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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.

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Part 9301

RIN 3460–AA04

Freedom of Information Act and Privacy Act Procedures

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Interim final rule.

SUMMARY: The Special Inspector General for Afghanistan Reconstruction (SIGAR) proposes to amend its Freedom of Information Act regulation to comply with the FOIA Improvement Act of 2016. The FOIA Improvement Act of 2016 requires, among other things, that agencies update the procedures for proactive disclosures, disclosure requirements, and the circumstances under which agencies can charge search and duplication fees.

DATES: This interim final rule is effective January 4, 2017. Submit comments on or before February 3, 2017.

ADDRESSES: Address all comments concerning this proposed interim final rule to William B. Gaertner, Associate General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. Comments will be made available for inspection upon written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 545–6000. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: William Gaertner, Associate General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202, (703) 545–5994.

SUPPLEMENTARY INFORMATION: On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created SIGAR to conduct independent and objective audits, investigations and analysis to promote economy and efficiency, and to detect and deter waste, fraud, and abuse in the reconstruction of Afghanistan. The Freedom of Information Act (FOIA), as amended, provides for access by the public to records of executive branch agencies, subject to certain restrictions and exemptions. In order to establish procedures to facilitate public interaction with SIGAR, the agency published 5 CFR part 9301 setting forth SIGAR's regulations governing the access provisions of those statutes and Executive Order 12958. On June 30, 2016 the President signed into law the FOIA Improvement Act of 2016 (Pub. L. 114–185) requiring that agencies make available for inspection in an electronic format records that have been requested three or more times, notify requesters of the right to seek dispute resolution services from the Office of Government Information Services (OGIS) when agencies extend time limits by more than ten additional working days, and limiting the circumstances under which agencies may charge requesters search fees. This interim final rule implements these changes to the FOIA. The changes will alter 5 CFR parts 9301.5, 9301.6, and 9301.8.

II. The Interim Final Rule

This interim final rule amends portions of SIGAR's existing regulation implementing provisions of the FOIA (5 U.S.C. 552). The provisions of this amendment shall apply to all components of SIGAR. The FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under delineated statutory exemptions under the FOIA. The procedures established here are intended to ensure that SIGAR fully satisfies its responsibility to the public to disclose agency information, but continues to safeguard sensitive information properly.

Procedural Requirements

This Interim Final rule amends SIGAR's regulations implementing the FOIA to facilitate the interaction of the public with SIGAR. SIGAR's policy of disclosure follows the Presidential Memorandum of January 21, 2009, ''Transparency and Open Government,'' 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of disclosure in FOIA decision making. This Interim Final Rule incorporates portions the FOIA Improvement Act of 2016, signed into law by the President on June 30, 2016. SIGAR has determined that good cause exists to publish this amendment to its FOIA regulations as an interim final rule. This amendment maintains SIGAR's compliance with the FOIA and those amendments to the FOIA adopted in the FOIA Improvement Act of 2016. SIGAR has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Finally, notice of proposed rulemaking is not required, because the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. It has been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Dated: December 16, 2016.

John F. Sopko,

Inspector General.

List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of information.

Authority and Issuance

For the reasons set forth above, SIGAR amends 5 CFR part 9301 as follows:

PART 9301—[AMENDED]

■ 1. The authority citation for part 9301 continues to read as follows:

Authority: 5 U.S.C. 552; Pub. L. 110–175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR

75373–75377, 3 CFR, 2006 Comp., pp. 216–200.

■ 2. Section 9301.5 is revised to read as follows:

§ 9301.5 Accessing records without request

Certain SIGAR records, including the agency's Quarterly Report, audit reports, testimony, oversight plans, press releases, other public issuances, and records that are required by 5 U.S.C. 552(a)(2) to be made publicly available are available electronically from SIGAR's homepage at *http://www.sigar.mil.* SIGAR encourages requesters to visit its Web site before making a request for records under § 9301.6.

■ 3. In § 9301.6, paragraphs (c)(1)(ii), (c)(3)(i), and (d)(1) are revised to read as follows:

§ 9301.6 Requesting records.

* * * * *

(c) * * *

(1) * * *

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. SIGAR will indicate, if technically feasible, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion was made. SIGAR will also indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemptions. The notice shall also describe the procedure for filing an appeal. SIGAR will further notify the requester of their right to seek assistance from SIGAR's FOIA Public Liaison or dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services.

* * * * *

(3) * * *

(i) *In general.* If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays and Federal holidays) the time limits described in paragraph (c)(1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination. If the extension goes beyond ten working days, the FOIA Officer will include a notification of the requester's right to seek dispute resolutions services from the Office of Government Information Services.

* * * * *

(d) * * *

(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate Authority to review the decision. Appeals must be delivered in writing within 90 days of the date of the decision and shall be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to Fax appeals to (703) 601–3804 or email to *sigar.pentagon.gencoun.mbx.foia@mail.mil.* An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

* * * * *

■ 4. In § 9301.8, paragraph (f)(3) is added to read as follows:

§ 9301.8 Fees in general.

* * * * *

(f) * * *

(3) SIGAR determines that unusual circumstances apply to the processing of a request, provides timely notice the requester, and delay is excused for an additional ten days, but SIGAR still fails to respond within the timeframe established by the additional delay. This provision applies only to search fees. However, the following exceptions shall apply:

(i) Notwithstanding § 9301.8(f)(3), if SIGAR determines that unusual circumstances apply and that responding to the request requires the production of more than 5,000 pages, SIGAR may continue to charge search fees, or duplication fees for requesters in preferred status, for as long as necessary, after timely written notice has been made to the requester and SIGAR has discussed with the requester how the requester could effectively limit the scope of the request via written mail, electronic mail, or telephone, or made three good-faith attempts to do so.

(ii) Notwithstanding § 9301.8(f)(3), if a court determines that exceptional circumstances exist, SIGAR's failure to comply with a time limit shall be excused for the length of time provided by the court order.

[FR Doc. 2016–30775 Filed 1–3–17; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD; Amendment 39–18753; AD 2016–25–27]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes. This AD was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. This AD requires repetitive detailed inspections for cracking of the lower frame fittings of the frame foot, and replacement with a new frame foot if cracking is found. This AD also provides optional terminating action for the repetitive inspections. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 8, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 8, 2017.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0143.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0143; or in person at the Docket Management Facility between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes. The SNPRM published in the **Federal Register** on July 7, 2016 (81 FR 44241) (''the SNPRM''). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on March 19, 2014 (79 FR 15266) (''the NPRM''). The NPRM was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. The NPRM proposed to require repetitive detailed inspections of the lower frame fittings, related investigative actions, and corrective actions if necessary. The SNPRM proposed to replace the proposed requirements in the NPRM with new repetitive detailed inspections for cracking of the lower frame fittings of the frame foot, and replacement with a new frame foot if cracking is found. The SNPRM also proposed to provide optional terminating action for the repetitive inspections. We are issuing this AD to detect and correct cracking of the lower frame fittings, 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 AD 2015–0217, dated October 30, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on all Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes. The MCAI states:

> During accomplishment of Airbus Service Bulletin (SB) A300–53–6111 (EASA AD 2012–0103), addressing detailed visual inspections of the lower frame fittings between Frame (FR) 41 and FR46, a crack was detected on one A300–600 aeroplane in the area 2 of the foot of FR46 at junction radius level.
>
> This frame, previously repaired due to a crack finding in the frame foot area 1, was not due to be inspected before reaching the post-repair inspection threshold, *i.e.* 45,400 flight cycles since repair embodiment.
>
> Further investigation determined that the repairs specified in Airbus SB A300–53–6111 were of limited effect to prevent cracking in the frame foot area 2.
>
> This condition, if not detected and corrected, could affect the structural integrity of the fuselage of all aeroplanes operated up to the extended service goal (ESG).
>
> As a temporary action and until an improvement of the existing repairs was made available, EASA issued AD 2012–0229 [AD * * *] to require a one-time detailed inspection (DET) of the frame feet that were repaired in accordance with Airbus SB A300–53–6111, and the reporting of findings to Airbus.
>
> Since that [EASA] AD was issued, a detailed study was performed resulting in the development of a new inspection programme.
>
> Consequently, Airbus cancelled SB A300–53–6111 and replaced it with SB A300–53–6177, introducing repetitive DET of the lower frame fittings between FR41 and FR46 for the entire fleet. In addition to this new inspection programme, Airbus designed a new frame foot which can be installed on aeroplanes through Airbus SB A300–53–6176.
>
> For the reasons described above, this [EASA] AD supersedes EASA AD 2012–0103, not retaining its requirements, and instead requires the new inspection programme for the lower frame fittings. This [EASA] AD also introduces an optional terminating action for the repetitive inspections required by the [EASA] AD.

Corrective actions include replacing any cracked lower frame fittings with a new frame foot. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0143.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM and the FAA's response to each comment.

Request To Extend Compliance Time for Reporting Requirement

United Parcel Service (UPS) asked that the compliance time for submitting the inspection report specified in paragraph (h) of the proposed AD (in the SNPRM) be extended from 30 to 60 days. UPS stated that accomplishing the inspection may occur many days before the final task signoff (*i.e.,* restoring access due to other work in the area), risking noncompliance with the 30-day requirement.

We agree to extend the compliance time for the reporting requirement in this AD to 60 days, because we have determined that this longer compliance time does not affect continued operational safety. We have changed paragraph (i) of this AD accordingly.

Request for Clarification of Compliance Time

Airbus asked that we clarify the compliance time for the inspections specified in paragraph (g) of the proposed AD (in the SNPRM). Airbus stated that unless Airbus Service Bulletin A300–53–6177, dated May 20, 2015, specifies differently, the inspection thresholds should be counted from the first flight of the airplane, not from the effective date of the AD. Airbus added that the compliance time provided in the proposed AD could be confusing to operators. Airbus also stated that for airplanes on which the inspections have not been done as of the effective date of the AD, no grace period is provided, which is a burden on operators.

We agree that clarification is necessary.

We agree that the compliance time identified in the ''Threshold'' column of paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–53–6177, dated May 20, 2015, refers to accumulated flight cycles or flight hours on the airplane since its first flight, but only if Airbus Service Bulletin A300–53–6177, dated May 20, 2015, does not specify differently. We redesignated paragraph (h) in the SNPRM as paragraph (i) of this AD, and redesignated subsequent paragraphs accordingly. We added clarification of the compliance times for the thresholds in paragraph (h)(1) of this AD.

We acknowledge that a grace period was not provided for all configurations. We removed the grace period exception language from paragraph (g) of the proposed AD (in the SNPRM) and moved it to paragraph (h)(2) of this AD. Paragraph (h)(2) of this AD explains that where grace periods specified in Airbus Service Bulletin A300–53–6177, dated May 20, 2015, refer to the issue date of certain service information, those compliance times are after the effective date of the AD. The exception in paragraph (h)(2) of this AD does not apply to compliance times specified as

thresholds in Airbus Service Bulletin A300–53–6177, dated May 20, 2015.

In addition, we have determined that the actions for Configuration 004 airplanes identified in Airbus Service Bulletin A300–53–6177, dated May 20, 2015, must be clarified. For Configuration 004 airplanes identified in Airbus Service Bulletin A300–53–6177, dated May 20, 2015, the actions required by paragraph (g) of this AD cannot be accomplished in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6177, dated May 20, 2015. Paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–53–6177, dated May 20, 2015, specifies the action for Configuration 004 airplanes as contacting and reporting to Airbus. Therefore, we have added paragraph (h)(3) to this AD to require operators to contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA), for corrective actions for Configuration 004 airplanes.

Request for Clarification of Inspections for Airplanes With a Previously Replaced Frame Foot

UPS asked for clarification of the inspection requirements specified in paragraph (g) of the proposed AD (in the SNPRM) for airplanes that previously replaced a frame foot per Airbus Service Bulletin A300–53–6111. UPS stated that if cracking was found during the inspections using that service information there were two options available: Installing a reinforcing doubler on the damaged fitting or replacing the fitting with a new part. UPS added that in Airbus Service Bulletin A300–53–6177, dated May 20, 2015, the inspection requirements are defined for airplanes previously inspected and found with no cracks, or fittings repaired per Airbus Service Bulletin A300–53–6111. UPS noted that it is not clear how to address airplanes on which the cracked fittings were replaced instead of installing a reinforcing repair. UPS asked that fittings replaced with a new part per Airbus Service Bulletin A300–53–6111 be treated as a previously inspected fitting with no crack findings, with repetitive inspections done per Airbus Service Bulletin A300–53–6177, dated May 20, 2015, using Configuration 001 instructions. UPS stated that this proposal is conservative and exceeds the inspection requirements in the proposed AD (in the SNPRM).

We agree that clarification is necessary. Airbus Service Bulletin A300–53–6177, dated May 20, 2015, defines four configurations: Configuration 001 for a frame foot that was never repaired, Configuration 002 for a frame foot that was preventatively repaired, Configuration 003 for a frame foot repaired in Area 1 as specified in Airbus Service Bulletin A300–53–6111 or with certain other repairs, and Configuration 004 for any frame foot not addressed by Configurations 1 through 3. If a new frame foot is installed on an airplane, it would be classified as Configuration 001. We have not changed this AD in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the SNPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A300–53–6177, dated May 20, 2015. The service information describes procedures for repetitive detailed inspections for cracking of the lower frame fittings between FR41 and FR46. Airbus has also issued Service Bulletin A300–53–6176, dated May 20, 2015. The service information describes procedures for replacing all lower frame feet between frame FR41 and FR46 with new, improved frame feet. 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 123 airplanes of U.S. registry.

We estimate that it takes about 541 work-hours per product to comply with the basic requirements of this AD, and 1 work-hour per product for reporting. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $5,666,610, or $46,070 per product.

We estimate that the optional terminating modification will take about 529 work-hours and require parts costing $131,500, for a cost of $176,465.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–27 Airbus: Amendment 39–18753; Docket No. FAA–2014–0143; Directorate Identifier 2012–NM–113–AD.

(a) Effective Date

This AD is effective February 8, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R variant F airplanes; certificated in any category; all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks in the frame base fittings connecting the frame lower positions to the center wing box. We are issuing this AD to detect and correct cracking of the lower frame fittings, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections and Replacement

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–53–6177, dated May 20, 2015, except as required by paragraphs (h)(1) and (h)(2) of this AD: Perform a detailed inspection for cracking of the lower frame fittings between frame (FR) 41 and FR46 of the frame foot, and if any crack is found, before further flight, replace with a new frame foot, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6177, dated May 20, 2015, except as required by paragraph (h)(3) of this AD. Repeat the inspection thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–53–6177, dated May 20, 2015.

(h) Service Information Exceptions

(1) Where the threshold identified in the ''Threshold'' column of paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–53–6177, dated May 20, 2015, specifies flight cycles or flight hours without specifying from a repair, replacement, or last inspection, the specified compliance time is accumulated flight cycles or flight hours on the airplane since its first flight.

