 and 2 and Huntington Units 1 and 2, in addition to three non-BART units, PacifiCorp's Hunter Unit 3 and Carbon Units 1 and 2. EPA previously approved Utah's BART eligibility determinations in our 2012 rulemaking.⁸²

c. Analysis of BART and Associated Emission Reductions

As noted in section IV.C.3, in the June 2015 Utah RH SIP, the State compared

⁷⁸ 40 CFR 51.308(e)(2)(iii).

⁷⁹ 40 CFR 51.308(e)(2)(iv).

⁸⁰ As presented in this proposal, while the majority of the State's demonstration is contained in Chapter 1, EPA has identified additional information regarding the demonstration and we include references to the additional information.

⁸¹ 77 FR 74357 (Dec. 14, 2012).

⁸² 77 FR 74355, 74357 (Dec. 14, 2012).

the Utah BART Alternative to a BART Benchmark that included the most stringent NO_x BART controls, SCR plus new LNBs and SOFA, at the four BART units. This is consistent with the streamlined approach described in Step 1 of the BART Guidelines. The BART Guidelines note that a comprehensive BART analysis can be avoided if a source commits to a BART determination that consists of the most stringent controls available.⁸³

We propose to find that Utah has met the requirement for an analysis of BART and associated emission reductions achievable at Hunter and Huntington under 40 CFR 51.308(e)(2)(i)(C).

d. Analysis of Projected Emissions Reductions Achievable Through the BART Alternative

As discussed previously in section IV.C.4, a summary of Utah's estimates of emissions for the Utah BART Alternative and the BART Benchmark is provided in Table 3. We propose to find that Utah has met the requirement for an analysis of the projected emissions reductions achievable through the alternative measure under 40 CFR 51.308(e)(2)(i)(D).

e. A Determination That the Alternative Achieves Greater Reasonable Progress Than Would Be Achieved Through the Installation and Operation of BART

Greater Reasonable Progress Based on 40 CFR 51.308(e)(3)'s Greater Emission Reductions Test

EPA's evaluation of the State's demonstration based on 40 CFR 51.308(e)(3) is located in section VI.B.2.e.

Greater Reasonable Progress Based on 40 CFR 51.308(e)(2)'s Weight-of-Evidence Test

Although Utah found that the BART Alternative demonstrates greater reasonable progress under 40 CFR 51.308(e)(3), it also chose to conduct a weight-of-evidence analysis under 40 CFR 51.308(e)(2) based on a BART Alternative involving the Hunter, Huntington, and Carbon power plants and considered the following evidence:

i. Annual Emissions Comparison for Visibility-Impairing Pollutants

The emissions of visibility-impairing pollutants from both the Utah BART Alternative and the BART Benchmark, as estimated by Utah, are summarized in Table 3 in section IV.C.4. Compared with the Utah BART Benchmark, the State projects that the Utah BART Alternative will result in 5,721 tpy more

⁸³ 40 CFR 51, appendix Y, section IV.D.1.9.

⁷⁷ 40 CFR 51.308(e)(2)(i).

NO_x emissions, 8,005 tpy fewer SO₂ emissions, and 573 tpy fewer PM₁₀ emissions than the BART Benchmark. Utah also found that the combined emissions of NO_x, SO₂ and PM₁₀ will be 2,856 tpy lower under the BART Alternative.

We propose to concur with Utah's finding that the BART Alternative will achieve greater SO₂ and PM₁₀ emissions reductions and greater aggregate emissions reductions of all pollutants. We further propose to recognize that not all pollutants impact visibility equally and that the total emissions reductions of all pollutants is not necessarily a direct indicator of whether the BART Alternative or the BART Benchmark will achieve greater reasonable progress. However, for reasons described later in subsection vii for our evaluation of Utah's IMPROVE monitoring metric, we propose to concur with Utah's finding that SO₂ emissions reductions should provide visibility benefits in all seasons and that sulfate is the largest contributor to visibility impairment at the affected Class I areas. Furthermore, we propose to find that these observations suggest that the BART Alternative is likely to achieve greater reasonable progress. We note that Utah has also provided CALPUFF modeling results for the BART Benchmark and BART Alternative scenarios to assess the relative visibility benefits of each. These modeling results are considered here by EPA as part of the overall weight-of-evidence analysis.

ii. Improvement in the Number of Days With Significant Visibility Impairment

As discussed previously in section IV.C.5, Utah provided modeling results to assess the improvement in the number of days with significant visibility impairment—that is, the improvement in the number of days with impacts that either cause (>1.0 dv) or contribute (>0.5 dv) to visibility impairment.

The BART Guidelines provide that, when making a BART determination, a State may consider the number of days or hours that a threshold was exceeded.⁸⁴ In developing the BART Guidelines, our example modeling analysis of a hypothetical source examined the number of days that 1.0 dv and 0.5 dv thresholds were exceeded.⁸⁵ In addition, we have used these metrics, and in particular the total number of days for the meteorological years modeled, in previous regional haze rulemakings such as for North

Dakota,⁸⁶ Montana,⁸⁷ and Washington.⁸⁸

This metric is useful in assessing the frequency and duration of significant visibility impacts from a source or small group of sources. Therefore, for this reason and because these metrics are supported by our regulations and past practice, we propose to find the State's use of these metrics is appropriate. Moreover, we propose to find the difference in the total number of days impacted—18 fewer days greater than the causation threshold of 1.0 dv (775 days for the BART Alternative vs. 793 days for the BART Benchmark), and 175 fewer days greater than the contribution 0.5 dv threshold (1,323 days for the BART Alternative vs. 1,498 days for the BART Benchmark)—is an indication that the BART Alternative achieves greater reasonable progress.

iii. 98th Percentile Impact (dv)

As discussed previously in section IV.C.5, Utah explained that the only metric it evaluated that showed greater improvement for the BART Benchmark in comparison to the BART Alternative was the 98th percentile metric (when averaged across all Class I areas and meteorological years modeled). Utah's comparison of the modeled visibility impacts on the 98th percentile day (8th highest impacted day in a given meteorological year) for the most impacted year shows that the BART Benchmark would result in greater visibility improvement at five of the nine Class I areas, and is slightly better on average across all nine Class I areas (0.11 dv difference). At the most impacted Class I areas, Canyonlands and Capitol Reef, Utah found that the 98th percentile metric indicates the BART Benchmark has 0.76 dv and 0.57 dv, respectively, more improvement than the BART Alternative. At other Class I areas, Utah found that the 98th percentile metric indicates that the BART Alternative provides greater visibility improvement (for example, 0.44 dv at Flat Tops).

The 98th percentile visibility impact is a key metric recommended by the BART Guidelines⁸⁹ when selecting BART controls. In addition, this is one of the primary metrics that EPA has relied on in evaluating prior regional haze actions that have included BART alternatives.⁹⁰ In the BART Guidelines,

EPA described this metric as an appropriate measure in determining the degree of visibility improvement expected from controls.⁹¹ Therefore, we propose to find that it is an appropriate metric for assessing the relative benefits of the Utah BART Alternative here.

We note that when calculating visibility improvements for individual Class I areas, Utah mixed the impacts from different meteorological years between modeling scenarios (baseline, BART benchmark, and BART Alternative). This may introduce some error as the visibility improvements could be driven by year-to-year variability in meteorological conditions, as opposed to the differences in emission reductions between the BART Alternative and BART Benchmark. For this reason, in addition to considering the State's numbers, EPA also calculated the visibility improvements for each modeling scenario using consistent meteorological years.⁹² Using this method, whether the BART Alternative resulted in lower 98th percentile impacts depended on both the particular Class I area and meteorological year modeled. In some years and some Class I areas, particularly some of the most impacted Class I areas, the BART Benchmark shows better visibility improvement than the BART Alternative. Notably, the BART Benchmark shows 0.93 dv greater improvement for Canyonlands in 2002 and 0.75 dv greater improvement for Capitol Reef in 2001.⁹³ By contrast, the BART Alternative shows 0.90 dv greater improvement for Arches in 2003 and 0.43 dv greater improvement for Flat Tops in 2002.⁹⁴ On the whole, when using this method, the BART Benchmark is better on average across all years and nine Class I areas (0.14 dv difference). See Table 12. We propose to find, consistent with the State's evaluation, that this metric favors the BART Benchmark.

Refinery BART Alternatives); 79 FR 56322, 56328 (Sept. 19, 2014)(proposed approval of Arizona Apache BART Alternative); 80 FR 19220 (April 10, 2015)(final approval of Arizona Apache BART Alternative); 77 FR 11827, 11837 (Feb. 28, 2012)(proposed approval of Maryland BART Alternative); 77 FR 39938, 39940–1 (July 6, 2012)(final approval of Maryland BART Alternative).

⁹¹ 70 FR at 39129.

⁹² See EPA Calculation of 98th Percentile Improvement for Utah BART Alternative spreadsheet (in docket).

⁹³ *Id.*

⁹⁴ *Id.*

⁸⁶ 76 FR 58584 (Sept. 21, 2011).

⁸⁷ 77 FR 24006 (Apr. 20, 2012).

⁸⁸ 79 FR 33438, 33440–33441 (June 11, 2014).

⁸⁹ 40 CFR 51, appendix Y, section IV.D.5.

⁹⁰ See, e.g., 78 FR 79344 (Dec. 30, 2012)(proposed rule, FIP for Tesoro Refining and Intalco Refinery BART Alternatives); 79 FR 33438 (June 11, 2014)(final rule, FIP for Tesoro Refining and Intalco

⁸⁴ 40 CFR 51, appendix Y, section IV.D.5.

⁸⁵ 70 FR 39130 (July 6, 2005).

TABLE 12—SUMMARY OF EPA COMPARISON OF UTAH CALPUFF 98TH PERCENTILE MODELING RESULTS BASED ON CONSISTENT METEOROLOGICAL YEARS⁹⁵

Class I Area	Average visibility improvement of BART benchmark over BART alternative (delta dv) ¹
Arches	-0.21
Black Canyon of the Gunnison	0.06
Bryce Canyon	0.04
Canyonlands	0.78
Capitol Reef	0.59
Flat Tops	-0.15
Grand Canyon	0.06
Mesa Verde	0.12
Zion	0.02
Class I Area Average	0.14

¹A negative value indicates the modeling results favor the BART Alternative. Results are based on the three-year average of results for 2001, 2002 and 2003.

iv. Annual Average Impact (dv)

As discussed previously in section IV.C.5, Utah's modeling shows that the average annual dv impact at all Class I areas is better under the Utah BART Alternative at five of the nine Class I areas, and is better on average across all the Class I areas. The average impact was calculated by averaging all daily modeling results for each year and then calculating a 3-year average from the annual average. Utah's information shows that the BART Alternative is better than the BART Benchmark by 0.009 dv on average across all nine Class I areas. While EPA has not considered this metric in the past,⁹⁶ since the State includes it, we consider it here. Furthermore, the BART Guidelines state that, "in determining what, if any, emission controls should be required, the State will have the opportunity to consider the frequency, duration, and intensity of a source's predicted effect on visibility."⁹⁷ The annual average does provide an indication of the modeled visibility impacts for the entire year while the 98th percentile modeled results speak to a particular day (the 8th highest impacted day). Accordingly, and while we have typically relied primarily

⁹⁵ *Id.*

⁹⁶ EPA final actions on BART alternatives that evaluated CALPUFF modeling analysis, which did not include consideration of annual average dv impacts include: 80 FR 19220 (April 10, 2015)(Region 9, Apache); 79 FR 33438 (June 11, 2014)(Region 10, Tesoro Refining and Alcoa Intalco Operations); 77 FR 39938 (July 6, 2012)(Region 3, Maryland HAA).

⁹⁷ 70 FR 39121 (July 5, 2005).

on the 98th percentile impacts in evaluating BART controls in other actions, we propose to find that the annual average impact provides additional useful information in considering Utah's weight of evidence. However, given that the difference in this metric is small (0.009 dv), we propose to find that it only marginally supports a conclusion that the BART Alternative achieves greater reasonable progress.

v. 90th Percentile Impact (dv)

As discussed previously in section IV.C.5, Utah's comparison of the modeled visibility impacts at the 90th percentile (the 110th highest day across three years) dv impact shows that the Utah BART Alternative is better at seven of the nine Class I areas and is slightly better averaged both across three years and across nine Class I areas (0.006 dv difference). We note that the use of the 90th percentile impacts to evaluate alternatives has not been EPA's practice for source-specific BART determinations; however, as discussed previously for the average dv impact metric, the BART Guidelines allow states to consider other visibility metrics in addition to the 98th percentile. Yet, because of the small difference between the two scenarios (0.006 dv), we propose to find that it only marginally supports a conclusion that the BART Alternative achieves greater reasonable progress.

vi. Timing for the Emissions Reductions

As discussed previously in section IV.C.5, Utah noted that reductions under the Utah BART Alternative will occur earlier than the BART Benchmark. The reductions under the Utah BART Alternative are required under the State SIP by August 2015, as noted in Table 5, providing an early and on-going visibility benefit as compared to BART. Also notable is that combustion control upgrades at the Hunter and Huntington facilities have been achieving significant NO_x reductions since the time of their installation between 2006 and 2014, depending on the unit. If, as proposed in section VI.C, BART for the four units is LNB/SOFA plus SCR, BART likely would be fully implemented sometime between 2019 and 2021.

Therefore, we note that the reductions from the BART Alternative will occur before the BART Benchmark.

vii. IMPROVE Monitoring Data

Utah's SIP presents sulfate and nitrate monitoring data at the Canyonlands IMPROVE monitor that show that "sulfates are the dominant visibility

impairing pollutant"⁹⁸ and that sulfate levels have decreased,⁹⁹ and references similar results at other Class I areas in the TSD.¹⁰⁰ Utah also presents data on trends in emissions from EGUs showing substantial reductions in emissions of both SO₂ and NO_x.¹⁰¹ Based on these data, Utah indicates it "has confidence that the SO₂ reductions will achieve meaningful visibility improvement," under the Utah BART Alternative, while "the visibility improvement during the winter months due to NO_x reductions is much more uncertain."¹⁰² Utah makes this point even though nitrate concentrations are highest in the winter, explaining that while there has been a reduction in NO_x, the ammonium nitrate values do not show similar improvement in the winter months.¹⁰³ Utah offers several possible explanations for the results, but does not provide any definitive conclusions.¹⁰⁴

Utah also presents data on the seasonality of park visitation and monitoring data for nitrate and sulfates. The data show that the highest measured nitrate concentrations occur in winter during the period of lowest park visitation, and that sulfates affect visibility throughout the year and are the dominant visibility impairing pollutant from anthropogenic sources during the high visitation period of March through November. Utah concludes that it has greater confidence that reductions in SO₂ will be reflected in improved visibility for visitors to the Class I areas, while reductions in NO_x will have a more uncertain benefit for visitors to Class I areas.

We invite comment on the information and conclusions provided by Utah as summarized previously.

We propose to concur with one of the State's findings. We propose to find that visibility benefits associated with NO_x reductions are much more likely to occur in the winter months because this is when aerosol thermodynamics favors nitrate formation.¹⁰⁵ By contrast, SO₂ emissions reductions should provide

⁹⁸ Utah Regional Haze State Implementation Plan, Technical Support Document, Ch. 1, p. 12 (2015).

⁹⁹ *Id.* at p. 15.

¹⁰⁰ *Id.* at p. 12.

¹⁰¹ *Id.* at p. 14.

¹⁰² *Id.* at p. 13.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at pp. 16–19.

¹⁰⁵ Fountoukis, C. & Nenes, A. *ISORROPIA II: A Computationally Efficient Aerosol Thermodynamic Equilibrium Model for K⁺, Ca₂⁺, Mg₂⁺, NH₄⁺, Na⁺, SO₄²⁻, NO₃⁻, Cl⁻, H₂O Aerosols*, 7 Atmos. Chem. Phys., 4639–4659 (2007).

visibility benefits in all seasons.¹⁰⁶ We also propose to find that, as concluded by the GCVTC, and supported by the IMPROVE monitoring data presented by Utah, anthropogenic visibility impairment on the Colorado Plateau is dominated by sulfates.^{107 108} Therefore, we propose to concur with Utah's statement that sulfate is the largest contributor to visibility impairment at the affected Class I areas.

We propose to disagree with the State's findings related to park visitation. While the BART Guidelines do mention visitation as something that can inform a control decision,¹⁰⁹ EPA is proposing to place little weight on the State's correlation of emissions reductions and park visitation because nothing in the CAA suggests that visitors during busy time periods are entitled to experience better visibility than visitors during off-peak periods. On the contrary, in the Regional Haze provisions of the CAA, Congress declared a national goal of remedying all manmade visibility impairment in all class I areas, which includes both heavily-visited national parks and seldom-visited wilderness areas. We invite comment on our evaluation and the information and conclusions provided by Utah as summarized previously.

viii. Energy and Non-Air Quality Benefits

As discussed previously in section IV.C.5, the State noted that the Utah BART Alternative would avoid an annual energy penalty of approximately \$2 million due to operating four SCR units at the Hunter and Huntington plants and presented additional non-air quality benefits associated with the closure of the Carbon plant such as

¹⁰⁶ Seinfeld, John H., *Urban Air Pollution: State of the Science*, 243 Science Magazine, No. 4892, 745, 745–752 (1989).

¹⁰⁷ While natural sources of haze from wildfires or windblown dust can be the largest contributor on some of the 20% haziest days, the RHR defines "impairment" as anthropogenic impairment, and sulfate formed from anthropogenic SO₂ emissions is the dominant contributor to anthropogenic visibility impairment on the haziest days.

¹⁰⁸ The Grand Canyon Visibility Transport Commission Recommendations for Improving Western Vistas, June 10, 1996, p. 32. Available at <http://www.wrapair.org/WRAP/reports/GCVTCFinal.PDF> and included in the docket.

¹⁰⁹ 70 FR 39104, 39130 (July 6, 2005) ("Other ways that visibility improvement may be assessed to inform the control decisions would be to examine distributions of the daily impacts, determine if the time of year is important (e.g. high impacts are occurring during tourist season), consideration of the cost-effectiveness of visibility improvements (i.e. the cost per change in deciview), using the measures of deciview improvement identified by the State, or simply compare the worst case days for the pre- and post-control runs. States may develop other methods as well.")

waste reduction and decreased water usage. Because such benefits do not have direct bearing on whether the BART Alternative achieves greater reasonable progress, it is not material to our action whether we agree or disagree with Utah's assessment that they reduce energy and non-air quality impacts.

ix. Cost

As discussed previously in section IV.C.5, the State noted that the Utah BART Alternative would achieve greater reasonable progress at lower cost to PacifiCorp than the BART Benchmark. Utah also noted that cost is one of the factors listed in CAA 169A(g)(2) that should be considered when determining BART. While we propose to find that the described cost difference does not have a direct bearing on whether the BART Alternative achieves greater reasonable progress, it is not material to our action whether we agree or disagree with Utah's conclusion that the BART Alternative would have a lower cost impact to PacifiCorp than the BART Benchmark (i.e., costs provided by PacifiCorp in its BART analyses of August 5, 2014, SIP TSD Chapter 2). However, we do agree.

f. Evaluation of the Weight of Evidence

In accordance with our regulations governing BART alternatives, we support the use of a weight-of-evidence determination as an alternative to the methodology set forth in section 51.308(e)(3).¹¹⁰ In evaluating Utah's weight-of-evidence demonstration, we have evaluated all nine elements of Utah's analysis, and as discussed later, rely primarily on the following four elements in proposing to approve the BART Alternative: Annual emissions comparison for two pollutants; improvement in the number of days with significant visibility impairment; IMPROVE monitoring data regarding sulfates; and the early timing for installation of controls. Additional elements that either marginally support or do not support our proposed approval of Utah's determination are also discussed later.

Regarding the emissions reduction comparison, the Utah BART Alternative will result in 8,005 tpy fewer SO₂ emissions compared to the BART Benchmark. In addition, the combined emissions of NO_x, SO₂ and PM₁₀ will be 2,856 tpy lower under the BART Alternative.

Regarding the improvement in the number of days with significant visibility impairment, modeling submitted by Utah shows that the Utah

BART Alternative will result in improved visibility at all affected Class I areas compared with baseline conditions. The units at issue will have impacts of 1.0 dv or more at the affected Class I areas on 48 fewer days under the Utah BART Alternative as compared to BART. When considering impacts of 0.5 dv or more, the units at issue will impact the affected Class I areas on 154 fewer days under the BART Alternative as compared to BART.

Regarding the IMPROVE visibility monitoring data, we propose to agree with the State's finding that SO₂ emissions reductions provide visibility benefits throughout the year. We also propose to concur with Utah's statement that sulfate is the largest contributor to visibility impairment at the affected Class I areas.

Regarding the timing of emissions reductions, these SO₂ emissions reductions were achieved in August 2015, the date in the June 2015 Utah RH SIP requiring the closure of the Carbon plant. Combustion controls at the four BART units in addition to Hunter Unit 3 were installed between 2006 and 2014. BART likely would otherwise have been implemented sometime between 2019 and 2021. So the Utah BART Alternative provides early and on-going visibility benefits as compared to BART.

Regarding other metrics that only marginally support or do not support our proposed approval of Utah's BART Alternative, we propose to find that average annual dv impact and the 90th percentile impact are the two metrics that marginally support a conclusion that the BART Alternative achieves greater reasonable progress.

Regarding the 98th percentile visibility impact, we propose to find this metric does not support our proposed approval of Utah's BART Alternative. While the 98th percentile visibility impact is a key metric that EPA has primarily focused on in prior actions, we propose to conclude that by itself it is not a dispositive metric in weighing a BART Alternative. Nonetheless, as discussed in section VI, we have given considerable weight to this metric in previous actions where we have evaluated BART alternatives as it captures a source's likely greatest visibility impacts at a Class I area; as such, it is a useful comparison point for determining whether one emission control scenario will have a greater impact on visibility improvement than another. In those actions, the 98th percentile visibility impact favored the BART alternative and therefore there was less need to introduce and consider additional evidence to determine

¹¹⁰ 71 FR 60622 (Oct. 13, 2006).

whether an alternative would provide greater reasonable progress. In the case of the Utah BART Alternative, where the 98th percentile does not favor the alternative, Utah has introduced additional evidence that we considered in order to evaluate whether the BART Alternative, on balance, achieves greater reasonable progress.

Regarding the 90th percentile visibility impact, we propose to find that consideration of this metric is appropriate in assessing the weight of evidence associated with a BART alternative. Visibility at a Class I area changes from day to day, and each emission control scenario would result in visibility improvements at the affected Class I areas that would differ from one day to another. The metrics related to the number of days with impacts greater than 0.5 dv and 1.0 dv are examples of the type of additional information that allows for consideration of the frequency and duration of visibility impacts. Similarly, the use of the 90th percentile impact metric allows for the comparison of BART and a BART alternative at a different point in the range of impacts. This can be useful, given the varying impacts of different pollutants under different meteorological conditions. The information provided by Utah for the 90th percentile shows that the BART Alternative is better at seven of the nine Class I areas for this metric, by amounts ranging from 0.019 to 0.140 dv, and is better when taking into account the impacts averaged both across three years and across nine Class I areas, but only by 0.006 dv. These values marginally support our proposed approval of Utah's BART Alternative as better than BART. We invite comment on this proposed assessment of how the 90th percentile metric should be considered in the weight of evidence determination. We also invite interested parties to submit additional information on how the impacts of the BART Alternative under various conditions compare to the impacts of the presumed BART scenario, because while the 90th percentile impact provides additional insight, it is not uniquely informative.

Regarding the energy and non-air quality impacts, as well as cost, we propose to find these metrics do not have direct bearing on whether the Utah BART Alternative achieves greater reasonable progress than the BART Benchmark; and therefore, we have not taken them into consideration.

Consistent with EPA's regulations governing BART alternatives,¹¹¹ in evaluating the weight-of-evidence

demonstration, we have evaluated all of the information and data submitted by Utah, while recognizing the relative strengths and weaknesses of that information to arrive at our proposed decision. Based on the weight-of-evidence presented, we propose to approve Utah's determination that the Utah BART Alternative would achieve greater reasonable progress than BART under 40 CFR 51.308(e)(2)(i)(I).

g. Requirement That Emission Reductions Take Place During Period of First Long-Term Strategy

As discussed previously in section IV.C.6, pursuant to 40 CFR 51.308(e)(2)(iii), the State must ensure that all necessary emission reductions take place during the period of the first long-term strategy for regional haze, *i.e.*, by December 31, 2018. The RHR further provides that, to meet this requirement, the State must provide a detailed description of the alternative measure, including schedules for implementation, the emission reductions required by the program, all necessary administrative and technical procedures for implementing the program, rules for accounting and monitoring emissions, and procedures for enforcement.¹¹²

As noted previously, the Utah SIP revision incorporates the revisions to R307–110–17, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, which includes provisions for implementing the Utah BART Alternative. In addition to the emission limitations for NO_x and PM₁₀, and the requirement for shutdown of the Carbon plant listed in Table 2, the SIP includes compliance dates, operation and maintenance requirements, and monitoring, recordkeeping, and reporting requirements. We propose to find that these provisions meet the requirements of 40 CFR 51.308(e)(2)(iii).

h. Demonstration That Emission Reductions From Alternative Program Will Be Surplus

i. June 2015 Utah RH SIP

As discussed previously in section IV.C.7, pursuant to 40 CFR 51.308(e)(2)(iv), the SIP must demonstrate that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. The baseline date for regional haze SIPs

is 2002.¹¹³ As discussed in section IV.C.7, all of the emission reductions required by the Utah BART Alternative result from measures applicable to Hunter, Huntington and Carbon that occur after 2002.

Furthermore, the State's SIP explains that the WRAP modeling that was done to support the Utah RH SIP included regional SO₂ emissions based on the 2018 SO₂ milestone and also included NO_x and PM₁₀ emissions from the Carbon plant. Thus, WRAP did not rely on emission reductions from the Carbon plant in establishing the 2018 SO₂ milestone.

The State's SIP also includes SO₂ trend data that further demonstrate emission reductions from the Carbon plant do not appear to be needed for meeting the 2018 milestone of 141,849 tpy. Actual emissions in the three-state region are calculated each year and compared to the milestones. As can be seen in Table 7, SO₂ emissions reported for 2011 are below the 2018 milestone and the most recent milestone report for 2013 demonstrates that SO₂ emissions are currently 26 percent lower than the 2018 milestone. Additionally, the Carbon plant was fully operational in the years 2011–2013 when the emissions from the three-state region were below the 2018 milestone for those years. Therefore, the SO₂ emission reductions from the closure of the Carbon plant appear to be surplus to what is needed to meet the 2018 milestone established in Utah's RH SIP.

ii. October 2015 Utah RH SIP

As discussed previously in section IV.D, Utah submitted enforceable commitments in its October 20, 2015 SIP to address potential concerns that the State would be double counting SO₂ emissions reductions for the Carbon plant closure under both the 40 CFR 51.308 and 309 programs.¹¹⁴

EPA has historically recognized that under certain circumstances, it is appropriate to approve a SIP submission that consists, in part, of an enforceable commitment. Once EPA determines that circumstances warrant consideration of an enforceable commitment to meet section 110(a)(2)(A) of the Act (and other applicable sections as relevant), EPA applies three factors to determine whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion

¹¹³ See Memorandum from Lydia Wegman and Peter Tsigotis, 2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM_{2.5}, and Regional Haze Programs, November 18, 2002. http://www3.epa.gov/ttnchie1/eidocs/2002baseinven_102502new.pdf.

¹¹⁴ Regional Haze Section XX, N. (1).

¹¹¹ 71 FR 60622 (Oct. 13, 2006).

¹¹² 40 CFR 51.308(e)(2)(iii).

of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time. Once approved in a SIP, the commitments are enforceable by both EPA and citizens under the Act.

First, Utah's revisions address a limited portion of the statutorily-required program. The Air Quality Board adopted revisions to SIP Section XX, Regional Haze, and added a new subsection N, "Enforceable Commitments for the Utah Regional Haze SIP" that resolves specific identified issues. In this provision of the SIP, "[t]he State commits to resolving this double counting issue by revising the Utah 309 plan to specifically state that the 8,005 tons of SO₂ emissions from the Carbon units will be added into the annual milestone reports from 2016 through the life of the backstop trading program, thereby removing any credit for that emission reduction in meeting the levels specified in the Utah 309 plan."¹¹⁵ Reporting Carbon's emissions in this manner is reasonable and ensures that these emissions reductions are only credited under the BART Alternative.

The SIP indicates the Board is capable of fulfilling these commitments by explaining that "[a]ll required amendments to this SIP will be done through the State's SIP adoption process"¹¹⁶ and that "[t]he SIP is adopted by the Governor-appointed Air Quality Board through a rulemaking process that includes public comment periods and an opportunity for a public hearing."¹¹⁷

The SIP commits to resolve the identified issues ("SIP Section XX.D.3.c and [the State's rule] R307-150 will be revised . . ." ¹¹⁸), and any other related issues, within reasonable amount of time ("Utah will work with EPA and take appropriate action to resolve any completeness or approvability issues that arise regarding the proposed SIP revision by March 2018"¹¹⁹). This will allow sufficient time for EPA to act on the submittal before the end of the milestone commitment.

We also propose to concur that Carbon's 8,005 tpy of SO₂ emissions reductions is a limited portion of the overall requirements of the 309 program and particularly in comparison to the

2018 SO₂ milestone of 141,849 tpy described in Table 7.¹²⁰

Based on these considerations, we propose to approve the enforceable commitment SIP.