(2) Where Airbus Service Bulletin A300–53–6177, dated May 20, 2015, specifies a compliance time ''from issuance of revision 04 of Service Bulletin No. A300–53–6111,'' or ''from issuance of Service Bulletin No. A300–53–6177,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) For Configuration 004 airplanes identified in Airbus Service Bulletin A300–53–6177, dated May 20, 2015: Within 6 months after the effective date of this AD, contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA), for corrective actions and accomplish all applicable corrective actions using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(i) Reporting

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Submit a report of the findings (both positive and negative) of each inspection required by paragraph (g) of this AD. Send the report to Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com*).

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 60 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

(j) Optional Terminating Action

Replacement of all lower frame feet between FR41 and FR46, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6176, dated May 20, 2015, terminates the repetitive inspections required by paragraph (g) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–2125. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0217, dated October 30, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0143.

(m) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A300–53–6176, dated May 20, 2015.

(ii) Airbus Service Bulletin A300–53–6177, dated May 20, 2015.

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

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

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

Issued in Renton, Washington, on December 6, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30117 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0733; Directorate Identifier 2015–SW–040–AD; Amendment 39–18762; AD 2016–26–04]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Robinson Helicopter Company (Robinson) Model R44, R44 II, and R66 helicopters. This AD requires inspecting the main rotor blade (MRB). This AD was prompted by a determination that some MRBs may have reduced blade thickness due to blending out corrosion. The actions are intended to prevent the unsafe condition on these products.

DATES: This AD is effective February 8, 2017.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of February 8, 2017.

ADDRESSES: For service information identified in this final rule, contact Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505; telephone (310) 539–0508; fax (310) 539–5198; or at *http://www.robinsonheli.com.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0733.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0733; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aviation Safety Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5348; email *eric.schrieber@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 27, 2016, at 81 FR 33609, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Robinson Model R44 and R44 II helicopters with an MRB part number (P/N) C016–7, Revision N/C, A through Z, and AA through AE; and Model R66 helicopters with an MRB P/N F016–2, Revision A through E. The NPRM proposed to require a one-time visual inspection of the MRB for a crack, corrosion, dent, nick, and scratch and either altering the MRB or removing it from service.

The NPRM was prompted by a report of a fatigue crack on a Model R44 II helicopter at the MRB trailing edge that had grown to reach the blade spar. The FAA subsequently determined that some MRBs may have reduced blade fatigue resistance due to repair by blending out corrosion in the area of the crack site radius. The proposed requirements were intended to prevent an MRB fatigue crack, which could lead to MRB failure and subsequent loss of helicopter control.

Comments

After our NPRM (81 FR 33609, May 27, 2016) was published, we received a comment from one commenter.

Request

Robinson requested we change the applicability of the AD for part number (P/N) C016–7 from ''Revision N/C, A through Z, and AA through AE'' to ''Revision AA through AE.'' Robinson stated that P/N C016–7 did not exist until Revision AA and suggested that some technicians may wrongfully apply the proposed AD to P/N C016–5 Revisions W thru Z.

We agree and have revised the AD accordingly.

FAA's Determination

We have reviewed the relevant information, considered the comment received, and determined that an unsafe condition exists and is likely to exist or develop on other products of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed with the change previously described. This change is consistent with the intent of the proposals in the NPRM (81 FR 33609, May 27, 2016) and will not increase the economic burden on any operator nor increase the scope of the AD.

Related Service Information Under 1 CFR Part 51

We reviewed Robinson R44 Service Bulletin SB–89, dated March 30, 2015 (SB–89), for Model R44 and R44 II helicopters and Robinson R66 Service Bulletin SB–13, dated March 30, 2015 (SB–13), for Model R66 helicopters. SB–89 and SB–13 provide a one-time procedure to inspect each MRB for cracks, corrosion, and damage that may indicate a crack. If there is a crack, corrosion, or any damage, SB–89 and SB–13 specify removing the MRB from service and contacting Robinson. Otherwise, SB–89 and SB–13 describe procedures to smooth the transition at the chord increase of each MRB to reduce the stress concentration.

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.

Differences Between This AD and the Service Information

This AD requires compliance within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first. The service information recommends compliance within 15 hours TIS or by May 31, 2015, whichever occurs first, for the R44 and R44 II helicopters and 10 hours TIS or by May 31, 2015, whichever occurs first, for the R66 helicopters.

Costs of Compliance

We estimate that this AD affects 2,236 helicopters of U.S. Registry and that labor costs average $85 per work hour. Based on these estimates, we expect the following costs:

- The visual inspection requires 1 work hour. No parts are needed, so the cost per helicopter totals $85. The cost for the U.S. fleet totals $190,060.
- Altering each MRB, if necessary, requires 2 work hours and $65 for parts. We estimate a total cost of $235 per helicopter and $525,460 for the U.S. fleet.
- Replacing an MRB, if necessary, requires 3 work hours. Parts cost $19,900 for the Model R44 and R44 II and $20,900 for the R66 helicopter for a total cost of $20,155 and $21,155, respectively, per MRB.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–26–04 Robinson Helicopter Company: Amendment 39–18762; Docket No. FAA–2016–0733; Directorate Identifier 2015–SW–040–AD.

(a) Applicability

This AD applies to Robinson Helicopter Company (Robinson) Model R44 and R44 II helicopters with a main rotor blade (MRB) part number (P/N) C016–7, Revision AA through AE installed; and Model R66 helicopters with a MRB P/N F016–2, Revision A through E, installed; certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a fatigue crack on an MRB. This condition could result in failure of an MRB and loss of helicopter control.

(c) Effective Date

This AD becomes effective February 8, 2017.

(d) Compliance

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

(e) Required Actions

Within 100 hours time-in-service or at the next annual inspection, whichever occurs first:

(1) Clean each MRB in the area depicted in Figure 1 of Robinson R44 Service Bulletin SB–89, dated March 30, 2015 (SB–89), or Robinson R66 Service Bulletin SB–13, dated March 30, 2015 (SB–13), as applicable to your model helicopter.

(2) Using 10X or higher power magnification and a light, visually inspect the upper and lower MRB surfaces and trailing edge as depicted in Figure 1 of SB–89 or SB–13, whichever applies to your helicopter, for a crack, a nick, a scratch, a dent, or corrosion. If there is a crack, a nick, a scratch, a dent, or any corrosion, repair the MRB to an airworthy configuration if the damage is within the maximum repair damage limits or remove the MRB from service.

(3) Alter the MRB in accordance with Compliance Procedure, paragraphs 4 through 19, of SB–89 or SB–13, as applicable to your model helicopter. Equivalent tubing may be used for R7769–1 and R7769–6 tubes. Power tools may not be used for this procedure.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Eric Schrieber, Aviation Safety Engineer, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5348; email *9-ANM-LAACO-AMOC-REQUESTS@faa.gov*.

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

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6210, Main Rotor Blades.

(h) Material Incorporated by Reference

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

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

(i) Robinson R44 Service Bulletin SB–89, dated March 30, 2015.

(ii) Robinson R66 Service Bulletin SB–13, dated March 30, 2015.

(3) For Robinson Helicopter Company service information identified in this AD, contact Robinson Helicopter Company, 2901 Airport Drive, Torrance, CA 90505; telephone (310) 539–0508; fax (310) 539–5198; or at *http://www.robinsonheli.com*.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy,

Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on December 15, 2016.

Stephen Barbini,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–30832 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9109; Directorate Identifier 2016–NM–011–AD; Amendment 39–18761; AD 2016–26–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Defense and Space S.A. (Formerly Known as Construcciones Aeronauticas, S.A.) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–23–02 for all Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes. AD 2013–23–02 required an inspection of the feeder cables of certain fuel booster pumps for damage (including, but not limited to, signs of electrical arcing and fuel leaks), and replacement if necessary. This new AD retains those requirements and also requires modification of the electrical installation of the fuel booster pumps. This AD was prompted by a report of an in-flight problem with the fuel transfer system. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 8, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 8, 2017.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 2, 2013 (78 FR 68688, November 15, 2013).

ADDRESSES: For service information identified in this final rule, contact EADS CASA (Airbus Defense and Space), Services/Engineering Support, Avenida de Aragón 404, 28022 Madrid, Spain; telephone: +34 91 585 55 84; fax: +34 91 585 31 27; email: *MTA.TechnicalService@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–2016–9109.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9109; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1112; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–23–02, Amendment 39–17657 (78 FR 68688, November 15, 2013) (''AD 2013–23–02''). AD 2013–23–02 applied to all Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes. The NPRM published in the **Federal Register** on September 19, 2016 (81 FR 64080). The NPRM was prompted by a report of an in-flight problem with the fuel transfer system. The NPRM proposed to continue to require an inspection of the feeder cables of certain fuel booster pumps for damage (including, but not limited to, signs of electrical arcing and fuel leaks), and replacement if necessary. The NPRM also proposed to require modification of the electrical installation of the fuel booster pumps. We are issuing this AD to prevent damage to certain fuel booster pumps, which could create an ignition source in the fuel tank vapor space, and result in a fuel tank explosion and consequent loss 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 AD 2016–0014, dated January 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes. The MCAI states:

> An occurrence with a CN–235 aeroplane was reported, involving an in-flight problem with the fuel transfer system. The results of the subsequent investigation revealed damage on the fuel booster pump electrical feeding cable and some burn marks on the pump body and plate (fairing) at the external side of the fuel tank; confirmed electrical arcing between the wire and pump body; and revealed fuel leakage onto the affected wire.
>
> This condition, if not detected and corrected, could create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosion and loss of the aeroplane.
>
> To address this potential unsafe condition, EADS CASA (Airbus Military) issued All Operators Letter (AOL) 235–025 and AOL 295–025, providing inspection instructions for the affected fuel booster pumps, Part Number (P/N) 1C12–34 and P/N 1C12–46.
>
> Consequently, EASA issued AD 2013–0186 [which corresponds to FAA AD 2013–23–02] to require a one-time [detailed visual] inspection of the affected fuel booster pumps to detect damage and, depending on findings, replacement of the fuel booster pump. That [EASA] AD also required reporting of all findings to EADS CASA for evaluation.
>
> Since that [EASA] AD was issued, Airbus Defence and Space (D&S) developed [a] modification of the fuel boost pump electrical installation, available for in-service application through Airbus D&S Service Bulletin (SB) 235–28–0023. That modification involves improved protection of the output of affected fuel pump harness avoiding undesired electrical contacts and preventing potential arcing between the affected harness and metallic parts of the fuel boost cover.
>
> For the reasons described above this [EASA] AD partially retains the requirements of EASA AD 2013–0186, which is superseded, and requires modification of the fuel pump electrical installation.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9109.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM 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 for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR part 51

Airbus Defense and Space has issued Service Bulletin SB–235–28–0023C, Revision 01, dated October 27, 2015. The service information describes procedures for modification of the fuel booster pumps. 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 35 airplanes of U.S. registry.

The actions required by AD 2013–23–02, and retained in this AD take about 4 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2013–23–02 is $340 per product.

We also estimate that it will take about 8 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 $1,802 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $86,870, or $2,482 per product.

In addition, we estimate that any necessary follow-on actions will take about 3 work-hours and require parts costing $16,080, for a cost of $16,335 per product. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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) 2013–23–02, Amendment 39–17657 (78 FR 68688, November 15, 2013), and adding the following new AD:

2016–26–03 Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.): Amendment 39–18761; Docket No. FAA–2016–9109; Directorate Identifier 2016–NM–011–AD.

(a) Effective Date

This AD is effective February 8, 2017.

(b) Affected ADs

This AD replaces AD 2013–23–02, Amendment 39–17657 (78 FR 68688, November 15, 2013) (''AD 2013–23–02'').

(c) Applicability

This AD applies to Airbus Defense and Space S.A. (formerly known as Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a report of an in-flight problem with the fuel transfer system. We are issuing this AD to prevent damage to certain fuel booster pumps, which could create an ignition source in the fuel tank vapor space, and 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) Retained Inspection of the Feeder Cables of Certain Fuel Booster Pumps, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–23–02, with no changes. Within the times specified in paragraph (g)(1) or (g)(2) of this AD, as applicable: Perform a detailed visual inspection for damage (including, but not limited to, signs of electrical arcing and fuel leaks) of the electrical feeder cables of each fuel booster pump having part number (P/N) 1C12–34 or 1C12–46, in accordance with the instructions of Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(1) For each fuel booster pump that has not been replaced as of December 2, 2013 (the effective date of AD 2013–23–02): Prior to the accumulation of 300 total flight hours or within 5 flight cycles after December 2, 2013, whichever occurs later.

(2) For each fuel booster pump that has been replaced as of December 2, 2013 (the effective date of AD 2013–23–02): Within 300 flight hours since the most recent fuel booster pump replacement, or within 5 flight cycles after December 2, 2013, whichever occurs later.

(h) Retained Replacement of Affected Fuel Boost Pumps, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–23–02, with no

changes. If any damage (including, but not limited to, signs of electrical arcing and fuel leaks) is found during the inspection required by paragraph (g) of this AD: Within the time specified in paragraph (h)(1) or (h)(2) of this AD, replace the affected fuel booster pump with a serviceable pump, in accordance with Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(1) Before further flight.

(2) Within 10 days following the inspection, provided that the airplane is operated under the conditions specified in Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(i) New Requirement of This AD: Modification of the Fuel Booster Pumps

For Airbus Defense and Space S.A. Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes: Within 12 months after the effective date of this AD, modify the electrical installation of the fuel booster pumps, in accordance with the Accomplishment Instructions of Airbus Defense and Space Service Bulletin SB–235–28–0023C, Revision 01, dated October 27, 2015. Accomplishing the modification terminates the requirements of paragraphs (g) and (h) of this AD for that airplane.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus EADS CASA Service Bulletin SB–235–28–0023, dated March 14, 2014.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1112; 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 European Aviation Safety Agency (EASA); or EADS CASA's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0014, dated January 14, 2016, 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–2016–9109.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(5) and (m)(6) of this AD.

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 8, 2017.

(i) Airbus Defense and Space Service Bulletin SB–235–28–0023C, Revision 01, dated October 27, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on December 2, 2013 (78 FR 68688, November 15, 2013).

(i) Airbus Military All Operator Letter 235–025, dated July 29, 2013.

(ii) Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013.

(5) For service information identified in this AD, contact EADS CASA (Airbus Defense and Space), Services/Engineering Support, Avenida de Aragón 404, 28022 Madrid, Spain; telephone: +34 91 585 55 84; fax: +34 91 585 31 27; email: *MTA.TechnicalService@Airbus.com.*

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

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

Issued in Renton, Washington, on December 8, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30842 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9263; Airspace Docket No. 15–AWA–6]

RIN 2120–AA66

Revocation of Offshore Airspace Areas; Control 1154H, Control 1173H, Control 1154L, and Control 1173L, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes offshore airspace areas Control 1154H and Control 1154L located offshore of Ukiah, California, and removes offshore airspace areas Control 1173H and Control 1173L located offshore of San Francisco, California. The FAA has determined these offshore airspace areas are no longer required.

DATES: Effective date 0901 UTC, March 2, 2017. The Director of the FEDERAL REGISTER approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, 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 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, 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 removes offshore airspace areas no longer required to ensure the safe and efficient flow of air traffic offshore of the west coast.

History

In 1950, the Civil Aeronautics Administration (CAA), (renamed the Federal Aviation Agency on August 23, 1958, and then renamed the Federal Aviation Administration (FAA) on October 15, 1966), issued a final rule establishing ''Control area extension (San Francisco, Calif.) (North dogleg route)'' (15 FR 3316, May 30, 1950). Subsequently in 1952, the CAA renamed the control area extension ''Control area extension (San Francisco, Calif.)'' (17 FR 8323, September 17, 1952). Then in 1962, the Federal Aviation Agency re-described the control area extension as an additional control area and renamed it ''Control 1173'' (27 FR 220–1, 220–56 (immediately after the 4 blank pages following 27 FR 11030), November 10, 1962). In 1969, the FAA issued a final rule establishing ''Control 1154'' (34 FR 13589, August 23, 1969) as an additional control area.

In 1993, as a result of the Airspace Reclassification final rule (56 FR 65638, December 17, 1991) and the Offshore Airspace Reconfiguration; Additional Control Areas final rule (58 FR 12128, March 2, 1993), additional control areas were re-designated as either offshore airspace areas or en route domestic airspace areas, as appropriate, and revised controlled airspace determinations were published, in accordance with Presidential Proclamation No. 5928, ''Territorial Sea of the United States,'' signed December 27, 1988. Accordingly, the additional control areas Control 1154 and Control 1173 were each re-designated into two offshore airspace areas; Control 1154L and Control 1154H, and Control 1173L and Control 1173H, respectively. The primary purpose of these offshore airspace areas was to define the airspace areas over the high seas for which the United States has jurisdiction through an ICAO regional agreement and within which domestic air traffic control procedures are applied.

Based on recent aeronautical reviews of these offshore airspace areas, the FAA has determined that the outer boundaries for the control areas contain geographic latitude/longitude coordinate references that do not align with the Flight Information Region (FIR) boundary, as indicated in their legal descriptions. Additionally, the inner boundary of these offshore airspace areas extend inside the United States territorial limit and are inconsistent with the offshore airspace area guidance, reference being designated in international airspace, published in Title 14 Code of Federal Regulations, part 71, and FAA Order 7400.2, Procedures for Handling Airspace Matters. Further, the Control 1154H, Control 1173H, Control 1154L, and Control 1173L offshore airspace areas are duplicated by the Pacific High and Pacific Low offshore airspace areas that were established in 1993 (58 FR 12128, March 2, 1993) and amended in 2010 (75 FR 51661, August 23, 2010). No operational impact will occur by the removal of Control 1154 and Control 1173 offshore airspace areas. Therefore, the FAA is taking action to remove offshore airspace areas Control 1154H, Control 1173H, Control 1154L, and Control 1173L.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, signed August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A 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 removing offshore airspace areas Control 1154H, Control 1173H, Control 1154L, and Control 1173L. The FAA has determined these control areas are no longer required as they are not in compliance with current regulatory criteria, are duplicated by the Pacific High and Pacific Low offshore airspace areas, and no operational impact will occur by removing them. As this action removes offshore airspace areas no longer needed, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Offshore airspace areas (Class A) extending upward from 18,000 feet mean sea level (MSL) to a specified altitude are published in paragraph 2003, and offshore airspace areas (Class E) extending upward from a specified altitude to, but not including 18,000 feet MSL are published in paragraph 6007, of FAA Order 7400.11A, signed August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. Offshore airspace areas Control 1154H and Control 1173H listed in this document will be subsequently removed from paragraph 2003 of the Order. Control 1154L and Control 1173L will be subsequently removed from paragraph 6007 of the Order.

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 Department of Transportation (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 and its agency implementing regulations in FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' regarding categorical exclusions for procedural actions at paragraph 5–6.5a which categorically excludes from full environmental impact review actions that are rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). This airspace action consists of removing offshore airspace areas no long needed and is not expected to cause any potentially

significant environmental impacts. In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that 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).

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 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 FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

Paragraph 2003. Offshore Airspace Areas

* * * * *

Control 1154H [Removed]

* * * * *

Control 1173H [Removed]

* * * * *

Paragraph 6007. Offshore Airspace Areas

* * * * *

Control 1154L [Removed]

* * * * *

Control 1173L [Removed]

* * * * *

Issued in Washington, DC, on November 29, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–29144 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 161228999–6999–01]

RIN 0694–AH27

Addition of Certain Entities to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding five entities to the Entity List. These five entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. BIS is taking this action in conjunction with the designations made by the Office of Foreign Asset Controls, Department of the Treasury, under amended Executive Order 13694. This final rule lists these entities on the Entity List under the destination of Russia.

DATES: This rule is effective January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the EAR) identifies entities and other persons reasonably believed to be involved in, or that pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy of the United States. The EAR imposes additional licensing requirements on, and limits the availability of most license exceptions for exports, reexports, and transfers (in-country) to those persons or entities listed on the Entity List. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List and the impact on the availability of license exceptions is described in the **Federal Register** notice adding entities or other persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC) is composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy, and where appropriate, the Treasury. The ERC makes decisions to add an entry to the Entity List by majority vote and to remove or modify an entry by unanimous vote. The Departments represented on the ERC have approved these changes to the Entity List.

Entity List Additions

Additions to the Entity List

This rule implements the decision of the agencies of the ERC to add five entities to the Entity List. These five entities are being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The five entries being added to the Entity List are in Russia.

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, persons for whom there is reasonable cause to believe, based on specific and articulable facts, have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List. The entities being added to the Entity List have been determined to be involved in activities that are contrary to the national security or foreign policy interests of the United States. Specifically, in this rule, BIS adds five entities to the Entity List, as further described below.

Entity Additions Consistent With Executive Order 13694

Five entities are added based on activities that are described in Executive Order 13694 (80 FR 18077), *Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,* issued by the President on April 1, 2015 and amended on December 29, 2016.

As originally issued in April 2015, Executive Order 13694 created a new, targeted authority for the U.S. government to respond more effectively to the most significant of cyber threats, particularly in situations where malicious cyber actors operate beyond the reach of existing authorities, focusing on cyber-enabled malicious activities. Executive Order 13694 authorized the imposition of sanctions on individuals and entities determined

to be responsible for or complicit in malicious cyber-enabled activities that result in enumerated harms that are reasonably likely to result in, or have materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States. Under Section 8 of the Executive Order 13694, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

On December 29, 2016, the President issued an Executive Order *Taking Additional Steps To Address The National Emergency With Respect To Significant Malicious Cyber-Enabled Activities,* which amended Executive Order 13694. With this action, the existing authorities have been amended to also allow for the imposition of sanctions on individuals and entities determined to be responsible for tampering, altering, or causing the misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions. Five entities and four individuals are identified in the Annex of the amended Executive Order and have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List). OFAC also designated an additional two individuals who also were added to the SDN List.

BIS, pursuant to Executive Order 13694, as amended, and in consultation with the Departments of State, Defense, Energy, and the Treasury, has designated the five entities specified in the next three paragraphs.

The Main Intelligence Directorate (a.k.a., the following two aliases: Glavnoe Razvedyvatel'noe Upravlenie; *and* GRU) is involved in external collection using human intelligence officers and a variety of technical tools, and is designated for tampering, altering, or causing a misappropriation of information with the purpose or effect of interfering with the 2016 U.S. election processes.

The Federal Security Service (FSB), (f.k.a., Esage Lab) a.k.a., Federalnaya Sluzhba Bezopasnosti, assisted the GRU in conducting the activities described above.

There were also three other entities involved: (1) The Special Technology Center, (a.k.a., STLC, Ltd.) assisted the GRU in conducting signals intelligence operations; (2) Zorsecurity Center (a.k.a., Esage Lab) provided the GRU with technical research and development; and (3) the Autonomous Noncommercial Organization Professional Association of Designers of Data Processing Systems (a.k.a., ANO PO KSI) provided specialized training to the GRU.

With these additions, BIS imposes on these entities a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR and a license review policy of presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. This license requirement implements an appropriate measure within the authority of the EAR to carry out the provisions of Executive Order 13694.

This final rule adds the following five entities to the Entity List:

Russia

(1) *Autonomous Noncommercial Organization Professional Association of Designers of Data Processing Systems,* a.k.a., the following one alias:

—ANO PO KSI.

Prospekt Mira D 68, Str 1A, Moscow 129110, Russia; *and* Dom 3, Lazurnaya Ulitsa, Solnechnogorskiy Raion, Andreyevka, Moscow Region 141551, Russia;

(2) *Federal Security Service (FSB),* a.k.a., the following one alias:

—Federalnaya Sluzhba Bezopasnosti.

Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; *and* Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia;

(3) *Main Intelligence Directorate,* a.k.a., the following three aliases

—Glavnoe Razvedyvatel'noe Upravlenie;

—GRU; *and*

—Main Intelligence Department.

Khoroshevskoye Shosse 76, Khodinka, Moscow, Russia; *and* Ministry of Defence of the Russian Federation, Frunzenskaya nab., 22/2, Moscow 119160, Russia;

(4) *Special Technology Center, a.k.a., the following one alias:*

—STC, Ltd.

Gzhatskaya 21 k2, St. Petersburg, Russia; *and* 21–2 Gzhatskaya Street, St. Petersburg, Russia; *and*

(5) *Zorsecurity Center* (f.k.a., Esage Lab), a.k.a., the following one alias:

—TSOR Security.

Luzhnetskaya Embankment 2/4, Building 17, Office 444, Moscow 119270, Russia.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and

Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the entities being added to the Entity List. If the effective date of this rule were delayed to allow for notice and comment, then the entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, publishing a proposed rule would give these parties notice of the U.S. Government's intention to place them on the Entity List and would create an incentive for these persons to either accelerate their receipt of items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and/or take other measures to try to limit the impact of the listing on the Entity List once a final rule is published.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

For the reasons stated in the preamble, the Bureau of Industry and Security amends part 744 of the Export Administration Regulations (15 CFR parts 730–774) as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016).

■ 2. Supplement No. 4 to part 744 is amended by adding under the destination of Russia, in alphabetical order, five Russian entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	*	*
RUSSIA				
*	* * *	*	*	*
	Autonomous Noncommercial Organization Professional Association of Designers of Data Processing Systems, a.k.a., the following one alias: —ANO PO KSI Prospekt Mira D 68, Str 1A, Moscow 129110, Russia; *and* Dom 3, Lazurnaya Ulitsa, Solnechnogorskiy Raion, Andreyevka, Moscow Region 141551, Russia	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	82 FR [INSERT FR PAGE NUMBER AND 1/4/2017]
*	* * *	*	*	*
	Federal Security Service (FSB), a.k.a., the following one alias: —Federalnaya Sluzhba Bezopasnosti Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; *and* Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	82 FR [INSERT FR PAGE NUMBER AND 1/4/2017]

Country	Entity	License requirement	License review policy	Federal Register citation
*	* * *	*	*	*
	Main Intelligence Directorate, a.k.a., the following three aliases: —Glavnoe Razvedyvatel'noe Upravlenie; —GRU; *and* —Main Intelligence Department Khoroshevskoye Shosse 76, Khodinka, Moscow, Russia; *and* Ministry of Defence of the Russian Federation, Frunzenskaya nab., 22/2, Moscow 119160, Russia	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	82 FR [INSERT FR PAGE NUMBER AND 1/4/2017]
*	* * *	*	*	*
	Special Technology Center, a.k.a., the following one alias: —STC, Ltd Gzhatskaya 21 k2, St. Petersburg, Russia; *and* 21–2 Gzhatskaya Street, St. Petersburg, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	82 FR [INSERT FR PAGE NUMBER AND 1/4/2017]
*	* * *	*	*	*
	Zorsecurity Center (f.k.a., Esage Lab), a.k.a., the following one alias: —TSOR Security Luzhnetskaya Embankment 2/4, Building 17, Office 444, Moscow 119270, Russia	For all items subject to the EAR. (See § 744.11 of the EAR)	Presumption of denial	82 FR [INSERT FR PAGE NUMBER AND 1/4/2017]
*	* * *	*	*	*

Dated: December 29, 2016.

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

[FR Doc. 2016–31969 Filed 12–30–16; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Docket No. OAG 155]

RIN 1105–AB51; A.G. Order No. 3803–2016

Revision of Department of Justice Freedom of Information Act Regulations

AGENCY: Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends the Department of Justice's regulations under the Freedom of Information Act (FOIA) to incorporate certain changes made to the FOIA by the FOIA Improvement Act of 2016. In addition, this rule amends certain provisions in the fee section to reflect developments in the case law and to streamline the description of the factors to be considered when making fee waiver determinations.

DATES: *Effective Date:* This rule is effective February 3, 2017.

Comment Date: Public comments must be submitted by March 6, 2017. Comments submitted by mail will be accepted as timely if they are postmarked on or before that date. Electronic comments may be submitted via *www.regulations.gov* prior to midnight Eastern Time at the end of that day.

ADDRESSES: You may submit written comments, identified by RIN 1105–AB51 or Docket No. OAG 155, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Lindsay Roberts, Attorney-Advisor, Office of Information Policy, 1425 New York Avenue NW., Room 11050, Washington, DC 20530.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For additional details on submitting comments, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lindsay Roberts, Attorney-Advisor, Office of Information Policy, (202) 514–3642.

SUPPLEMENTARY INFORMATION:

This rule amends the Department's regulations under the Freedom of Information Act to incorporate certain changes made to the FOIA, 5 U.S.C. 552, by the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (June 30, 2016). The FOIA Improvement Act of 2016 provides that agencies must allow a minimum of 90 days for requesters to file an administrative appeal. The Act also requires that agencies notify requesters of the availability of dispute resolution services at various times throughout the FOIA process. Finally, the Act codifies the Department of Justice's ''foreseeable harm'' standard. This rule updates the Department's regulations in 28 CFR part 16, subpart A, to reflect those statutory changes.

In addition, as explained below, this rule amends provisions in § 16.10 (Fees) to incorporate the new statutory restrictions on charging fees in certain circumstances, to reflect developments in the case law, and to streamline the description of the factors to be

considered when making fee waiver determinations.

Section 16.1 (General provisions) is revised to delete the reference to the Department's policy regarding discretionary release of information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, because that foreseeable harm standard is now part of the FOIA statute itself as a result of the FOIA Improvement Act of 2016.

Section 16.2 (Proactive disclosure of Department records) is revised to more clearly reflect the FOIA Improvement Act of 2016's requirement that records the FOIA requires agencies to make available for public inspection must be in an electronic format, rather than simply made available for public inspection and copying.

Section 16.4 (Responsibility for responding to requests) is revised to remove the reference to discretionary release of information when another component or agency is better able to make the determination because the foreseeable harm standard is now part of the FOIA statute itself as a result of the FOIA Improvement Act of 2016.