Therefore, based on the information presented previously from the State's SIP and enforceable commitment SIP, we propose to concur that the reductions from Carbon are surplus and can be considered as part of an alternative strategy under 40 CFR 51.308(e)(2)(iv).

C. PM₁₀ BART Determinations

As discussed previously in section IV.B.2, Utah determined that the PM₁₀ BART emission limit for Hunter Units 1 and 2 and Huntington Units 1 and 2 was 0.015 lb/MMBtu based on a three-run test average. Utah noted that because the most stringent technology is in place at these units and that the PM₁₀ emission limits have been made enforceable in the SIP, no further analysis was required.

EPA has reviewed Utah's PM₁₀ BART streamlined five-factor analysis and PM₁₀ BART determinations for Hunter Units 1 and 2 and Huntington Units 1 and 2 and proposes to find that these determinations meet the requirements of 40 CFR 51.309(d)(4)(vii). The fabric filter baghouses installed at these BART units are considered the most stringent technology available. The emission limit of 0.015 lb/MMBtu at these units represents the most stringent emission limit for PM₁₀. Utah's use of a streamlined approach to the five-factor analysis is reasonable as the BART Guidelines provide that a comprehensive BART analysis can be avoided if a source commits to a BART determination that consists of the most stringent controls available.¹²¹

Utah's regulatory text provides, "[e]missions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average." It further states that "[s]tack testing for the emission limitation shall be performed each year on each boiler."¹²² We note that BART limits must apply at all times. See CAA section 302(k), 40 CFR part 51, appendix Y, section V. Furthermore, EPA's credible evidence rule requires that a state's plan must not preclude the use of any credible evidence or information, which can include evidence and information other than the test method specified in the plan, that would indicate whether a source was in

compliance with applicable requirements.¹²³

Consistent with these requirements, we propose to interpret Utah's regulatory text as imposing a PM limit of 0.015 lb/MMBtu that applies at all times and does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source is in compliance with the limit.

D. Monitoring, Recordkeeping, and Reporting

EPA has reviewed Utah's monitoring, recordkeeping and reporting measures in its June 4, 2015 SIP Section IX, Part H for the BART Alternative and the PM₁₀ BART determinations and proposes to approve these measures as meeting the requirements of section 110(a)(2) of the CAA and 40 CFR 51, subpart K, Source Surveillance, with the exception of reporting requirements for violations of PM₁₀ emissions limitations. For PM₁₀ reporting, we are proposing to conditionally approve this element in accordance with CAA section 110(k)(4) based on Utah's commitment to submit specific measures to address the reporting requirement.¹²⁴ Utah's letter commits to adopt and submit rule language that would require sources to report any deviation from the requirements of the RH SIP provisions, which would include the PM₁₀ emission limitations. The specific language is detailed in Utah's commitment letter.

Otherwise, the SIP includes adequate measures that pertain to operation of Hunter and Huntington and the closure of Carbon. EPA previously approved state rule provisions that Utah has also cross referenced in these new regional haze measures, including terms, conditions and definitions in R307-101-1, R307-101-2 and R307-170-4 as well as other continuous emission monitoring system (CEMS) requirements referenced in R307-107. These measures are consistent with similar monitoring, recordkeeping, and reporting requirements that EPA has approved in other states or that we have adopted in federal plans,¹²⁵ and in particular contain the requirements that were missing from Utah's prior regional haze submittals.¹²⁶ As described previously in section IV.A.3, Utah has provided the emission limitations, work practice standards, monitoring, recordkeeping, and reporting

¹²³ 40 CFR 51.212(c).

¹²⁴ Letter from Department of Environmental Quality, State of Utah to EPA, DAQP-120-15 (Dec. 10, 2015).

¹²⁵ 77 FR 57864; 79 FR 5032.

¹²⁶ 77 FR 74365-74366 (Dec. 14, 2012).

¹¹⁵ Regional Haze SIP Section XX, N. (1).

¹¹⁶ Regional Haze SIP Section XX, N. (4).

¹¹⁷ Regional Haze SIP Section XX, N. (4).

¹¹⁸ Regional Haze SIP Section XX, N. (3).

¹¹⁹ Regional Haze SIP Section XX, N. (6), (3).

¹²⁰ Regional Haze SIP Section XX, N. (2).

¹²¹ 40 CFR 51, appendix Y, section IV.D.1.9.

¹²² June 2015 Utah RH SIP, Sections

IX.H.22.a.i.A-B, IX.H.22.b.i.A-B.

requirements for all the units that are part of Utah's BART Alternative for the Hunter, Huntington, and Carbon plants.

If we finalize our proposed approval, the regulatory text contained in our final rule for 40 CFR part 52 subpart TT will be consistent with the relevant provisions of Utah's regional haze submittals for making the emission limits and other requirements enforceable. If EPA finalizes the conditional approval of Utah's PM₁₀ reporting provision, the State has one year from the date of EPA's final action on the June 4, 2015 SIP to submit the necessary SIP revisions. If the State fails to meet its commitment within the one-year period, the approval is treated as a disapproval. EPA proposes to find that the necessary SIP revisions meet EPA's criteria for conditional approvals¹²⁷ as the revisions appear to involve a limited amount of technical work, are anticipated to be non-controversial, and can reasonably be accomplished within the length of time for the State's adoption process.

E. Consultation with FLMs

As discussed previously in section IV.G, Utah conducted FLM consultation during late 2014, providing over 60 days prior to the December 1, 2014 public hearing. Subsequently, the National Park Service provided extensive comments in response to a second public comment period in April 2015. Based on these considerations, we propose to find that Utah has met the requirements of 40 CFR 308(i)(2).

VI. EPA's Evaluation and Proposed Partial Approval and Partial Disapproval of Utah's Regional Haze SIP

In this section, we present the second of two alternative proposed actions on which EPA is soliciting comment. As explained previously in sections II.A and V, EPA is soliciting comments on two alternative proposals: a proposal to approve the State SIP in its entirety, and a proposal to partially approve and partially disapprove the State SIP and to issue a FIP. The co-proposals detailed in this section and Section V represent different conclusions regarding Utah's NO_x BART Alternative and the metrics the State has proposed to support this alternative.

As described in this section, EPA is proposing to partially approve and partially disapprove Utah's June 2015 and October 2015 RH SIP revisions and

propose a FIP. Alternatively, as discussed in section V, EPA is co-proposing in the alternative to approve Utah's June 2015 and October 2015 RH SIP revisions.

This document is written as two separate proposals in order to clearly present the options and solicit comment on each. EPA intends to finalize only one of these co-proposals; however, we also acknowledge that additional information and comments may also lead the Agency to adopt final SIP and/or FIP regulations that differ somewhat from the co-proposals presented here regarding the BART Alternative, BART control technology option or emission limits, or impact other proposed regulatory provisions.

A. Basis for Proposed Partial Disapproval and Partial Approval

For the reasons described later, EPA proposes to partially approve and partially disapprove the two Utah 2015 RH SIP revisions. Our proposed action is based on an evaluation of Utah's regional haze SIP submittals against the regional haze requirements at 40 CFR 51.300–51.309 and CAA sections 169A and 169B, as well as the supplemental information EPA developed, such as EPA's calculations of the visibility improvements for each modeling scenario using consistent meteorological years in evaluating the 98th percentile modeling and referencing the topographical maps in evaluating whether distribution of emissions would be substantially different under the Utah BART Alternative. All general SIP requirements contained in CAA section 110, other provisions of the CAA, and our regulations applicable to this action were also evaluated. The purpose of this action is to ensure compliance with these requirements. As discussed in section V, EPA is also co-proposing to approve the Utah's June 2015 and October 2015 RH SIP revisions.

B. Utah BART Alternative

1. Summary of Utah BART Alternative

Utah has opted to establish an alternative measure (or program) for NO_x in accordance with 40 CFR 51.308(e)(2). A description of the Utah BART Alternative is provided in section IV.C. The RHR requires that a SIP revision establishing a BART alternative include three elements as listed later. We have evaluated the Utah BART Alternative with respect to each of these elements.

- A demonstration that the emissions trading program or other alternative measure will achieve greater reasonable

progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program.¹²⁸

- A requirement that all necessary emissions reductions take place during the period of the first long-term strategy for regional haze.¹²⁹
- A demonstration that the emissions reductions resulting from the alternative measure will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.¹³⁰

2. Demonstration of Greater Reasonable Progress for Alternative Program

As discussed previously in section III.E.1, pursuant to 40 CFR 51.308(e)(2)(i), Utah must demonstrate that the alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program. This demonstration, primarily included in Chapter 1 of the TSD of the Utah RH SIP,¹³¹ must be based on five criteria presented below.

a. A List of All BART-Eligible Sources Within the State

As discussed previously in section IV.C.1, Utah included a list of BART-eligible sources and noted the following sources are all covered by the alternative program:

- PacifiCorp Hunter, Unit 1,
- PacifiCorp Hunter, Unit 2,
- PacifiCorp, Huntington, Unit 1, and
- PacifiCorp, Huntington, Unit 2.

EPA approved Utah's BART eligibility determinations in our 2012 rulemaking.¹³²

b. A List of All BART-Eligible Sources and All BART Source Categories Covered by the Alternative Program

As discussed previously in section IV.A.3, the Utah BART Alternative covers all the BART-eligible sources in the state, Hunter Units 1 and 2 and Huntington Units 1 and 2, in addition to three non-BART units, PacifiCorp's Hunter Unit 3 and Carbon Units 1 and 2. EPA previously approved Utah's

¹²⁸ 40 CFR 51.308(e)(2)(i).

¹²⁹ 40 CFR 51.308(e)(2)(iii).

¹³⁰ 40 CFR 51.308(e)(2)(iv).

¹³¹ As presented in this proposal, while the majority of the State's demonstration is contained in Chapter 1, EPA has identified additional information regarding the demonstration and we include references to the additional information.

¹³² 77 FR 74357 (Dec. 14, 2012).

¹²⁷ See Memorandum from John Calcagni to EPA Regional Directors. "Processing of State Implementation Plan (SIP) Submittals" (July 1992), available at <http://www3.epa.gov/ttn/oarpg/t1/memoranda/siproc.pdf>.

BART eligibility determinations in our 2012 rulemaking.¹³³

c. Analysis of BART and Associated Emission Reductions Achievable

As noted previously in section IV.C.3, in the June 2015 Utah RH SIP, Utah compared the Utah BART Alternative to a BART Benchmark which included the most stringent NO_x BART controls, SCR plus new LNBs and SOFA, at the four BART units. This is consistent with the streamlined approach described in Step 1 of the BART Guidelines. The BART Guidelines note that a comprehensive BART analysis can be avoided if a source commits to a BART determination that consists of the most stringent controls available.¹³⁴

We propose to find that Utah has met the requirement for an analysis of BART and associated emission reductions achievable at Hunter and Huntington under 40 CFR 51.308(e)(2)(i)(C).

d. Analysis of Projected Emissions Reductions Achievable Through the BART Alternative

As discussed previously in section IV.C.4, a summary of Utah's estimates of emissions for the Utah BART Alternative and the BART Benchmark is provided in Table 3. We propose to find that Utah has met the requirement for an analysis of the projected emissions reductions achievable through the alternative measure under 40 CFR 51.308(e)(2)(i)(D).

e. A Determination That the Alternative Achieves Greater Reasonable Progress Than Would Be Achieved Through the Installation and Operation of BART

Greater Reasonable Progress Based on 40 CFR 51.308(e)(3)'s Greater Emission Reductions Test

As discussed previously in section III.E.1, 40 CFR 51.308(e)(3) allows a state to satisfy the final step of the better-than-BART demonstration by showing that that "distribution of emissions is not substantially different than under BART" and that "the alternative measure results in greater emission reductions." EPA has explained that when the BART alternative "achieves greater emission reductions than each of the individual BART determinations"¹³⁵ for each of the pollutants, "as well as in the aggregate,"¹³⁶ "visibility modeling is

not required to support a better-than-BART determination. . . ."¹³⁷

However, as EPA explained in responding to comments in the final rule for the BART Alternative for the Apache Generating Station in Arizona's SIP, "where BART and the BART Alternative result in reduced emissions of one pollutant but increased emissions of another, it is not appropriate to use the 'greater emission reductions' test." Instead, the proper approach is to employ a clear weight-of-evidence approach under 40 CFR 51.308(e)(2) in order to demonstrate that the alternative achieves greater reasonable progress than BART."¹³⁸ We have not considered a total emissions profile that combines emissions of multiple pollutants to determine whether BART or the alternative is "better," except where every visibility impairing pollutant is reduced by a greater amount under the BART alternative.¹³⁹ A comparison of mass emissions from multiple pollutants (such as NO_x and SO₂) is not generally informative, particularly in assessing whether the alternative approach provides for greater reasonable progress towards improving visibility. Instead, when emissions of one or more pollutants increases under an alternative, EPA has "given the most weight to the visibility impacts based on air quality modeling"¹⁴⁰ and used modeling to determine whether or not a "BART Alternative measure that relies on interpollutant trading results in greater reasonable progress."¹⁴¹

39940-1 (July 6, 2012) (final approval of Maryland BART Alternative, explaining in responding to comments that because the emission reductions are greater for the Alternative than BART and the distribution of emissions is not substantially different, the Alternative was found to meet 40 CFR 51.308(e)(2) and visibility dispersion modeling was not needed).

¹³⁷ 79 FR 9318, 9335 (Feb. 18, 2014) (proposed approval of Arizona BART Alternative for Sundt Unit 4). *See also*, 79 FR 52420 (Sept. 3, 2014) (final approval of Arizona BART Alternative for Sundt Unit 4); 77 FR 18052, 18073-18075 (Mar. 26, 2012) (proposed approval of Colorado BART Alternative, no modeling required where the 40 CFR 51.308(e)(3) test was met); 77 FR 76871 (Dec. 31, 2012) (final approval of Colorado BART Alternative).

¹³⁸ 80 FR 19220, 19221 (Apr. 10, 2015). *See, e.g.*, 79 FR 56322, 56327-28 (Sept. 19, 2014); 77 FR 18052, 18075 (Mar. 26, 2012).

¹³⁹ 77 FR 18052, 18075 (Mar. 26, 2012).

¹⁴⁰ 79 FR 56322, 56328 (Sept. 19, 2014) (proposed approval of Arizona Apache BART Alternative); 80 FR 19220 (Apr. 10, 2015) (final approval of Arizona Apache BART Alternative).

¹⁴¹ 79 FR 33438, 33441 (June 11, 2014) (final rule, FIP for Tesoro Refining BART Alternative); *See, e.g.*, 79 FR 56322, 56328 (Sept. 19, 2014) (proposed approval of Arizona Apache BART Alternative); 80 FR 19220 (Apr. 10, 2015) (final approval of Arizona Apache BART Alternative); 77 FR 11827, 11837 (Feb. 28, 2012) (proposed approval of Maryland BART Alternative); 77 FR 39938, 39940-1 (July 6,

The State's demonstration appears to satisfy the first part of the test under 40 CFR 51.308(e)(3) (the distribution of emissions may not be substantially different than under BART) since the Hunter, Huntington and Carbon plants are all located within close proximity of each other in central Utah, as discussed previously in section IV.C.5. EPA's interpretation of the requirement under 40 CFR 51.308(e)(3) that the alternative measure "results in greater emission reductions" has been that the emission reduction comparisons are pollutant specific. We have not looked at a total emissions profile that combines emissions of multiple pollutants to determine whether a BART benchmark or a BART alternative is "better," except where every visibility impairing pollutant is reduced by a greater amount under the BART alternative.¹⁴² Therefore, we propose to find that the State's demonstration does not meet the second part of the test. While in the aggregate there are fewer SO₂ and PM₁₀ emissions for the BART Alternative, the total NO_x emissions are greater under the BART Alternative than the BART Benchmark. Therefore, we propose to disapprove Section XX.D.6.c of the Utah SIP under the test in 40 CFR 51.308(e)(3).

Greater Reasonable Progress Based on 40 CFR 51.308(e)(2)'s Weight-of-Evidence Test

Utah also chose to conduct a weight-of-evidence analysis under 40 CFR 51.308(e)(2) based on a BART Alternative involving certain units at the Hunter, Huntington, and Carbon power plants, which included the following nine categories of evidence.

i. Annual Emissions Comparison of all Visibility-Impairing Pollutants

The emissions of visibility-impairing pollutants from both the Utah BART Alternative and the BART Benchmark, as estimated by Utah, are summarized in Table 3 in section IV.C.4. Compared with the Utah BART Benchmark, the State projects that the Utah BART Alternative will result in 5,721 tpy more NO_x emissions, 8,005 tpy fewer SO₂ emissions and 573 tpy fewer PM₁₀ emissions than the BART Benchmark. As discussed previously, Utah also

2012) (final approval of Maryland BART Alternative).

¹⁴² 79 FR 9318, 9335 (Feb. 18, 2014) (proposed approval of Arizona BART Alternative for Sundt Unit 4). 79 FR 52420 (Sept. 3, 2014) (final approval of Arizona BART Alternative for Sundt Unit 4); 77 FR 18052, 18073-18075 (Mar. 26, 2012) (proposed approval of Colorado BART Alternative, no modeling required where the 40 CFR 51.308(e)(3) test was met); 77 FR 76871 (Dec. 31, 2012) (final approval of Colorado BART Alternative).

¹³³ 77 FR 74357 (Dec. 14, 2012).

¹³⁴ 40 CFR 51, appendix Y, section IV.D.1.9.

¹³⁵ 79 FR 9318, 9335 (Feb. 18, 2014).

¹³⁶ 79 FR 9318, 9335 (Feb. 18, 2014). *See, e.g.*, 77 FR 11827, 11837 (Feb. 28, 2012) (proposed approval of Maryland BART Alternative, which shows greater SO₂ and NO_x reductions from the Alternative than application of BART, the two pollutants covered by the Alternative); 77 FR 39938,

noted that the combined emissions of NO_x, SO₂ and PM₁₀ will be 2,856 tpy lower under the BART Alternative than the BART Benchmark.

While the total emission reductions under the Utah BART Alternative are less than those under the BART Benchmark, a comparison of emissions of multiple pollutant species of emissions is generally not informative, particularly when the Agency is assessing whether an approach provides for greater reasonable progress towards improving visibility. As explained in section VI.B.e, our interpretation of the language in 40 CFR 51.308(e)(3) (“results in greater emission reductions . . . may be deemed to achieve greater reasonable progress”) has been pollutant specific. EPA has not relied on a total emissions profile that combines emissions of multiple pollutants together to determine that either BART or a BART alternative is “better,” because visibility modeling is the most appropriate method to assess the overall improvements in visibility impacts from control scenarios where reductions of multiple pollutants are considered, except where every visibility impairing pollutant is reduced by a greater amount under the alternative.¹⁴³ As we have explained, “[e]ach of the five pollutants which cause or contribute to visibility impairment has a different impact on light extinction for a given particle mass, making it therefore extremely difficult to judge the equivalence of interpollutant trades in a manner that would be technically credible, yet convenient to implement in the timeframe needed for transactions to be efficient. This analysis is further complicated by the fact that the visibility impact that each pollutant can have varies with humidity, so that control of different pollutants can have markedly different effects on visibility in different geographic areas and at different times of the year.”¹⁴⁴ As other Agency actions on BART alternatives have explained, modeling assesses “both pollutants’ chemical aerosol formation mechanisms and impacts on visibility,”¹⁴⁵ which allows evaluation of the “relative visibility impacts from the atmospheric formation of visibility impairing aerosols of sulfate and

nitrate.”¹⁴⁶ Since we find that Utah’s BART Alternative provides greater emission reductions for two pollutants (SO₂ and PM₁₀), but find that NO_x emissions would be greater under the BART Alternative, we propose to find that it is not appropriate to combine all three pollutants in the annual emissions comparison test to support the BART Alternative as the State has done. While we acknowledge that two of the pollutants are less under the BART Alternative, one of the pollutants is greater, therefore we further propose to find that the annual emissions comparison of all three pollutants does not show that the BART Alternative is better than the BART Benchmark.

ii. Improvement in the Number of Days With Significant Visibility Impairment

As discussed previously in section IV.C.5, Utah provided modeling results to assess the improvement in the number of days with significant visibility impairment—that is, the improvement in the number of days with impacts that either cause (>1.0 dv) or contribute (0.5 dv) to visibility impairment.

The BART Guidelines provide that, when making a BART determination, a State may consider the number of days or hours that a threshold was exceeded.¹⁴⁷ In developing the BART Guidelines, our example modeling analysis of a hypothetical source examined the number of days that 1.0 dv and 0.5 dv thresholds were exceeded.¹⁴⁸ As detailed in section IV.C.5.b, we note the difference in the total number of days impacted—18 fewer days greater than the causation threshold of 1.0 dv (775 days for the BART Alternative vs. 793 days for the BART Benchmark), and 175 fewer days greater than the contribution 0.5 dv threshold (1,323 days for the BART Alternative vs. 1,498 days for the BART Benchmark. Utah’s results show that there are fewer days with impacts over 0.5 dv for the BART Alternative, which indicates greater improvement in visibility. Therefore, the results for the 0.5 dv threshold favor the BART Alternative.

However, Utah’s results for the total number of days with impacts over 1.0 dv on a Class I area-by-area basis are not as clear in supporting the BART Alternative. The modeling results for the total number of days with impacts greater than 1.0 dv show that the BART Alternative would have more days with impacts greater than 1.0 dv at seven of

the nine Class I areas, and that only two of the Class I areas, would have fewer days with impacts greater than 1.0 dv compared to the BART Benchmark. Therefore, the Class I area-by-area results do not show that the BART Alternative is better than the BART Benchmark. Similarly, the results for the average number of days with impacts over 1.0 dv show that most of the Class I areas have the same result under both the BART Alternative and Benchmark, or are within one day of having the same result. In this context, a difference of one day is not particularly significant. We therefore propose to find that these results do not show the BART Alternative is better.

Utah’s results in applying the number of days with impacts greater than 1.0 dv show the BART Alternative is better “on average” across all nine Class I areas. We agree that use of average visibility impacts could be acceptable as part of assessing the multiple-area impacts and improvements. However, in this case the visibility results for the individual Class I areas do not consistently support or undermine the BART Alternative; there is variation by Class I area. Here, averaging the visibility results has the effect of obscuring the impacts on the individual Class I areas. Additionally, we propose to not give the difference in days significant weight because by itself it does not indicate whether benefits on those days were large or small. Therefore, while we note that the BART Alternative shows fewer days with impacts greater than 1.0 dv when looking at the average over all nine areas, we propose to find that averaging the number of days with impacts greater than 1.0 dv across all affected Class I areas is not a relevant metric under these circumstances. We therefore further propose to find that this metric does not show the BART Alternative is better.

iii. 98th Percentile Impact (dv)

As discussed previously in section IV.C.5, Utah asserted that the only metric it evaluated that showed greater improvement for the BART Benchmark in comparison to the BART Alternative was the 98th percentile metric when averaged across all Class I areas and meteorological years modeled. Utah’s comparison of the modeled visibility impacts on the 98th percentile day (8th highest impacted day in a given meteorological year) for the most impacted year shows that the BART Benchmark would result in greater visibility improvement at five of the nine Class I areas, and is better on average across all nine Class I areas (0.11 dv difference). At the most

¹⁴³ 79 FR 9318, 9335 (Feb. 18, 2014) (proposed approval of Arizona BART Alternative for Sundt Unit 4); 79 FR 52420 (Sept. 3, 2014) (final approval of Arizona BART Alternative for Sundt Unit 4); 77 FR 18052, 18073–18075 (Mar. 26, 2012) (proposed approval of Colorado BART Alternative, no modeling required where the 40 CFR 51.308(e)(3) test was met); 77 FR 76871 (Dec. 31, 2012) (final approval of Colorado BART Alternative).

¹⁴⁴ 64 FR 35714, 35743 (July 1, 1999).

¹⁴⁵ 78 FR 79344, 79355 (Dec. 30, 2013).

¹⁴⁶ 79 FR 33438, 33440 (June 11, 2014).

¹⁴⁷ 40 CFR 51, appendix Y, section IV.D.5.

¹⁴⁸ 70 FR 39130 (July 6, 2005).

impacted Class I areas, Canyonlands and Capitol Reef, Utah found that the 98th percentile metric indicates the BART Benchmark has 0.76 dv and 0.57 dv, respectively, more improvement than the BART Alternative. At other Class I areas, such as Arches, Utah found that the 98th percentile metric indicates that the BART Alternative provides greater visibility improvement (for example, 0.44 dv at Flat Tops).

The 98th percentile visibility impact is a key metric recommended by the BART Guidelines when selecting BART controls.¹⁴⁹ As noted previously, we described this metric as an appropriate measure for determining the degree of visibility improvement to be expected from controls.¹⁵⁰ In addition, this is one of the primary metrics that EPA has relied on in evaluating prior regional haze actions that have included BART alternatives.¹⁵¹

We note that when calculating visibility improvements for individual Class I areas, Utah mixed the impacts from different meteorological years between modeling scenarios (baseline, BART benchmark, and BART Alternative). As discussed in section V.B.2.e, the State's use of different meteorological years may introduce some error as the visibility improvements could be driven by year-to-year variability in meteorological conditions, as opposed to the differences in emission reductions between the BART Alternative and BART Benchmark. For this reason, in addition to the information from the State, EPA has also calculated the visibility improvements for each modeling scenario using paired-in-time meteorological and emissions data.¹⁵² Using this method, whether the BART Alternative resulted in lower 98th percentile impacts depends on both the particular Class I area and meteorological year modeled. In some years and some Class I areas, particularly some of the most impacted Class I areas, the BART Benchmark shows better visibility improvement

than the BART Alternative (for example, 0.93 dv greater improvement for Canyonlands and 0.75 in 2002 dv greater improvement for Capitol Reef in 2001).¹⁵³ At other Class I areas, the 98th percentile metric indicates that the BART Alternative provides greater visibility improvement (for example, by 0.90 dv at Arches in 2003 and 0.43 dv at Flat Tops in 2002).¹⁵⁴ On the whole, when using this method, the BART Benchmark is slightly better on average across all years and nine Class I areas (0.14 dv difference).¹⁵⁵ We propose to find, consistent with the State's evaluation, that this metric favors the BART Benchmark.

iv. Annual Average Impact (dv)

As discussed previously in section IV.C.5, Utah's modeling shows that the average annual dv impact at all Class I areas is better under the Utah BART Alternative at five of the nine Class I areas, and is better on average across all the Class I areas. The average impact was calculated by averaging all daily modeling results for each year and then calculating a three-year average from the annual average. Utah's information shows that the BART Alternative is better than the BART Benchmark by 0.009 dv on average across all nine Class I areas. While EPA has not considered this metric in the past,¹⁵⁶ since the State includes it,¹⁵⁷ we consider it here. Furthermore, the BART Guidelines state that, "in determining what, if any, emission controls should be required, the State will have the opportunity to consider the frequency, duration, and intensity of a source's predicted effect on visibility."¹⁵⁸ We note that the difference in the annual average metric of 0.009 dv only marginally supports the BART Alternative and that this metric shows less or equal visibility improvement at four of the nine Class I areas. Because the annual average metric averages over all days, it does not represent the benefits of the BART Alternative on the maximum impact days. In previous evaluations of BART alternatives we have relied on either the 98th percentile metric or the average

improvement for the worst 20% IMPROVE monitoring days to evaluate greater reasonable progress. Therefore, we propose to find that the information from the annual average metric does not support a conclusion that the BART Alternative achieves greater reasonable progress than the BART Benchmark.

v. 90th Percentile Impact (dv)

As discussed previously in section IV.C.5, Utah's comparison of the modeled visibility impacts at the 90th percentile (the 110th highest day in a year) dv impact shows that the Utah BART Alternative is better at seven of the nine Class I areas and is slightly better averaged both across three years and across nine Class I areas (0.006 dv difference). We note that the use of the 90th percentile impacts to evaluate alternatives has not been EPA's practice for source-specific BART determinations; however, as discussed previously for the average dv impact metric, the BART Guidelines allow states to consider other visibility metrics in addition to the 98th percentile. Yet, because of the small difference between the two scenarios (0.006 dv), we propose to find that it is questionable whether the 90th percentile supports a conclusion that the BART Alternative achieves greater reasonable progress.

vi. Timing for the Emissions Reductions

As discussed previously in section IV.C.5, assuming the four BART units receive five years to come into compliance, Utah noted that reductions under the Utah BART Alternative will occur earlier than the BART Benchmark. The reductions under the Utah BART Alternative are required under the State SIP by August 2015, as noted in Table 5, and would provide an early and on-going visibility benefit as compared to BART. Also notable is that combustion control upgrades at the Hunter and Huntington facilities have been achieving significant NO_x reductions since the time of their installation between 2006 and 2014, depending on the unit.¹⁵⁹ Finally, if, as proposed in section VI.C, BART for the four units is LNB/SOFA plus SCR, BART likely would be fully implemented sometime between 2019 and 2021.

Therefore, we recognize that the reductions from the BART Alternative would occur before the BART Benchmark.

¹⁵⁹ Copies of Administrative Orders DAQE-AN0102370012-08 and DAQE-AN0102380021-10 are included in the docket, and include information regarding the schedule for installation of combustion controls at Hunter and Huntington.

¹⁴⁹ 40 CFR 51, appendix Y, section IV.D.5.

¹⁵⁰ 70 FR at 39129.