Section 16.5 (Timing of responses to requests) is revised to include a requirement that components notify requesters of the availability of assistance from the Office of Government Information Services (OGIS) at the National Archives and Records Administration when the component gives notice to requesters that the request involves unusual circumstances. This notification is required by the FOIA Improvement Act of 2016.

Section 16.6 (Responses to requests) is revised to include requirements that components notify requesters of the availability of assistance from a FOIA Public Liaison and OGIS when providing requesters with responses to their requests. These notifications are required by the FOIA Improvement Act of 2016.

Section 16.8 (Administrative appeals) is revised to extend the time to file an administrative appeal to 90 days, in conformity with the 90-day minimum time period established by the FOIA Improvement Act of 2016. This section is also revised to include a new paragraph regarding engaging in dispute resolution services provided by OGIS.

Paragraph (b) of § 16.10 (Fees) is revised to conform to recent decisions of the D.C. Circuit Court of Appeals addressing two FOIA fee categories: ''representative of the news media'' and ''educational institution.'' *See Cause of Action* v. *FTC,* 799 F.3d 1108 (D.C. Cir. 2015); *Sack* v. *DOD,* 823 F.3d 687 (D.C. Cir. 2016). The Department's existing FOIA regulations state that a representative of the news media is ''any person or entity that is organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.'' In *Cause of Action,* 799 F.3d at 1125, the court held that a representative of the news media need not work for an entity that is ''organized and operated'' to publish or broadcast news. Therefore, the definition of ''representative of the news media'' is revised to remove the ''organized and operated'' requirement. The definition of ''educational institution'' is revised to reflect the holding in *Sack,* 823 F.3d at 688, that students who make FOIA requests in furtherance of their coursework or other school-sponsored activities may qualify under this requester category.

Paragraph (d)(2) of § 16.10, which addresses restrictions on charging fees when the FOIA's time limits are not met, is revised to reflect changes made to those restrictions by the FOIA Improvement Act of 2016. Specifically, these changes reflect that agencies may not charge search fees (or duplication fees for representatives of the news media and educational/non-commercial scientific institution requesters) when the agency fails to comply with the FOIA's time limits. The restriction on charging fees is excused and the agency may charge fees as usual when it satisfies one of three exceptions detailed at 5 U.S.C. 552(a)(4)(A)(viii)(II).

Lastly, this rule revises paragraph (k) of § 16.10, which addresses the requirements for a waiver or reduction of fees, to specify that requesters may seek a waiver of fees and to streamline and simplify the description of the factors to be considered by components when making fee waiver determinations. These updates do not substantively change the analysis, but instead present the factors in a way that is clearer to both components and requesters. Rather than six factors, the amended section provides for three overall factors. Specifically, a requester should be granted a fee waiver if the requested information (1) sheds light on the activities and operations of the government; (2) is likely to contribute significantly to public understanding of those operations and activities; and (3) is not primarily in the commercial interest of the requester. This streamlined description facilitates easier understanding and application of the statutory standard.

Public Participation

The Department is issuing an interim rule to make these revisions in the Department's FOIA regulations, because these changes merely bring the regulations into alignment with the provisions contained in the FOIA Improvement Act of 2016 and with current case law and clarify the procedure the Department uses for making fee waiver determinations. This approach allows these regulatory changes to take effect sooner than would otherwise be possible with the publication of a Notice of Proposed Rulemaking in advance. Nevertheless, the Department welcomes public comments from any interested person on any aspect of the changes made by this interim final rule. Please refer to the **ADDRESSES** section above. The Department will carefully consider all public comments in the drafting of the final rule.

Please note that all comments received are considered part of the public record and are made available for public inspection online at *http://www.regulations.gov.* The information made available includes personal identifying information (such as name and address) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted. If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify any confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person, please see the **FOR FURTHER INFORMATION CONTACT**

paragraph above to schedule an appointment.

Regulatory Certifications

Administrative Procedure Act

The Department's implementation of this rule as an interim final rule, with provision for post-promulgation public comment, is based on section 553(b) of the Administrative Procedure Act. 5 U.S.C. 553(b). Under section 553(b), an agency may issue a rule without notice of proposed rulemaking and the pre-promulgation opportunity for public comment, with regard to ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' The Department has determined that many of the revisions being made are interpretive rules issued by the Department, as they merely advise the public of the Department's construction of the new statute and clarify the application of the substantive law. Moreover, the Department has determined that the remaining revisions are rules of agency procedure or practice, as they do not change the substantive standards the agency applies in implementing the FOIA. The Department has also concluded that there is good cause to find that a pre-publication public comment period is unnecessary. These revisions to the existing regulations in 28 CFR part 16 merely implement the statutory changes, align the Department's regulations with controlling judicial decisions, and clarify agency procedures.

Regulatory Flexibility Act

This rule amends the Department of Justice's regulations under the FOIA to incorporate certain changes made by the FOIA Improvement Act of 2016, and to reflect developments in the case law and to streamline the description of the factors to be considered when making fee waiver determinations. Because the Department is not required to publish a notice of proposed rulemaking for this rule, a Regulatory Flexibility analysis is not required. 5 U.S.C. 603(a).

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—Federalism

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. Therefore, in accordance with Executive Order 13132, the Attorney General has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million 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 enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Freedom of information, Privacy.

Accordingly, for the reasons stated in the preamble, 28 CFR Chapter 1, part 16 is amended as follows:

PART 16—DISCLOSURE OR PRODUCTION OF MATERIAL OR INFORMATION

■ 1. Revise the authority citation for part 16 to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

§ 16.1 [Amended]

■ 2. In § 16.1, remove the last sentence of paragraph (a).

■ 3. In § 16.2, revise the first sentence, to read as follows:

§ 16.2 Proactive disclosure of Department records.

Records that are required by the FOIA to be made available for public inspection in an electronic format may be accessed through the Department's Web site at *http://justice.gov/oip/04_2.html.* * * *

■ 4. In § 16.4, revise the first sentence of paragraph (d) introductory text, to read as follows:

§ 16.4 Responsibility for responding to requests.

* * * * *

(d) * * * When reviewing records located by a component in response to a request, the component shall determine whether another component or another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. * * *

* * * * *

■ 5. In § 16.5, add a sentence at the end of paragraph (c), to read as follows:

§ 16.5 Timing of responses to requests.

* * * * *

(c) * * * The component must also alert requesters to the availability of the Office of Government Information Services to provide dispute resolution services.

* * * * *

■ 6. In § 16.6, add a sentence at the end of paragraph (c), and add paragraph (e)(5), to read as follows:

§ 16.6 Responses to requests.

* * * * *

(c) * * *. The component must inform the requester of the availability

of the FOIA Public Liaison to offer assistance.

* * * * *

(e) * * *

(5) A statement notifying the requester of the assistance available from the component's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

* * * * *

■ 7. In § 16.8:

■ a. Remove the term ''60 calendar days'' in paragraph (a) and add in its place ''90 calendar days'';

■ b. Redesignate paragraph (d) as paragraph (e); and

■ c. Add a new paragraph (d), to read as follows:

§ 16.8 Administrative appeals.

* * * * *

(d) *Engaging in dispute resolution services provided by OGIS.* Mediation is a voluntary process. If a component agrees to participate in the mediation services provided by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.

* * * * *

■ 6. In § 16.10:

■ a. Revise paragraph (b)(4) and Example 3 to paragraph (b)(4);

■ b. Revise the first sentence of paragraph (b)(6); and

■ c. Revise paragraph (d)(2) and paragraph (k), to read as follows:

§ 16.10 Fees.

* * * * *

(b) * * *

* * * * *

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with the requester's role at the educational institution. Components may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

* * * * *

Example 3. A student who makes a request in furtherance of the student's coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

* * * * *

(6) *Representative of the news media* is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. * * *

* * * * *

(d) * * *

(2) If a component fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(i) through (iii) of this section.

(i) If a component has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(ii) If a component has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the component may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees if the following steps are taken. The component must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the component may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

* * * * *

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) A component must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In deciding whether this standard is satisfied the component must consider the factors described in paragraphs (k)(2)(i) through (iii) of this section:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. Components will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following criteria:

(A) Components must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the component must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this

section are satisfied and any commercial interest is not the primary interest furthered by the request. Components ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

Dated: December 21, 2016.

Loretta E. Lynch,

Attorney General.

[FR Doc. 2016–31508 Filed 1–3–17; 8:45 am]

BILLING CODE 4410–BE–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0067; FRL–9957–71–Region 10]

Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho $PM_{2.5}$ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on portions of a state implementation plan (SIP) submission from the State of Idaho. The SIP submission addresses attainment plan requirements for the Idaho portion of the Logan, Utah-Idaho nonattainment area (Logan UT–ID) for the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The Idaho Department of Environmental Quality (IDEQ) submitted the attainment plan to the EPA on December 14, 2012 (2012 SIP submission), and supplemented the attainment plan on December 24, 2014 (2014 amendment). The EPA is approving certain portions, disapproving other portions, and deferring action on the remaining portions of the attainment plan.

DATES: This final rule is effective February 3, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2015–0067. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: (206) 553–0256; email address: *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background Information
II. Response to Comments
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V. Statutory and Executive Orders Review

I. Background Information

On October 27, 2016, the EPA proposed to approve certain portions and disapprove other portions of Idaho's 2012 SIP submission and 2014 amendment (81 FR 74741). An explanation of the CAA requirements, a detailed analysis of the submittals, and the EPA's reasons for proposing partial approval and partial disapproval were provided in the notice of proposed rulemaking, and will not be restated here. In this action, the EPA is approving Idaho's determination of which pollutants must be evaluated for control in the Idaho portion of the Logan, UT–ID nonattainment area for purposes of the Moderate area plan for the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA is also approving Idaho's evaluation of, and imposition of, reasonably available control measure and reasonably available control technology (RACM/RACT) level controls on appropriate sources in the Idaho portion of the nonattainment area. The EPA is disapproving the Idaho attainment plan with respect to the contingency measure requirement. Finally, the EPA is deferring action on the submissions with respect to the attainment demonstration, reasonable further progress, quantitative milestone, and motor vehicle emission budget requirements to a future date.

With respect to the deferred Moderate area plan elements the EPA notes that on December 16, 2016, the Agency published a proposed determination, based on complete, quality-assured air quality and certified monitoring data, that the Logan UT–ID nonattainment area failed to attain the 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date (81 FR 91088). If the EPA finalizes the determination that Logan UT–ID did not attain, then the nonattainment area will be reclassified from ''Moderate'' to ''Serious'' and Idaho will be required to submit a Serious area attainment plan to meet additional statutory requirements. The EPA anticipates that Idaho may elect to reevaluate and address the deferred elements of the Moderate area plan, as well as the contingency measure requirements, in the context of developing the Serious area attainment plan.

The EPA received three sets of comments on the proposed action that pertain to portions of the 2012 SIP submission and 2014 amendment that are relevant to this final action. The EPA is responding to those comments in this notice. Comments that pertain to the attainment demonstration, reasonable further progress, quantitative milestone, and motor vehicle emissions budget requirements will be addressed when the EPA takes final action on these plan elements.

II. Response to Comments

Commenter 1, comment 1: A citizen observed, ''As I have traveled north out of Logan toward Idaho I have noticed that the inversion gets lighter. The $PM_{2.5}$ that hangs thick and cloudy over Logan turns to spidery, wispy clouds that just reach across the mountains. They reach and then disappear completely. I don't think the emissions and $PM_{2.5}$ are coming from cars in Franklin County Idaho. I think that they are coming from Logan and traveling up the valley into Franklin County, Idaho.''

Response: The commenter's observation concerning the appearance of air quality during inversions is generally consistent with Idaho's monitoring data and air quality studies for the area which show lower $PM_{2.5}$ concentrations outside of the immediate Logan area. Monitored levels of ambient $PM_{2.5}$ are typically higher in Utah than in Idaho. For example, the measured 98th percentile of $PM_{2.5}$ concentrations at the Franklin, Idaho monitor in 2015 was 19 $\mu g/m^3$. However, in the context of the nonattainment area designations that were finalized in 2009, the EPA determined that emissions from sources in Idaho, including not only cars but also other area sources of emissions, were contributing to violations of the 2006 24-hour $PM_{2.5}$ NAAQS in the Logan, UT–ID nonattainment area as part of the CAA section 107(d)(1)(A) designation process.[1]

Commenter 1, comment 2: The commenter also stated, ''Putting auto emissions mandates in Franklin County, Idaho will not help anything. It will only add more financial issues to a rural community. I don't think it is necessary for auto emissions to be put in place in Franklin County, Idaho.''

Response: As discussed in the proposed rulemaking for this action, the EPA proposed to agree with the IDEQ's determination that a Franklin County inspection and maintenance (I&M) program for motor vehicles was not a reasonable control approach based on factors including the cost of control and economic feasibility (see pages 81 FR 74745–6). We are now finalizing that determination. We also note that existing federal motor vehicle emission regulations and requirements are having, and will continue to have, significant emission reduction benefits in this airshed (see section 5.3.8 of the 2012 SIP submittal).

Commenter 1, comment 3: The commenter also stated, ''I think that the wood stove change-out and burn ban are good things to have in place to help reduce the carbon that is being put into the air; however, I think there needs to be more done in the Logan area to reduce their emissions and I'm sure they are working on it also. Logan is continuing to get more people to ride the bus.'' The commenter then elaborated on several suggested control strategies for Utah portion of the nonattainment area.

Response: As discussed in our proposed rulemaking, the EPA proposed to approve the woodstove curtailment, device restrictions, and burn ban control measures for Franklin County, that are already incorporated into the SIP, as meeting the requirements of the CAA for purposes of RACM/RACT level control of appropriate sources in this area for purposes of the 2006 24-hour $PM_{2.5}$ NAAQS (see pages 81 FR 74746–7). The EPA is finalizing this determination. To the extent that the commenter has additional suggestions for the Utah portion of the Logan, UT–ID nonattainment area, these suggestions are outside the scope of this action which is directed at the EPA's review of Idaho's attainment plan.

Commenter 2, comment 1: Another commenter noted, ''We like the air the way it is. Your meddling in these situations is not welcome. Please do not pursue these ridiculous 'rules' further.''

Response: Under the CAA, states and the EPA are required to take actions to protect public health from air pollution. Exposure to elevated levels of $PM_{2.5}$ results in serious health impacts up to and including premature death from respiratory or cardiovascular diseases, and is especially unhealthy for sensitive populations such as children. Thus, CAA section 189(a) requires states with areas designated as Moderate nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS to develop and submit a plan to improve air quality to meet the standards, including provisions to assure implementation of RACM/RACT level controls to reduce emissions. Under CAA section 110(k) the EPA has a mandatory duty to act on these state SIP submissions. In evaluating and acting upon Idaho's attainment plan SIP submission in this action, the EPA is complying with its own duty under the CAA.

State of Idaho, comment 1: On behalf of the State of Idaho, the IDEQ submitted several comments. The first comment questions the basis of the EPA's December 14, 2009 decision to include Franklin County as part of the Logan UT–ID nonattainment area (74 FR 58688). The IDEQ states, ''Upon review of the plans submitted by both Idaho and Utah it is readily apparent that Idaho's emission sources are truly *de minimis* and the motor vehicle commuter pattern is equal with respect to the number of vehicles traveling from Idaho to Utah and from Utah to Idaho. Consequently, Idaho questions the technical reasons for its inclusion in this NAA, and the jurisdictional authority issues have not only held the state of Idaho back from obtaining plan approval, but also from obtaining a one-year extension to demonstrate compliance with the $PM_{2.5}$ NAAQS. As a result, DEQ intends to request that the current NAA be split into two separate $PM_{2.5}$ NAAs, similar to the revision that occurred in the Power-Bannock Counties. 63 FR 59722.''

Response: As noted by the commenter, the determination to designate Franklin County, Idaho as part of the Logan UT–ID nonattainment area was completed in December 2009 and is outside the scope of this action which is directed at the EPA's review of Idaho's attainment plan SIP submission. In addition, should Idaho submit a petition to split the nonattainment area, the EPA will review the technical merits of the petition. However, such a review is also outside the scope of this action.

State of Idaho, comment 2: The IDEQ resubmitted its February 26, 2016 request for a one-year extension of the Moderate area attainment date and questions the EPA's rationale for determining that the area did not attain by the attainment date, stating ''DEQ should not be punished for Utah's acts or omissions.''

Response: The EPA has addressed whether the Logan, UT–ID nonattainment area attained the 2006 24-hour $PM_{2.5}$ NAAQS and the IDEQ's attainment date extension request in the rulemaking *Determinations of Attainment by the Attainment Date, Determinations of Failure to Attain by the Attainment Date and Reclassification for Certain Nonattainment Areas for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards* (81 FR 91088, December 16, 2016). This comment is thus outside the scope of this action and the EPA is not restating our rationale here.

State of Idaho, comment 3: The IDEQ states, ''It should also be noted that on May 25, 2016, a Consent Decree was filed in U.S. District Court for the Northern District of California, Oakland Division, wherein EPA committed to act on the remaining items in Idaho's Plan by December 8, 2016. In the same Decree EPA did not commit to act on Utah's NAA plan. EPA is treating the two areas separately. Thus, not only should the area be split in two NAA for technical reasons, for planning purposes, the area is on two very separate tracts—with Idaho further along.''

Response: The EPA acknowledges that the Consent Decree in the litigation identified by the commenter did not include any deadline for an attainment plan submission from the State of Utah

[1] Technical Support Document for 2006 24-Hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) Designations, Chapter 4.0 ''Technical Analyses of Individual Nonattainment Areas'' Section 4.10 ''Region 10 Nonattainment Areas'' Part 4.10.2 ''EPA Technical Analysis for Idaho'' (204_supplementary material_EPA–HQ–OAR–2007–0562–0439.pdf).

for the Utah portion of the Logan, UT–ID nonattainment area. This is because although the litigation at issue initially included a claim that the EPA had failed to act on such a SIP submission from Utah, the State of Utah elected to withdraw the SIP submission. Thus, at the time of that Consent Decree, the EPA did not have a mandatory duty to act on the withdrawn Utah SIP submission. Utah subsequently resubmitted an attainment plan for the Utah portion of the Logan, UT–ID nonattainment area on December 16, 2014. The EPA is currently evaluating that later SIP submission in order to meet its statutory obligations under CAA section 110(k).

State of Idaho, comment 4: The IDEQ states, ''DEQ, in good faith, complied with all regulations and guidance in place at the time of submittal for both the original Plan in 2012 and the amendment in 2014. Table 10 in the 2012 Plan submittal lists how DEQ complied with each requirement at that time. In the current proposed action, the EPA is evaluating DEQ' s submittal against current regulations. Instead of disapproving portions of Idaho's Plan, the EPA could request DEQ address certain deficiencies due to the new regulations and court decisions; as was done to address the Court decision in 2013.'' In particular, the IDEQ calls into question the EPA's proposed disapproval of the attainment plan with respect to the reasonable further progress, quantitative milestones, and contingency measure requirements.

Response: The EPA acknowledges the difficulties the January 4, 2013, *NRDC* v. *EPA,* D.C. Circuit Court decision (706 F.3d 428) and remand of the prior $PM_{2.5}$ implementation rule presented for both the EPA and Idaho. As noted by the commenter, the EPA provided states with additional time to withdraw and resubmit, or to supplement, prior attainment plan SIP submissions in order to address any impacts that resulted from the court's decision. See, *Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS* (79 FR 31566, June 2, 2014). The EPA appreciates the efforts of Idaho to update its attainment plan in the 2014 amendment. However, the EPA is required by statute to evaluate the attainment plan for compliance with statutory and regulatory requirements, and must do so consistent with the requirements of the CAA, as interpreted by the courts. The EPA will continue to work with the IDEQ to meet the statutory attainment plan requirements, such as the contingency measure requirement addressed in this action. In addition, the EPA recently promulgated the 2016 $PM_{2.5}$ Implementation Rule in order to provide additional regulatory certainty and guidance concerning attainment plan requirements for the 2006 24-hour $PM_{2.5}$ NAAQS and future $PM_{2.5}$ NAAQS. See, *Fine Particulate Matter National Ambient Air Quality Standards; State Implementation Plan Requirements; Final Rule* (81 FR 58010, August 24, 2016).

State of Idaho, comment 5: The IDEQ questions the EPA's proposed disapproval of the Idaho contingency measures citing the EPA's basis that the emissions reductions were not precisely quantified in terms of 1-year's worth of reasonable further progress (RFP). The IDEQ also notes that while discussed in the preamble of the 2016 $PM_{2.5}$ Implementation Rule, the requirement for 1-year's worth of RFP is not cited in the regulatory text of 40 CFR 51.1014.

Response: The EPA agrees that it did not include regulatory text in the final 2016 $PM_{2.5}$ Implementation Rule imposing the requirement that contingency measures reflect emissions reductions comparable to 1-year's worth of RFP in the attainment plan at issue. Nevertheless, this has been the EPA's guidance on the proper interpretation of the statutory requirements of CAA section 172(c)(9) for many years, and remains so in the preamble to the 2016 $PM_{2.5}$ Implementation Rule (see page 81 FR 58066). Because the contingency measures in a Moderate area attainment plan are intended to be available in the event that the area fails to meet the RFP requirement, the EPA has long interpreted CAA section 172(c)(9) to require control measures that would result in emissions reductions comparable to 1-year's worth of RFP in the area.

The EPA acknowledges the IDEQ's concern with the challenges to identify and impose additional control measures to meet the contingency measure requirement in the Logan, UT–ID nonattainment area. As discussed in the proposal for this action, Franklin County is a sparsely populated, rural area with a unique emissions inventory. Idaho estimated that over 75% of the directly emitted $PM_{2.5}$ comes from road dust, using the EPA's AP–42 road dust emission estimation methodology (see Appendix C of the 2012 SIP submittal). Idaho calculated the remaining directly emitted $PM_{2.5}$ to be 13% residential wood combustion, 6% on-road and non-road mobile emissions, and 6% all other remaining source categories. Also as discussed in the proposal for this action, Idaho estimated that the limiting $PM_{2.5}$ precursors from Franklin County, nitrogen oxides (NO_X) and volatile organic compounds (VOC), come primarily from motor vehicles, which are expected to decline significantly due to federal motor vehicle standards already in place (see page 81 FR 74747). In considering these emission sources, the IDEQ established road sanding agreements, woodstove curtailment ordinances, and the woodstove change-out program. Because Idaho and Utah modeled that the Logan UT–ID nonattainment area would attain based solely on the Utah control measures, the IDEQ reasoned that anticipated reductions from the Idaho control measures (*i.e.,* the road sanding agreements, woodstove curtailment ordinances, and the woodstove change-out program), were not otherwise relied upon in the control strategy for the area. As such, the IDEQ considered these early implemented contingency measures, as allowed under the EPA's longstanding guidance interpreting section 172(c)(9) to allow this approach.

However, as discussed in the proposed rulemaking, a recent decision by the U.S. Court of Appeals for the 9th Circuit rejected the EPA's interpretation of CAA section 172(c)(9) to allow already implemented control measures to meet the contingency measure requirements. *Bahr* v. *EPA,* No. 12–72327 (Sept. 12, 2016). The Court concluded that contingency measures must be control measures that will take effect at the time the area fails to meet RFP or fails to attain by the applicable attainment date, not before. *Id.*at 35–36. The IDEQ road sanding agreements, woodstove curtailment ordinances, and the woodstove change-out program which have already been implemented, do not meet the standard for section 172(c)(9) contingency measures set out by the *Bahr* decision which is controlling for EPA actions on SIP submissions from states located within the jurisdiction of the 9th Circuit. For this reason, the EPA is disapproving the contingency measures in this final action. Because the contingency measures are invalid as early implemented measures, the EPA is not addressing whether they would otherwise be approvable as contingency measures at this time.

III. Final Action

The EPA is approving parts of Idaho's attainment plan for the Idaho portion of the Logan, UT–ID nonattainment area for the 2006 24-hour NAAQS $PM_{2.5}$ NAAQS. In particular, the EPA is approving Idaho's determination of which pollutants must be evaluated for control in the Idaho portion of the

Logan, UT–ID nonattainment area for purposes of the Moderate area plan for the 2006 24-hour $PM_{2.5}$ NAAQS. The EPA is also approving Idaho's evaluation of, and imposition of, RACM/RACT level controls on appropriate sources in the Idaho portion of the area for this NAAQS. This includes approval of Idaho's woodstove curtailment ordinances, burn ban, heating device restrictions, and woodstove change-out programs as meeting the RACM/RACT requirements in this area. The EPA is deferring action on the submitted attainment plan with respect to the Moderate area attainment demonstration, RFP, quantitative milestone, and motor vehicle emissions budget requirements. Lastly, for the reasons set forth in our proposed rulemaking and discussed above, the EPA has determined that the contingency measures submitted as part of Idaho's 2012 SIP submittal and 2014 amendment do not meet CAA requirements, as interpreted in the 9th Circuit.

IV. Consequences of a Disapproved SIP

This section explains the consequences of disapproval, in whole or in part, of a SIP submission required under the CAA. The Act provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if a state fails to submit, and the EPA approve, a plan revision that corrects the deficiencies identified by the EPA in its disapproval of the initial SIP submission.

The Act's Provisions for Sanctions

Once the EPA finalizes disapproval of a required SIP submission, such as an attainment plan submission, or a portion thereof, CAA section 179(a) provides for the imposition of sanctions, unless the deficiency is corrected within 18 months of the final rulemaking of disapproval. The first sanction would apply 18 months after the EPA disapproves the SIP submission, or portion thereof. Under the EPA's sanctions regulations at 40 CFR 52.31, the first sanction imposed would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the state has still failed to submit a SIP submission to correct the identified deficiencies for which the EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a prohibition on the approval or funding of certain highway projects.[2]

Federal Implementation Plan Provisions That Apply if a State Fails To Submit an Approvable Plan

In addition to sanctions, once the EPA finds that a state failed to submit the required SIP revision, or finalizes disapproval of the required SIP revision or a portion thereof, the EPA must promulgate a FIP no later than two years from the date of the finding—if the deficiency has not been corrected within that time period.

Ramifications Regarding Transportation Conformity

The proposal discussed conformity freeze implications due to disapproval of the control strategy SIP.[3] This final action only disapproves the contingency measures. Section 93.120(a) of the conformity rule is not triggered by disapproval of contingency measures, so the area is not subject to a conformity freeze as discussed in the proposal.

V. Statutory and Executive Orders Review

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, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address, 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 in Idaho and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not

[2] On April 1, 1996 the US Department of Transportation published a notice in the **Federal Register** describing the criteria to be used to determine which highway projects can be funded or approved during the time that the highway sanction is imposed in an area. (*See* 61 FR 14363).

[3] Control strategy SIP revisions as defined in the transportation conformity rules include reasonable further progress plans and attainment demonstrations (40 CFR 93.101).

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 20, 2016.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

For the reasons set forth in the preamble, 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 N—Idaho

■ 2. In § 52.670, the table in paragraph (e) is amended by adding an entry at the end of the table for ''Fine Particulate Matter Attainment Plan.''

The addition reads as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	* *		* *	* *
Fine Particulate Matter Attainment Plan.	Franklin County, Logan UT–ID $PM_{2.5}$ Nonattainment Area.	12/19/12; 12/24/14	1/4/2017, [**Insert Federal Register citation**].	*Approved:* reasonably available control measures and reasonably available control technology requirements. *Disapproved:* contingency measures. *Deferred:* Moderate area attainment demonstration, reasonable further progress, quantitative milestone, and year motor vehicle emissions budget requirements.

[FR Doc. 2016–31643 Filed 1–3–17; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 82, No. 2
Wednesday, January 4, 2017

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9524; Directorate Identifier 2016–NM–049–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2014–16–19, for all Airbus Model A330–200 Freighter, –200, and –300 series airplanes. AD 2014–16–19 currently requires revision of the maintenance or inspection program to include certain fuel airworthiness limitations. Since we issued AD 2014–16–19, Airbus has issued more restrictive fuel airworthiness limitations. This proposed AD would require revision of the maintenance or inspection program, as applicable, to include new fuel airworthiness limitations. The proposed AD also removes certain airplanes from the applicability of AD 2014–16–19. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 21, 2017.

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9524; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9524; Directorate Identifier 2016–NM–049–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On August 4, 2014, we issued AD 2014–16–19, Amendment 39–17943 (79 FR 49449, August 21, 2014) (''AD 2014–16–19''). AD 2014–16–19 requires actions intended to correct an unsafe condition for all Airbus Model A330–200 Freighter, –200, and –300 series airplanes.

Since we issued AD 2014–16–19, Airbus has issued more restrictive fuel airworthiness limitations.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0065, dated April 5, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–200 Freighter series airplanes, Model A330–200 series airplanes, Model A330–300 series airplanes; and Model A340–200 series airplanes, Model A340–300 series airplanes, Model A340–500 series airplanes, and Model A340–600 series airplanes. The MCAI states:

> Prompted by an accident * * *, the Federal Aviation Authority (FAA) published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. A design review was conducted by Airbus to develop Fuel Airworthiness Limitations (FAL) for Airbus A330 and A340 aeroplanes in response to these regulations.
>
> The FAL, which are approved by EASA, are defined and published in Airbus A330 and A340 Airworthiness Limitations Section (ALS) documents known as Part 5. Failure to comply with these instructions could result in a fuel tank explosion and consequent loss of the aeroplane.
>
> EASA issued AD 2012–0168 [which corresponds with FAA AD 2014–16–19 for Model A330 airplanes, and FAA AD 2013–26–03, Amendment 39–17712 (78 FR 79292, December 30, 2013) for Model A340 airplanes] to require compliance with the FAL as specified in the A330 and A340 ALS Part 5 Revision 00.
>
> Since that [EASA] AD was issued, Airbus issued Revision 01 of both ALS Parts 5 for Airbus A330 and A340 to introduce more restrictive maintenance requirements and/or airworthiness limitations.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0168, which is superseded, and requires accomplishment of the actions

specified in Airbus A330 ALS Part 5 Revision 01, A340 ALS Part 5 Revision 01, as applicable (hereafter collectively referred to as 'the ALS' in this AD).