¹⁵¹ See, e.g., 78 FR 79344 (Dec. 30, 2012)(proposed rule, FIP for Tesoro Refining and Intalco Refinery BART Alternatives); 79 FR 33438 (June 11, 2014)(final rule, FIP for Tesoro Refining and Intalco Refinery BART Alternatives); 79 FR 56322, 56328 (Sept. 19, 2014)(proposed approval of Arizona Apache BART Alternative); 80 FR 19220 (Apr. 10, 2015)(final approval of Arizona Apache BART Alternative); 77 FR 11827, 11837 (Feb. 28, 2012)(proposed approval of Maryland BART Alternative); 77 FR 39938, 39940-1 (July 6, 2012)(final approval of Maryland BART Alternative).

¹⁵² See EPA Calculation of 98th Percentile Improvement for Utah BART Alternative spreadsheet (in docket).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ EPA final actions on BART Alternatives that evaluated CALPUFF modeling analysis, which did not include consideration of annual average dv impacts include: 80 FR 19220 (Apr. 10, 2015)(Region 9, Apache); 79 FR 33438 (June 11, 2014)(Region 10, Tesoro Refining and Alcoa Intalco Operations); 77 FR 39938 (July 6, 2012)(Region 3, Maryland HAA).

¹⁵⁷ See Utah Regional Haze State Implementation Plan, Technical Support Document, Ch. 1, p. 23 (2015).

¹⁵⁸ 70 FR 39121 (July 5, 2005).

vii. IMPROVE Monitoring Data

Utah's SIP presents sulfate and nitrate monitoring data at the Canyonlands IMPROVE monitor that show that "sulfates are the dominant visibility impairing pollutant"¹⁶⁰ and that sulfate levels have decreased,¹⁶¹ and references similar results at other Class I areas in the TSD.¹⁶² Utah also presents data on trends in emissions from EGUs showing substantial reductions in emissions of both SO₂ and NO_x.¹⁶³ Based on these data, Utah indicates it "has confidence that the SO₂ reductions will achieve meaningful visibility improvement", under the Utah BART Alternative,¹⁶⁴ while "the visibility improvement during the winter months due to NO_x reductions is much more uncertain,"¹⁶⁵ Utah makes this point even though nitrate concentrations are highest in the winter, explaining that while there has been a reduction in NO_x, the ammonium nitrate values do not show similar improvement in the winter months. Utah offers several possible explanations for the results, but does not provide any definitive conclusions.¹⁶⁶

Utah also presents data on the seasonality of park visitation and monitoring data for nitrate and sulfates. These data show the highest measured nitrate concentrations occur in winter during the period of lowest park visitation, and that sulfates affect visibility throughout the year and are the dominant visibility impairing pollutant from anthropogenic sources during the high visitation period of March through November. Utah concludes that it has greater confidence that reductions in SO₂ will be reflected in improved visibility for visitors to the Class I areas, while reductions in NO_x will have a more uncertain benefit for visitors to Class I areas. We invite comment on the information and conclusions provided by Utah as summarized earlier.

We propose to concur with one of the State's findings. We propose to find that visibility benefits associated with NO_x reductions are much more likely to occur in the winter months because this is when aerosol thermodynamics favors nitrate formation.¹⁶⁷ By contrast, SO₂

emissions reductions should provide visibility benefits in all seasons.¹⁶⁸ We also propose to find that, as concluded by the GCVTC, and supported by the IMPROVE monitoring data presented by Utah, anthropogenic visibility impairment on the Colorado Plateau is dominated by sulfates. Therefore, we propose to concur with Utah's statement that sulfate is the largest contributor to visibility impairment at the affected Class I areas.

We propose to disagree with the State's findings related to park visitation. While the BART Guidelines do mention visitation as something that can inform a control decision,¹⁶⁹ EPA is proposing to place little weight on the State's correlation of emissions reductions and park visitation because nothing in the CAA suggests that visitors during busy time periods are entitled to experience better visibility than visitors during off-peak periods. On the contrary, in the Regional Haze provisions of the CAA, Congress declared a national goal of remedying all manmade visibility impairment in all class I areas, which includes both heavily-visited national parks and seldom-visited wilderness areas. We invite comment on our evaluation and the information and conclusions provided by Utah as summarized previously.

viii. Energy and Non-Air Quality Benefits

EPA's evaluation of the State's information on energy and non-air quality benefits is located earlier in section V.B.2.e.viii.

ix. Cost

EPA's evaluation of the Utah's cost information is located in section V.B.2.e.ix.

f. Evaluation of the Weight of Evidence

In this section we evaluate Utah's SIP under 40 CFR 51.308(e)(2), to determine whether the State met the final step of the better-than-BART analysis "based

Na⁺, SO₄²⁻, NO₃⁻, Cl⁻, H₂O Aerosols, 7 Atmos. Chem. Phys., 4639–4659 (2007).

¹⁶⁸ Seinfeld, John H., *Urban Air Pollution: State of the Science*, 243 Science Magazine, no. 4892, 745, 750 (1989).

¹⁶⁹ 70 FR 39104, 39130 (July 6, 2005) ("Other ways that visibility improvement may be assessed to inform the control decisions would be to examine distributions of the daily impacts, determine if the time of year is important (e.g., high impacts are occurring during tourist season), consideration of the cost-effectiveness of visibility improvements (i.e., the cost per change in deciview), using the measures of deciview improvement identified by the State, or simply compare the worst case days for the pre- and post-control runs. States may develop other methods as well.").

on the clear weight of evidence that the trading program or other alternative measure achieves greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources." 40 CFR 51.308(e)(2)(i)(E).

As discussed previously, we evaluated Utah's demonstration and all available information and data presented by the State, as well as additional information and data EPA developed and presented in this notice. We propose to find that this information and data do not meet the requirements of 40 CFR 51.308(e)(2)(i)(E). Specifically, we propose that Utah's demonstration does not show by the "clear weight of evidence" that the BART alternative "measure achieves greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources." 40 CFR 51.308(e)(2)(i)(E). We have evaluated the relative strengths and weakness of the information and propose to find that the State's analysis and conclusions do not clearly show that the BART Alternative results in greater reasonable progress than the BART Benchmark for the following reasons: (1) The key metric EPA has used in evaluating alternatives (98th percentile) on average across all the Class I areas favors the BART Benchmark by 0.14 dv and not the BART Alternative; (2) the majority of information and data that the State asserts favor the BART Alternative over BART show small differences; (3) the comparison of net emissions reductions across three pollutants, which the State relies on significantly is not appropriate because not all pollutants are reduced under the BART Alternative and each pollutant may have different effects on visibility; and (4) while some information may show the Alternative is better than BART, the information is not adequate to meet the "clear weight of evidence" test.

First, consistent with the Agency's practice, we have considered all information, but have given most weight to the visibility impacts based on air quality modeling.¹⁷⁰ Here, the 98th percentile impacts from the State's CALPUFF modeling show that the

¹⁷⁰ See, e.g., 78 FR 79344 (Dec. 30, 2012) (proposed rule, FIP for Tesoro Refining BART Alternative); 79 FR 33438, 33441 (June 11, 2014) (final rule, FIP for Tesoro Refining BART Alternative); 79 FR 56322, 56328 (Sept. 19, 2014) (proposed approval of Arizona Apache BART Alternative); 80 FR 19220 (Apr. 10, 2015) (final approval of Arizona Apache BART Alternative); 77 FR 11827, 11837 (Feb. 28, 2012) (proposed approval of Maryland BART Alternative); 77 FR 39938, 39940–1 (July 6, 2012) (final approval of Maryland BART Alternative).

¹⁶⁰ Utah Regional Haze State Implementation Plan, Technical Support Document, Ch. 1, p. 12 (2015).

¹⁶¹ *Id.* at p. 15.

¹⁶² *Id.* at p. 12.

¹⁶³ *Id.* at p. 14.

¹⁶⁴ *Id.* at p. 13.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at pp. 16–19.

¹⁶⁷ Fountoukis, C. & Nenes, A., *ISORROPIA II: A Computationally Efficient Aerosol Thermodynamic Equilibrium Model for K⁺, Ca₂⁺, Mg₂⁺, NH₄⁺,*

BART Alternative is not better than the BART Benchmark because the BART Benchmark would provide a 0.14 dv greater average improvement than the BART Alternative. In addition, Table 12 lists a comparison of 2001–2003 three-year average 98th percentile visibility improvement for each of the nine Class I areas; and the results for seven of the Class I areas favor BART over the Alternative (Black Canyon of the Gunnison (0.06 dv), Bryce Canyon (0.04 dv), Canyonlands (0.78 dv), Capitol Reef (0.59 dv), Grand Canyon (0.06 dv), Mesa Verde (0.12 dv), and Zion (0.02 dv)).

Second, several metrics that the State suggests favor the BART Alternative over BART show only small improvements as compared to BART. We propose to find that the slight comparative benefits in the annual average impacts are not compelling evidence that the BART Alternative will provide for greater reasonable progress than BART. Additionally, we propose to find that it is questionable whether the 90th percentile supports a conclusion that the BART Alternative will provide for greater reasonable progress than BART.

Third, regarding the energy and non-air quality impacts, as well as cost, for the reasons presented previously, we propose to find that because these metrics do not have a direct bearing on whether the Utah BART Alternative achieves greater reasonable progress, it is not material to our action whether we agree or disagree with Utah's assessment that they reduce energy and non-air quality impact.

As explained previously in this section, in the aggregate the SO₂ and PM₁₀ emissions are lower for the BART Alternative. However, the NO_x emissions are greater under the BART Alternative. Additionally, while Utah's results show that some of the metrics support the Alternative (e.g., there are fewer days with impacts over 0.5 dv for the Alternative indicating greater improvement in visibility under the BART Alternative; emission reductions would occur earlier under the Alternative; the Alternative will result in 8,005 tpy lower SO₂ emissions and 573 tpy lower PM₁₀ emissions compared to the BART Benchmark; sulfate is the largest contributor to visibility impairment at the affected Class I areas), we propose to find that these metrics are not enough by themselves to meet the "clear weight of evidence" test.

Thus, we propose to find that the BART Alternative does not meet the requirements in the RHR because it does not show the BART Alternative would achieve greater reasonable progress than the BART Benchmark, and therefore, we

are proposing to disapprove the resultant BART Alternative SIP.

g. Evaluation That Emission Reductions Take Place During Period of First Long-Term Strategy

EPA's evaluation of Utah's information regarding the timing of implementation of controls is located in section V.B.2.g.

h. Demonstration That Emission Reductions From Alternative Program Will Be Surplus

EPA's evaluation of Utah's information regarding whether the emission reductions are surplus is located in section V.B.2.h.

C. Monitoring, Recordkeeping and Reporting for Utah's BART Alternative

As discussed previously in section IV.B.3, Utah's June 2015 RH SIP includes enforceable measures and monitoring, recordkeeping and reporting requirements for the Utah BART Alternative and the State's PM₁₀ BART determinations. Because in this co-proposal we are proposing to disapprove Utah's BART Alternative, we are also proposing to disapprove (in other words, to not make federally enforceable as part of the SIP) the monitoring, recordkeeping and reporting requirements located in SIP Sections IX.H.22 associated with the BART Alternative. This includes SIP Section IX.H.22, subsections a.ii, a.iii, b.ii, and c.i.

Concurrently, as described earlier in section V.C, we are proposing to approve the remainder of the monitoring, recordkeeping and reporting requirements associated with Utah's PM₁₀ BART determinations. This includes SIP Section IX.H.21 in its entirety and Section IX.H.22, subsections a.i and b.i.

D. Proposed Federal Implementation Plan

The following explanation details the support for EPA's FIP proposed in conjunction with the proposed partial approval and partial disapproval of Utah's SIP. This FIP constitutes EPA's proposed determination of NO_x BART for Utah's four subject-to-BART sources.

1. BART Evaluations

In determining BART, the state, or EPA if promulgating a FIP, must consider the five statutory factors in section 169A(g)(2) of the CAA: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the

source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. See also 40 CFR 51.308(e)(1)(ii)(A). Our evaluation of BART for Hunter and Huntington follows the Guidelines for BART Determinations Under the Regional Haze Rule.

Following the identification of subject-to-BART sources as described in section IV.A.3, the next step of a BART evaluation is to perform the BART analysis. The BART Guidelines describe the BART analysis as consisting of the following five steps:¹⁷¹

- Step 1: Identify All Available Retrofit Control Technologies;
- Step 2: Eliminate Technically Infeasible Options;
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies;
- Step 4: Evaluate Impacts and Document the Results; and
- Step 5: Evaluate Visibility Impacts.

The results of this five step analysis are then used to select BART, taking into consideration the five factors listed earlier.¹⁷²

Immediately following this, we provide background information that is common to our cost of compliance analysis (under Step 4) and visibility impacts analysis (step 5) for all BART sources. This is followed by the five step analysis and proposed selection of BART specific to each BART source.

a. Costs of Compliance

In accordance with the BART Guidelines, we have estimated the costs of compliance consistent with the EPA Air Pollution Control Cost Manual (CCM).¹⁷³ In addition, we have utilized portions of the draft 2015 revisions to the CCM chapters for the post-combustion NO_x control technologies, selective non-catalytic reduction (SNCR) and selective catalytic reduction (SCR).¹⁷⁴ In addition, we rely on the

¹⁷¹ 40 CFR 51, appendix Y, section IV.D.

¹⁷² See *id.* section IV.E.

¹⁷³ EPA's CCM Sixth Edition, January 2002, EPA 452/B-02-001.

¹⁷⁴ Chapter 1, Selective Noncatalytic Reduction, —6/5/2015—Draft for Public Comment ("the 2015 SNCR CCM"); Chapter 2 Selective Catalytic Reduction, —6/5/2015—Draft for Public Comment ("the 2015 SCR CCM"). The draft CCM SNCR and SCR revisions were made available for public comment in a Notice of Data Availability (NODA) on June 12, 2015, 80 FR 33515, and on July 17, 2015, 80 FR 42491, the public comment period was extended to September 10, 2015. In this co-proposal for Utah's regional haze SIP, we are not taking comment on the revisions to the CCM. We are only taking comment on the application of those revisions of the CCM to the particular facts and circumstances for the two subject-to-BART sources, Hunter and Huntington, at issue in this action.

cost of compliance estimates supplied to EPA by Andover Technology Partners (ATP).¹⁷⁵ These estimates in turn rely on the cost estimates that PacifiCorp submitted to Utah in 2012 and 2014, but with those cost estimates adjusted in a number of cases for reasons described in the ATP report. All costs are presented in 2014 dollars. Refer to the ATP report and associated spread sheets for details on how the costs of compliance are calculated.

b. Visibility Impact Modeling

The BART Guidelines provide that states may use the CALPUFF modeling system or another appropriate model to determine the visibility improvement expected at affected Class I areas from potential BART control technologies. The BART Guidelines also recommend that states develop a modeling protocol for modeling visibility improvement, and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. In consultation with EPA, Utah developed a CALPUFF modeling protocol titled “Air Quality Modeling Protocol: Utah Regional Haze State Implementation Plan”, February 13, 2015, to support its BART Alternative analysis (see Chapter 6 of the State’s TSD). The Utah protocol follows recommendations for long-range transport described in appendix W to 40 CFR part 51, Guideline on Air Quality Models, and in the federal Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long Range Transport Impacts, as recommended by the BART Guidelines (40 CFR part 51, appendix Y, section III.D.5). Utah’s protocol also follows Federal Land Managers’ Air Quality Related Values Workgroup—Phase I Report (revised 2010). In section VI.B.e, we evaluate the State’s modeling approach in consideration of the purpose for which it is intended (*i.e.*, analyzing the BART Alternative). However, because Utah’s modeling is not meant to support analysis of control options for individual BART sources under a five factor analysis, EPA developed separate CALPUFF modeling for this purpose. While the Utah modeling assesses the combined impacts of all of the BART and non-BART sources included in the BART Alternative—Carbon, Hunter, and Huntington—our modeling assesses the impacts of the individual BART sources. In addition, our modeling assesses the

visibility impacts of all of the NO_x BART control technologies found to be technologically feasible in Step 2: LNB and OFA, LNB and OFA with SNCR, and LNB and OFA with SCR. Beyond assessing impacts from individual BART sources and evaluating all technologically feasible control options, our modeling methodology is otherwise very similar to that employed by Utah. Our modeling protocol, and visibility impact results, can be found in the docket.¹⁷⁶ Also, the visibility impacts for each BART source are provided later in the respective five factor analyses.

EPA notes that, in considering the visibility improvements reflected in our revised modeling, EPA interprets the BART Guidelines to require consideration of the visibility improvement from BART applied to the entire BART-eligible source. The BART Guidelines explain that, “[i]f the emissions from the list of emissions units at a stationary source exceed a potential to emit of 250 tons per year for any visibility-impairing pollutant, then that collection of emissions units is a BART-eligible source.” In other words, the BART-eligible source (the list of BART emissions units at a source) is the collection of units for which one must make a BART determination. The BART Guidelines state “you must conduct a visibility improvement determination for the source(s) as part of the BART determination.” This requires consideration of the visibility improvement from BART applied to the subject-to-BART source as a whole.

We note, however, that while our regulations require states and EPA to assess visibility improvement on a source-wide basis, they provide flexibility to also consider unit-specific visibility improvement in order to more fully inform the reasonableness of a BART determination, but that does not replace the consideration of visibility benefit from the source (facility) as a whole. In making the BART determinations in this final action we have considered visibility improvements at the source, and then also at the units that comprise the source.

2. Hunter Power Plant

As described previously in section IV.A, Hunter Units 1 and 2 were determined to be subject to BART, while Unit 3 is not subject to BART. Hunter Units 1 and 2 have a nameplate generating capacity of 488.3 MW

each.¹⁷⁷ The boilers are tangentially fired pulverized coal boilers, burning bituminous coal from the Deer Creek Mine in Utah.

Our evaluation of BART for Hunter Units 1 and 2 follows the BART Guidelines. For Hunter Units 1 and 2, the BART Guidelines are mandatory because the combined capacity for all three units at the Hunter facility is greater than 750 MW. See 40 CFR 51.302(e)(1)(ii)(B) (“The determination of BART for fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts must be made pursuant to the guidelines in appendix Y of this part”). Under the Guidelines, cost estimates for control technologies should be based on the CCM, where possible.

The BART Guidelines establish presumptive NO_x limits for coal-fired EGUs greater than 200 MW located at greater than 750 MW power plants that are operating without post-combustion controls. For the tangential-fired boilers burning bituminous coal at Hunter, that presumptive limit is 0.28 lb/MMBtu.¹⁷⁸ The BART Guidelines provide that the five factor analysis may result in a limit that is different than the presumptive limit, and the presumptive limits do not obviate the need to determine BART on a case-by-case basis considering the five factors.¹⁷⁹

PacifiCorp provided BART analyses for Hunter Unit 1 to Utah in 2012 and 2014 which we utilize in our proposed BART evaluation here.¹⁸⁰ Although we are using some information provided by Utah and PacifiCorp, we are independently evaluating all five statutory BART factors, as is appropriate for this co-proposed FIP.

a. Hunter Unit 1

The Hunter Unit 1 boiler is of tangential-fired design with newer generation low-NO_x burners and separated overfire air which were installed in 2014. Unit 1 currently achieves an annual emission rate of approximately 0.21 lb/MMBtu with these combustion controls. Under Utah’s submitted regional haze SIP, Unit 1 is subject to a state-law NO_x emission

¹⁷⁷ U.S. Energy Information Administration, Electric Generating Capacity for 2011 taken from Form EIA-860. See spread sheet titled “EIA existing generating units 2011.xls” in the docket.

¹⁷⁸ 40 CFR part 51, appendix Y, IV.E.5, Table. 1.

¹⁷⁹ See 40 CFR 51.301 (definition of BART); 40 CFR 51.308(e).

¹⁸⁰ PacifiCorp BART Analysis for Hunter Units 1 (July 2, 2012); PacifiCorp BART Analysis for Hunter Unit 2 (June 7, 2012); Utah’s Regional Haze BART Submittal, Chapter 2 of the Technical Support Document (2015); PacifiCorp’s BART Analysis Update for Hunter Units 1 and 2 and Huntington Units 1 and 2 (Aug. 5, 2014).

¹⁷⁵ Cost of NO_x BART Controls on Utah EGUs, from Andover Technology Partners, to EC/R, Inc., October 22, 2015 (ATP report). Andover Technology Partners is a subcontractor to EC/R Incorporated.

¹⁷⁶ Air Quality Modeling Protocol: Utah Regional Haze Federal Implementation Plan, EPA Region 8, November 2015.

limit of 0.26 lb/MMBtu on a 30-day rolling average. Prior to the installation of LNB and SOFA the unit operated with an actual annual emission rate of about 0.40 lb/MMBtu.

Step 1: Identify All Available NO_x Control Technologies

In its 2012 BART analysis for Hunter Unit 1, PacifiCorp identified several NO_x control technologies, both for combustion controls and post-combustion controls.¹⁸¹ The combustion controls identified by PacifiCorp include: low-NO_x burners and separated overfire air (LNB and SOFA; already installed), rotating overfire air, neural network optimization system, flue gas recirculation, gas reburn, fuel lean gas reburn, coal switching, water injection, and others. Post-combustion control options identified by PacifiCorp include: SNCR, rich reagent injection (RRI), SCR, and others.

We note that the combustion controls, LNB and SOFA, have already been installed on Hunter Unit 1, and so we consider them here as “any existing controls” under the third statutory BART factor. In addition, the BART Guidelines recognize that “[c]ombinations of inherently lower-emitting processes and add-on controls” are a category of retrofit controls which can be considered.¹⁸² Accordingly, the inherently lower-emitting combustion controls, LNB and SOFA, are evaluated

in combination with the add-on controls, SNCR and SCR.

We have reviewed PacifiCorp’s review of NO_x control technologies and find it to be comprehensive. We propose to adopt it to satisfy Step 1 and we refer the reader to the 2012 PacifiCorp BART analysis for details on the available NO_x control technologies.

Step 2: Eliminate Technically Infeasible Options

In its 2012 BART analysis,¹⁸³ PacifiCorp eliminated available NO_x control technologies that PacifiCorp evaluated as technologically infeasible for Hunter Unit 1. The remaining technologically feasible control technologies are the combustion controls, LNB and SOFA, and the post-combustion controls, SNCR and SCR.

We agree with PacifiCorp’s evaluation of technologically available controls for Hunter Unit 1 and propose to adopt it for Step 2.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

As noted previously, Hunter Unit 1 is currently achieving an actual annual emission rate of approximately 0.21 lb/MMBtu with LNB and SOFA. This represents a 48.4 percent reduction from the baseline emission rate of 0.40 lb/MMBtu.

The post-combustion control technologies, SNCR and SCR, have been evaluated in combination with

combustion controls. That is, the inlet concentration to the post-combustion controls is assumed to be 0.21 lb/MMBtu (annual). This allows the equipment and operating and maintenance costs of the post-combustion controls to be minimized based on the lower inlet NO_x concentration.

Typically, SNCR reduces NO_x an additional 20 to 30 percent above combustion controls without excessive NH₃ slip.¹⁸⁴ For this analysis, the control efficiency of SNCR has been calculated based on the formula in the 2015 draft CCM SNCR chapter,¹⁸⁵ which for Hunter Unit 1 yields an additional reduction of 21.4 percent after combustion controls. When combined with LNB and SOFA, SNCR is anticipated to achieve an annual emission rate of 0.16 lb/MMBtu, corresponding to an overall control efficiency of 59.4 percent.

SCR can achieve performance emission rates as low as 0.04 to 0.07 lb/MMBtu on an annual basis.¹⁸⁶ For this analysis, consistent with our actions elsewhere, as well with PacifiCorp’s analysis, we use an annual emission rate of 0.05 lb/MMBtu for SCR, which when combined with LNB and SOFA achieves an overall control efficiency of 87.5 percent.

A summary of emissions projections for the control options evaluated is provided in Table 13.

TABLE 13—SUMMARY OF NO_x BART ANALYSIS CONTROL TECHNOLOGIES FOR HUNTER UNIT 1

Control option	Control effectiveness (%)	Annual emission rate (lb/MMBtu)	Emissions reduction (tpy)	Remaining emissions (tpy)
LNB/SOFA +SCR	87.5	0.05	5,500	784
LNB/SOFA +SNCR	59.4	0.16	3,735	2,549
LNB/SOFA	48.4	0.21	3,042	3,242
Baseline ¹ .....	.....	0.40	.....	6,284

¹ Baseline emissions were determined by averaging the annual emissions from 2001 to 2003 as reported to EPA Air Markets Program Data, available at <http://ampd.epa.gov/ampd/>. The annual emissions data is presented in Chapter 4.a of Utah’s June 2015 submittal.

Step 4: Evaluate Impacts and Document Results

Under Step 4, the Guidelines list impact analyses in four parts: costs of compliance, energy impacts, non-air quality environmental impacts, and remaining useful life. For convenience, we combine energy and non-air quality environmental impacts later on.

Part 1—Costs of Compliance

We obtained capital costs for LNB and SOFA from the 2014 PacifiCorp BART analysis. PacifiCorp did not report any operating and maintenance costs for LNB and SOFA. Similarly, we obtained capital cost estimates for LNB and SOFA with SNCR from the 2014 PacifiCorp BART analysis. However, for operating and maintenance costs we

propose to rely on the draft 2015 draft SNCR chapter of the CCM. Refer to the ATP report for details. Capital costs for LNB and SOFA with SCR were also obtained from the 2014 PacifiCorp BART analysis. However, PacifiCorp’s capital costs were adjusted to account for items that were double-counted or should not be allowed under the CCM, such as an allowance for funds used during construction (AFUDC).¹⁸⁷ In

¹⁸¹ 2012 PacifiCorp BART analysis for Hunter Unit 1, page 2.a–106.

¹⁸² BART Guidelines, IV.D.1.

¹⁸³ 2012 PacifiCorp BART analysis for Hunter Unit 1, pages 2.a–106 through 2.a–123.

¹⁸⁴ White Paper, SNCR for Controlling NO_x Emissions, Institute of Clean Air Companies, pp. 4 and 9, February 2008.

¹⁸⁵ 2015 SNCR CCM, Figure 1.1c: SNCR NO_x Reduction Efficiency Versus Baseline NO_x Levels for Coal-fired Utility Boilers.

¹⁸⁶ Srivastava, R., Hall, R., Khan, S., Lani, B., & Culligan, K., *Nitrogen Oxides Emission Control Options for Coal-Fired Utility Boilers*, 55 J. Air & Waste Mgmt. Assoc. 1367, 1367–88 (2005).

¹⁸⁷ See 79 FR 5032, 5133 (Jan. 30, 2014) (discussing reasons for rejecting use of AFUDC).

addition, the capital costs were adjusted to account for a significant overestimation of the catalyst volume and related costs. These adjustments are documented in the ATP report and

associated spread sheet. A discussion of operating and maintenance costs of SCR is also included in the ATP report. For the reasons given in the report, we

propose to adopt the cost estimates contained in it.

A summary of our proposed cost estimates for all control options is presented in Table 14.

TABLE 14—SUMMARY OF NO_x BART COSTS ON HUNTER UNIT 1

Control option	Total capital investment	Indirect annual costs	Direct annual costs	Total annual cost	Emissions reductions (tpy)	Average cost effectiveness (\$/ton)
LNB/SOFA	\$11.6M	\$1.2M	\$0M	\$1.2M	3,042	\$382
LNB/SOFA/SNCR	19.0M	1.9M	1.9M	3.8M	3,735	1,016
LNB/SOFA/SCR	110.3M	10.5M	2.5M	13.1M	5,500	2,380

Parts 2 and 3—Energy and Non-Air Quality Environmental Impacts of Compliance

SNCR slightly reduces the thermal efficiency of a boiler as the reduction reaction uses thermal energy from the boiler, decreasing the energy available for power generation.¹⁸⁸ Using the CCM, we have calculated the electrical power consumption of SNCR to be 326,000 kW-hr per year for Hunter Unit 1.

For SCR, the thermal efficiency is much more reduced because the new ductwork and the reactor's catalyst layers decrease the flue gas pressure. As a result, additional fan power is necessary to maintain the flue gas flow rate through the ductwork and reactor. Using the CCM, we have calculated the electrical power consumption of SCR to be approximately 18,541,000 kW-hr per year for Hunter Unit 1.

Both SCR and SNCR also require some minimal electricity to service pretreatment and injection equipment, pumps, compressors, and control systems. The energy requirements

described earlier are not significant enough to warrant elimination of either SNCR or SCR as BART. In addition, the cost of the additional energy requirements has been included in our cost effectiveness calculations.

SNCR and SCR will slightly increase the quantity of ash that will need to be disposed. In addition, transportation and storage of chemical reagents may result in spills or releases. However, these non-air quality environmental impacts do not warrant elimination of either SNCR or SCR as BART.

There are no additional energy requirements associated with the new LNB and SOFA, and no significant non-air quality environmental impacts.

In summary, we propose to determine that we have adequately considered these impacts by including cost of additional energy in cost effectiveness and assessing non-air quality environmental impacts as insufficient to eliminate or weigh against any of the BART options.

Part 4—Remaining Useful Life

PacifiCorp assumes a remaining useful life of at least 20 years for Hunter Unit 1 in its BART analysis, and has not indicated any intention to retire, or curtail generation from, Hunter Unit 1. Therefore, this factor does not preclude any of the control options considered. In addition, this factor is consistent with our BART calculation of cost effectiveness because annualized costs have been calculated over a 20 year period for each of the control options considered. We propose that this gives adequate consideration to this factor.