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9524.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and critical design configuration control limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A330 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations (FAL), Revision 01, dated October 28, 2015. The airworthiness limitations introduce more restrictive fuel airworthiness limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Differences Between This Proposed AD and the MCAI or Service Information

This proposed AD does not include the Airbus Model A340 airplanes that are specified in the MCAI. We have added the MCAI to the required airworthiness actions list (RAAL) for the Model A340 airplanes.

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Airworthiness Limitations Based on Type Design

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes.

In addition, U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including revisions, is a part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design.

To address this conflict, the FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore would apply to Model A330 series airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of approval of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Costs of Compliance

We estimate that this proposed AD affects 104 airplanes of U.S. registry.

The actions required by AD 2014–16–19, and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2014–16–19 is $85 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $8,840, or $85 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–16–19, Amendment 39–17943 (79 FR 49449, August 21, 2014), and adding the following new AD:

Airbus: Docket No. FAA–2016–9524; Directorate Identifier 2016–NM–049–AD.

(a) Comments Due Date

We must receive comments by February 21, 2017.

(b) Affected ADs

This AD replaces AD 2014–16–19, Amendment 39–17943 (79 FR 49449, August 21, 2014) (''AD 2014–16–19'').

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(3) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before October 28, 2015.

(1) Airbus Model A330–223F and –243F airplanes.

(2) Airbus Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(d) Subject

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

(e) Reason

This AD was prompted by the issuance of more restrictive fuel airworthiness limitations. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Maintenance Program Revision and Airworthiness Limitations Compliance, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2014–16–19, with no changes.

(1) Within 3 months after September 25, 2014 (the effective date of AD 2014–16–19), revise the maintenance or inspection program, as applicable, by incorporating Airbus A330 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations (FAL), dated November 16, 2011.

(2) Comply with all applicable instructions and airworthiness limitations included in Airbus A330 ALS Part 5—FAL, dated November 16, 2011. The initial compliance times for the actions specified in Airbus A330 ALS Part 5—FAL, dated November 16, 2011, are at the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, except as required by paragraphs (h) and (i) of this AD.

(i) Within the applicable compliance times specified in Airbus A330 ALS Part 5—FAL, dated November 16, 2011.

(ii) Within 3 months after accomplishing the actions required by paragraph (g)(1) of this AD.

(h) Retained Exceptions to Compliance Times for Design Changes, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2014–16–19, with no changes.

(1) For type design changes specified in ''Sub-part 5–2 Changes to Type Design,'' of Airbus A330 ALS Part 5—FAL, dated November 16, 2011, the compliance times are defined as ''Embodiment Limits,'' except as defined in paragraph (h)(2) of this AD.

(2) Where Airbus A330 ALS Part 5—FAL, dated November 16, 2011, specifies a compliance time based on a calendar date for modifying the control circuit for the fuel pump of the center fuel tank (installing ground fault interrupters to the center tank fuel pump control circuit), the compliance date is September 18, 2016 (48 months after the effective date of AD 2012–16–05, Amendment 39–17152 (77 FR 48425, August 14, 2012)).

(i) Retained No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs), With Added Exception

This paragraph restates the requirements of paragraph (i) of AD 2014–16–19, with an added exception. Except as required by paragraph (j) of this AD: After accomplishing the revision required by paragraph (g)(1) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used; except as specified in paragraph (h) of this AD; or unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(j) New Requirement of This AD: Revise the Maintenance or Inspection Program

Within 3 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airbus A330 ALS Part 5—FAL, Revision 01, dated October 28, 2015. The compliance times for accomplishing the initial tasks specified in Airbus A330 ALS Part 5—FAL, Revision 01, dated October 28, 2015, are at the times specified in Airbus A330 ALS Part 5—FAL, Revision 01, dated October 28, 2015, or within 3 months after revising the maintenance or inspection program as required by paragraph (j) of this AD, whichever occurs later. Accomplishing the revision required by this paragraph terminates the actions required by paragraph (g) of this AD.

(k) New Requirement of This AD: No Alternative Actions, Intervals, or CDCCLs

After accomplishing the revision required by paragraph (j) 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 (l)(1) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport

Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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 European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0065, dated April 5, 2016, 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–2016–9524.

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

Issued in Renton, Washington, on December 16, 2016.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–31366 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9522; Directorate Identifier 2016–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2009–17–01, which applies to certain Gulfstream Model G–IV, GIV–X, GV–SP airplanes and Model GV airplanes. AD 2009–17–01 currently requires, an inspection for sealant applied to the exterior of the auxiliary power unit (APU) enclosure (firewall), and a revision of the airplane flight manual (AFM), as applicable. Since we issued AD 2009–17–01, we received a report indicating that the type design sealant applied to the APU enclosure is flammable and failed certain tests. This proposed AD would require revising the AFM, and revising the applicability to include additional airplanes. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 21, 2017.

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

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

For service information identified in this NPRM, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9522; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ky Phan, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office (ACO) 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5536; fax: 404–474–5606; email: *ky.phan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9522; Directorate Identifier 2016–NM–144–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On July 31, 2009, we issued AD 2009–17–01, Amendment 39–15991 (74 FR 40061, August 11, 2009) (''AD 2009–17–01''), for certain Gulfstream Model G–IV, GIV–X, GV–SP airplanes, and Model GV airplanes. AD 2009–17–01 requires, for certain airplanes, a one-time inspection for sealant applied to the exterior of the APU enclosure, and for airplanes with the subject sealant and certain other airplanes, a revision of the AFM to prohibit operation of the APU during certain ground and flight operations. AD 2009–17–01 resulted from notification by the airplane manufacturer that an improper, flammable sealant was used on the interior and exterior of the APU enclosure. We issued AD 2009–17–01 to prevent this flammable sealant from igniting the exterior surfaces of the APU enclosure under certain anomalous conditions, such as an APU failure/APU compartment fire, which could result in propagation of an uncontained fire to other critical areas of the airplane.

Actions Since AD 2009–17–01 Was Issued

Since we issued AD 2009–17–01, the manufacturer has notified us that the type design sealant (AMS 3374) applied to the APU enclosure is flammable and failed a certification test and a company

test. Paragraph (g) of AD 2009–17–01 required an inspection to determine if GMS 4107 sealant (*i.e.,* not type design sealant) or AMS 3374 sealant was applied to the APU enclosure. If the inspections revealed the application of GMS 4107 sealant, operators were required by paragraph (h) of AD 2009–17–01 to revise the applicable AFM to include the applicable AFM supplement (AFMS). The AFMS provided limitations that prohibited operation of the APU during certain ground and flight operations. At the time AD 2009–17–01 was issued, the type design sealant was AMS 3374 sealant, which was thought to be fireproof. If the inspection required by paragraph (g) of AD 2009–17–01 revealed that AMS 3374 sealant was used, the applicable AFM did not have to be revised. With the discovery that AMS 3374 sealant is flammable, we have determined that AD 2009–17–01 does not address the identified unsafe condition.

Related Service Information Under 1 CFR Part 51

We reviewed the Gulfstream AFM supplements (AFMSs) identified below. The AFMSs provide operating limitations on the use of the APU during certain ground and flight operations. These documents are distinct since they apply to different airplane models.

(1) Gulfstream Aerospace GIV/G300/G400 AFM Supplement GIV–2016–01, dated July 27, 2016, to the GIV AFM, dated April 22, 1987; the G300 AFM, dated January 15, 2003; and the G400 AFM, dated November 18, 2002.

(2) Gulfstream G450/G350 AFM Supplement G450–2016–01, dated July 27, 2016, to the G450 AFM, dated August 12, 2004; and the G350 AFM, dated October 28, 2004.

(3) Gulfstream GV AFM Supplement GV–2016–01, dated July 27, 2016, to the GV AFM, dated April 11, 1997.

(4) Gulfstream G550/G500 AFM Supplement G550–2016–01, dated July 27, 2016, to the G550 AFM, dated August 14, 2003; and the G500 AFM, dated December 5, 2003.

(5) Gulfstream GVI (G650) AFM Supplement G650–2016–01, dated July 27, 2016, to the GVI (G650) AFM dated, September 7, 2012.

(6) Gulfstream GVI (G650ER) AFM Supplement G650ER–2016–03, dated July 27, 2016, to the GVI (G650ER) AFM, dated October 2, 2014.

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

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require a revision of the AFM to prohibit operation of the APU during certain ground and flight operation and would add additional airplanes to the applicability.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this proposed AD affects 1,220 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$103,700

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–17–01, Amendment 39–15991 (74 FR 40061, August 11, 2009), and adding the following new AD:

Gulfstream Aerospace Corporation: Docket No. FAA–2016–9522; Directorate Identifier 2016–NM–144–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 21, 2017.

(b) Affected ADs

This AD replaces AD 2009–17–01, Amendment 39 15991 (74 FR 40061, August 11, 2009) (''AD 2009–17–01'').

(c) Applicability

This AD applies to the Gulfstream Aerospace Corporation airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(5) of this AD.

(1) Model G–IV airplanes, having serial numbers (S/Ns) 1000 and subsequent.

(2) Model GIV–X airplanes, having S/Ns 4001 and subsequent.

(3) Model GV airplanes, having S/Ns 501 and subsequent.

(4) Model GV–SP airplanes, having S/Ns 5001 and subsequent.

(5) Model GVI airplanes, having S/Ns 6001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 49, Airborne Auxiliary Power; and 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report indicating that the type design sealant is flammable and failed a certification test and a company test. We are issuing this AD to provide the flight crew with operating procedures for airplanes that have flammable sealant compound applied to the auxiliary power unit (APU) enclosure (firewall). Under certain anomalous conditions such as an APU failure/APU compartment fire, flammable sealant could ignite the exterior surfaces of the APU enclosure and result in propagation of an uncontained fire to other critical areas of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

Within 30 days after the effective date of this AD, revise the Limitations Section of the applicable Gulfstream AFM specified in paragraphs (h)(1) through (h)(6) of this AD to include the information in the applicable Gulfstream AFM supplement (AFMS) specified in paragraphs (h)(1) through (h)(6) of this AD. These AFM supplements (AFMSs) introduce operating limitations on the use of the APU during certain ground and flight operations.

Note 1 to paragraph (g) of this AD: This AFM revision may be done by inserting a copy of the applicable AFMS into the applicable AFM specified in paragraphs (h)(1) through (h)(6) of this AD. When the AFMS has been included in the general revision of the AFM, the general revision may be inserted into the AFM, provided the relevant information in the general revision is identical to that in the applicable AFMS specified in paragraphs (h)(1) through (h)(6) of this AD.

(h) AFMSs

For the AFM revision required by paragraph (g) of this AD, insert the applicable AFMS into the applicable Gulfstream AFM identified in paragraphs (h)(1) through (h)(6) of this AD.

(1) Gulfstream GIV/G300/G400 AFM Supplement GIV–2016–01, dated July 27, 2016, to the GIV AFM, dated April 22, 1987; the G300 AFM, dated January 15, 2003; and the G400 AFM, dated November 18, 2002.

(2) Gulfstream G450/G350 AFM Supplement G450–2016–01, dated July 27, 2016, to the G450 AFM, dated August 12, 2004; and the G350 AFM, dated October 28, 2004.

(3) Gulfstream GV AFM Supplement GV–2016–01, dated July 27, 2016, to the GV AFM, dated April 11, 1997.

(4) Gulfstream G550/G500 AFM Supplement G550–2016–01, dated July 27, 2016, to the G550 AFM, dated August 14, 2003; and the G500 AFM, dated December 5, 2003.

(5) Gulfstream GVI (G650) AFM Supplement G650–2016–01, dated July 27, 2016, to the GVI (G650) AFM dated, September 7, 2012.

(6) Gulfstream GVI (G650ER) AFM Supplement G650ER–2016–03, dated July 27, 2016, to the GVI (G650ER) AFM, dated October 2, 2014.

(i) Credit for Previous Actions

This paragraph provides credit for the action required by paragraph (g) of this AD, if that action was performed before the effective date of this AD using the applicable service information specified in paragraphs (i)(1) through (i)(4) of this AD. This service information was incorporated by reference in AD 2009–17–01.

(1) Gulfstream G–IV/G300/G400 AFM Supplement G–IV–2009–02, Revision 1, dated June 25, 2009.

(2) Gulfstream G450/G350 AFM Supplement G450–2009–03, Revision 1, dated June 25, 2009.

(3) Gulfstream GV AFM Supplement GV–2009–03, Revision 1, dated June 25, 2009.

(4) Gulfstream G550/G500 AFM Supplement G550–2009–03, Revision 1, dated June 25, 2009.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(3) AMOCs approved previously for paragraph (h) of AD 2009–17–01 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(k) Related Information

(1) For more information about this AD, contact Ky Phan, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta ACO 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5536; fax: 404–474–5606; email: *ky.phan@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 16, 2016.

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–31362 Filed 1–3–17; 8:45 am]

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DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 725

RIN 1240–AA11

Black Lung Benefits Act: Medical Benefit Payments

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department is proposing revisions to regulations under the Black Lung Benefits Act (BLBA or Act) governing the payment of medical benefits. The Department is basing these rules on payment formulas that the Centers for Medicare & Medicaid Services (CMS) uses to determine payments under the Medicare program. The Department also intends to make the rules similar to those utilized in the other programs that the Office of Workers' Compensation Programs (OWCP) administers. These rules will determine the amounts payable for covered medical services and treatments provided to entitled miners, when those services or treatments are paid by the Black Lung Disability Trust Fund. In addition, the proposed rule would eliminate two obsolete provisions.

DATES: The Department invites written comments on the proposed regulations from interested parties. Written comments must be received by March 6, 2017.

ADDRESSES: You may submit written comments, identified by RIN number

1240–AA11, by any of the following methods. To facilitate receipt and processing of comments, OWCP encourages interested parties to submit their comments electronically.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Facsimile:* (202) 693–1395 (this is not a toll-free number). Only comments of ten or fewer pages, including a FAX cover sheet and attachments, if any, will be accepted by FAX.
- *Regular Mail or Hand Delivery/Courier:* Submit comments on paper to the Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Suite C–3520, 200 Constitution Avenue NW., Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Chance, Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Suite C–3520, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 1–800–347–2502. This is a toll-free number. TTY/TDD callers may dial toll-free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The BLBA, 30 U.S.C. 901–944, provides for the payment of benefits to coal miners and certain of their dependent survivors on account of total disability or death due to coal workers' pneumoconiosis. 30 U.S.C. 901(a); *Usery* v. *Turner Elkhorn Min. Co.,* 428 U.S. 1, 5 (1976). Benefits are paid by either an individual coal mine operator that employed the coal miner (or its insurance carrier), or the Black Lung Disability Trust Fund. *Director, OWCP* v. *Bivens,* 757 F.2d 781, 783 (6th Cir. 1985).

A miner who is entitled to disability benefits under the BLBA is also entitled to medical benefits. 33 U.S.C. 907, as incorporated by 30 U.S.C. 932(a); 20 CFR 725.701. The current rules governing the payment of medical benefits are contained in 20 CFR part 725, subpart J. Under these rules, a miner is entitled to ''such medical, surgical, and other attendance and treatment, nursing and hospital services, medicine and apparatus, and any other medical service or supply, for such periods as the nature of miner's pneumoconiosis and disability requires.'' 20 CFR 725.701(b).

In most cases, a responsible operator is liable for the payment of medical benefits. But OWCP pays medical benefits from the Trust Fund in three instances: (1) If no responsible operator can be identified as the party liable for a claim, and the Trust Fund is liable as a result (*id.*); (2) when the identified responsible operator declines to pay benefits pending final adjudication of a claim (*see* 20 CFR 725.522, 725.708(b)); and (3) when the responsible operator fails to meet its payment obligations on a final award (*see* 20 CFR 725.502). For interim payments made pending final adjudication, OWCP seeks reimbursement from the operator after the claim is finally awarded. 20 CFR 725.602(a). Likewise, OWCP seeks reimbursement for payments made when an operator fails to meet its obligations on a final award. 20 CFR 725.601.

Current § 725.706(c) provides that payment for medical benefits ''shall be made at no more than the rate prevailing in the community in which the providing physician, medical facility or supplier is located.'' 20 CFR 725.706(c). The current regulations, however, do not address how the prevailing community rate for a particular medical service or treatment is determined. For medical benefits paid by the Trust Fund, the Division of Coal Mine Workers' Compensation (DCMWC) currently bases payment for professional medical services, medical equipment, and inpatient and outpatient medical services and treatments, on internally-derived payment formulas. DCMWC currently pays for prescription medications utilizing a payment formula similar to that employed by the three other workers' compensation programs that OWCP administers.

The Department now proposes to revise Subpart J. Specifically, the Department proposes to base Trust Fund payments for all medical services and treatments rendered on or after the effective date of this rule on payment formulas derived from those used by CMS under the Medicare program. The proposed payment formulas are similar to those used by the other OWCP programs, but are tailored to the specific geography, medical conditions, and needs of black lung program stakeholders. *See* proposed § 725.707. The proposal also gives OWCP the flexibility to depart from the payment formulas if they cannot be used to determine the prevailing community rate, and requires OWCP to review (and, if necessary, update, revise or replace) the payment formulas at least annually. *See* proposed § 725.707(e). This flexibility will allow OWCP to timely address any issues that may result from the implementation and application of the payment formulas, including any impact on miners' access to health care.

The Department believes that the proposed payment formulas more accurately reflect prevailing community rates for authorized treatments and services than do the internally-derived formulas that OWCP currently uses for the black lung program. Moreover, because the Department believes that responsible operators and their insurance carriers utilize payment formulas or fee schedules that are substantially similar to the proposed payment formulas, the Trust Fund is more likely to be fully reimbursed for the payments it makes on an interim basis. Thus, this change will serve to control the health care costs associated with the BLBA, conserve the Trust Fund's limited resources, and provide greater clarity and certainty with respect both to fees paid to providers and reimbursements sought from operators and carriers. Likewise, it will ensure more consistent payment policies across all of the compensation programs administered by OWCP. The Department invites comments on the proposed rule from all interested parties. The Department is particularly interested in comments addressing the impact of the proposed payment formulas on health care services providers and any resulting impact on miners' access to health care.

II. Summary of the Proposed Rule

A. General Provisions

The Department is proposing several general revisions to advance the goals set forth in Executive Order 13563 (2012). That Order states that regulations must be ''accessible, consistent, written in plain language, and easy to understand.'' 76 FR 3821. *See also* E.O. 12866, 58 FR 51735 (Sept. 30, 1993) (agencies must draft ''regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such

uncertainty''). Accordingly, the Department proposes numerous technical and stylistic changes to Subpart J to improve clarity, consistency, and readability.

The Department proposes to remove the imprecise term ''shall'' throughout the sections that it is amending or republishing, and to substitute ''must,'' ''must not,'' ''will,'' or other situation-appropriate terms. No alteration in meaning either results from or is intended by these changes, which are made in the following proposed regulations: § 725.701, § 725.703, § 725.704, § 725.705, § 725.706, § 725.718, and § 725.720.

Consistent with the goal of making this regulation easier to understand, the Department proposes several additional technical changes. First, the Department proposes to replace references to ''the Office'' with ''OWCP'' because that acronym is more commonly used by stakeholders. As explained in current § 725.101(a)(21), ''Office'' and ''OWCP'' both mean ''the Office of Workers' Compensation Programs, United States Department of Labor.'' Thus, no alteration in meaning either results from or is intended by this change, which is made in the following regulations: § 725.703, § 725.704, § 725.705, and § 725.706.

Second, where appropriate, the Department proposes to replace references to a coal-mine ''operator'' with ''operator or carrier'' because § 725.360(a)(4) makes any coal-mine operator's insurance carrier a party to the operator's claims. Because either an operator or a carrier may defend or pay claims for medical benefits, no alteration in meaning either results from or is intended by this change, which is made in the following regulations: § 725.704, § 725.706, and § 725.718. Additionally, the Department proposes to replace a reference to ''insurer'' with the word ''carrier'' because, under § 725.101(a)(18), both mean an entity ''authorized under the laws of a State to insure employers' liability under workers' compensation laws.'' Thus, no alteration in meaning either results from or is intended by this change, which appears in § 725.704.

Third, where appropriate, for purposes of consistency with the rest of the Subpart, the Department proposes to substitute the broader term ''provider'' for the term ''physician'' and/or ''facility'' as well as to substitute the term ''medical equipment'' for the term ''apparatus.'' No alteration in meaning either results from or is intended by these changes, which are made in the following regulations: § 725.701, § 725.704, § 725.705, and § 725.706.

Finally, to make the regulations clearer and more user-friendly, the Department proposes new titles, phrased in question form, for all of the regulations appearing in Subpart J.

Executive Order 13563 also instructs agencies to review ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.'' The Department proposes to cease publication of two obsolete rules (20 CFR 725.308(b) and 725.702). Because of the deletion of current § 725.702 and the addition of new rules adopting the payment formulas noted above, other current regulations (20 CFR 725.703–725.708 and 725.710–725.711) will be renumbered.

All technical and stylistic changes designated here are not included in the section-by-section explanation. All proposed substantive revisions to existing rules and all proposed new rules are discussed below.

B. Section-by-Section Explanation

§ 725.308 Time Limits for Filing Claims

The Department proposes to discontinue publication of § 725.308(b) because it is obsolete. Current § 725.308(b) establishes a time limit applicable to miners' claims for medical benefits filed under Section 11 of the Black Lung Benefits Reform Act, 30 U.S.C. 924a, *repealed,* Public Law 107–275, 2(c)(2), 116 Stat. 1926 (2002). For the reasons explained in the discussion under 20 CFR subpart J below, continued publication of regulations related to Section 11 is unnecessary. To implement this change, the Department also proposes conforming technical amendments to current § 725.308(c), including renumbering current paragraph (c) as paragraph (b).

Subpart J—Medical Benefits and Vocational Rehabilitation

The Department proposes multiple revisions and additions to the provisions governing medical benefits in Subpart J. Because the proposed changes are substantial, the Department has republished Subpart J in its entirety below.

In the existing regulations and in compliance with Executive Order 13563, the Department proposes to discontinue publication of § 725.702 because it is obsolete. 20 CFR 725.702. Section 725.702 implements Section 11 of the Black Lung Benefits Reform Act passed in 1977. 30 U.S.C. 924a, *repealed,* Public Law 107–275, 2(c)(2), 116 Stat. 1926 (2002). Section 11 required the Secretary of Health, Education and Welfare to notify miners receiving benefits under Part B of the Act that they could file a claim for medical benefits under Part C of the Act. Current §§ 725.308 and 725.702 required miners to file these claims on or before December 31, 1980, unless the period was extended for good cause shown. Few, if any, Section 11 claims for medical benefits only remain in litigation. In fact, Congress repealed Section 11 as obsolete in 2002. Thus, continued publication of this regulation is unnecessary. If any Section 11 claim results in litigation after the effective date of these regulations, the claim will continue to be governed by the criteria in the 2015 edition of the Code of Federal Regulations. As a consequence of the deletion of current § 725.702, and the addition of new provisions regarding payments for medical services and treatments, other current regulations (20 CFR 725.703–725.708, 725.710–725.711) will be renumbered.

The Department also proposes a new set of regulations that adopt payment formulas and related procedures for determining the prevailing community rate for medical benefits paid by the Trust Fund. The subheadings and other regulatory references in this discussion generally refer to the location of the proposed rule if promulgated as a final rule.

Specifically, the Department proposes to replace current § 725.706(c) with proposed §§ 725.707–725.717, which adopt payment formulas and procedures to determine the rates at which various medical services and treatments will be paid by the Trust Fund, as well as the rates at which OWCP will seek reimbursement from operators for medical benefits paid on an interim basis. Similar payment formulas are used by the other three workers' compensation programs that OWCP administers. Such payment formulas were first developed and adopted for use in claims under the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.,* in 1986. *See* 51 FR 8276–82 (Mar. 10, 1986). Subsequently, similar formulas were adopted for claims under the Longshore Act in 1995 and for claims under the Energy Employees Occupational Illness Compensation Program Act, 42 U.S.C. 7384 *et seq.,* in 2001. *See* 60 FR 51347–48 (Oct. 2, 1995); 66 FR 28957–59, 79–80 (May 25, 2001).

The payment formulas the Department proposes to adopt for claims under the BLBA (and those it already utilizes under the other OWCP programs) are derived from the payment formulas that CMS uses to determine payments for medical services and

treatments under the Medicare program. The proposed formulas encompass locality-based payment rates for physician services and medical equipment (*see* proposed § 725.708), as well as for outpatient and inpatient medical services (*see* proposed §§ 725.710 and 725.711, respectively). The Department also proposes, consistent with existing practice and similar to the other OWCP programs, to adopt a single national formula for the payment of prescription-drug costs. *See* proposed § 725.709.

Finally, the Department proposes to adopt specific procedures for providers to enroll with OWCP for authorization to submit medical bills for payment, and for miners to request reimbursement for covered medical expenses and transportation costs. *See* proposed §§ 725.714–725.717. Most of these provisions simply implement current procedures and, to the extent any differences are proposed, the procedures are consistent with current industry standards. Specific provisions proposed for addition to the regulations in Subpart J are discussed in detail below.

§ 725.701 What medical benefits are available?

Proposed § 725.701 is a revision of current § 725.701. The Department proposes to combine current paragraphs (e) and (f), and add subdivisions to paragraph (e) for greater clarity and ease of comprehension. Likewise, the Department proposes to delete the confusing reference to ''other employer'' in paragraph (b). Proposed paragraph (b) also enumerates more clearly the medical services and treatments to which a miner is entitled. The terms ''service'' and ''treatment'' are used interchangeably throughout Subpart J to indicate those benefits for which the responsible operator or Trust Fund may be liable. The Department proposes to revise paragraphs (d) and (e)(3) for greater clarity and readability. For the same reason, in paragraph (e), the Department proposes replacing the word ''supply'' with ''treatment.'' Finally, the Department also proposes to replace the reference to ''district director'' in paragraph (d) with ''OWCP,'' as communication may be made with either the OWCP national or district offices.

§ 725.702 Who is considered a physician?

Proposed § 725.702 is substantively identical to current § 725.703. For consistency, however, osteopathic physicians (DO) are now identified in the same manner as other doctors of medicine (MD). The reference to ''district director'' in the final sentence is changed to ''OWCP,'' as the supervision of care may be provided by either the OWCP national office or district offices, depending upon factors such as the geographic location of the miner or provider, the particular services or treatments required by the miner, and the relative resource levels in the OWCP national and district offices.

§ 725.703 How is treatment authorized?

Proposed § 725.703 is a revision of current § 725.704 and contains only technical changes described in Section II–A above.

§ 725.704 How are arrangements for medical care made?

Proposed § 725.704 is a revision of current § 725.705. References to ''such operator'' have been changed to ''the operator,'' ''decisionmaking'' has been changed to ''decision-making,'' and ''such designation'' has been changed to ''this designation.'' The Department does not intend any substantive alteration to the current provision.

§ 725.705 Is prior authorization for medical services required?

Proposed § 725.705 is a revision of paragraphs (a) and (b) of current § 725.706. The Department proposes to replace the reference to ''Chief, Branch of Medical Analysis and Services, DCMWC'' with ''Chief, Medical Audit and Operations Section, DCMWC'' to reflect the correct title of the employee authorized to approve requests for hospitalization or surgery by telephone. Paragraph (c) of current § 725.706 is deleted and replaced by proposed §§ 725.707–725.711 (*see* below).

§ 725.706 What reports must a medical provider give to OWCP?

Proposed § 725.706 is a revision of current § 725.707. The Department proposes to replace the reference to ''district director'' in paragraph (b) with ''OWCP,'' as payment determinations may be made by either the OWCP national or district offices.

§ 725.707 At what rate will fees for medical services and treatments be paid?

Proposed § 725.707 is a new provision that sets out general rules governing the payment of compensable medical bills by the Trust Fund. Paragraph (a) provides that the Trust Fund will pay no more than the prevailing community rate for medical services, treatments, drugs or equipment. Paragraph (b) provides that the prevailing community rate for various types of treatments and services will be determined under the provisions of §§ 725.708–725.711. Paragraph (c), however, precludes the application of §§ 725.708–725.711 to charges for services or treatments furnished by the U.S. Public Health Services or the Departments of the Army, Navy, Air Force or Veterans Affairs. Payment for services or treatments furnished by these providers is made under the provisions of proposed § 725.707(d). Because the Department recognizes that there may be circumstances where the provisions of §§ 725.708–725.711 cannot be used to determine the prevailing community rate, paragraph (d) permits OWCP to determine the prevailing community rate based on other payment formulas or evidence. Paragraph (e) requires OWCP to review the payment formulas in §§ 725.708–725.711 annually, and permits OWCP to adjust, revise or replace any formula (or its components) when needed. This provision allows OWCP to change the payment formulas in §§ 725.707–725.711 (or replace them entirely) if, at any given time, OWCP finds that those formulas cannot be used to determine prevailing community rates, are adversely impacting miners' access to care, or are otherwise not appropriate. Finally, paragraph (f) makes §§ 725.707–725.711 applicable to all services and treatments provided on or after the rule's effective date.