Step 5: Evaluate Visibility Impacts

Table 15 presents the highest of the 98th percentile visibility improvements at the affected Class I areas for the three meteorological years modeled, 2001 through 2003. Tables 16 and 17 present the number of days (summed across three years) with impacts greater than the contribution and causation thresholds—0.5 dv and 1.0 dv, respectively.

TABLE 15—HUNTER UNIT 1—VISIBILITY IMPROVEMENTS

Class I area	LNB with SOFA (Δdv)	LNB with SOFA and SNCR (Δdv)	LNB with SOFA and SCR (Δdv)
Arches NP	0.737	0.906	1.342
Black Canyon of the Gunnison NP	0.198	0.241	0.345
Bryce Canyon NP	0.306	0.372	0.534
Canyonlands NP	0.846	1.041	1.545
Capitol Reef NP	0.639	0.750	1.113
Flat Tops WA	0.231	0.280	0.404
Grand Canyon NP	0.349	0.426	0.618
Mesa Verde NP	0.235	0.286	0.426
Zion NP	0.184	0.224	0.323

¹⁸⁸ EPA Air Pollution Control Cost Manual p. 1-21 (6th ed. 2002), available at http://www3.epa.gov/ttn/catc1/dir1/c_allchs.pdf.

TABLE 16—HUNTER UNIT 1—DAYS GREATER THAN 0.5 DECIVIEW
[Three year total]

Class I area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	293	260	259	235
Black Canyon of the Gunnison NP	68	55	53	41
Bryce Canyon NP	42	37	36	28
Canyonlands NP	359	330	322	311
Capitol Reef NP	175	160	156	145
Flat Tops WA	77	63	59	50
Grand Canyon NP	49	43	42	37
Mesa Verde NP	82	66	63	55
Zion NP	29	23	23	22

TABLE 17—HUNTER UNIT 1—DAYS GREATER THAN 1.0 DECIVIEW
[Three year total]

Class I area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	170	141	139	122
Black Canyon of the Gunnison NP	22	13	12	9
Bryce Canyon NP	22	19	18	16
Canyonlands NP	240	218	202	188
Capitol Reef NP	118	110	109	94
Flat Tops WA	31	20	18	10
Grand Canyon NP	32	25	23	18
Mesa Verde NP	32	20	19	13
Zion NP	14	9	8	7

Select BART.

A summary of our impacts analysis for Hunter Unit 1 is presented in Table 18.

TABLE 18—SUMMARY OF HUNTER UNIT 1 IMPACTS ANALYSIS

Control option	Annual emission rate (lb/MMBtu)	Emission reduction (tpy)	Total annual costs (million\$)	Average cost effectiveness (\$/ton)	Incremental cost effectiveness (\$/ton)	Visibility impacts*		
						Improvement (dv)	Days > 0.5 dv	Days > 1.0 dv
LNB with SOFA	0.21	3,042	\$1.2M	\$382	.....	0.846	330	218
LNB with SOFA and SNCR.	0.16	3,735	3.8M	1,016	\$3,796	1.041	322	202
LNB with SOFA and SCR.	0.05	5,500	13.1M	2,380	\$5,268 (compared to LNB with SOFA and SNCR). \$4,853 (compared to LNB with SOFA).	1.545	311	188

* At the most impacted Class I area, Canyonlands National Park.

In determining what to co-propose as BART, we have taken into consideration all five of the statutory factors required by the CAA: The costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Later we provide a justification for our

selection of BART, including an explanation of how each of the CAA factors was used in that selection. As described in step 1 before, we have considered the existing pollution control technology in use at the source. We note that Hunter Unit 1 was equipped with LNB and SOFA in the spring of 2014 in order to meet state-law requirements in the 2011 Utah RH SIP submittal, which we did not approve. In this co-proposal we have to evaluate control technologies and baseline emissions from the correct starting

point, that is, prior to the installation of the combustion controls pursuant to state-law NO_x limitations.¹⁸⁹ As a result, we used the period 2001–2003 as the appropriate period for baseline emissions, in order to provide a realistic depiction of annual emissions for Hunter Unit 1 prior to installation of combustion controls.

We have considered the energy and non-air quality environmental impacts of compliance and propose to find that

¹⁸⁹ See 79 FR 5032, 5105 (Jan. 30, 2014).

they do not appreciably favor one control option over another, or preclude a particular control option from selection. And finally, we have considered the remaining useful life of the source and find that it is sufficiently long (greater than 20 years) so as not to favor or preclude any of the control options. As a result, the remaining factors—the costs of compliance and visibility improvement—are the primary factors that lead us to our proposed BART selection for Hunter Unit 1.

In order to select BART we propose to consider the costs of compliance and visibility impacts by generally comparing them with BART determinations that have been made elsewhere. In the context of reasonable progress determinations, a comparison with another reasonable progress determination has been upheld by the Ninth Circuit Court of Appeals as a rational explanation for that determination.¹⁹⁰ If this were the first BART determination under the RHR and BART Guidelines, which it is not, it would obviously be difficult to employ this precise methodology.¹⁹¹ At this point, however, the EPA thinks there are sufficient examples of reasonable determinations to make this methodology feasible.

Specifically, we propose to compare the average cost-effectiveness, incremental cost-effectiveness, visibility improvement, and incremental visibility improvement for LNB and SOFA with SCR with BART determinations where the EPA and States have based their determination on the same metrics. The most comparable determination appears to be in EPA's final action for Wyoming's regional haze SIP, in which EPA promulgated a FIP for three units at Laramie River Station and determined NO_x BART to be LNB and SOFA with SCR for the three units.¹⁹² On a per-unit basis, the visibility improvement at the most impacted Class I area from this control option was 0.52 to 0.57 dv, and across all three units the sum of the improvement was 1.62 dv. Thus, the application of this control option to all three units of Laramie River Station was

estimated to have a visibility benefit about the same as the application of this control option to Hunter Unit 1. The average cost-effectiveness ranged from \$4,375/ton to \$4,461/ton, considerably higher than the corresponding value for Hunter Unit 1, while the incremental cost-effectiveness ranged from \$5,449 to \$5,871/ton which is very close to the corresponding value for Hunter Unit 1. Finally, the incremental visibility improvement as compared to LNB and SOFA with SNCR was significant, as it is for Hunter Unit 1. On the other hand, at Dave Johnston Units 3 and 4 (for example), where EPA rejected LNB and SOFA with SCR, the incremental cost-effectiveness value of LNB and SOFA with SCR was much higher and incremental visibility benefit lower than at Laramie River Station and higher than the same metrics at Hunter Unit 1.¹⁹³

There are other BART determinations in which SCR has been selected as BART (either alone or in conjunction with LNB and SOFA) based on similar metrics, although those determinations may not have explicitly discussed incremental cost-effectiveness and incremental visibility benefits on a per-unit basis. First, the State of Colorado selected, and the EPA approved, SCR as NO_x BART for Public Service Company's Hayden Station, Units 1 and 2.¹⁹⁴ Hayden Units 1 and 2 were equipped with first generation LNB and over-fire air (OFA) installed in 1999.¹⁹⁵ In its BART determination, Colorado considered these existing controls as given and analyzed as feasible controls upgraded LNB, SNCR, and SCR. Based on an average cost-effectiveness of \$3,385/ton and \$4,064/ton, incremental cost-effectiveness (as compared with LNB and OFA with SNCR) of \$5,326/ton and \$7,331/ton, and visibility improvement of 1.12 dv and 0.85 dv at the most impacted Class I area, respectively, Colorado selected SCR as BART for Units 1 and 2. In this case, due to the existing controls at Hayden Station, the cost-effectiveness values for SCR for Hayden Units 1 and 2 should be compared to the incremental cost-effectiveness values (as compared with LNB and SOFA, and with LNB and SOFA with SNCR) for SCR for Hunter Unit 1, and similarly for incremental visibility benefits. We think they are

comparable, particularly for Hayden Unit 2, and considering that Hunter Unit 1 significantly impacts several Class I areas, while Colorado selected SCR for Hayden based solely on the visibility improvement at the most impacted Class I area, Mt. Zirkel Wilderness.

Another comparable determination can be found in EPA's FIP for Arizona Public Service's Cholla Power Plant, Units 2, 3, and 4, in which EPA determined that NO_x BART was SCR.¹⁹⁶ Similarly to Colorado's determination for Hayden, EPA considered the existing controls, LNB and OFA, at the three units and estimated average cost-effectiveness values for SCR of \$3,114/ton, \$3,472/ton, and \$3,395/ton, and incremental cost-effectiveness values (as compared to LNB and OFA with SNCR) of \$3,257/ton, \$3,811/ton, and \$3,661/ton, respectively, for Units 2, 3, and 4. EPA's modeling showed a source-wide visibility improvement for SCR of 1.34 dv at the most impacted Class I area. Based on these metrics, EPA determined NO_x BART to be SCR for the three units. In this case, as with Hayden, the average cost-effectiveness of SCR at Cholla should be compared with the incremental cost-effectiveness of SCR (as compared with just LNB and SOFA) at Hunter Unit 1. The cost-effectiveness values for Hunter Unit 1 are somewhat higher than at Cholla, but on the other hand the source-wide visibility improvement at Hunter Units 1 and 2 (as obtained by summing the per-unit improvements from Units 1 and 2)¹⁹⁷ from LNB and SOFA with SCR is 2.759 dv at the most impacted Class I area, with incremental visibility improvements of 1.29 dv and 0.932 dv over LNB and SOFA and LNB and SOFA with SNCR, respectively. These visibility improvements are very much in line with those at Cholla, and given that the incremental cost-effectiveness of SCR at Hunter Unit 1 is still reasonable, the comparison with Cholla also supports selection of SCR for Hunter Unit 1. We invite comment on other potentially relevant BART determinations and our methodology generally.

Based on these comparisons to Laramie River Station, Hayden Station, Dave Johnston Units 3 and 4, and Cholla Power Plant, we think that selection of LNB and SOFA with SCR as BART for Hunter Unit 1 would be fully consistent with these prior actions. For Hunter

¹⁹⁰ *Nat'l Parks Conserv. Ass'n v. U.S. EPA*, 788 F.3d 1134, 1148–49 (9th Cir. 2014).

¹⁹¹ Even in that initial scenario, at least cost of compliance, as expressed in cost-effectiveness in dollars per ton, can be compared with what has been found reasonable for best available control technology (BACT) and reasonably available control technology (RACT), and visibility improvement can be compared with the 0.5 dv subject-to-BART threshold that determines whether a BART-eligible source causes or contributes to visibility impairment in Class I areas. The EPA notes that this alternate methodology would also support our proposed BART determinations in this action.

¹⁹² 79 FR 5032, 5047 (Jan. 30, 2014).

¹⁹³ 79 FR 5032, 5049.

¹⁹⁴ 77 FR 18069 (Mar. 26, 2012) (proposal); 77 FR 76871 (Dec. 31, 2012) (final).

¹⁹⁵ Colorado Department of Health and Environment, Air Pollution Control Division, *Best Available Retrofit Technology (BART) Analysis of Control Options For Public Service Company—Hayden Station*, p. 5, available at https://www.colorado.gov/pacific/sites/default/files/AP_PO_Hayden-Power-Plant_0.pdf.

¹⁹⁶ 77 FR 42834 (July 20, 2012) (proposal); 77 FR 72512, 72514–15 (Dec. 5, 2012) (final).

¹⁹⁷ We use the source-wide number here to compare with the Cholla determination; in addition as explained above we must consider source-wide visibility improvements.

Unit 1, LNB and SOFA with SCR is very cost-effective, at \$2,380/ton on an average basis (counting the costs and emission reductions from the combination of the three control technology elements) and at \$5,268/ton on an incremental basis compared to LNB with SOFA and SNCR. Compared to LNB with SOFA, the incremental cost effectiveness is \$4,813/ton, which also compares favorably to the incremental cost effectiveness that supported the selection of LNB with SOFA and SCR for Laramie River Station. For Hunter Unit 1, LNB and SOFA with SCR provides substantial visibility benefits at several Class I areas that are similar to those from Laramie River Station and larger than those from Dave Johnson Units 3 and 4. For example, the visibility improvement from that control option installed on a single unit is 1.342 dv at Arches NP, 1.545 dv at Canyonlands NP, and 1.113 at Capitol Reef NP. These comparisons show that costs are justified in light of the substantial visibility benefits, both total and incremental.

In the case of Hunter, the unit level visibility improvements justify the most stringent level of control, SCR, for each of the two Hunter units. Necessarily, when we consider the source-wide visibility improvements, they will be larger and also justify the most stringent level of control. In addition, the unit level visibility improvements and source-wide visibility improvements (as derived by summing the unit level visibility improvements) at other impacted Class I areas, particularly Arches NP and Capitol Reef NP, support the most stringent level of control. Accordingly, for Hunter Unit 1, we propose to find that BART for NO_x is LNB and SOFA with SCR, represented by an emission limit of 0.07 lb/MMBtu (30-day rolling average). The proposed BART emission limit of 0.07 lb/MMBtu allows for a sufficient margin of

compliance for a 30-day rolling average limit that would apply at all times, including startup, shutdown, and malfunction.¹⁹⁸ We are also proposing monitoring, recordkeeping, and reporting requirements as described in our proposed regulatory text for 40 CFR 52.2336.

Under 40 CFR 51.308(e)(1)(iv), “each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than five years after approval of the implementation plan revision.” In light of the considerable effort involved to retrofit SCR, we propose that five years is as expeditiously as practicable. Therefore, we propose a compliance deadline of five years from the date our final FIP becomes effective.

b. Hunter Unit 2

Generally speaking, Hunter Unit 2 is identical to Hunter Unit 1. The Hunter Unit 2 boiler is of tangential-fired design with newer generation low-NO_x burners and separated overfire air which were installed in spring 2011. Hunter Unit 2 currently achieves an annual emission rate of approximately 0.20 lb/MMBtu with these combustion controls. Under Utah’s submitted regional haze SIP, Unit 1 is subject to a state-law NO_x emission limit of 0.26 lb/MMBtu on a 30-day rolling average. Prior to the installation of LNB and SOFA the unit operated with an actual annual emission rate of about 0.38 lb/MMBtu.

Step 1: Identify All Available NO_x Control Technologies

For the same reasons as for Hunter Unit 1, we propose to adopt the identification of available NO_x control technologies in PacifiCorp’s 2012 BART analysis to satisfy Step 1, and we refer the reader to the 2012 PacifiCorp BART analysis for details on those control technologies.

Step 2: Eliminate Technically Infeasible Options

In its 2012 BART analysis,¹⁹⁹ PacifiCorp eliminated available NO_x control technologies that PacifiCorp evaluated as technologically infeasible for Hunter Unit 2. The remaining technologically feasible control technologies are the combustion controls, LNB and SOFA, and the post-combustion controls, SNCR and SCR.

As with Hunter Unit 1, we agree with PacifiCorp’s evaluation of technologically available controls for Hunter Unit 2 and propose to adopt it for Step 2.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

As noted previously, Hunter Unit 2 is currently achieving an actual annual emission rate of approximately 0.20 lb/MMBtu with LNB and SOFA. This represents a 48.2 percent reduction from the baseline emission rate of 0.38 lb/MMBtu.

SCR can achieve performance emission rates as low as 0.04 to 0.07 lb/MMBtu on an annual basis.²⁰⁰ For this analysis, consistent with our actions elsewhere, as well with PacifiCorp’s analysis, we use an annual emission rate of 0.05 lb/MMBtu for SCR, which when combined with LNB and SOFA achieves an overall control efficiency of 86.9 percent. For this analysis, consistent with our actions elsewhere, as well with PacifiCorp’s analysis, we use an annual emission rate of 0.05 lb/MMBtu for SCR, which when combined with LNB and SOFA achieves an overall control efficiency of 86.9 percent.

As with Hunter Unit 1, we evaluated post-combustion control technologies, SNCR and SCR, in combination with combustion controls. Our evaluation is the same as for Hunter Unit 1. A summary of emissions projections for the control options evaluated is provided in Table 19.

TABLE 19—SUMMARY OF NO_x BART ANALYSIS CONTROL TECHNOLOGIES FOR HUNTER UNIT 2

Control option	Control effectiveness (%)	Annual emission rate (lb/MMBtu)	Emissions reduction (tpy)	Remaining emissions (tpy)
LNB/SOFA+SCR	86.9	0.05	5,230	788
LNB/SOFA+SNCR	59.2	0.16	3,562	2,457
LNB/SOFA	48.2	0.20	2,902	3,117
Baseline ¹		0.38		6,018

¹ Baseline emissions were determined by averaging the annual emissions from 2001 to 2003 as reported to EPA Air Markets Program Data available at <http://ampd.epa.gov/ampd/>.

¹⁹⁸ Emission limits such as BART are required to be met on a continuous basis. See 70 FR 39104, 39172 (July 6, 2005) (stating that emissions limits including BART are to be met on a “continuous basis” in the BART Guidelines, section V); 42

U.S.C. 7602(k) (noting that emission limits are to be on “a continuous basis”).

¹⁹⁹ PacifiCorp BART Analysis for Hunter Unit 2, pp. 2.b–105—2.a–122 (2012).

²⁰⁰ Srivastava, R., Hall, R., Khan, S., Lani, B., & Culligan, K., *Nitrogen Oxides Emission Control Options for Coal-Fired Utility Boilers*, 55 J. Air & Waste Mgmt. Assoc. 1367, 1385–86 (2005).

Step 4: Evaluate Impacts and Document Results

Part 1—Costs of Compliance

We obtained capital costs for LNB and SOFA from the 2014 PacifiCorp BART analysis. PacifiCorp did not report any operating and maintenance costs for LNB and SOFA. Similarly, we obtained capital cost estimates for LNB and SOFA with SNCR from the 2014 PacifiCorp BART analysis. However, for operating and maintenance costs we

propose to rely on the draft 2015 draft SNCR chapter of the CCM. Refer to the ATP report for details. Capital costs for LNB and SOFA with SCR were also obtained from the 2014 PacifiCorp BART analysis. However, PacifiCorp’s capital costs were adjusted to account for items that were double-counted or should not be allowed under the CCM, such as AFUDC.²⁰¹ In addition, the capital costs were adjusted to account for a significant overestimation of the

catalyst volume and related costs. These adjustments are documented in the ATP report and associated spread sheet. A discussion of operating and maintenance costs of SCR is also included in the ATP report. For the reasons given in the report, we propose to adopt the cost estimates contained in it.

A summary of our proposed cost estimates for all control options is presented in Table 20.

TABLE 20—SUMMARY OF NO_x BART COSTS ON HUNTER UNIT 2

Control option	Total capital investment	Indirect annual cost	Direct annual cost	Total annual cost	Emissions reductions (tpy)	Average cost effectiveness (\$/ton)
LNB/SOFA	\$8.6M	\$0.9M	\$0M	\$0.9M	2,902	\$298
LNB/SOFA/SNCR	16.0M	1.6M	1.9M	3.5M	3,562	968
LNB/SOFA/SCR ...	108.1M	10.3	2.4M	12.7M	5,230	2,432

Parts 2 and 3—Energy and Non-Air Quality Environmental Impacts of Compliance

The energy and non-air quality impacts for Hunter Unit 2 are nearly identical to those for Hunter Unit 1 as discussed previously. Accordingly, for the same reasons as for Hunter Unit 1, we propose to determine that we have adequately considered these impacts by including cost of additional energy in cost effectiveness and assessing non-air quality environmental impacts as

insufficient to eliminate or weigh against any of the BART options.

Part 4—Remaining Useful Life

PacifiCorp assumes a remaining useful life of at least 20 years for Hunter Unit 2 in its BART analysis, and has not indicated any intention to retire, or curtail generation from, Hunter Unit 2. Therefore, this factor does not preclude any of the control options considered. In addition, this factor is consistent with our BART calculation of cost effectiveness because annualized costs have been calculated over a 20 year

period for each of the control options considered. We propose that this gives adequate consideration to this factor.

Step 5: Evaluate Visibility Impacts

Table 21 presents the highest of the 98th percentile visibility improvements at the affected Class I areas for the three meteorological years modeled, 2001 through 2003. Tables 22 and 23 present the number of days (summed across three years) with impacts greater than the contribution and causation thresholds—0.5 dv and 1.0 dv, respectively.

TABLE 21—HUNTER UNIT 2—VISIBILITY IMPROVEMENTS

Class I area	LNB with SOFA (Δdv)	LNB with SOFA and SNCR (Δdv)	LNB with SOFA and SCR (Δdv)
Arches NP	0.569	0.711	1.080
Black Canyon of the Gunnison NP	0.153	0.189	0.279
Bryce Canyon NP	0.234	0.291	0.429
Canyonlands NP	0.658	0.822	1.250
Capitol Reef NP	0.491	0.623	0.879
Flat Tops WA	0.180	0.223	0.328
Grand Canyon NP	0.275	0.340	0.506
Mesa Verde NP	0.182	0.225	0.344
Zion NP	0.144	0.178	0.262

TABLE 22—HUNTER UNIT 2—DAYS GREATER THAN 0.5 DECIVIEW [Three Year Total]

Class I area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	293	276	268	245
Black Canyon of the Gunnison NP	68	57	55	49
Bryce Canyon NP	42	39	37	30
Canyonlands NP	359	336	331	317
Capitol Reef NP	175	163	161	152

²⁰¹ See 79 FR 5032, 5133 (Jan. 30, 2014) (discussing reasons for rejecting use of AFUDC).

TABLE 22—HUNTER UNIT 2—DAYS GREATER THAN 0.5 DECIVIEW—Continued
[Three year total]

Class I area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Flat Tops WA	77	64	63	57
Grand Canyon NP	49	46	45	40
Mesa Verde NP	82	72	66	59
Zion NP	29	24	23	22

TABLE 23—HUNTER UNIT 2—DAYS GREATER THAN 1.0 DECIVIEW
[Three year total]

Class I area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	170	151	145	131
Black Canyon of the Gunnison NP	22	16	13	11
Bryce Canyon NP	22	21	19	16
Canyonlands NP	240	221	218	198
Capitol Reef NP	118	113	111	105
Flat Tops WA	31	20	20	14
Grand Canyon NP	32	25	25	22
Mesa Verde NP	32	22	20	14
Zion NP	14	11	9	8

Select BART.

A summary of our impacts analysis for Hunter Unit 2 is presented in Table 24.

TABLE 24—SUMMARY OF HUNTER UNIT 2 IMPACTS ANALYSIS

Control option	Annual emission rate (lb/MMBtu)	Emission reduction (tpy)	Total annual costs (million\$)	Average cost effectiveness (\$/ton)	Incremental cost effectiveness (\$/ton)	Visibility impacts*		
						Improvement (dv)	Days > 0.5 dv	Days > 1.0 dv
LNB with SOFA	0.20	2,902	\$0.9M	\$298	.....	0.658	336	221
LNB with SOFA and SNCR.	0.16	3,562	3.5M	968	\$3,913	0.822	331	218
LNB with SOFA and SCR.	0.05	5,230	12.7M	2,432	\$5,558 (compared to LNB with SOFA and SNCR). \$5,092 (compared to LNB with SOFA).	1.250	317	198

* At the most impacted Class I area, Canyonlands National Park.

In determining what to co-propose as BART, we have taken into consideration all five of the statutory factors required by the CAA: The costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Later on we provide a justification for our selection of BART, including an explanation of how each of the CAA factors was used in that selection.

We have considered the energy and non-air quality environmental impacts of compliance and propose to find that

they do not appreciably favor one control option over another, or preclude a particular control option from selection. As explained for Hunter Unit 1, the existing pollution controls have been accounted for in our evaluation of BART, and also would not favor or preclude any of the control options considered. And finally, we have considered the remaining useful life of the source and find that it is sufficiently long (greater than 20 years) so as not to favor or preclude any of the control options. As a result, the remaining factors—the costs of compliance and visibility improvement—are the primary factors that lead us to our proposed BART selection for Hunter Unit 2.

In order to select BART we propose (for the same reasons as for Hunter Unit 1) to weigh the costs of compliance against visibility impacts by generally comparing them with BART determinations that have been made elsewhere. Specifically, we propose to compare the average cost-effectiveness, incremental cost-effectiveness, visibility improvement, and incremental visibility improvement for LNB and SOFA with SCR with BART determinations where the EPA and States have based their determination on the same metrics. The most comparable determinations are the same as for Hunter Unit 1: Laramie River Station, Hayden Station, and Cholla Power Plant.

Based on these comparisons, we think LNB and SOFA with SCR for Hunter 2 is fully consistent with the other BART determinations. LNB and SOFA with SCR is very cost-effective at \$2,432/ton, and provides substantial visibility benefits at several Class I areas. For example, the visibility improvement from that control option is 1.250 dv at Canyonlands NP and 1.080 dv at Arches NP. The incremental cost-effectiveness of SCR, \$5,558/ton, is by comparison also reasonable. This comparison also shows that costs are justified in light of the substantial visibility benefits, both total and incremental.

In the case of Hunter, the unit level visibility improvements justify the most stringent level of control, SCR, for each of the two Hunter units. Necessarily, when we consider the source-wide visibility improvements, they will be larger and also justify the most stringent level of control. In addition, the unit level visibility improvements and source-wide visibility improvements (as derived by summing the unit level visibility improvements) at other impacted Class I areas, particularly Arches NP and Capitol Reef NP, support the most stringent level of control.

Accordingly, for Hunter Unit 2, we propose to find that BART for NO_x is LNB and SOFA with SCR, represented by an emission limit of 0.07 lb/MMBtu (30-day rolling average). The proposed BART emission limit of 0.07 lb/MMBtu allows for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including startup, shutdown, and malfunction.²⁰² We are also proposing monitoring, recordkeeping, and reporting requirements as described in our proposed regulatory text for 40 CFR 52.2336.

Under 40 CFR 51.308(e)(1)(iv), “each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.” In light of the considerable effort involved to retrofit SCR, we propose that five years is as expeditiously as practicable. Therefore, we propose a compliance deadline of five years from the date our final FIP becomes effective.

3. Huntington Power Plant

As described previously in section IV.A, Huntington Units 1 and 2 were

²⁰² Emission limits such as BART are required to be met on a continuous basis. See 70 FR 39104, 39172 (July 6, 2005) (stating that emissions limits including BART are to be met on a “continuous basis” in the BART Guidelines, section V); 42 U.S.C. 7602(k) (noting that emission limits are to be on “a continuous basis”).

determined to be subject to BART. PacifiCorp’s Huntington Power Plant (Huntington), is located in Huntington City, Utah, and consists of a total of the two electric utility steam generating units. Huntington Units 1 and 2 have a nameplate generating capacity of 498 MW each.²⁰³ The boilers are tangentially fired pulverized coal boilers, burning bituminous coal from the nearby Deer Creek Mine.

Our evaluation of BART for Huntington Unit 1 and 2 follows the *Guidelines for BART Determinations Under the Regional Haze Rule*, which are found in appendix Y to 40 CFR part 51. For Huntington Units 1 and 2, the BART Guidelines are mandatory because the combined capacity for all units at the Huntington facility is greater than 750 MW.²⁰⁴ Under the Guidelines, cost estimates for control technologies should be based on the CCM, where possible.

The BART Guidelines establish presumptive NO_x limits for coal-fired EGUs greater than 200 MW located at greater than 750 MW power plants that are operating without post-combustion controls. For the tangential-fired boilers burning bituminous coal at Huntington, that presumptive limit is 0.28 lb/MMBtu.²⁰⁵ The BART Guidelines provide that the five factor analysis may result in a limit that is different than the presumptive limit, and the presumptive limits do not obviate the need to determine BART on a case-by-case basis considering the five factors.²⁰⁶

PacifiCorp provided BART analyses for Huntington 1 and 2 to Utah in 2012 and 2014 which we utilize in our proposed BART evaluation here.²⁰⁷ Although we are using some information provided by Utah and PacifiCorp, we have independently evaluated all five statutory BART factors.

a. Huntington Unit 1

The Huntington Unit 1 boiler is of tangential-fired design with newer

²⁰³ See U.S. Energy Information Administration, Electric Generating Capacity for 2011 (taken from Form EIA-860). See “EIA existing generating units 2011.xls” spreadsheet in the docket.

²⁰⁴ See 40 CFR 51.302(e)(1)(ii)(B) (“The determination of BART for fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts must be made pursuant to the guidelines in appendix Y of this part.”).

²⁰⁵ 40 CFR part 51, appendix Y, IV.E.5, Table. 1.

²⁰⁶ See 40 CFR 51.301 (defining BART); 40 CFR 51.308(e).

²⁰⁷ See PacifiCorp BART Analysis for Huntington Unit 1(2012); PacifiCorp BART Analysis for Huntington Unit 2 (2012); see also Chapter 2 of the Technical Support Document for Utah’s Regional Haze BART Submittal; PacifiCorp’s BART Analysis Update for Hunter Units 1 and 2 and Huntington Units 1 and 2 (2014).

generation low-NO_x burners and separated overfire air which were installed in fall 2010. Huntington Unit 1 currently achieves an annual emission rate of approximately 0.22 lb/MMBtu with these combustion controls. Under Utah’s submitted regional haze SIP, Unit 1 is subject to a state-law NO_x emission limit of 0.26 lb/MMBtu on a 30-day rolling average. Prior to the installation of LNB and SOFA the unit operated with an actual annual emission rate of about 0.37 lb/MMBtu.

Step 1: Identify All Available NO_x Control Technologies

In its 2012 BART analysis for Huntington Unit 1, PacifiCorp identified several NO_x control technologies, both for combustion controls and post-combustion controls.²⁰⁸ The combustion controls identified by PacifiCorp include: Low-NO_x burners and separated overfire air (LNB and SOFA overfire air; already installed), rotating overfire air, neural network optimization system, flue gas recirculation, gas reburn, fuel lean gas reburn, coal switching, water injection, and others. Post-combustion control options identified by PacifiCorp include: SNCR, RRI, SCR, and others.

We note that the combustion controls, LNB and SOFA, have already been installed on Huntington Unit 1, and so we consider them here as “any existing controls” under the third statutory factor. In addition, the BART Guidelines recognize that “[c]ombinations of inherently lower-emitting processes and add-on controls” are a category of retrofit controls which can be considered.²⁰⁹ Accordingly, the inherently lower-emitting combustion controls, LNB and SOFA, are evaluated in combination with the add-on controls, SNCR and SCR.

We have reviewed PacifiCorp’s review of NO_x control technologies and find it to be comprehensive. We propose to adopt it to satisfy Step 1 and we refer to the 2012 PacifiCorp BART analysis for details on the available NO_x control technologies.

Step 2: Eliminate Technically Infeasible Options

In its 2012 BART analysis,²¹⁰ PacifiCorp eliminated available NO_x control technologies that PacifiCorp evaluated as technologically infeasible for Huntington Unit 1. The remaining technologically feasible control technologies are the combustion

²⁰⁸ PacifiCorp BART Analysis for Huntington Unit 1, p. 2.c-60 (2012).

²⁰⁹ 40 CFR part 51 appendix Y.

²¹⁰ PacifiCorp BART Analysis for Huntington Unit 1, pp. 2.c-61–2.c-77 (2012).

controls, LNB and SOFA, and the post-combustion controls, SNCR and SCR.

We agree with PacifiCorp's evaluation of technologically available controls for Huntington Unit 1 and propose to adopt it for Step 2.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

As noted previously, Huntington Unit 1 is currently achieving an actual annual emission rate of approximately 0.22 lb/MMBtu with LNB and SOFA. This represents a 41.5 percent reduction from the baseline emission rate of 0.37 lb/MMBtu.

The post-combustion control technologies, SNCR and SCR, have been evaluated in combination with

combustion controls. That is, the inlet concentration to the post-combustion controls is assumed to be 0.22 lb/MMBtu (annual). This allows the equipment and operating and maintenance costs of the post-combustion controls to be minimized based on the lower inlet NO_x concentration.

Typically, SNCR reduces NO_x an additional 20 to 30 percent above combustion controls without excessive NH₃ slip.²¹¹ For this analysis, the control efficiency of SNCR has been calculated based on the formula in the 2015 draft CCM SNCR chapter,²¹² which for Huntington Unit 1 yields an additional reduction of 21.7 percent after combustion controls. When

combined with LNB and SOFA, SNCR is anticipated to achieve an annual emission rate of 0.17 lb/MMBtu, corresponding to an overall control efficiency of 54.2 percent.

SCR can achieve performance emission rates as low as 0.04 to 0.07 lb/MMBtu on an annual basis.²¹³ For this analysis, consistent with our actions elsewhere, as well with PacifiCorp's analysis, we use an annual emission rate of 0.05 lb/MMBtu for SCR, which when combined with LNB and SOFA achieves an overall control efficiency of 86.7 percent.

A summary of emissions projections for the control options evaluated is provided in Table 25.

TABLE 25—SUMMARY OF NO_x BART ANALYSIS CONTROL TECHNOLOGIES FOR HUNTINGTON UNIT 1

Control option	Control effectiveness (%)	Annual emission rate (lb/MMBtu)	Emissions reduction (tpy)	Remaining emissions (tpy)
LNB/SOFA +SCR	86.7	0.05	5,092	784
LNB/SOFA +SNCR	54.2	0.17	3,185	2,692
LNB/SOFA	41.5	0.22	2,440	3,436
Baseline ¹ .....	.....	0.37	.....	5,876

¹ Baseline emissions were determined by averaging the annual emissions from 2001 to 2003 as reported to EPA Air Markets Program Data available at <http://ampd.epa.gov/ampd/>.

Step 4: Evaluate Impacts and Document Results

Part 1—Costs of Compliance

We obtained capital costs for LNB and SOFA from the 2014 PacifiCorp BART analysis. PacifiCorp did not report any operating and maintenance costs for LNB and SOFA. Similarly, we obtained capital cost estimates for LNB and SOFA with SNCR from the 2014 PacifiCorp BART analysis. However, for operating and maintenance costs we

propose to rely on the draft 2015 draft SNCR chapter of the CCM. Refer to the ATP report for details. Capital costs for LNB and SOFA with SCR were also obtained from the 2014 PacifiCorp BART analysis. However, PacifiCorp's capital costs were adjusted to account for items that were double-counted or should not be allowed under the CCM, such as AFUDC.²¹⁴ In addition, the capital costs were adjusted to account for a significant overestimation of the

catalyst volume and related costs. These adjustments are documented in the ATP report and associated spread sheet. A discussion of operating and maintenance costs of SCR is also included in the ATP report. For the reasons given in the report, we propose to adopt the cost estimates contained in it.

A summary of our proposed cost estimates for all control options is presented in Table 26.

TABLE 26—SUMMARY OF NO_x BART COSTS ON HUNTINGTON UNIT 1

Control option	Total capital investment	Indirect annual cost	Direct annual cost	Total annual cost	Emissions reductions (tpy)	Average Cost effectiveness (\$/ton)
LNB/SOFA	\$8.1M	\$0.8M	\$0M	\$0.8M	2,440	\$332
LNB/SOFA/SNCR	15.5M	1.5M	2.0M	3.5M	3,185	1,098
LNB/SOFA/SCR	107.8M	10.3M	2.5M	12.8M	5,092	2,515

Parts 2 and 3—Energy and Non-Air Quality Environmental Impacts of Compliance

SNCR slightly reduces the thermal efficiency of a boiler as the reduction

reaction uses thermal energy from the boiler, decreasing the energy available for power generation.²¹⁵ Using the CCM, we have calculated the electrical power

consumption of SNCR to be 361,000 kW-hr per year for Huntington Unit 1.

For SCR, the thermal efficiency is much more reduced because the new ductwork and the reactor's catalyst layers decrease the flue gas pressure. As

²¹¹ Institute of Clean Air Companies, White Paper, SNCR for Controlling NO_x Emissions, pp. 4, 9 (Feb. 2008).

²¹² See [DRAFT] 2015 SNCR CCM (July 2015), Figure 1.1c: SNCR NO_x Reduction Efficiency

Versus Baseline NO_x Levels for Coal-fired Utility Boilers.

²¹³ Srivastava, R., Hall, R., Khan, S., Lani, B., & Culligan, K., *Nitrogen Oxides Emission Control Options for Coal-Fired Utility Boilers*, 55 J. Air & Waste Mgmt. Assoc. 1367, 1367–88 (2005).

²¹⁴ See 79 FR 5032, 5133 (Jan. 30, 2014) (discussing reasons for rejecting use of AFUDC).

²¹⁵ EPA Air Pollution Control Cost Manual, pp. 1–21 (6th ed. 2002).

a result, additional fan power is necessary to maintain the flue gas flow rate through the ductwork and reactor. Using the CCM, we have calculated the electrical power consumption of SCR to be approximately 18,617,000 kW-hr per year for Huntington Unit 1.

Both SCR and SNCR require some minimal electricity to service pretreatment and injection equipment, pumps, compressors, and control systems. The energy requirements described earlier are not significant enough to warrant elimination of either SNCR or SCR as BART. In addition, the cost of the additional energy requirements has been included in our cost effectiveness calculations.

SNCR and SCR will slightly increase the quantity of ash that will need to be disposed. In addition, transportation and storage of chemical reagents may

result in spills or releases. However, these non-air quality environmental impacts do not warrant elimination of either SNCR or SCR as BART.

There are no additional energy requirements associated with the new LNB and SOFA, and no significant non-air quality environmental impacts.

In summary, we propose to determine that we have adequately considered these impacts by including cost of additional energy in cost effectiveness and assessing non-air quality environmental impacts as insufficient to eliminate or weigh against any of the BART options.

Part 4—Remaining Useful Life

PacifiCorp assumes a remaining useful life of at least 20 years for Huntington Unit 1 in its BART analysis, and has not indicated any intention to retire, or curtail generation from,

Huntington Unit 1. Therefore, this factor does not preclude any of the control options considered. In addition, this factor does not impact our BART calculation of cost effectiveness because annualized costs have been calculated over a 20 year period for each of the control options considered. We propose that this gives adequate consideration to this factor.

Step 5: Evaluate Visibility Impacts

Table 27 presents the highest of the 98th percentile visibility improvements at the affected Class I areas for the three meteorological years modeled, 2001 through 2003. Tables 28 and 29 present the number of days (summed across three years) with impacts greater than the contribution and causation thresholds—0.5 dv and 1.0 dv, respectively.

TABLE 27—HUNTINGTON UNIT 1—VISIBILITY IMPROVEMENTS

Class I Area	LNB with SOFA (Δdv)	LNB with SOFA and SNCR (Δdv)	LNB with SOFA and SCR (Δdv)
Arches NP	0.684	0.907	1.488
Black Canyon of the Gunnison NP	0.156	0.205	0.328
Bryce Canyon NP	0.222	0.292	0.473
Canyonlands NP	0.851	1.133	1.881
Capitol Reef NP	0.493	0.651	1.108
Flat Tops WA	0.181	0.239	0.383
Grand Canyon NP	0.200	0.262	0.419
Mesa Verde NP	0.215	0.284	0.462
Zion NP	0.150	0.198	0.320

TABLE 28—HUNTINGTON UNIT 1—DAYS GREATER THAN 0.5 DECIVIEW
[Three year total]

Class I Area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	237	221	210	180
Black Canyon of the Gunnison NP	45	33	30	23
Bryce Canyon NP	36	26	25	19
Canyonlands NP	277	249	244	210
Capitol Reef NP	131	117	116	99
Flat Tops WA	64	41	37	27
Grand Canyon NP	40	35	34	27
Mesa Verde NP	63	46	41	30
Zion NP	21	16	16	14

TABLE 29—HUNTINGTON UNIT 1—DAYS GREATER THAN 1.0 DECIVIEW
[Three year total]

Class I Area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	146	121	117	86
Black Canyon of the Gunnison NP	16	7	7	3
Bryce Canyon NP	19	13	9	5
Canyonlands NP	175	153	143	117
Capitol Reef NP	91	74	69	55

TABLE 29—HUNTINGTON UNIT 1—DAYS GREATER THAN 1.0 DECIVIEW—Continued
[Three year total]

Class I Area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Flat Tops WA	17	9	8	3
Grand Canyon NP	19	13	12	9
Mesa Verde NP	22	13	10	4
Zion NP	11	8	6	4

Select BART.

A summary of our impacts analysis for Huntington Unit 1 is presented in Table 30.

TABLE 30—SUMMARY OF HUNTINGTON UNIT 1 IMPACTS ANALYSIS

Control option	Annual emission rate (lb/MMBtu)	Emission reduction (tpy)	Total annual costs (million\$)	Average cost effectiveness (\$/ton)	Incremental cost effectiveness (\$/ton)	Visibility impacts*		
						Improvement (dv)	Days > 0.5 dv	Days > 1.0 dv
LNB with SOFA	0.22	2,440	\$0.8M	\$332	.....	0.851	249	153
LNB with SOFA and SNCR.	0.17	3,185	3.5M	1,098	3,609	1.113	244	143
LNB with SOFA and SCR.	0.05	5,092	12.8M	2,515	\$4,879 (compared to LNB with SOFA and SNCR). \$4,522 (compared to LNB with SOFA).	1.881	210	117

* At the most impacted Class I area, Canyonlands National Park.

In determining what to co-propose as BART, we have taken into consideration all five of the statutory factors required by the CAA: The costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Later on we provide a justification for our selection of BART, including an explanation of how each of the CAA factors was used in that selection.

As described in step 1 previously, we have considered the existing pollution control technology in use at the source. We note that Huntington Unit 1 was equipped with LNB and SOFA in the fall of 2010 in order to meet state-law requirements in the 2011 Utah RH SIP submittal, which we did not approve. In this co-proposal we have to evaluate control technologies and baseline emissions from the correct starting point, that is, prior to the installation of the combustion controls pursuant to state-law NO_x limitations.²¹⁶ As a result, we used the period 2001–2003 as

the appropriate period for baseline emissions, in order to provide a realistic depiction of annual emissions for Huntington Unit 1 prior to installation of combustion controls.

We have considered the energy and non-air quality environmental impacts of compliance and propose to find that they do not appreciably favor one control option over another, or preclude a particular control option from selection. And finally, we have considered the remaining useful life of the source and find that it is sufficiently long (greater than 20 years) so as not to favor or preclude any of the control options. As a result, the remaining factors—the costs of compliance and visibility improvement—are the primary factors that lead us to our proposed BART selection for Huntington Unit 1.

Having already considered the other factors, in order to select BART we propose to weigh the costs of compliance against visibility impacts by generally comparing them with BART determinations that have been made elsewhere. Specifically, we propose to compare the average cost-effectiveness, incremental cost-effectiveness, visibility improvement, and incremental visibility improvement for LNB and SOFA with SCR with BART determinations where

the EPA and States have based their determination on the same metrics. The most comparable determinations are the same as for Hunter Unit 1. The most comparable determination appears to be in EPA’s final action for Wyoming’s regional haze SIP, in which EPA promulgated a FIP for three units at Laramie River Station and determined BART to be LNB and SOFA with SCR for the three units.²¹⁷ On a per-unit basis, the visibility improvement from that control option was 0.52 to 0.57 dv, and across all three units the sum of the improvement was 1.62 dv. The average cost-effectiveness ranged from \$4,375/ton to \$4,461/ton, while the incremental cost-effectiveness ranged from \$5,449 to \$5,871/ton. Finally, the incremental visibility improvement as compared to LNB and SOFA with SNCR was significant. On the other hand, at Dave Johnston Units 3 and 4 (for example), where EPA rejected LNB and SOFA with SCR, the incremental cost-effectiveness value of LNB and SOFA with SCR was much higher and incremental visibility benefit lower than at Laramie River Station.²¹⁸

²¹⁷ 79 FR 5032, 5047 (Jan. 30, 2014).

²¹⁸ 79 FR 5032, 5049.

²¹⁶ See 79 FR 5032, 5105–1 (Jan. 30, 2012).

There are other BART determinations in which SCR has been selected as BART (either alone or in conjunction with LNB and SOFA) based on similar metrics, although those determinations may not have explicitly discussed incremental cost-effectiveness and incremental visibility benefits on a per-unit basis. First, the State of Colorado selected, and the EPA approved, SCR as NO_x BART for Public Service Company's Hayden Station, Units 1 and 2.²¹⁹ Hayden Units 1 and 2 were equipped with first generation LNB and over-fire air (OFA) installed in 1999.²²⁰ In its BART determination, Colorado considered these existing controls as given and analyzed as feasible controls upgraded LNB, SNCR, and SCR. Based on an average cost-effectiveness of \$3,385/ton and \$4,064/ton, incremental cost-effectiveness (as compared with LNB and OFA with SNCR) of \$5,326/ton and \$7,331/ton, and visibility improvement of 1.12 dv and 0.85 dv at the most impacted Class I area, respectively, Colorado selected SCR as BART for Units 1 and 2. In this case, due to the existing controls at Hayden Station, the cost-effectiveness values for SCR for Hayden Units 1 and 2 should be compared to the incremental cost-effectiveness values (as compared with LNB and SOFA, and with LNB and SOFA with SNCR) for SCR for Huntington Unit 1, and similarly for incremental visibility benefits. We think they are comparable, particularly for Hayden Unit 2, and considering that Huntington Unit 1 significantly impacts several Class I areas, while Colorado selected SCR for Hayden based solely on the visibility improvement at the most impacted Class I area, Mt. Zirkel Wilderness.

Another comparable determination can be found in EPA's FIP for Arizona Public Service's Cholla Power Plant, Units 2, 3, and 4, in which EPA determined that NO_x BART was SCR.²²¹ Similarly to Colorado's determination for Hayden, EPA considered the existing controls, LNB and OFA, at the three units and estimated average cost-effectiveness values for SCR of \$3,114/ton, \$3,472/ton, and \$3,395/ton, and incremental cost-effectiveness values (as compared to LNB and OFA with SNCR) of \$3,257/ton, \$3,811/ton, and \$3,661/

ton, respectively, for Units 2, 3, and 4. EPA's modeling showed a source-wide visibility improvement for SCR of 1.34 dv at the most impacted Class I area. Based on these metrics, EPA determined NO_x BART to be SCR for the three units. In this case, as with Hayden, the average cost-effectiveness of SCR at Cholla should be compared with the incremental cost-effectiveness of SCR (as compared with just LNB and SOFA) at Huntington Unit 1. The cost-effectiveness values for Huntington Unit 1 are somewhat higher than at Cholla, but on the other hand the source-wide visibility improvement at Huntington Units 1 and 2 (as obtained by summing the per-unit improvements from Units 1 and 2)²²² from LNB and SOFA with SCR is 2.759 dv at the most impacted Class I area, with incremental visibility improvements of 1.29 dv and 0.932 dv over LNB and SOFA and LNB and SOFA with SNCR, respectively. These visibility improvements are very much in line with those at Cholla, and given that the incremental cost-effectiveness of SCR at Huntington Unit 1 is still reasonable, the comparison with Cholla also supports selection of SCR for Huntington Unit 1. We invite comment on other potentially relevant BART determinations and our methodology generally.

Based on these comparisons, we think LNB and SOFA with SCR is very cost-effective at \$2,515/ton, and provides substantial visibility benefits at several Class I areas. For example, the visibility improvement from that control option is 1.488 dv at Arches NP, 1.881 dv at Canyonlands NP, and 1.108 dv at Capitol Reef NP. The incremental cost-effectiveness of SCR, \$4,879/ton, is by comparison with the Laramie River Station BART determination also reasonable. This comparison also shows that costs are justified in light of the substantial visibility benefits, both total and incremental.

In the case of Huntington, the unit level visibility improvements justify the most stringent level of control, SCR, for each of the two Huntington units. Necessarily, when we consider the source-wide visibility improvements, they will be larger and also justify the most stringent level of control.

Accordingly, for Huntington Unit 1, we propose to find that BART for NO_x is LNB and SOFA with SCR, represented by an emission limit of 0.07 lb/MMBtu (30-day rolling average). The proposed BART emission limit of 0.07

lb/MMBtu allows for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including startup, shutdown, and malfunction.²²³ We are also proposing monitoring, recordkeeping, and reporting requirements as described in our proposed regulatory text for 40 CFR 52.2336.

Under 40 CFR 51.308(e)(1)(iv), "each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision." In light of the considerable effort involved to retrofit SCR, we propose that five years is as expeditiously as practicable. Therefore, we propose a compliance deadline of five years from the date our final FIP becomes effective.

b. Huntington Unit 2

Generally, Huntington Unit 2 is identical to Unit 1. The Huntington Unit 2 boiler is of tangential-fired design with newer generation low-NO_x burners and separated overfire air which were installed in winter 2006. Huntington Unit 2 currently achieves an annual emission rate of approximately 0.21 lb/MMBtu with these combustion controls. Under Utah's submitted regional haze SIP, Unit 2 is subject to a state-law NO_x emission limit of 0.26 lb/MMBtu on a 30-day rolling average. Prior to the installation of LNB and SOFA the unit operated with an actual annual emission rate of about 0.39 lb/MMBtu.

Step 1: Identify All Available NO_x Control Technologies

For the same reasons as for Huntington Unit 1, we propose to adopt the identification of available NO_x control technologies in PacifiCorp's 2012 BART analysis to satisfy Step 1, and we refer the reader to the 2012 PacifiCorp BART analysis for details on the available NO_x control technologies.

Step 2: Eliminate Technically Infeasible Options

In its 2012 BART analysis,²²⁴ PacifiCorp eliminated available NO_x control technologies that PacifiCorp evaluated as technologically infeasible for Huntington Unit 2. The remaining technologically feasible control technologies are the combustion

²¹⁹ 77 FR 18069 (Mar. 26, 2012) (proposal); 77 FR 76871 (Dec. 31, 2012) (final).

²²⁰ Colorado Department of Health and Environment, Air Pollution Control Division, *Best Available Retrofit Technology (BART) Analysis of Control Options For Public Service Company—Hayden Station*, p. 5, available at https://www.colorado.gov/pacific/sites/default/files/AP_PO_Hayden-Power-Plant_0.pdf.

²²¹ 77 FR 42834 (July 20, 2012) (proposal); 77 FR 72512, 72514–15 (Dec. 5, 2012) (final).

²²² We use the source-wide number here to compare with the Cholla determination; in addition as explained above we must consider source-wide visibility improvements.

²²³ Emission limits such as BART are required to be met on a continuous basis. See 70 FR 39104, 39172 (July 6, 2005) (stating that emissions limits including BART are to be met on a "continuous basis" in the BART Guidelines, section V); 42 U.S.C. 7602(k) (noting that emission limits are to be on "a continuous basis").

²²⁴ PacifiCorp BART Analysis for Huntington Unit 2, pp. 2.a–106–2.a–124 (2012).

controls, LNB and SOFA, and the post-combustion controls, SNCR and SCR.

We agree with PacifiCorp's evaluation of technologically available controls for Huntington Unit 2 and propose to adopt it for Step 2.

Step 3: Evaluate Control Effectiveness of Remaining Control Technologies

As noted previously, Huntington Unit 2 is currently achieving an actual annual emission rate of approximately 0.21 lb/MMBtu with LNB and SOFA. This represents a 44.6 percent reduction from the baseline emission rate of 0.39 lb/MMBtu.

The post-combustion control technologies, SNCR and SCR, have been evaluated in combination with

combustion controls. That is, the inlet concentration to the post-combustion controls is assumed to be 0.21 lb/MMBtu (annual). This allows the equipment and operating and maintenance costs of the post-combustion controls to be minimized based on the lower inlet NO_x concentration.

Typically, SNCR reduces NO_x an additional 20 to 30 percent above combustion controls without excessive NH₃ slip.²²⁵ For this analysis, the control efficiency of SNCR has been calculated based on the formula in the 2015 draft CCM SNCR chapter,²²⁶ which for Huntington Unit 2 yields an additional reduction of 21.5 percent after combustion controls. When

combined with LNB and SOFA, SNCR is anticipated to achieve an annual emission rate of 0.17 lb/MMBtu, corresponding to an overall control efficiency of 56.6 percent.

SCR can achieve performance emission rates as low as 0.04 to 0.07 lb/MMBtu on an annual basis.²²⁷ For this analysis, consistent with our actions elsewhere, as well with PacifiCorp's analysis, we use an annual emission rate of 0.05 lb/MMBtu for SCR, which when combined with LNB and SOFA achieves an overall control efficiency of 87.0 percent.

A summary of emissions projections for the control options evaluated is provided in Table 31.

TABLE 31—SUMMARY OF NO_x BART ANALYSIS CONTROL TECHNOLOGIES FOR HUNTINGTON UNIT 2

Control option	Control effectiveness (%)	Annual emission rate (lb/MMBtu)	Emissions reduction (tpy)	Remaining emissions (tpy)
LNB/SOFA +SCR	87.0	0.05	5,023	747
LNB/SOFA +SNCR	56.6	0.17	3,264	2,506
LNB/SOFA	44.6	0.21	2,576	3,194
Baseline ¹	—	0.39	—	5,770

¹ Baseline emissions were determined by averaging the annual emissions from 2001 to 2003 as reported to EPA Air Markets Program Data available at <http://ampd.epa.gov/ampd/>.

Step 4: Evaluate Impacts and Document Results

Part 1—Costs of Compliance

We obtained capital costs for LNB and SOFA from the 2014 PacifiCorp BART analysis. PacifiCorp did not report any operating and maintenance costs for LNB and SOFA. Similarly, we obtained capital cost estimates for LNB and SOFA with SNCR from the 2014 PacifiCorp BART analysis. However, for operating and maintenance costs we

propose to rely on the draft 2015 draft SNCR chapter of the CCM. Refer to the ATP report for details. Capital costs for LNB and SOFA with SCR were also obtained from the 2014 PacifiCorp BART analysis. However, PacifiCorp's capital costs were adjusted to account for items that were double-counted or should not be allowed under the CCM, such as AFUDC.²²⁸ In addition, the capital costs were adjusted to account for a significant overestimation of the

catalyst volume and related costs. These adjustments are documented in the ATP report and associated spread sheet. A discussion of operating and maintenance costs of SCR is also included in the ATP report. For the reasons given in the report, we propose to adopt the cost estimates contained in it.

A summary of our proposed cost estimates for all control options is presented in Table 32.

TABLE 32—SUMMARY OF NO_x BART COSTS ON HUNTINGTON UNIT 2

Control option	Total capital investment	Indirect annual costs	Direct annual costs	Total annual cost	Emissions reductions (tpy)	Average cost effectiveness (\$/ton)
LNB/SOFA	\$9.4M	\$0.9M	\$0M	\$0.9M	2,576	\$365
LNB/SOFA/SNCR	16.7M	1.6M	1.9M	3.5M	3,264	1,075
LNB/SOFA/SCR	109.4M	10.4M	2.4M	12.9M	5,023	2,563

Parts 2 and 3—Energy and Non-Air Quality Environmental Impacts of Compliance

The energy and non-air quality impacts for Huntington Unit 2 are nearly identical to those for Huntington

Unit 1 as discussed previously. Accordingly, for the same reasons as for Huntington Unit 1, we propose to determine that we have adequately considered these impacts by including cost of additional energy in cost

effectiveness and assessing non-air quality environmental impacts as insufficient to eliminate or weigh against any of the BART options.

²²⁵ Institute of Clean Air Companies, *White Paper, SNCR for Controlling NO_x Emissions*, pp. 4 and 9 (Feb. 2008).

²²⁶ EPA Selective Noncatalytic, Reduction Cost Manual Draft for Public Comment, p. 1–6 (Figure

1.1c: SNCR NO_x Reduction Efficiency Versus Baseline NO_x Levels for Coal-fired Utility Boilers) (June 5, 2015).

²²⁷ Srivastava, R., Hall, R., Khan, S., Lani, B., & Culligan, K., *Nitrogen Oxides Emission Control*

Options for Coal-Fired Utility Boilers, 55 J. Air & Waste Mgmt Assoc. 55, 1367, 1367–88 (2005).

²²⁸ See 79 FR 5032, 5133 (discussing reasons for rejecting use of AFUDC).

Part 4—Remaining Useful Life

PacifiCorp assumes a remaining useful life of at least 20 years for Huntington Unit 2 in its BART analysis, and has not indicated any intention to retire, or curtail generation from, Huntington Unit 2. Therefore, this factor does not preclude any of the control options considered. In addition, this factor does not impact our BART

calculation of cost effectiveness because annualized costs have been calculated over a 20 year period for each of the control options considered. We propose that this gives adequate consideration to this factor.

Step 5: Evaluate Visibility Impacts

Table 33 presents the highest of the 98th percentile visibility improvements

at the affected Class I areas for the three meteorological years modeled, 2001 through 2003. Tables 34 and 35 present the number of days (summed across three years) with impacts greater than the contribution and causation thresholds—0.5 dv and 1.0 dv, respectively.

TABLE 33—HUNTINGTON UNIT 2—VISIBILITY IMPROVEMENTS

Class I Area	LNB with SOFA (Δdv)	LNB with SOFA and SNCR (Δdv)	LNB with SOFA and SCR (Δdv)
Arches NP	0.625	0.816	1.316
Black Canyon of the Gunnison NP	0.143	0.184	0.292
Bryce Canyon NP	0.205	0.266	0.424
Canyonlands NP	0.776	1.016	1.657
Capitol Reef NP	0.449	0.584	0.955
Flat Tops WA	0.168	0.217	0.343
Grand Canyon NP	0.183	0.236	0.371
Mesa Verde NP	0.199	0.258	0.414
Zion NP	0.136	0.176	0.281

TABLE 34—HUNTINGTON UNIT 2—DAYS GREATER THAN 0.5 DECIVIEW

[Three year total]

Class I Area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	237	223	214	186
Black Canyon of the Gunnison NP	45	35	32	26
Bryce Canyon NP	36	26	26	23
Canyonlands NP	277	254	244	220
Capitol Reef NP	131	119	116	104
Flat Tops WA	64	44	39	31
Grand Canyon NP	40	36	35	30
Mesa Verde NP	63	48	43	31
Zion NP	21	17	16	15

TABLE 35—HUNTINGTON UNIT 2—DAYS GREATER THAN 1.0 DECIVIEW

[Three year total]

Class I Area	Baseline (days)	LNB with SOFA (days)	LNB with SOFA and SNCR (days)	LNB with SOFA and SCR (days)
Arches NP	146	122	118	98
Black Canyon of the Gunnison NP	16	8	7	4
Bryce Canyon NP	19	15	13	6
Canyonlands NP	175	153	149	126
Capitol Reef NP	91	75	70	59
Flat Tops WA	17	9	8	4
Grand Canyon NP	19	13	13	9
Mesa Verde NP	22	13	13	6
Zion NP	11	8	6	4

Select BART.

A summary of our impacts analysis for Huntington Unit 2 is presented in Table 36.

TABLE 36—SUMMARY OF HUNTINGTON UNIT 2 IMPACTS ANALYSIS

Control option	Annual emission rate (lb/MMBtu)	Emission reduction (tpy)	Total annual costs (\$)	Average cost effectiveness (\$/ton)	Incremental cost effectiveness (\$/ton)	Visibility impacts *		
						Improvement (dv)	Days >0.5 dv	Days >1.0 dv
LNB with SOFA	0.21	2,576	\$0.9M	\$365	.....	0.776	254	153
LNB with SOFA and SNCR.	0.17	3,264	3.5M	1,075	\$3,730	1.016	244	149
LNB with SOFA and SCR.	0.05	5,023	12.9M	2,563	\$5,326	1.657	220	126

* At the most impacted Class I area, Canyonlands National Park.

In determining what to co-propose as BART, we have taken into consideration all five of the statutory factors required by the CAA: The costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Later on we provide a justification for our selection of BART, including an explanation of how each of the CAA factors was used in that selection.

We have considered the energy and non-air quality environmental impacts of compliance and propose to find that they do not appreciably favor one control option over another, or preclude a particular control option from selection. The existing pollution controls have been accounted for in our evaluation of BART, and also would not favor or preclude any of the control options considered. And finally, we have considered the remaining useful life of the source and find that it is sufficiently long (greater than 20 years) so as not to favor or preclude any of the control options. As a result, the remaining factors—the costs of compliance and visibility improvement—are the primary factors that lead us to our proposed BART selection for Huntington Unit 2.

In order to select BART we propose to weigh the costs of compliance against visibility impacts by generally comparing them with BART determinations that have been made elsewhere. Specifically, we propose to compare the average cost-effectiveness, incremental cost-effectiveness, visibility improvement, and incremental visibility improvement for LNB and SOFA with SCR with BART determinations where the EPA and States have based their

determination on the same metrics. The most comparable determinations are the same as for Huntington Unit 1: The Laramie River Station, Hayden Station, and Cholla Power Plant determinations.

Based on these comparisons, we think LNB and SOFA with SCR is very cost-effective at \$2,563/ton, and provides substantial visibility benefits at several Class I areas. For example, the visibility improvement from that control option is 1.316 at Arches NP and 1.657 dv Canyonlands NP. The incremental cost-effectiveness of SCR, \$5,326/ton, is by comparison also reasonable. This comparison also shows that costs are justified in light of the substantial visibility benefits, both total and incremental.

In the case of Huntington, the unit level visibility improvements justify the most stringent level of control, SCR, for each of the two Huntington units. Necessarily, when we consider the source-wide visibility improvements, they will be larger and also justify the most stringent level of control. In addition, the unit level visibility improvements and source-wide visibility improvements at other impacted Class I areas, particularly Arches NP and Capitol Reef NP, support the most stringent level of control.

Accordingly, for Huntington Unit 2, we propose to find that BART for NO_x is LNB and SOFA with SCR, represented by an emission limit of 0.07 lb/MMBtu (30-day rolling average). The proposed BART emission limit of 0.07 lb/MMBtu allows for a sufficient margin of compliance for a 30-day rolling average limit that would apply at all times, including startup, shutdown, and malfunction.²²⁹ We are also proposing

²²⁹ Emission limits such as BART are required to be met on a continuous basis. See 70 FR 39104, 39172 (July 6, 2005) (stating that emissions limits including BART are to be met on a “continuous basis” in the BART Guidelines, section V); 42

monitoring, recordkeeping, and reporting requirements as described in our proposed regulatory text for 40 CFR 52.2336.

Under § 51.308(e)(1)(iv), “each source subject to BART [is] required to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision.” In light of the considerable effort involved to retrofit SCR, we propose that five years is as expeditiously as practicable. Therefore, we propose a compliance deadline of five years from the date our final FIP becomes effective.

4. Federal Monitoring, Recordkeeping, and Reporting

We have explained earlier in section III.C.4 that the CAA and 40 CFR part 51, subpart K require that SIPs, including the regional haze SIP, contain certain elements sufficient to ensure emission limits are practically enforceable. EPA is proposing to disapprove Utah’s NO_x BART Alternative along with the associated monitoring, recordkeeping and reporting requirements in SIP sections IX.H.21 and H.22. EPA is proposing regulatory language as part of our FIP that specifies monitoring, recordkeeping, and reporting requirements for all BART sources. For purposes of consistency, EPA is proposing to adopt language that is the same as we have adopted for other states in Region 8.

E. PM₁₀ BART Determinations

As discussed earlier in section IV.B.2, Utah determined that the PM₁₀ BART emission limit for Hunter Units 1 and 2 and Huntington Units 1 and 2 was 0.015 lb/MMBtu based on a three-run test average. Utah noted that because the most stringent technology is in place at

U.S.C. 7602(k) (noting that emission limits are to be on “a continuous basis”).

these units and that the PM₁₀ emission limits have been made enforceable in the SIP, no further analysis was required.

EPA has reviewed Utah's PM₁₀ BART streamlined five-factor analysis and PM₁₀ BART determinations for Hunter Units 1 and 2 and Huntington Units 1 and 2 and proposes to find that these determinations meet the requirements of 40 CFR 51.309(d)(4)(vii). The fabric filter baghouses installed at these BART units are considered the most stringent technology available. The emission limit of 0.015 lb/MMBtu at these units represents the most stringent emission limit for PM₁₀ and is within the range of PM₁₀ BART limits that EPA has approved in other states.²³⁰ Utah's use of a streamlined approach to the five-factor analysis is reasonable as the BART Guidelines provide that a comprehensive BART analysis can be avoided if a source commits to a BART determination that consists of the most stringent controls available.²³¹

Utah's regulatory text provides, "[e]missions of particulate (PM) shall not exceed 0.015 lb/MMBtu heat input from each boiler based on a 3-run test average."²³² It further states that "[s]tack testing for the emission limitation shall be performed each year on each boiler."²³³ We note that BART limits must apply at all times.²³⁴ Furthermore, EPA's credible evidence rule requires that a state's plan must not preclude the use of any credible evidence or information, which can include evidence and information other than the test method specified in the plan, that would indicate whether a source was in compliance with applicable requirements.²³⁵

Consistent with these requirements, we propose to interpret Utah's regulatory text as imposing a PM₁₀ limit of 0.015 lb/MMBtu that applies at all times and does not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source is in compliance with the limit.

F. Consultation With FLMs

As discussed previously in section IV.G, Utah conducted FLM consultation during late 2014, providing over 60 days

²³⁰ For example, Wyoming, Naughton Unit 3, Jim Bridger Units 1 through 4, Dave Johnston Units 3 and 4, and Wyodak Unit 1. See 40 CFR 52.2636; 79 FR 5220, (Jan. 30, 2014).

²³¹ 40 CFR 51, appendix Y, section IV.D.1.9.

²³² Utah Regional Haze State Implementation Plan: Emission Limits & Operating Practices, Sections IX.H.22.a.i.A–B, IX.H.22.b.i.A–B (2015).

²³³ *Id.*

²³⁴ See 42 U.S.C. 7602(k); 40 CFR part 51, appendix Y, section V.

²³⁵ 40 CFR 51.212(c).

prior to the December 1, 2014 public hearing. Subsequently, the National Park Service provided extensive comments in response to a second public comment period in April 2015. Based on these considerations, we propose to find that Utah has met the requirements of 40 CFR 308(i)(2).

VII. EPA's Proposed Actions

EPA is proceeding with co-proposals on Utah's June 3, 2015 and October 20, 2015 regional haze SIP revisions. Later on is a summary of our proposed actions. As noted above, EPA intends to finalize only one proposal, although it may differ from what is presented here based on any comments and additional information we receive.

A. Proposed Approval

We are proposing to approve the regional haze SIP revisions submitted by the State of Utah on June 3, 2015 and October 20, 2015:

1. We are proposing to approve these aspects of the State's June 4, 2015, which rely on elements from prior approvals²³⁶:

- NO_x BART Alternative that includes NO_x, and SO₂, emission reductions from Hunter Units 1 through 3, Huntington 1 and 2, and Carbon Units 1 and 2, and PM₁₀ emission reductions from Carbon Units 1 and 2.

- BART determinations and emission limits for PM₁₀ at Hunter Units 1 and 2 and Huntington Units 1 and 2.

- Monitoring, recordkeeping and reporting requirements for units subject to the BART Alternative and the PM₁₀ emission limits, including conditional approval of the recordkeeping requirements for the PM₁₀ emission limits.

2. We are proposing to approve these elements of the State's October 20, 2015 SIP submittal:

- Enforceable commitments to revise, at a minimum, SIP Section XX.D.3.c and State rule R307–150 by March 2018 to clarify emission inventory requirements for tracking compliance with the SO₂ milestone and properly accounting for the SO₂ emission reductions due to the closure of the Carbon plant.

B. Proposed Partial Disapproval/ Approval and Federal Implementation Plan

1. We are proposing to approve these elements of the State's SIP submittals,

²³⁶ As necessary for our proposed approval, we propose to fill gaps in the 2015 Utah RH SIP submittals with the following already-approved sections from the 2011 Utah RH SIP: Section XX.B.8, Figures 1 and 2, Affected Class I Areas, pp. 8–9; Section XX.D.6.b, Table 3, BART-Eligible Sources in Utah, p. 21; Section. XX.D.6.c, Sources Subject to BART, pp. 21–23.

which rely on elements from prior approvals:²³⁷

- BART determinations and emission limits for PM₁₀ at Hunter Units 1 and 2 and Huntington Units 1 and 2.

- Monitoring, recordkeeping, and reporting requirements for units subject to the PM₁₀ emission limits, including conditional approval of the recordkeeping requirements for the PM₁₀ emission limits.

2. We are proposing to disapprove these aspects of the State's June 4, 2015 SIP:

- NO_x BART Alternative that includes NO_x, and SO₂, emission reductions from Hunter Units 1 through 3, Huntington 1 and 2, and Carbon Units 1 and 2, and PM₁₀ emission reductions from Carbon Units 1 and 2.

- Monitoring, recordkeeping and reporting requirements for units subject to the BART Alternative.

- The enforceable commitments to revise, at a minimum, SIP Section XX.D.3.c and State rule R307–150 by March 2018.

3. We are proposing that if we finalize our co-proposal to disapprove the NO_x BART Alternative, we will promulgate a FIP to address the deficiencies in the Utah regional haze SIPs. The proposed FIP includes the following elements:

- NO_x BART determinations and limits for Hunter Units 1 and 2, Huntington Units 1 and 2.

- Monitoring, recordkeeping, and reporting requirements applicable to Hunter Units 1 and 2, and Huntington Units 1 and 2.

VIII. 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" under the terms of Executive Order 12866²³⁸ and was therefore not submitted to the Office of Management and Budget (OMB) for review. This proposed rule applies to only two facilities containing four BART units. 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 (PRA).²³⁹ Because this proposed rule applies to just two facilities, the PRA does not apply.

²³⁷ *Id.*

²³⁸ 58 FR 51735, 51738 (Oct. 4, 1993).

²³⁹ 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities as small entities are not subject to the requirements of this rule. Under the full approval approach in this proposed rule, EPA would approve all elements of the State's submittals as meeting the federal regional haze requirements and therefore EPA's action does not impose any requirements.²⁴⁰ Under the partial approval approach, EPA would disapprove the state's SIP submittal and promulgate a FIP that consists of imposing federal controls to meet the BART requirement for emissions on four specific BART units at two facilities in Utah. The net result of this action is that EPA is proposing direct emission controls on selected units at only two sources, and those sources are large electric generating plants that are not owned by small entities, and therefore the owners are not a small entities under the RFA.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local,

and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and 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 actions with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million²⁴¹ by State, local, or Tribal governments or the private sector in any one year. The private sector expenditures that would result from the approach to promulgate a FIP would include BART controls for all four units at the Hunter and Huntington plants would be \$51.5 million²⁴² per year. Additionally, we do not foresee significant costs (if any) for state and local governments. Thus, because the annual expenditures associated with the approach to promulgate a FIP are less than the threshold of \$100 million in

any one year, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, *Federalism*,²⁴³ revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications."²⁴⁴ "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."²⁴⁵ Under Executive Order 13132, EPA may not issue a regulation "that has federalism implications, that imposes substantial direct compliance costs, . . . and that is not required by statute, unless [the federal government provides the] funds necessary to pay the direct [compliance] costs incurred by the State and local governments," or EPA consults with state and local officials early in the process of developing the final regulation.²⁴⁶ EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the final regulation.

This action does not have federalism implications. Neither of the two approaches presented in this proposed rule will have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under the full approval approach, this proposed action would merely approve the state SIP as federally enforceable. Under the partial approval approach, this proposed action would merely address the State not fully meeting its

²⁴¹ Adjusted to 2014 dollars, the UMRA threshold becomes \$152 million.

²⁴² Andover Technology Partners, *Cost of NO_x BART Controls on Utah EGUs*, to EC/R, Inc. (Oct. 22, 2015). Andover Technology Partners is a subcontractor to EC/R Incorporated.

²⁴³ 64 FR 43255, 43255-43257 (Aug. 10, 1999).

²⁴⁴ 64 FR 43255, 43257.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁰ See, e.g., *Mid-Tex Elec. Coop., Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (hereinafter *Mid-Tex*).

obligation under the CAA to adequately address the visibility requirements of Part C of Title I of the CAA in its SIP and to prohibit emissions from interfering with other states measures to protect visibility. Thus, Executive Order 13132 does not apply to this action.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments”, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”²⁴⁷ This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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 the environmental health or safety risks addressed by this action do not present a disproportionate risk to children. Note, however, that emissions reductions achieved as a result of this rule, under either proposal, will have a positive benefit on children’s health, as they are especially vulnerable to impacts from emissions.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. Section 12(d) of NTTAA, Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to consider and use “voluntary consensus standards” in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and

business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898, establishes federal executive policy on environmental justice.²⁴⁸ 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.

I certify that the approaches under this proposed rule will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous/tribal populations. The results of this evaluation are available in the docket. Both approaches would result in overall emission reductions for NO_x, SO₂ and PM₁₀ and therefore an increase in the level of environmental protection for all affected populations. EPA, however, will consider any input received during the public comment period regarding environmental justice considerations.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: December 16, 2015.

Shaun L. McGrath,

Regional Administrator, Region 8.

For the reasons discussed in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 52 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 TT—Utah

■ 2. Add § 52.2336 to read as follows:

§ 52.2336 Federal implementation plan for regional haze.

(a) *Applicability.* (1) This section applies to each owner and operator of the following emissions units in the State of Utah:

(i) PacifiCorp Hunter Plant Units 1 and 2; and

(ii) PacifiCorp Huntington Plant Units 1 and 2.

(b) *Definitions.* Terms not defined here shall have the meaning given them in the Clean Air Act or EPA’s regulations implementing the Clean Air Act. For purposes of this section:

(1) *BART* means Best Available Retrofit Technology.

(2) *BART unit* means any unit subject to a Regional Haze emission limit in table 1 of this section.

(3) *Continuous emission monitoring system or CEMS* means the equipment required by this section to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of NO_x emissions, diluent, or stack gas volumetric flow rate.

(4) *FIP* means Federal Implementation Plan.

(5) The term *lb/MMBtu* means pounds per million British thermal units of heat input to the fuel-burning unit.

(6) *NO_x* means nitrogen oxides.

(7) *Operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the BART unit. It is not necessary for fuel to be combusted for the entire 24-hour period.

(8) The *owner/operator* means any person who owns or who operates, controls, or supervises a unit identified in paragraph (a) of this section.

(9) *Unit* means any of the units identified in paragraph (a) of this section.

(c) *Emissions limitations.* (1) The owners/operators of emissions units subject to this section shall not emit, or cause to be emitted, NO_x in excess of the following limitations:

²⁴⁷ 65 FR 67249, 67250 (Nov. 9, 2000).

²⁴⁸ 59 FR 7629, 7629 (Feb. 16, 1994).

TABLE 1—TO § 52.2336—EMISSION LIMITS FOR BART UNITS

Source name/BART unit	NO _x emission limit—lb/MMBtu (30-day rolling average)
PacifiCorp Hunter Plant/Unit 1 ¹	0.07
PacifiCorp Hunter Plant/Unit 2 ¹	0.07
PacifiCorp Huntington Plant/Unit 1 ¹	0.07
PacifiCorp Huntington Plant/Unit 2 ¹	0.07

¹ The owners and operators of PacifiCorp Hunter Units 1 and 2 and Huntington Units 1 and 2, shall comply with the NO_x emission limit for BART of 0.07 lb/MMBtu and other requirements of this section by [date five years from the effective date of the final rule].

(2) These emission limitations shall apply at all times, including startups, shutdowns, emergencies, and malfunctions.

(d) *Compliance date.* (1) The owners and operators of PacifiCorp Hunter Units 1 and 2 shall comply with the NO_x emission limit of 0.07 lb/MMBtu and other requirements of this section by [date five years from the effective date of the final rule]. The owners and operators of PacifiCorp Huntington Units 1 and 2 shall comply with the NO_x emission limit of 0.07 lb/MMBtu and other requirements of this section by [date five years from the effective date of the final rule].

(e) *Compliance determinations for NO_x.* (1) For all BART units:

(i) *CEMS.* At all times after the earliest compliance date specified in paragraph (d) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR part 75, to accurately measure NO_x, diluent, and stack gas volumetric flow rate from each unit. The CEMS shall be used to determine compliance with the emission limitations in paragraph (c) of this section for each unit.

(ii) *Method.* (A) For any hour in which fuel is combusted in a unit, the owner/operator of each unit shall calculate the hourly average NO_x emission rate in lb/MMBtu at the CEMS in accordance with the requirements of 40 CFR part 75. At the end of each

operating day, the owner/operator shall calculate and record a new 30-day rolling average emission rate in lb/MMBtu from the arithmetic average of all valid hourly emission rates from the CEMS for the current operating day and the previous 29 successive operating days.

(B) An hourly average NO_x emission rate in lb/MMBtu is valid only if the minimum number of data points, as specified in 40 CFR part 75, is acquired by both the pollutant concentration monitor (NO_x) and the diluent monitor (O₂ or CO₂).

(C) Data reported to meet the requirements of this section shall not include data substituted using the missing data substitution procedures of subpart D of 40 CFR part 75, nor shall the data have been bias adjusted according to the procedures of 40 CFR part 75.

(f) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(1) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(2) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 75.

(3) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(4) Any other CEMS records required by 40 CFR part 75.

(g) *Reporting.* All reports under this section shall be submitted to the Director, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8, Mail Code 8ENF-AT, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

(1) The owner/operator of each unit shall submit quarterly excess emissions reports for NO_x BART units no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (c) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of

each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(2) The owner/operator of each unit shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments. The owner/operator of each unit shall also submit results of any CEMS performance tests required by 40 CFR part 75.

(3) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by paragraphs (g)(1) and (2) of this section.

(h) *Notifications.* (1) The owner/operator shall promptly submit notification of commencement of construction of any equipment which is being constructed to comply with the NO_x emission limits in paragraph (c) of this section.

(2) The owner/operator shall promptly submit semi-annual progress reports on construction of any such equipment.

(3) The owner/operator shall promptly submit notification of initial startup of any such equipment.

(i) *Equipment operation.* At all times, the owner/operator shall maintain each unit, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(j) *Credible evidence.* Nothing in this section shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with requirements of this section if the appropriate performance or compliance test procedures or method had been performed.

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Part III

Federal Trade Commission

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 306

RIN 3084-AB39

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Final rule.

SUMMARY: The Commission issues final amendments to its Rule for Automotive Fuel Ratings, Certification and Posting (“Fuel Rating Rule” or “Rule”) by adopting rating, certification, and labeling requirements for certain ethanol-gasoline blends. The amendments further the Rule’s goal of helping purchasers identify the correct fuel for their vehicles.

DATES: The amendments published in this document will become effective July 14, 2016. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 2016.

ADDRESSES: Relevant portions of the proceeding, including this document, are available at www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: R. Michael Waller, (202) 326-2902, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 4, 2014, the Commission published a Notice of Proposed Rulemaking (“2014 NPRM”) requesting comments on: (1) New rating, certification, and labeling requirements for gasoline blends with more than 10 percent ethanol (“Ethanol Blends”); and (2) an alternative method to determine the fuel rating of gasoline (“octane rating”).¹ After considering the comments received in response as well as Environmental Protection Agency (“EPA”) decisions related to ethanol blends, the Commission now issues final ethanol fuel amendments.²

¹ *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Notice of Proposed Rulemaking*, 79 FR 18850 (Apr. 4, 2014).

² EPA’s decisions permitted the use of ethanol blends between 10 to 15 percent concentration (“E15”) for 2001 and newer conventional vehicles. In 2010, the EPA approved E15 for 2007 and newer conventional vehicles. *Environmental Protection Agency: Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of Administrator (“EPA Waiver Decision I”)*, 75 FR 68094 (Nov. 4, 2010). Then, it expanded its approval to 2001 and

As explained below, the final amendments require that entities rate and certify all ethanol fuels to provide useful information to consumers about ethanol concentration and suitability for their cars and engines. Responding to the comments, the final amendments provide greater flexibility for businesses to comply with the ethanol labeling requirements, and do not adopt the alternative octane rating method proposed in the 2014 NPRM.

This document first provides background on the Fuel Rating Rule. It then summarizes comments in response to the 2014 NPRM regarding ethanol blend ratings and labeling as well as octane rating testing. Finally, it provides the Commission’s analysis and final rule.

II. Background

A. The Fuel Rating Rule

The Commission first promulgated the Fuel Rating Rule, 16 CFR part 306 (then titled the “Octane Certification and Posting Rule”), in 1979 pursuant to the Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C. 2801 *et seq.*³ The Rule originally applied only to gasoline. The Energy Policy Act of 1992 amended Title II of the PMPA to extend the Commission’s authority, requiring it to determine automotive fuel certification and posting requirements for all liquid automotive fuels, including ethanol-gasoline blends.⁴ Pursuant to these amendments, the Commission expanded the Rule to cover “alternative liquid fuels” in 1993, including ethanol blends below 70 percent concentration.⁵

newer vehicles based on additional test data. *Environmental Protection Agency, Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator (“EPA Waiver Decision II”)*, 76 FR 4662 (Jan. 26, 2011). EPA soon thereafter promulgated complementary regulations providing “labeling requirements for fuel pumps that dispense E15 to alert consumers to the appropriate and lawful use of the fuel.” *Environmental Protection Agency: Regulation to Mitigate the Misfueling of Vehicles and Engines with Gasoline Containing Greater than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs; Final Rule (“EPA Final Rule to Mitigate Misfueling”)*, 76 FR 44406 (July 25, 2011).

³ *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule*, 44 FR 19160 (Mar. 30, 1979).

⁴ Section 1501(b) of Public Law 102-486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(6), (17)-(18)). The statute defines the term “automotive fuel” to mean liquid fuel of a type distributed for use in any motor vehicle. Section 1501(b) of Public Law 102-486, 106 Stat. 2776, 2996-7 (codified at 15 U.S.C. 2821(6)).

⁵ *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule (“1993 Final Rule”)*, 58 FR 41356, 41358 (Aug. 3, 1993).

However, the current Rule’s non-exhaustive list of alternative liquid fuels does not expressly include these ethanol blends.⁶

For covered fuels, the Rule mandates methods for rating and certifying, as well as posting the ratings at the point of sale. For most alternative fuels,⁷ the rating is “the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel” (e.g., “Methanol/Minimum 80% Methanol”).⁸ Any covered entity, including a distributor, that transfers a fuel must certify the fuel’s rating to the transferee either by including it in papers accompanying the transfer or by letter.⁹ The Rule further requires retailers to post this fuel rating by adhering a label to the retail fuel pump and provides precise specifications (e.g., content, size, color, and font) for these labels.¹⁰

B. Procedural History

In March 2009, as part of a systematic review of the FTC’s rules and guides, the Commission solicited general comments on the Fuel Rating Rule.¹¹ After reviewing those comments, the Commission published a Notice of Proposed Rulemaking in March 2010 (“2010 NPRM”) proposing three amendments addressing ethanol fuels.¹² First, the proposed amendments would have required ratings disclosing an ethanol blend’s ethanol concentration (e.g., 40 percent ethanol), rather than the “principal component” concentration. Second, the proposed amendments would have required retailers to post labels disclosing a blend’s ethanol content by displaying a broad range of 10 to 70 percent ethanol, a narrower range (e.g., 30-40 percent ethanol), or a specific percentage. Finally, the proposed amendments would have required all ethanol fuel labels to disclose “may harm some vehicles” and “check owner’s manual.” In the 2010 NPRM, the Commission explained that “[t]his additional information should assist consumers in identifying the proper fuel for their vehicles.”¹³ In April 2011, the Commission published

⁶ 16 CFR 306.0(i)(2).

⁷ The Rule requires rating biodiesel fuels by the percentage of biodiesel or biomass-based diesel in the fuel.

⁸ 16 CFR 306.0(j)(2).

⁹ 16 CFR 306.6.

¹⁰ 16 CFR 306.10, 306.12.

¹¹ *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Request for Public Comments*, 74 FR 9054 (Mar. 2, 2009).

¹² *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Notice of Proposed Rulemaking*, 75 FR 12470 (Mar. 16, 2010).

¹³ 2010 NPRM, 75 FR at 12474.

final amendments providing an alternative method of rating gasoline octane and making other minor changes to the Rule.¹⁴ At that time, the Commission declined to adopt final ethanol amendments, noting that it needed additional time to consider ethanol labeling in light of comments received in response to the 2010 NPRM and a recent EPA decision permitting the use of certain ethanol blends between 10 and 15 percent concentration (“E15”) in newer conventional vehicles.¹⁵

In April 2014, the Commission published a second NPRM proposing that ethanol blend labels disclose the exact percentage of ethanol, or a percentage rounded to the nearest multiple of ten.¹⁶ The proposal also required that the label state “Use Only in Flex-Fuel Vehicles/May Harm Other Engines.”¹⁷ In addition, to prevent consumer confusion and avoid unnecessary burden on industry, the proposed rule exempted EPA-approved E15 (“EPA E15”) from the Rule’s labeling requirements. Finally, the 2014 NPRM proposed allowing octane ratings determined by infrared spectrophotometry.¹⁸

III. Comments in Response to the 2014 NPRM

Many comments received in response to the 2014 NPRM supported the need for new labeling and testing methods.¹⁹ However, commenters suggested several modifications, including defining gasoline to include E15, an octane label for Ethanol Blends, an alternative label for Ethanol Blends of 51 to 83 percent, and referee testing methods for octane ratings determined through infrared spectrophotometry.

A. Proposed Definition of “Ethanol Blend” and Exemption for EPA E15

The 2014 NPRM proposed including E15 in the definition of “Ethanol Blend,” but not requiring retailers to post a separate FTC fuel rating label for EPA E15.²⁰ The Commission intended its proposal to facilitate coverage of all concentrations of ethanol blends above 10 percent and to help consumers

quickly identify ethanol blends at pumps.²¹

Several commenters, including fuel manufacturers, a state regulator, and an ethanol industry group, urged the FTC to exclude E15 from the definition of Ethanol Blends altogether.²² For example, Tesoro suggested that “Ethanol Blend” be defined as “a mixture of gasoline and ethanol containing more than 15 percent ethanol” and that the definition of “gasoline” include concentrations below 15 percent, *i.e.*, E10 and E15.²³ According to Tesoro, these changes would subject E15 to the Rule’s octane labeling and certification requirements for gasoline.²⁴ Moreover, defining E15 as gasoline would exempt E15 from the ethanol blend labeling requirements and prevent an overlap with EPA’s E15 regulations.²⁵ According to Tesoro, “all E15 is subject to the EPA Misfueling Mitigation rule.”²⁶ Phillips66 agreed and added that all Ethanol Blends below 16 percent are subject to EPA regulations on blendstock and finished gasoline, including “vapor pressure, sulfur, benzene, etc.”²⁷ It argued that defining gasoline to include E15 would avoid “confusion and conflict with EPA regulations and requirements.”²⁸ API worried that the 2014 NPRM exemption for EPA E15 “may allow a supplier to differentiate ‘EPA-approved E15’ from ‘non-EPA-approved E15’ and, for the latter, avoid” the EPA’s requirements.²⁹ Thus, it concluded that the FTC Rule should exclude E15 from the definition of Ethanol Blends.³⁰

Finally, the Tennessee Department of Agriculture (“TN Dept. Ag.”) and the National Conference of Weights and Measures (“NCWM”) urged the Commission to refer to Ethanol Blends as “Ethanol Flex Fuel Blends” or “Ethanol Flex Fuel.”³¹ TN Dept. Ag.

explained that the relevant ASTM International (“ASTM”) standard for ethanol fuel blends, ASTM D5798, recognizes “Ethanol Flex-Fuel” as the most standardized term for “higher level” ethanol blends (*i.e.*, blends from 51 to 83 percent volume ethanol).³² Additionally, TN Dept. Ag. explained that the term “Ethanol Flex Fuel” is consistent with NCWM’s definition of ethanol blends.³³

B. Octane Rating for Ethanol Blends

Although the 2014 NPRM did not propose an octane rating for Ethanol Blends, eight commenters suggested that the Commission require one to prevent misfueling, ensure fuel quality, or bolster ethanol’s competitiveness.³⁴ Two state regulators and ethanol industry groups asserted that, without such a rating, consumers could not choose the EPA E15 appropriate for their vehicle.³⁵ The California Department of Food and Agriculture (“CA Dept. Ag.”) explained that “[v]ehicles manufactured after 2001 also have varying octane requirements, and requiring use of the US EPA label alone does not ensure that consumers will purchase a fuel that meets their vehicle’s needs.”³⁶

Automotive manufacturing groups argued for an octane rating for Ethanol Flex Fuels of less than 51 percent ethanol: “Consumers have come to expect and have a right to know the octane rating of the fuel offered for sale The correct octane rating for the vehicle is provided in the vehicle owner’s manual and therefore the correlating octane information should be available from the rating on the retail pump.”³⁷ These commenters added, however, that “at this point an octane AKI posting for Ethanol Flex Fuel (E51–83%) as defined by ASTM International is not yet practically feasible given variable composition.”³⁸ The NADA, an automobile dealers group, suggested that retailers display octane ratings for

²¹ 79 FR at 18857.

²² See Phillips66 comment at 1; Renewable Fuels Association (“RFA”) comment at 1–2; Tesoro comment Att. 1 at 1–2; American Fuel & Petrochemical Manufacturers (“AFPM”) comment at 2–3; American Petroleum Institute (“API”) comment at 2; BP Products North America (“BP Products”) comment at 1; Chevron comment at 2; Marathon Petroleum Corporation (“Marathon”) comment at 1–2; Tennessee Department of Agriculture (“TN Dept. Ag.”) comment at 2–3.

²³ Tesoro comment Att. 1 at 1–2; see AFPM comment at 2–3; API comment at 2; BP Products comment at 1; Chevron comment at 2; TN Dept. Ag. comment at 2–3.

²⁴ Tesoro comment Att. 1 at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Phillips66 comment at 1.

²⁸ *Id.*

²⁹ API comment at 2; see also Marathon comment at 2.

³⁰ API comment at 2.

³¹ TN Dept. Ag. comment at 1–3; NCWM comment at 6.

³² TN Dept. Ag. comment at 1–2 (referring to ASTM International D5798 Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines).

³³ *Id.* at 2.

³⁴ Tesoro comment at 1, Att. 1 at 5–6; Alliance of Automobile Manufacturers and Association of Global Automakers (“AAM/AGA”) comment at 4–5; National Automobile Dealers Association (“NADA”) comment at 3; American Coalition for Ethanol (“ACE”) comment at 2; TN Dept. Ag. comment at 1; California Department of Food and Agriculture (CA Dept. Ag.) comment; Growth Energy comment at 2; Davis comment.

³⁵ ACE comment at 2; Growth Energy comment at 2; TN Dept. Ag. comment at 1; CA Dept. Ag. comment.

³⁶ CA Dept. Ag. comment.

³⁷ AAM/AGA comment at 4.

³⁸ *Id.* at 4–5.

¹⁴ Federal Trade Commission: *Automotive Fuel Ratings Certification and Posting: Final Rule*, 76 FR 19684 (Apr. 8, 2011).

¹⁵ *Id.* at 19689.

¹⁶ 2014 NPRM, 79 FR 18850, 18859.

¹⁷ *Id.* at 18857.

¹⁸ *Id.* at 18861.

¹⁹ The Commission received 357 comments in response to the 2014 NPRM. These comments are located at: <http://www.ftc.gov/policy/public-comments/initiative-555>.

²⁰ See 40 CFR 80.1501; see also 2014 NPRM, 79 FR at 18865.

all automotive fuels: “[c]onsumers often and wisely consider a fuel’s octane rating when making appropriate vehicle fueling decisions, whether or not an ethanol blend is involved.”³⁹

Other commenters argued that an octane rating is important for communicating ethanol’s benefits. Ethanol proponents Growth Energy and ACE noted that ethanol’s high octane rating represents an important advantage for ethanol.⁴⁰ ACE explained that “[c]lean and high octane is one of ethanol’s greatest competitive advantages in the marketplace, and while nothing in the rule would preclude a marketer from posting the octane rating of E15, ACE believes this proposal gives oil companies the power to prevent their branded marketers from displaying the higher octane rating of E15.”⁴¹ The TN Dept. Ag. added that “[r]equiring the [octane rating] as the legal Automotive Fuel Rating for E15 will benefit the consumer and both the ethanol and petroleum industries by maintaining a level playing field for marketing the various grades of gasoline and gasoline-ethanol blends.”⁴²

Tesoro and automaker groups argued for certification and display of octane rating to ensure the quality of the gasoline used for Ethanol Flex Fuels.⁴³ AAM/AGA explained that, “[an] octane rating label will also support compliance/enforcement to be sure the correct octane tracks with the blend [Ethanol Flex Fuel], and is not inappropriately low due to lower octane BOB ([Gasoline] Blendstock for Oxygenate Blending) used” in the blending.⁴⁴

C. Proposed Ethanol Blend Pump Labeling

Commenters disagreed about the proposed fuel pump label for Ethanol Blends. Some supported the Commission’s proposal and others urged more detail and precision in the label disclosure, while still others sought less detail and precision. Finally, many commenters argued that there is no label that would be sufficient to prevent misfueling and, therefore, opposed the Commission’s proposal.

1. Required Label Statement

Commenters, including petroleum retailers and industry groups, auto manufacturing groups, ethanol producer

groups, and a state regulator, all supported inclusion of “Use Only in Flex-Fuel Vehicles” on the label.⁴⁵ Few commenters, however, supported the “May Harm Other Engines” language without change.⁴⁶

Ethanol producer groups argued “May Harm Other Engines” is scientifically unsubstantiated and unduly harmful to the ethanol industry.⁴⁷ For example, RFA stated that it is “not aware of any credible evidence showing that misfueling has been a problem at flex fuel dispensers that simply advise the consumer” that the fuel is for flex-fuel vehicles only.⁴⁸ IRFA reported that there have been no reports of misfueling, and ACE stated “that there has been little, if any, harm or damage reported” from misfueling.⁴⁹ According to RFA, “the proposed language . . . does not appear to be based on scientific evidence and would undoubtedly deter some [flex-fuel vehicle] drivers from purchasing the fuel[.]”⁵⁰ IRFA added, “[n]o scientific evidence exists to prove that any vehicles may be harmed [by flex-fuel blends].”⁵¹ Ethanol groups also described the phrase as unfair because labels for other fuels (*e.g.*, diesel) do not include this language.⁵² Growth Energy added that the phrase is vague, does nothing to prevent misfueling, and “further confuses the consumer.”⁵³ It suggested an alternative phrase: “Attention . . . Not Approved for Other Engines.”⁵⁴

Conversely, some commenters viewed “May Harm Other Engines” as too weak. Citing concerns such as misfueling, automobile performance, warranty

coverage, damage to small engines, and consistency with NCWM’s label, the NCWM, gasoline manufacturers and retailers, automobile manufacturers, a regulator, and two individual commenters suggested adding “Check Owner’s Manual” or “Consult Vehicle Owner’s Manual for Fuel Recommendations.”⁵⁵ AFPM and other commenters explained that NCWM’s suggested label for ethanol blends includes the phrase “Check Owner’s Manual.”⁵⁶ Retailers expressed concern about liability under laws that prohibit misfueling and suggested that the label contain an “advisory word” such as “Attention.”⁵⁷ Similarly, other commenters proposed adding “Warning” or “Caution” to the label.⁵⁸ Commenters also highlighted harm to engines from misfueling and advocated for: “Do Not Use in Other Engines May Cause Harm;”⁵⁹ and “Don’t Use in other Vehicles, Boats, or Gasoline Powered Engine. It May Cause Damages;”⁶⁰ among others.⁶¹

AAM/AGA added that “‘May Harm . . .’ does not convey the intended absolute prohibition on its use for non-flex-fuel equipment, whereas ‘Do Not Use . . .’ is a clear, simple instruction.”⁶² AAM/AGA further expressed “strong concerns about the risks for consumers from misfueling vehicles with ethanol blends,” including mechanical damage on engine parts and the fuel pump as well as improper illumination of the malfunction indicator light (“MIL”) that will reduce consumer confidence in this

⁴⁵ RFA comment at 5; AAM/AGA comment at 2; Iowa Renewable Fuels Association (“IRFA”) comment at 2; AAM/AGA comment at 2; ACE comment Att. (May 20, 2010 comment at 3); Petroleum Marketers and Convenience Stores of Iowa (“PMCSI”) comment; Outdoor Power and Equipment Institute/National Marine Manufacturers Association (“OPEI/NMMA”) comment at 14; CA Dept. Ag. comment; Growth Energy comment at 1; Marathon comment at 3; Davis comment. Phillips66, Tesoro, AFPM, API, and NCWM suggest “For Use in Flexible Fuel Vehicles (FFV) Only.” Phillips66 comment at 2; Tesoro comment Att. 1 at 3; AFPM comment at 4; API comment at 3; NCWM comment at 4; BP Products comment at 1; Chevron comment at 1.

⁴⁶ See Center for Auto Safety (“CAS”) comment at 1; CA Dept. Ag. comment at ¶ 2.

⁴⁷ RFA comment at 5; see also IRFA comment at 2; ACE comment at 1; Growth Energy comment at 1. These groups reiterated concerns raised in their comments to the March 16, 2010 NPRM, available at <https://www.ftc.gov/policy/public-comments/initiative-335>.

⁴⁸ RFA comment at 5.

⁴⁹ IRFA comment at 1; ACE comment at 2.

⁵⁰ RFA comment at 5.

⁵¹ IRFA comment at 2.

⁵² RFA comment at 5–6; IRFA comment at 2; ACE comment at 1.

⁵³ Growth Energy comment at 1.

⁵⁴ *Id.*

⁵⁵ Phillips66 comment at 2; Tesoro comment Att. 1; AFPM comment at 3; Chevron comment at 1; BP Products at 1; API comment at 3; AAM/AGA comment at 3; PMCSI comment; NCWM comment at 6; OPEI/NMMA comment at 19; TN Dept. Ag. comment at 2; McComas comment; Lori Jacobson comment.

⁵⁶ AFPM comment at 4; Tesoro comment Att. 1; Phillips66 comment at 2; NCWM comment at 4, 6.

⁵⁷ National Association of Convenience Stores/Society of Independent Gasoline Marketers of America (“NACS/SIGMA”) comment at 3–4.

⁵⁸ AAM/AGA comment at 3; OPEI/NMMA comment at 19.

⁵⁹ OPEI/NMMA comment at 14; AAM/AGA comment at 2–3; see NADA comment at 2 (suggests replacing “May Harm Other Engines” with “Do Not Use in Other Engines”).

⁶⁰ Mississippi State Chemical Laboratory (“MSU Chem. Lab.”) comment.

⁶¹ Pipkorn comment (“I think the label should include a large print warning on the ethanol fuel pumps that ethanol fuels will cause harm, damage and possibly destroy your engine and fuel systems!”); Scally comment (“Since ethanol is known to damage engines, why don’t you just say that at the pumps? That would be much more understandable for the general public.”); Seldon comment (“Any labels for gasoline containing E–15 can only honestly say ‘POISON for gasoline engines’—DO NOT USE!”); Haines comment (“Do Not Use—May Cause Engine Damage.”).

⁶² AAM/AGA comment at 3.

³⁹ NADA comment at 3.

⁴⁰ Growth Energy comment at 2; ACE comment at 2.

⁴¹ ACE comment at 2.

⁴² TN Dept. Ag. comment at 2.

⁴³ Tesoro comment at 1, Att. 1 at 5–6; AAM/AGA comment at 4–5.

⁴⁴ AAM/AGA comment at 4–5.

diagnostic tool.⁶³ AAM/AGA included letters from 12 automakers about the potential for damage to automobiles from ethanol blends above 10 percent ethanol. In these letters, the automakers expressed concern about vehicle damage not covered by vehicle warranties and reduced fuel efficiency.⁶⁴ Marathon argued for the word “damage” in lieu of “harm,” which it considers an insufficient warning to owners of small engines, motorcycles, and other non-flex fuel vehicles.⁶⁵ Groups representing motorcycle, marine, and other small engine manufacturers and users also cited evidence of engine damage from ethanol blends.⁶⁶

Finally, some commenters proposed changes to the color of the labels and size of the fonts. For example, AAM/AGA recommended increasing the font sizes of the language on the labels to “ease reading them.”⁶⁷ API and supporting commenters recommended a larger label, matching the size of the EPA’s E15 label.⁶⁸ NCWM proposed larger type than the 2014 NPRM and greater flexibility for retailers in the placement of particular components of the label on fuel pumps as well as colors and font styles.⁶⁹

2. Ethanol Percentage Disclosure

Three commenters supported the FTC’s proposed ethanol percentage label disclosures.⁷⁰ Seven called for more precise disclosures.⁷¹ Thirteen urged the FTC to permit less precise disclosures, such as a single label for 51 to 83 percent ethanol blends.⁷²

Commenters supporting more precise disclosures argued for 5 percent increments, instead of the 10 percent increments in the proposal. They claimed that the narrower range would allow retailers to use commercially

available ethanol blend dispensers without confusing or deceiving consumers.⁷³ AAM/AGA added that “[u]sing units of 5 avoids the potential perception that FTC’s proposed units of 10 somehow inhibit the ability to market an E25 fuel [albeit the proposed regulatory language in the NPRM allows the option for labeling the exact % ethanol content in proposed Sec. 306(12)(a)(4)(A)].”⁷⁴

Most commenters who proposed less precise disclosures⁷⁵ generally supported the National Conference for Weights and Measures (“NCWM”) proposal to allow businesses to round the ethanol content to the nearest ten percent for ethanol blends below 51 percent ethanol (“Mid-level Blends”) and post a single label for blends from 51 to 83 percent (“High-level Blends”).⁷⁶ These commenters explained that engines will not cold-start during winter months if the ethanol concentration is too high. As a result, High-level Blends contain a changing ratio of ethanol to gasoline during colder months to ensure performance and compliance with ASTM International (“ASTM”) specifications.⁷⁷ Commenters worried that manufacturers and sellers of High-level Blends would, therefore, incur high costs resulting from constantly changing labels and that these changes would cause customer confusion. For example, the Renewable Fuels Association (“RFA”) stated that “[a] requirement to change the label every time the ethanol content fluctuates would be burdensome, costly, and confusing;” moreover, simultaneously posting “multiple labels for every possible variant of ethanol content in the ‘ethanol flex fuel’ offered at the pump . . . would only confuse

consumers about the actual ethanol content of the fuel.”⁷⁸ TN Dept. Ag., which supported rounding ethanol content to the nearest 10 percent for Mid-level Blends, argued that some retailers will choose not to sell ethanol or blend lower amounts of ethanol to avoid the burden of re-labeling High-level Blends seasonally.⁷⁹ They further explained that selling only lower blends would be counter to the intent of the Energy Independence and Security Act of 2007⁸⁰ to increase the availability of alternative fuels.

Convenience store groups and fuel marketers also urged less precision, advocating for a single label for Mid-level Blends.⁸¹ According to them, many retailers cannot know the ethanol content within 10 percent because they do not blend their own fuels and mix fuel deliveries with preexisting fuel in their storage tanks. They explained, “[e]ven if retailers *are* in a position to make this determination, requiring them to constantly shift the labels on their blender pumps (E20 one day, E40 another day, etc.) would be exceedingly burdensome and have little offsetting benefit to the consumer.”⁸²

3. Opposition to Additional Labeling

The American Motorcyclist Association (“AMA”) and 72 individual commenters argued that the proposed label would be ineffective. According to AMA, “another label on a blender pump that already has many labels will not be sufficient to avoid misfueling and could be easily overlooked.”⁸³ Instead, AMA recommends “physical barriers in the fueling nozzle/receptacle, as was provided when the nation went from leaded to unleaded fuel.”⁸⁴

D. Infrared Testing Method for Octane Rating

Commenters generally supported allowing infrared spectrophotometry (“IR Testing”) to establish an octane rating, citing reduced production and enforcement costs.⁸⁵ Specifically, the Commission’s proposal would have allowed octane ratings from infrared spectrophotometers that are correlated with ASTM D2699 and D2700 and

⁶³ *Id.* at 5.

⁶⁴ *Id.* at 6–7 and attachments.

⁶⁵ Marathon comment at 3.

⁶⁶ OPEI/NMMA comment at 3–7; American Motorcyclist Association (“AMA”) comment at 1–2. Individual commenters also expressed support for AMA’s comment.

⁶⁷ AAM/AGA comment at 3.

⁶⁸ API comment at 4; *see also* Phillips66 comment at 1; Chevron comment at 1; BP Products comment at 1.

⁶⁹ NCWM comment at 6.

⁷⁰ CAS comment at 1; PMCSI comment; Davis comment.

⁷¹ AAM/AGA comment at 2; NADA comment at 2; OPEI/NMMA comment at 21; Berendts comment; Brink comment; Miller comment; Theissen comment.

⁷² Phillips66 comment at 2; RFA comment at 4; Tesoro comment Att. 1 at 3–4; API comment at 3; ACE comment at 2; NCWM comment at 3–4; TN Dept. Ag. comment at 3; CA Dept. Ag. comment; NACS/SIGMA comment at 1–3; BP Products comment at 1; Chevron comment at 2; Marathon comment at 2.

⁷³ AAM/AGA comment at 2; OPEI/NMMA comment at 21. Other commenters argue that more precise disclosures would be “safer for consumer use” or provided no explanation. *See* Theissen comment; Berendts comment; Brink comment; Miller comment.

⁷⁴ AAM/AGA comment at 2 (brackets included in original text).

⁷⁵ Phillips66 comment at 2; RFA comment at 4; Tesoro comment Att. 1 at 3–4; API comment at 3; ACE comment at 2; NCWM comment at 3–4; TN Dept. Ag. comment at 3; CA Dept. Ag. comment; NACS/SIGMA comment at 1–3; BP Products comment at 1; Chevron comment at 2; Marathon comment at 2.

⁷⁶ Citing the high cost of changing labels, NACS/SIGMA argued for a single label for ethanol blends below 51 percent and another label for blends between 51 and 83 percent. NACS/SIGMA comment at 1–3.

⁷⁷ According to Phillips66, “[t]he ASTM specification varies seasonally to ensure continued vehicle performance with changing ambient temperatures. In order to meet the seasonal specification changes, the ethanol volume is varied.” Phillips66 comment at 2.

⁷⁸ RFA comment at 4; *see also* AFPM comment at 3; Tesoro comment Att. 1 at 2–3.

⁷⁹ TN Dept. Ag. comment at 3.

⁸⁰ Pub. L. 110–140, 121 Stat. 1492 (2007).

⁸¹ NACS/SIGMA comment at 2–3.

⁸² *Id.*

⁸³ AMA comment at 3.

⁸⁴ *Id.*

⁸⁵ Phillips66 comment at 1; Lima comment at 1; Tesoro comment Att. 1 at 4–5; CAS comment at 2; AFPM comment at 5; AAM/AGA comment at 9; API comment at 4–5; Chevron comment at 1; MSU Chem. Lab. comment; Marathon comment at 4; Davis comment.

conform to ASTM D6122 (“Standard Practice for the Validation of the Performance of Multivariate Infrared Spectrophotometers”).⁸⁶ In support, some commenters noted that gasoline producers and regulators already use such spectrophotometric testing.⁸⁷ Others suggested that the Rule permit additional techniques, including Raman spectrophotometry.⁸⁸

However, even these commenters argued that should the Rule provide for IR Testing, it must identify ASTM D2699 and D2700 as “referee” tests in case of a dispute over the reliability of testing results.⁸⁹ Some of these commenters questioned the reliability of IR Testing and noted that, unlike D2699 and D2700, IR Testing identifies the components of fuel, not its actual performance. AFPM, a petrochemical manufacturers group, explained: “All correlative test methods such as infrared and others must relate the results obtained (*i.e.*, spectra inferred octane) to the engine test methods as required in ASTM D4814 for gasoline certification.”⁹⁰ AFPM concludes that the purpose of correlative methods “is only to predict the standard method results [from ASTM D2699 and D2700],” which have been used to classify gasoline for “over 60 years.”⁹¹ It adds that “[r]eplacing this combustion-based technology testing with a chemical make-up test technology [such as infrared spectrophotometry] may or may not be fully functional or directly applicable to today’s fuels or automobile needs.”⁹² BP Products and an individual commenter urged the FTC not to include these methods until ASTM endorses correlative methods specifically for octane rating.⁹³

⁸⁶ 2014 NPRM, 79 FR at 18865. The Commission received 22 comments on this issue.

⁸⁷ TN Dept. Ag. comment at 2; *see also* Gibbs comment.

⁸⁸ Lima comment at 2; Tesoro comment Att. 1 at 4–5; AFPM comment at 5; Chevron comment at 1; Travers comment; Botelho comment; Demsey comment; Parsley comment; McDaniel comment; Smith comment.

⁸⁹ Phillips66 comment at 1; Tesoro comment Att. 1 at 4–5; AFPM comment at 5; AAM/AGA comment at 9; API comment at 4–5; Chevron comment at 1–2; TN Dept. Ag. comment at 2; Marathon comment at 4; Davis comment. Many commenters pointed out that the 2014 NPRM cited outdated ASTM standards and urged the FTC to adopt the most recent standards. RFA comment at 1; API comment at 5; BP Products comment at 1; NCWM comment at 4; Chevron comment at 1; TN Dept. Ag. comment at 2; Gibbs comment.

⁹⁰ AFPM comment at 6; *see also* Gibbs comment.

⁹¹ AFPM comment at 6.

⁹² *Id.*; *see* Tesoro comment Att.1 at 4–5; Gibbs comment.

⁹³ BP Products comment at 1; Gibbs comment.

IV. Final Rule Amendments

After considering the record, the Commission now issues final Rule amendments regarding the rating, certification, and labeling of ethanol fuels. These amendments include modifications in response to the comments. Specifically, the final amendments: (1) establish specific rating and certification requirements for Ethanol Blends with ethanol content above 10 percent to a *maximum* of 83 percent (“Ethanol Flex Fuels”); (2) modify the ethanol fuel labeling to permit a single pump label for High-level Blends; and (3) do *not* adopt infrared spectrophotometry as a method to determine octane rating for gasoline.

A. Definitions and Exemption for EPA E15

To establish requirements for rating, certifying, and labeling gasoline-ethanol blends, the 2014 NPRM proposed defining “Ethanol Blends” as “a mixture of gasoline and ethanol containing more than 10 percent ethanol.”⁹⁴ The NPRM, however, exempted EPA E15 from the Rule’s labeling requirements, because it is subject to EPA labeling requirements. The final amendments retain this definition and exemption, but replace the proposed term “Ethanol Blends” with “Ethanol Flex Fuels.”

Though some commenters agreed that E15 should be exempt from the Rule’s ethanol labeling, they urged the Commission to require an octane rating label for E15. Specifically, they suggested that the Commission include E15 in the Rule’s definition of gasoline, which currently includes gasoline-ethanol blends of up to 10 percent ethanol. Doing so would require E15 pumps to have octane rating labels. These ratings, according to automotive manufacturer and dealer groups, state regulators, and ethanol industry groups, would help consumers choose fuels appropriate for their vehicles, bolster ethanol’s competitiveness as a high-octane fuel, and ensure that Ethanol Flex Fuels are composed of appropriate quality gasoline.

The Commission has not adopted these suggestions. First, as discussed in the 2010 NPRM and the Commission’s 1993 rulemaking, an octane rating likely would not provide useful information to consumers and may deceive them about the suitability of Ethanol Flex Fuels for their vehicles.⁹⁵ Ethanol naturally boosts the octane rating in Ethanol Flex Fuels, and consumers may mistakenly

⁹⁴ 2014 NPRM, 79 FR at 18865.

⁹⁵ 2010 NPRM, 79 FR at 18857; 1993 Final Rule, 58 FR at 41361.

equate octane with fuel quality.⁹⁶ Thus, this higher octane rating may mislead consumers to believe that such fuels are better for conventional gasoline engines. Second, according to automakers, using E15 may void vehicle warranties regardless of model year, except for certain vehicles manufactured since MY2012 as “E15 capable.”⁹⁷ Third, by exempting EPA E15 from the labeling requirements, but not from the other Rule requirements, *e.g.*, the certification provisions, the Rule ensures distributors and retailers have accurate ethanol concentration information, but does not burden retailers or confuse consumers with two separate E15 pump labels.

Finally, using the term “Ethanol Flex Fuels” is consistent with NCWM’s and ASTM’s use of “Ethanol Flex Fuels” for ethanol blends up to 83 percent.⁹⁸ Harmonizing these terms should alleviate consumer confusion. Including concentrations above 83 percent, however, would be inappropriate because automakers have not certified such blends for flex fuel vehicles or conventional automobiles, and Section 211(f) of the Clean Air Act prohibits their use as an automotive fuel.⁹⁹ If this changes, the Commission will consider appropriate amendments.

B. Rating and Certification

The final rule contains amendments related to rating and certification. First, consistent with the 2014 NPRM, the final amendments require an ethanol content rating for all Ethanol Flex Fuels. Previously, the Rule rated ethanol blends with the common name of the fuel and the percentage of the principal component of the fuel (*e.g.*, E85/“Minimum 70% Ethanol”). As a result, the Rule required rating ethanol blends below 50 percent ethanol concentration with the fuel’s gasoline concentration, not its ethanol concentration (*e.g.*, E45/“Minimum 55% Gasoline”). Generally, ethanol contains less energy per gallon than petroleum-derived gasoline.¹⁰⁰ Consequently, the higher the ethanol concentration, the lower the fuel

⁹⁶ 1993 Final Rule, 58 FR at 41361.

⁹⁷ *See* AAM/AGA comment at 5, 7. If EPA E15 and E15 capable vehicles become prevalent, the Commission may consider whether retailers must post an octane label for EPA E15.

⁹⁸ TN Dept. Ag. comment at 2–3; NCWM comment at 5; *see also* ASTM D5798.

⁹⁹ 42 U.S.C. 7545(f).

¹⁰⁰ *See* Hyde comment to 2010 NPRM; AMA comment at 7 & atts. Honda Letter at 2, Chrysler Letter at 2, BMW Letter at 2, & GM Letter at 2; Department of Energy, National Renewable Energy Laboratory, Effects of Intermediate Ethanol Blends on Legacy Vehicles and Small Non-Road Engines, Report 1—Updated study, at xvii. Golden, Colorado, February 2009. Available at <http://energy.gov/eere/bioenergy/downloads/effects-intermediate-ethanol-blends-legacy-vehicles-and-small-non-road>.

economy. Therefore, by disclosing the ethanol concentration, the label does not incorrectly convey that the fuel has the same fuel economy as gasoline. No commenter opposed this change.

Second, the Commission adopts the 2014 NPRM proposal to allow transferors to certify fuel content through a letter to the transferee. For most other alternative fuels, a certification letter remains valid if a transferred fuel has the same or a higher concentration of the principal fuel component because an increase in concentration will not trigger label changes. In contrast, an increase or decrease in the concentration for Ethanol Flex Fuels may trigger new disclosures by changing the ethanol concentration of the fuel. For example, if a fuel's ethanol concentration increased from 26 percent to 38 percent, the label, as discussed below, must disclose a higher concentration level. Therefore, a certification letter will only remain valid as long as the transferred fuel contains the same percentage of ethanol as previous fuel transfers covered by the letter. No commenter objected to this proposal.¹⁰¹

C. Labeling

As explained below, the final amendments adopt the proposed "Use Only in Flex-Fuel Vehicles/May Harm Other Engines" language, but modify the ethanol percentage disclosures proposed in the 2014 NPRM. Specifically, retailers must post labels with exact ethanol concentrations or round to the nearest multiple of 10 for Mid-level Blends. For High-level Blends, however, they may post the exact concentration, round to the nearest multiple of 10, or label the fuel as "51% to 83% Ethanol."

1. Required Label Statement

As proposed in the 2014 NPRM, the final rule requires that ethanol labels disclose "Use Only in Flex-Fuel Vehicles/May Harm Other Engines," despite objections both that "May Harm Other Engines" is too narrow and that it is overbroad. No commenters opposed the proposed "Use Only in Flex-Fuel Vehicles."¹⁰²

¹⁰¹ Tesoro suggested that the FTC consider requiring certification of the octane rating for gasoline blendstock intended for blending with oxygenates, such as ethanol. Tesoro comment Att. 1 at 5–6. The Rule, however, does not require an octane rating for ethanol blends above 10 percent, and therefore will not require a certification for the gasoline used in Ethanol Flex Fuels.

¹⁰² As discussed in Section III.C.3. *supra*, some commenters recommended physical barriers between gasoline and Ethanol Flex Fuel nozzles or pumps to prevent misfueling. However, the PMPA does not authorize the FTC to mandate such

The Commission reaches the same conclusion as in the 2014 NPRM—objections to the proposed text are unconvincing and not supported by the record.¹⁰³ First, there are significant risks, including engine damage and legal liability, associated with misfueling. The record demonstrates that Ethanol Flex Fuels may cause engine malfunction, engine damage, damage to the vehicle's emissions system, or other problems in conventional automobiles Model Year ("MY") 2000 or older, motorcycles, small engines, and non-road engines, including marine engines.¹⁰⁴ The EPA permits E15 use only in MY2001 or newer automobiles¹⁰⁵ because it determined that Ethanol Flex Fuels may damage emissions systems and engine components of other engines.¹⁰⁶ Moreover, AAM/AGA submitted letters from 12 automakers stating that E15 may also harm MY2001 or newer automobiles.¹⁰⁷ These automakers also expressed concern that damage from ethanol may not be covered by warranty.¹⁰⁸

Second, "May Harm Other Engines" is not confusing. By stating "Use Only In Flex-Fuel Vehicles" and "May Harm Other Engines," the label clearly and accurately explains: (1) The fuel's suitability for consumers' cars and (2) that misfueling risks harm to non-flex-fuel engines, but not that it will necessarily harm all such engines. Moreover, because the disclosure clearly distinguishes between flex-fuel vehicles and "other" (*i.e.*, non-flex fuel) engines, it should not cause flex-fuel vehicle owners to fear that use of ethanol blends would harm their engines.

Third, the Commission disagrees that the disclosures are unfair because they apply only to ethanol blends. Ethanol blends present a different challenge than other automotive fuels. Specifically, most fuels present consumers with a binary choice (*e.g.*, engines either operate on diesel fuel or not). In contrast, when choosing a gasoline-ethanol blend, consumers must

barriers. Thus, the Commission does not analyze this recommendation further.

¹⁰³ 2014 NPRM, 79 FR at 18858–59.

¹⁰⁴ *Id.*; see discussion of comments from gasoline manufacturers and retailers, automobile manufacturers, and other similar comments in Section III.C.1. *supra*.

¹⁰⁵ EPA Waiver Decision II, 76 FR at 4662.

¹⁰⁶ EPA Waiver Decision I, 75 FR at 68097–98, 68103; see also EPA Final Rule to Mitigate Misfueling, 76 FR at 44414–15, 44439.

¹⁰⁷ AAM/AGA comment at 7 and Atts. The automakers included Chrysler, Ford, GM, Mercedes-Benz, Honda, Mazda, Toyota, Nissan, Volkswagen, Volvo, BMW, Hyundai, and Kia Motors.

¹⁰⁸ *Id.*

determine the appropriate ethanol concentration because different makes and models of gasoline-powered engines operate on differing ranges of ethanol concentration. For example, ethanol blends up to 10% ethanol concentration (*i.e.*, E10) are appropriate for almost all gasoline-powered automotive engines, but E15 may only be appropriate for MY2001 or newer automobiles and Flex-Fuel Vehicles. Furthermore, higher blends (*e.g.*, E20, E30, or E85) are only appropriate for Flex-Fuel Vehicles. Accordingly, the challenge of choosing the appropriate ethanol concentration is more likely to lead to misfueling than the binary choice between a gasoline-ethanol blend and another automotive fuel, such as diesel. A label, therefore, that delineates between different blends (*e.g.*, E20, E30, or E85) is appropriate for ethanol, but unnecessary for other fuels.

As courts have repeatedly held, agencies may limit rules to those areas where they have observed a problem.¹⁰⁹ Similarly, agencies need not take an all-or-nothing approach to regulation but may proceed incrementally.¹¹⁰

Fourth, the Commission disagrees with the argument that the disclosures need additional or different language, such as "Warning," "Check Owner's Manual," or more information about potential harm from misfueling. The label's orange color and placement on the fuel pump should sufficiently attract consumer's attention, making "Warning" or similar language unnecessary. Moreover, when displayed together, the phrases "Use Only in Flex-Fuel Vehicles" and "May Harm Other Engines" simply and unambiguously inform consumers that they can use ethanol blends in their flex-fuel vehicles and does not require the extra step of consulting an owner's manual.

Finally, as explained in the 2014 NPRM, the disclosures fall squarely within the Commission's statutory authority under the PMPA to prescribe labels disclosing fuel ratings.¹¹¹

2. Ethanol Disclosure

The final rule adopts tiered labeling for Ethanol Flex Fuels because this

¹⁰⁹ See, *e.g.*, *Pharm. Research and Mfrs. of Am. v. FTC*, 790 F.3d 198, 206 (D.C. Cir. 2015); *Illinois Commercial Fishing Ass'n v. Salazar*, 867 F.Supp.2d 108, 118–19 (D.D.C. 2012) (upholding rule banning commercial fishing but allowing recreational fishing, where commercial fishing posed the greater risk to endangered fish.).

¹¹⁰ *Investment Co. Inst. v. CFTC*, 891 F. Supp. 2d 162, 187 (D.D.C. 2012) ("[A]gencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop.") (quotation omitted); *City of Las Vegas v. Lujan*, 891 F.2d 927 (D.C. Cir. 1989) ("[A]gencies have great discretion to treat a problem partially.").

¹¹¹ 2014 NPRM, 79 FR at 18860–61.

approach provides consumers with the information needed to choose appropriate fuels without placing an undue burden on retailers. First, for Mid-level Blends (ethanol concentrations above 10 percent, but no greater than 50 percent), retailers may post the exact percentage or round to the nearest multiple of 10 (*e.g.*, “40% Ethanol”).¹¹² Second, for High-level Blends (concentrations above 50 percent, but no greater than 83 percent), retailers may post the exact percentage of ethanol concentration, round to the nearest multiple of 10, or indicate that the fuel contains “51% to 83% Ethanol.”¹¹³

For Mid-level Blends, the consumer benefits from more precise labels outweigh the burden on retailers. Requiring more precise disclosures provides flexible-fuel vehicle owners with meaningful information about the fuel’s suitability for their vehicles without the risk of incorrectly conveying that the fuel has the same fuel economy as gasoline.¹¹⁴ Thus, the precision helps them make informed choices about Ethanol Flex Fuels. The Rule, furthermore, mitigates the burden of labeling by permitting rounding of ethanol concentration, which allows retailers to alter their blends by small percentages without changing labels.

In contrast, the consumer benefits from more precise labeling of High-level Blends do not outweigh the increased burden to retailers. Unlike Mid-level Blends, High-level Blends’ performance depends on weather conditions. As a result, retailers and producers must change the ethanol concentration in High-level Blends to maintain performance in changing weather conditions and comply with ASTM D5798’s standards for vapor pressure.¹¹⁵ To do so, producers may frequently change blends with varying ethanol concentrations.¹¹⁶ When retailers place a newer blend in their tanks, it mixes with fuel of different ethanol concentration from prior deliveries. As a result, retailers may be unable to determine a concentration range more precise than 51 to 83 percent.¹¹⁷ More precise labeling, therefore, would

require retailers to acquire testing technology, regularly test for ethanol concentration, and re-label when necessary.

More precise labeling for High-level Blends, moreover, would have less benefit for consumers because it is unlikely that retailers could market High-Level Blends differentiated by ethanol concentration. According to the TN Dept. of Ag., retailers and producers will market “comparable concentrations of [High-Level Blends] at [their] competing fuel sites in a given market,” in order to comply with ASTM D5798 and their obligations under the Energy Independence and Security Act of 2007 to blend increasing amounts of renewable fuels.¹¹⁸ Thus, these reduced benefits do not outweigh the retailers’ increased burden from precise labels.

3. Label Specifications

The final amendments generally adopt the size, font, format, and color requirements proposed in the 2014 NPRM, with minor alterations to accommodate the additional characters needed for High-level Blend labels.¹¹⁹ To help effectuate these amendments, 306.12(f) now provides sample illustrations of labels for Mid-level Blends and High-level Blends.

Some commenters argued for changes to the proposed label’s size, font size, placement on the pump, or color. The proposed label formatting and placement specifications, however, are consistent with those in place for most of the alternative liquid fuels covered by the Rule, and the record does not support inconsistent treatment for ethanol labels. For example, the ethanol industry commented that orange is “associated with danger” and would put the industry at a competitive disadvantage.¹²⁰ However, as explained in the 2014 NPRM, orange is the color for all alternative fuels except biodiesel and will enable retail consumers to distinguish Ethanol Flex Fuels from gasoline. Furthermore, orange’s brightness will help ensure that consumers notice the label and, therefore, avoid misfueling. Finally, EPA’s E15 label uses the same orange background. Thus, using orange creates a uniform color scheme for all Ethanol Flex Fuels, making the label easier for consumers to identify.

¹¹² TN Dept. Ag. comment at 3.

¹¹³ The final amendments also delete the Rule’s sample label for “E-100” (*i.e.*, ethanol not mixed with gasoline) because the record does not show any retail sales of such fuels.

¹¹⁴ ACE comment Att. (May 20, 2010 comment at 2).

D. Octane Rating by Infrared Spectrophotometry

Contrary to the 2014 proposal, the Commission does not adopt infrared spectrophotometry as an approved method to test octane rating.¹²¹ According to the record, infrared testing is an indirect method of determining octane rating that is not endorsed by ASTM, nor is it as reliable as the methods currently specified by the Rule, namely ASTM D2699 and D2700. Furthermore, in the case of a dispute involving infrared testing, ASTM D2699 and D2700 must verify the results. Therefore, to avoid potential conflict and uncertainty from such indirect testing methods, the Commission does not amend its list of octane rating testing methods.

V. Paperwork Reduction Act

The certification and labeling requirements announced in the final amendments for Ethanol Flex Fuels constitute a “collection of information” under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (“PRA”).

Consistent with the Rule’s requirements for other alternative fuels, under the final amendments, refiners, producers, importers, distributors, and retailers of Ethanol Flex Fuels must retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify or post.¹²² The covered entities also must make these records available for inspection by staff of the Commission and EPA or by persons authorized by those agencies. Finally, retailers must produce, distribute, and post fuel rating labels on fuel pumps.

In 2014, the Commission discussed the estimated recordkeeping and disclosure burdens for entities covered under the Rule and sought comment on the accuracy of those estimates. Commenters have not disputed those estimates. The Commission has updated those estimates to incorporate more recent data for the number of retailers nationwide and labor costs. Below, the Commission discusses those estimates.

The Commission has previously estimated the burden associated with the Rule’s recordkeeping requirements for the sale of automotive fuels to be no more than 5 minutes per year (or 1/12th of an hour) per industry member, and no more than 1/8th of an hour per year per industry member for the Rule’s

¹²¹ The amendments do adopt, however, the most current versions of the ASTM D4814, D2699, D2700, and D2885.

¹²² See the Rule’s recordkeeping requirements, 16 CFR 306.7; 306.9; and 306.11.

¹¹² For example, retailers can label fuels at 25 and 34 percent concentrations as 30% Ethanol.

¹¹³ The label states “51% to 83% Ethanol,” even though High-level Blends include concentrations about 50 percent. An “Over 50% to 83% Ethanol” label or similar alternative might be more specific, but would present consumers with a more complicated message in a smaller font, impeding comprehension.

¹¹⁴ See *supra* Section IV.B.

¹¹⁵ See *supra* notes 75–79; see also ASTM D5798 X1.3.

¹¹⁶ NCWM comment at 2.

¹¹⁷ NACS/SIGMA comment at 3.

disclosure requirements.¹²³ Consistent with OMB regulations that implement the PRA, these estimates reflect solely the burden incremental to the usual and customary recordkeeping and disclosure activities performed by affected entities in the ordinary course of business.¹²⁴

Because the procedures for distributing and selling Mid-Level Ethanol blends are no different from those for other automotive fuels, the Commission expects that, consistent with practices in the fuel industry generally, the covered parties will record the fuel rating certification on documents (*e.g.*, shipping receipts) already in use, or will use a letter of certification. Furthermore, the Commission expects that labeling of Ethanol Flex Fuel pumps will be consistent, generally, with practices in the fuel industry. Accordingly, the PRA burden will be the same as that for other automotive fuels: 1/12th of an hour per year for recordkeeping and 1/8th of an hour per year for disclosure.

The U.S. Department of Energy (“DOE”) indicates 2,674 ethanol retailers nationwide, and the U.S. Energy Information Administration indicates 195 ethanol fuel production plants.¹²⁵ Assuming that each ethanol retailer and producer will spend 1/12th of an hour per year complying with the recordkeeping requirements, the cumulative recordkeeping burden for retailers and producers is 223 hours and 16 hours, respectively. Assuming each ethanol retailer will spend 1/8th of an hour per year complying with the disclosure requirements, the cumulative disclosure burden for retailers is 334 hours.

Estimated labor costs are derived by applying appropriate hourly cost figures to the estimated burden hours described above. Applying an average hourly wage of \$11.08 for ethanol retailers,¹²⁶ the aggregate recordkeeping and disclosure labor cost for all ethanol retailers

combined would be \$6,172 ((223 hours + 334 hours) × \$11.08). Applying an average hourly wage of \$29.67 for ethanol producers,¹²⁷ their cumulative labor costs (recordkeeping) would be \$475 (16 hours × \$29.67). Thus, cumulative labor costs for ethanol retailers and producers, combined, would be \$6,647 (\$6,172 + \$475).

The Rule does not impose any capital costs for producers, importers, or distributors of ethanol blends. Retailers, however, do incur the cost of procuring and replacing fuel dispenser labels to comply with the Rule. Staff has previously estimated that the price per automotive fuel label is fifty cents and that the average automotive fuel retailer has six dispensers. The Petroleum Marketers Association of American (“PMAA”), however, stated in its comment to the 2010 NPRM that the cost of labels ranges from one to two dollars. Conservatively applying the upper end from PMAA’s estimate results in an initial cost to retailers of \$12 (6 pumps × \$2).

Regarding label replacement, staff has previously estimated a dispenser useful life range of 6 to 10 years. Assuming a useful life of 8 years, the mean of that range, replacement labeling will not be necessary for well beyond the relevant time frame, *i.e.*, the immediate 3-year PRA clearance sought. Averaging solely the \$12 labeling cost at inception per retailer over that shorter period, however, annualized labeling cost per retailer will be \$4. Cumulative labeling cost would thus be \$10,696 (2,674 retailers × \$4 each, annualized).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide a Final Regulatory Flexibility Analysis with the final rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.¹²⁸

The FTC reaffirms its conclusion that the final amendments will not have a significant economic impact on a substantial number of small entities. As explained in Section V above, the Commission expects Ethanol Flex Fuel retailers to spend, at most, 5 minutes per year complying with the recordkeeping requirements and 1/8th of an hour per year complying with the disclosure requirements. As also explained in Section V, staff estimates

the mean hourly wage for producers of \$29.67, and for retailers of \$11.08. Even assuming that all ethanol retailers are small entities, compliance with the recordkeeping requirements will cost producers, individually, an estimated \$2.47 (\$29.67 × 1/12th of an hour) and cost retailers, individually, an estimated \$.92 (\$11.08 × 1/12th of an hour). In addition, under the same assumptions, compliance with the disclosure requirements will cost individual retailers an estimated \$1.39 (\$11.08 × 1/8th of an hour). Finally, as discussed in Section V, the Commission estimates annualized capital costs of \$4 per retailer.

This document serves as notice to the Small Business Administration of the agency’s certification of no effect. Nonetheless, the Commission has prepared the following analysis.

A. Statement of the Need for, and Objectives of, the Final Amendments

The Commission adopts these amendments to further the PMPA’s objective of giving consumers information necessary to choose the correct fuel for their vehicles. The emergence of Ethanol Flex Fuels as a retail fuel and its likely increased availability necessitate the amendments. These amendments provide requirements for rating, certifying, and labeling Ethanol Flex Fuels (blends of gasoline and more than 10 percent but no greater than 83 percent ethanol) pursuant to PMPA, 15 U.S.C. 2801 *et seq.*

B. Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

Commenters did not raise any specific issues with respect to the regulatory flexibility analysis in the NPRM.

C. Estimate of the Number of Small Entities to Which the Final Amendments Will Apply

Retailers of ethanol blends will be classified as small businesses if they satisfy the Small Business Administration’s relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System (“NAICS”). The closest NAICS size standard relevant to this rulemaking is for “Gasoline Stations with Convenience Stores.” That standard classifies retailers with a maximum \$29.5 million in annual receipts as small businesses.¹²⁹ As discussed above, DOE reports 2,674

¹²³ See, *e.g.*, *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule on Biodiesel Labeling*, 73 FR 40154, 40161 (July 11, 2008). Staff has previously estimated that retailers of automotive fuels incur an average burden of approximately one hour to produce, distribute, and post fuel rating labels. Because the labels are durable, staff has concluded that only about one of every eight retailers incurs this burden each year, hence, 1/8th of an hour, on average, per retailer.

¹²⁴ See 5 CFR 1320.3(b)(2).

¹²⁵ See http://www.afdc.energy.gov/fuels/ethanol_locations.html (last visited Oct. 28, 2015); <http://www.eia.gov/petroleum/ethanolcapacity/> (last visited Oct. 28, 2015).

¹²⁶ See <http://www.bls.gov/iag/tgs/iag447.htm> (Bureau of Labor Statistics, July 2015 Current Employment Statistics, Average Hourly Earnings for Gasoline Station Production and Nonsupervisory Employees).

¹²⁷ See <http://www.bls.gov/iag/tgs/iag211.htm#earnings> (Bureau of Labor Statistics, July 2015 Current Employment Statistics, Average Hourly Earnings for Oil and Gas Extraction Production and Nonsupervisory Employees).

¹²⁸ See 5 U.S.C. 603–605.

¹²⁹ See <http://www.sba.gov/content/small-business-size-standards> (last visited Jan. 15, 2015).

ethanol fueling stations.¹³⁰ DOE does not provide information on those retailers' revenue and no commenters submitted information about this issue. Therefore, the Commission is unable to determine how many of these retailers qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final amendments make clear that the Fuel Rating Rule's recordkeeping, certification, and labeling requirements apply to Ethanol Flex Fuels. Small entities potentially affected are producers, distributors, and retailers of those fuels. The Commission expects that the recordkeeping, certification, and labeling tasks are done by industry members in the normal course of their business. Accordingly, we do not expect the amendments to require any professional skills beyond those already employed by industry members, namely, administrative.

E. Alternatives Considered

As explained above, PMPA requires retailers of liquid automotive fuels to post labels at the point of sale displaying those fuels' ratings. The posting requirements in the final amendments are minimal and, as noted above, do not require creating any separate documents because covered parties may use documents already in use to certify a fuel's rating. Moreover, the Commission cannot exempt small businesses from the Rule and still communicate fuel rating information to consumers. Furthermore, the amendments minimize what, if any, economic impact there is from the labeling requirements. Finally, because PMPA requires point-of-sale labels, the Rule must require retailers to incur the costs of posting those labels. Therefore, the Commission concludes that there are no alternative measures that would accomplish the purposes of PMPA and further minimize the burden on small entities.

VII. Incorporation by Reference

Consistent with 5 U.S.C. 552(a) and 1 CFR part 51, the Commission is incorporating the specifications of the following standards issued by ASTM International: D4814–15a “Standard Specification for Automotive Spark-Ignition Engine Fuel (published August 2015)” (“ASTM D4814–15a”); ASTM D2699–15a, “Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel (published November 2015)” (“ASTM D2700–14,

“Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel (published November 2014)”); and ASTM D2885–13, “Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique (published July 2013).”

The terms *research octane number* and *motor octane number* have the meanings provided in ASTM Standard D4814–15a, Standards ASTM D2699–15a, ASTM D2700–14, and ASTM D2855–13 provide test methods or protocols for determining research octane number or motor octane number of specified grades or types of gasoline.

These ASTM standards are reasonably available to interested parties. Members of the public can obtain copies of ASTM D4814–15a, ASTM D2699–15a, ASTM D2700–14, and ASTM D2885–13 from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428; telephone: 1–877–909–2786; internet address: <http://www.astm.org>. These ASTM standards are also available for inspection at the FTC Library, (202) 326–2395, Federal Trade Commission, Room H–630, 600 Pennsylvania Avenue NW., Washington, DC 20580.

List of Subjects in 16 CFR Part 306

Trade practices, Fuel ratings, Fuel, Gasoline, Incorporation by reference.

For the reasons discussed in the preamble, the Federal Trade Commission amends title 16, Chapter I, Subchapter C, of the Code of Federal Regulations, part 306, as follows:

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

- 1. The authority citation for part 306 continues to read as follows:

Authority: 15 U.S.C. 2801 *et seq.*; 42 U.S.C. 17021.

- 2. Amend § 306.0 by revising paragraphs (b), (i), (j), and (l) and adding paragraph (o) to read as follows:

§ 306.0 Definitions.

* * * * *

(b) *Research octane number and motor octane number.* These terms have the meanings given such terms in the specifications of ASTM D4814–15a, Standard Specification for Automotive Spark-Ignition Engine Fuel, (incorporated by reference, see § 306.13) and, with respect to any grade or type of gasoline, are determined in accordance with one of the following test methods or protocols:

(1) ASTM D2699–15a, Standard Test Method for Research Octane Number of

Spark-Ignition Engine Fuel, and ASTM D2700–14, Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel, (both incorporated by reference, see § 306.13) or

(2) ASTM D2885–13, Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique, (incorporated by reference, see § 306.13).

* * * * *

(i) *Automotive fuel* means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to:

(1) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90 percent unleaded gasoline and 10 percent ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 *et seq.*, such as reformulated gasoline and oxygenated gasoline; and

(2) Alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing 85 percent or more by volume of methanol and/or other alcohols (or such other percentage, as provided by the Secretary of the United States Department of Energy, by rule), with gasoline or other fuels;

(iii) Ethanol flex fuels;

(iv) Liquefied natural gas;

(v) Liquefied petroleum gas;

(vi) Coal-derived liquid fuels;

(vii) Biodiesel;

(viii) Biomass-based diesel;

(ix) Biodiesel blends containing more than 5 percent biodiesel by volume; and

(x) Biomass-based diesel blends containing more than 5 percent biomass-based diesel by volume.

(3) Biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet ASTM D975–07b, Standard Specification for Diesel Fuel Oils (incorporated by reference, see § 306.13), are not automotive fuels covered by the requirements of this part.

Note to paragraph (i): Provided, however, that biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet ASTM D975–09b, Standard Specification for Diesel Fuel Oils (incorporated by reference, see § 306.13), are not automotive fuels covered by the requirements of this Part.

(j) *Automotive fuel rating* means—

¹³⁰ See www.afdc.energy.gov/afdc/fuels/stations_counts.html (last visited Oct. 28, 2015).

(1) For gasoline, the octane rating.
 (2) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, biomass-based diesel blends, and ethanol flex fuels, the commonly used name of the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as the minimum percentage by volume, may be included, if desired.

(3) For biomass-based diesel, biodiesel, biomass-based diesel blends with more than 5 percent biomass-based diesel, and biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

(4) For ethanol flex fuels, a disclosure of the ethanol component, expressed as the percentage by volume and the text "Use Only in Flex-Fuel Vehicles/May Harm Other Engines."

* * * * *

(l) Biodiesel means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: The registration requirements for fuels and fuel additives under 40 CFR part 79; and the requirements of ASTM D6751-10, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, (incorporated by reference, see § 306.13).

* * * * *

(o) *Ethanol flex fuels* means a mixture of gasoline and ethanol containing more than 10 percent but not greater than 83 percent ethanol by volume.

■ 3. Revise § 306.5 to read as follows:

§ 306.5 Automotive fuel rating.

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by ASTM D4814-15a, Standard Specifications for Automotive Spark-Ignition Engine Fuel, (incorporated by reference, see § 306.13). To determine the research octane and motor octane numbers, you may do one of the following:

(1) Use ASTM D2699-15a, Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel (incorporated by reference, see § 306.13), to determine the research octane number, and ASTM D2700-14, Standard Test Method for Motor Octane

Number of Spark-Ignition Engine Fuel (incorporated by reference, see § 306.13), to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885-13, Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique (incorporated by reference, see § 306.13).

(b) To determine automotive fuel ratings for alternative liquid automotive fuels other than ethanol flex fuels, biodiesel blends, and biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose. In the case of biodiesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biodiesel contained in the fuel. In the case of biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biomass-based diesel contained in the fuel. In the case of ethanol flex fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of ethanol contained in the fuel. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

■ 4. Amend § 306.6 by revising paragraph (b) to read as follows:

§ 306.6 Certification.

* * * * *

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower automotive fuel rating, except that a letter certifying the fuel rating of biomass-based diesel, biodiesel, a biomass-based diesel blend, a biodiesel blend, or an ethanol flex fuel will be good only until you transfer those fuels with a different automotive fuel rating, whether the rating is higher or lower. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery

ticket or by sending a new letter of certification.

* * * * *

■ 5. Amend § 306.10 by revising paragraphs (a) and (f) to read as follows:

§ 306.10 Automotive fuel rating posting.

(a) If you are a retailer, you must post the automotive fuel rating of all automotive fuel you sell to consumers. You must do this by putting at least one label on each face of each dispenser through which you sell automotive fuel. If you are selling two or more kinds of automotive fuel with different automotive fuel ratings from a single dispenser, you must put separate labels for each kind of automotive fuel on each face of the dispenser. Provided, however, that you do not need to post the automotive fuel rating of a mixture of gasoline and ethanol containing more than 10 but not more than 15 percent ethanol if the face of the dispenser is labeled in accordance with 40 CFR 80.1501.

* * * * *

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule's coverage to only the mentioned fuels:

- (1) "Methanol/Minimum ____% Methanol"
- (2) "____% Ethanol/Use Only in Flex-Fuel Vehicles/May Harm Other engines"
- (3) "M85/Minimum ____% Methanol"
- (4) "LPG/Minimum ____% Propane" or "LPG/Minimum ____% Propane and ____% Butane"
- (5) "LNG/Minimum ____% Methane"
- (6) "B20 Biodiesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"
- (7) "20% Biomass-Based Diesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"
- (8) "B100 Biodiesel/contains 100 percent biodiesel"
- (9) "100% Biomass-Based Diesel/contains 100 percent biomass-based diesel"

* * * * *

■ 6. Amend § 306.12:

- a. By redesignating paragraphs (a)(4) through (9) as paragraphs (a)(5) through (10), respectively;
- b. By adding new paragraph (a)(4);
- c. By removing the illustration of the "E-100" label in paragraph (f); and
- d. By adding two illustrations after the existing illustrations in paragraph (f).

The additions read as follows:

§ 306.12 Labels.

* * * * *

(a) * * *

(4) *For ethanol flex fuels.* (i) The label is 3 inches (7.62 cm) wide x 2½ inches (6.35 cm) long. “Helvetica Black” or equivalent type is used throughout. The band at the top of the label contains one of the following:

(A) *For all ethanol flex fuels.* The numerical value representing the volume percentage of ethanol in the fuel followed by the percentage sign and then by the term “ETHANOL”; or

(B) *For ethanol flex fuels containing more than 10 percent and no greater than 50 percent ethanol by volume.* The numerical value representing the volume percentage of ethanol in the fuel, rounded to the nearest multiple of

10, followed by the percentage sign and then the term “ETHANOL”; or

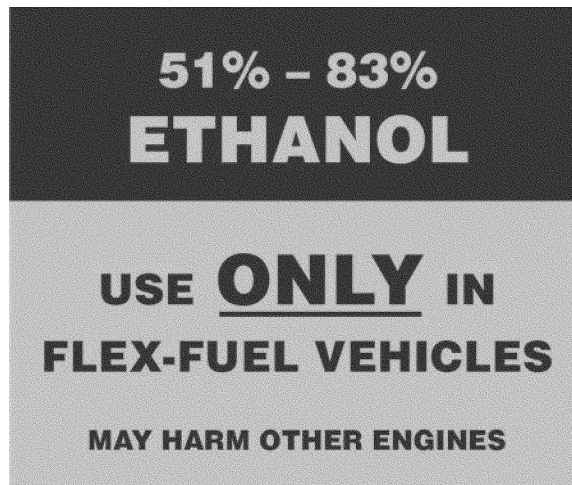
(C) *For ethanol flex fuels containing more than 50 percent and no greater than 83 percent ethanol by volume.* The numerical value representing the volume percentage of ethanol in the fuel, rounded to the nearest multiple of 10, followed by the percentage sign and then the term “ETHANOL” or the phrase, “51%–83% ETHANOL.”

(ii) The band should measure 1 inch (2.54 cm) deep. The type in the band is centered both horizontally and vertically. The percentage disclosure and the word “ETHANOL” are in 24 point font. In the case of labels including the phrase, “51%–83% ETHANOL,” the percentage disclosure is in 18 point font, and the word

“ETHANOL” is in 24 point font and at least ⅛ inch (.32 cm) below the percentage disclosure. The type below the black band is centered vertically and horizontally. The first line is the text: “USE ONLY IN.” It is in 16 point font, except for the word “ONLY,” which is in 26 point font. The word “ONLY” is underlined with a 2 point (or thicker) underline. The second line is in 16 point font, at least ⅛ inch (.32 cm) below the first line, and is the text: “FLEX-FUEL VEHICLES.” The third line is in 10 point font, at least ⅛ inch (.32 cm) below the first line, and is the text “MAY HARM OTHER ENGINES.”

* * * * *

(f) * * *



■ 7. Add § 306.13 to read as follows:

§ 306.13 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect all

approved material at the FTC Library, (202) 326–2395, Federal Trade Commission, Room H–630, 600 Pennsylvania Avenue NW., Washington, DC 20580, and 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>.

(b) ASTM International (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428 telephone: 1–877–909–2786; Internet address: <http://www.astm.org>.

(1) ASTM D975–07b, Standard Specification for Diesel Fuel Oils,

published July 2007; IBR approved for § 306.0(i).

(2) ASTM D975–09b, Standard Specification for Diesel Fuel Oils, published August 2009; IBR approved for § 306.0(i).

(3) ASTM D2699–15a, Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel, published November 2015; IBR approved for §§ 306.0(b) and 306.5(a).

(4) ASTM D2700–14, Standard Test Method for Motor Octane Number of

Spark-Ignition Engine Fuel, published November 2014; IBR approved for §§ 306.0(b) and 306.5(a).

(5) ASTM D2885–13, Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique, published July 2013; IBR approved for §§ 306.0(b) and 306.5(a).

(6) ASTM D4814–15a, Standard Specification for Automotive Spark-Ignition Engine Fuel, published August

2015; IBR approved for §§ 306.0(b) and 306.5(a).

(7) ASTM D6751–10, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, published October 2010; IBR approved for § 306.0(l).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2015–32972 Filed 1–13–16; 8:45 am]

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