§ 725.708 How are payments for professional medical services and medical equipment determined?

Proposed § 725.708 is a new provision to govern payments for compensable professional medical services and medical equipment. Paragraph (a) provides that OWCP will pay for professional medical services based on a fee schedule derived from the CMS Medicare program fee schedule. OWCP's fee schedule will be used to determine the prevailing rate paid for a given medical service in the community in which the provider is located. To calculate the maximum allowable payment, each professional service is identified by a Healthcare Common Procedure Coding System/Current Procedural Terminology (HCPCS/CPT) code,[1] which is assigned a relative value for work, practice expense, and malpractice expense. OWCP proposes to utilize relative values established by CMS for the Medicare program. Where CMS does not have a relative value for

[1] CPT codes are established and updated by the American Medical Association. HCPCS codes were developed by CMS to complement the CPT. The use of these codes is standard practice in the coding and processing of medical bills.

a service, OWCP may develop and assign one. The relative value is multiplied by a relevant geographic adjustment factor as defined by CMS. The resulting value is then multiplied by a monetary conversion factor (which is defined by OWCP) to determine the prevailing community rate for each coded service. Some professional services are not covered by the fee schedule described in paragraph (a). Thus, paragraph (b) provides that payment for services not covered by the paragraph (a) fee schedule is derived from other fee schedules or pricing formulas utilized by OWCP for professional services. Finally, paragraph (c) provides that payment for medical equipment identified by a HCPCS/CPT code is based on fee schedules or pricing formulas utilized by OWCP for medical equipment.

§ 725.709 How are payments for prescription drugs determined?

Proposed § 725.709 is a new provision to govern payment for compensable prescription drugs. It merely codifies existing policy and does not change current payment practice. Paragraph (a) provides for payment for prescribed medication at a percentage of the national average wholesale price (or another baseline price designated by OWCP). In addition, the provider of the drug will receive a flat-rate dispensing fee, to be set by OWCP. Paragraph (b) provides that where the pricing formula in paragraph (a) cannot be used, OWCP may make payment based on other pricing formulas. Lastly, paragraph (c) provides that OWCP may require the use of specific providers for certain medications and may require the use of generic versions of medications where available.

§ 725.710 How are payments for outpatient medical services determined?

Proposed § 725.710 is a new provision to govern payment for compensable outpatient medical services. Paragraph (a) provides that, where appropriate, OWCP will utilize the Outpatient Prospective Payment System (OPPS) devised by CMS for the Medicare program. Under OPPS, outpatient services are generally assigned to Ambulatory Payment Classifications based on their clinical and resource cost similarities. Payment rates are based on those classifications, adjusted by other factors, including the hospital wage index for the locality where the service is provided. The OPPS was first implemented by CMS in 2000, and the industry is familiar with this payment system for hospital outpatient services. Where outpatient services cannot be assigned or priced appropriately under the OPPS system, paragraph (b) provides that payment for the services will be based on fee schedules and other pricing formulas utilized by OWCP. Finally, paragraph (c) specifies that services provided at an ambulatory surgery center are not paid for under OPPS. Rather, such services are paid under § 725.707(d).

§ 725.711 How are payments for inpatient medical services determined?

Proposed § 725.711 is a new provision to govern payment for compensable hospital inpatient services. Under paragraph (a), OWCP will pay for inpatient services utilizing a Diagnosis-Related Group (DRG) system derived from the Medicare Severity DRG (MS–DRG) methodology used by Medicare in the Inpatient Prospective Payment System (IPPS). DRG-based pricing is the industry standard for determining the payment rates for inpatient hospital treatment and services. In addition to Medicare, it is used by the Department of Veterans' Affairs, and TRICARE (formerly known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)), as well as by numerous state workers' compensation programs and private insurance plans. Paragraph (a) specifies that hospital discharge diagnoses are classified into groups (DRGs) based on the patient's diagnosis and the procedures furnished. Each DRG is assigned a base payment rate, which is then adjusted for both geographic and provider-specific factors to determine the payment rate for each admission. Under paragraph (b), where a compensable inpatient service cannot be paid under the DRG system, payment for the service will be based on fee schedules or other pricing formulas utilized by OWCP.

§ 725.712 When and how are fees reduced?

Proposed § 725.712(a) is a new provision addressing reductions in requested fees. The Department proposes that, where a provider submits a properly coded bill, OWCP will pay no more than the maximum amount allowable under §§ 725.707–725.711. Where a bill is improperly coded, OWCP will either return it to the provider for correction, or deny it outright. Under proposed paragraph (b), if a bill exceeds the maximum amount allowed under the regulations, OWCP will pay only the allowed amount and advise the provider of any reduction in the requested fee. Finally, consistent with current practice, proposed paragraph (c) provides that disputes over fee payments may be referred to the Department's Office of Administrative Law Judges. *See* 20 CFR 725.708, to be re-codified at 20 CFR 725.718.

§ 725.713 If a fee is reduced, may a provider bill the claimant for the balance?

Proposed § 725.713 is a new provision addressing reductions in requested fees. It codifies current OWCP policy. The proposed provision provides that if a fee has been reduced in accordance with this subpart, providers may not recover any additional amount from the miner. This provision thus would prohibit the practice of ''balance billing,'' which occurs when providers receive only a portion of their submitted charges from third-party payers and seek to recover the ''balance'' from the patient.

§ 725.714 How do providers enroll with OWCP for authorizations and billing?

Proposed § 725.714 is a new provision, but it simply codifies OWCP's existing practice of requiring all non-pharmacy providers seeking payments from the Trust Fund to enroll in the OWCP bill payment processing system. Paragraph (a) requires non-pharmacy providers to enroll in the system and paragraph (b) specifies the manner of enrollment. Paragraph (c) requires non-pharmacy providers to maintain proof of their eligibility for enrollment in the system. Paragraph (d) requires non-pharmacy providers to notify OWCP of any change in the provider's enrollment information. Paragraph (e) explains that pharmacy providers are required to obtain a National Council for Prescription Drug Programs number, and that upon obtaining such number, they will be automatically enrolled in OWCP's pharmacy billing system. Finally, paragraph (f) requires providers to submit bills via a specified bill-processing portal or to the requisite OWCP mailing address and to include any identifying numbers OWCP may require.

§ 725.715 How do providers submit medical bills?

Proposed § 725.715 is a new provision that prescribes the forms and documents providers must submit to be paid for rendering covered medical services or treatments to miners. Paragraph (a) lists the forms that a provider must submit for each type of service or treatment. Paragraph (b) sets out the coding or other information that must be included on the forms for each type of service or treatment. Finally, under paragraph (c), a provider, by submitting a bill or accepting payment, signifies that the

service or treatment was necessary and appropriate and was billed in accordance with standard industry practices. In addition, paragraph (c) requires providers to comply with the regulations in Subpart J with respect to the provision of, and billing for, services and treatments.

§ 725.716 How should a miner prepare and submit requests for reimbursement for covered medical expenses and transportation costs?

In some instances, a miner will pay for covered medical services out of his or her own pocket. Proposed § 725.716 is a new provision that reflects existing procedures allowing the miner to be reimbursed for these payments. Proposed paragraph (a) requires the miner to submit the appropriate form along with an itemized bill and proof of payment for the services. Proposed paragraph (b) allows OWCP to waive these requirements if the delay between the time of the service and approval of the miner's claim makes it difficult to obtain this information. Proposed paragraph (c) provides for reimbursement at the rate allowed under proposed §§ 725.707–725.711. If that reimbursement is less than the full amount the miner paid, proposed paragraph (d) places responsibility on the miner to seek a refund or a credit from the provider. But if those efforts fail, proposed paragraph (e) protects the miner by allowing OWCP to make a reasonable reimbursement based on the facts and circumstances in the particular case. Finally, proposed paragraph (f) specifies the form and documentation that a miner must submit to be reimbursed for travel costs and other incidental expenses related to obtaining covered medical services.

§ 725.717 What are the time limitations for requesting payment or reimbursement for medical services and treatments?

Proposed § 725.717 would impose a new time limitation on requests for payment or reimbursement for medical services and treatments. The proposed provision would require providers to request payment no later than one year after the end of the calendar year during which either the service or treatment was rendered or in which the miner received a final award of benefits, whichever is later. Miners seeking reimbursement for covered medical services are also governed by this provision. Time limitations on requests for payment will encourage providers and miners to act promptly and will help prevent delays in the submission of bills and reimbursement requests to the Trust Fund. OWCP may waive the time limitation if the provider or miner demonstrates good cause for the late submission of a payment or reimbursement request.

§ 725.718 How are disputes concerning medical benefits resolved?

Proposed § 725.718 is a revision of current § 725.708. The Department proposes to revise paragraph (a) to clarify that the dispute-resolution procedures apply to disputes over the payment or cost of a particular medical service or treatment as well as to the miner's entitlement to such service or treatment. The current regulation requires that hearing requests on whether a miner is entitled to a service or treatment must be given priority over other hearing requests. The proposed provision does not change this requirement, but adds language to paragraph (b) clarifying that disputes over only the payment or cost of a service or treatment are not prioritized over other hearing requests. In paragraph (a) and (b), the Department also proposes to change the references to ''the district director'' to ''OWCP,'' as informal resolution efforts and referrals for hearing may be made by either the OWCP national or district offices. In addition, the Department proposes to replace the reference to ''the Director'' in the last sentence of paragraph (b) with ''OWCP,'' and to edit the introductory clause in the first sentence of paragraph (b) for clarity and consistency. Finally, the Department proposes to replace the phrase ''over medical benefits'' in paragraph (d) with ''under this subpart,'' for clarity and to avoid redundancy.

§ 725.719 What is the objective of vocational rehabilitation?

Proposed § 725.719 is a revision of current § 725.710. For conciseness and clarity, the Department proposes to replace the phrase ''for work in or around a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment'' in the first sentence with ''by pneumoconiosis.'' *See* 20 CFR 718.204(b)(1)(ii) (defining total disability as inability to ''engag[e] in gainful employment in the immediate area of his or her residence requiring the skills or abilities comparable to those of any employment in a mine or mines in which he or she previously engaged with some regularity over a substantial period of time''). No change in the meaning of the current provision is intended.

§ 725.720 How does a miner request vocational rehabilitation assistance?

Proposed § 725.720 is a revision of current § 725.711 and contains only technical changes described in Section II–A above.

III. Statutory Authority

Section 426(a) of the BLBA, 30 U.S.C. 936(a), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration and enforcement of the Act.

IV. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320, require that the Department consider the impact of paperwork and other information collection burdens imposed on the public. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the Office of Management and Budget (OMB) under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person may generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Although the proposed medical benefit payment rules in Subpart J contain collections of information within the meaning of the PRA (*see* proposed §§ 725.715–725.716), these collections are not new. They are currently approved for use in the black lung program and other OWCP-administered compensation programs by OMB under Control Numbers 1240–0007 (OWCP–915 Claim for Medical Reimbursement); 1240–0019 (OWCP–04 Uniform Billing Form); 1240–0021 (OWCP–1168 Provider Enrollment Form); 1240–0037 (OWCP–957 Medical Travel Refund Request); 1240–0044 (OWCP–1500 Health Insurance Claim Form). The requirements for completion of the forms and the information collected on the forms will not change if this rule is adopted in final. Since no changes are being made to the collections, the overall burdens imposed by the information collections will not change.

While the Department has determined that the rule does not affect the general terms of the information collections or their associated burdens, consistent

with requirements codified at 44 U.S.C. 3506(a)(1)(B), (c)(2)(B) and 3507(a)(1)(D); 5 CFR 1320.11, the Department has submitted a series of Information Collection Requests to OMB for approval under the Paperwork Reduction Act of 1995 (PRA) in order to update the information collection approvals to reflect this rulemaking and provide interested parties a specific opportunity to comment under the PRA. Allowing an opportunity for comment helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

In addition to having an opportunity to file comments with the Department, the PRA provides that an interested party may file comments on the information collection requirements in a proposed rule directly with OMB, at the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the Department by one of the methods set forth above. OMB will consider all written comments that the agency receives within 30 days of publication of this Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention at least one of the OMB control numbers cited in this preamble.

OMB and the Department are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collections in this rule may be summarized as follows. The number of responses and burden estimates listed are not specific to the black lung program; instead, the estimates are cumulative for all OWCP-administered compensation programs that collect this information.

1. *Title of Collection:* Claim for Medical Reimbursement Form.
OMB Control Number: 1240–0007.
Total Estimated Number of Responses: 31,824.
Total Estimated Annual Time Burden: 5,283 hours.
Total Estimated Annual Other Costs Burden: $54,737.

2. *Title of Collection:* Uniform Billing Form (OWCP–04).
OMB Control Number: 1240–0019.
Total Estimated Number of Responses: 190,970.
Total Estimated Annual Time Burden: 21,811 hours.
Total Estimated Annual Other Costs Burden: $0.

3. *Title of Collection:* Provider Enrollment Form.
OMB Control Number: 1240–0021.
Total Estimated Number of Responses: 37,257.
Total Estimated Annual Time Burden: 4,955 hours.
Total Estimated Annual Other Costs Burden: $18,629.

4. *Title of Collection:* Medical Travel Refund Request.
OMB Control Number: 1240–0NEW.
Total Estimated Number of Responses: 342,462.
Total Estimated Annual Time Burden: 56,849 hours.
Total Estimated Annual Other Costs Burden: $171,231.

5. *Title of Collection:* Health Insurance Claim Form.
OMB Control Number: 1240–0044.
Total Estimated Number of Responses: 2,646,438.
Total Estimated Annual Time Burden: 254,875 hours.
Total Estimated Annual Other Costs Burden: $0.

V. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess all the costs and benefits of the available alternatives to regulation 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, harmonizing rules, and promoting flexibility. It also instructs agencies to review ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them.''

The Department has considered the proposed rule with these principles in mind and has determined that the affected community will benefit from this regulation. The discussion below sets out the rule's anticipated economic impact and discusses non-economic factors favoring adoption of the proposal. The Office of Information and Regulatory Affairs of OMB has determined that the Department's rule represents a ''significant regulatory action'' under Section 3(f)(4) of Executive Order 12866 and has reviewed the rule.

A. Economic Considerations

The proposed rule could have an economic impact on parties to black lung claims and others, including health care services providers that furnish covered medical services to entitled miners. The rule is nevertheless necessary to define the prevailing community rate used to pay for particular medical services and treatments for the affected community. As explained in Section I of this preamble, miners found entitled to monthly disability benefits under the BLBA are also entitled to medical benefits, *i.e.,* those medical services and treatments as the miner's pneumoconiosis and resulting disability require. The Trust Fund pays for medical benefits both when the Trust Fund is primarily liable for a claim and on behalf of non-paying responsible operators. When the Trust Fund pays medical benefits on behalf of a non-paying operator, it later seeks reimbursement from the operator responsible for the miner's benefits.

As detailed in Section II.B. of this preamble, the proposed regulations would change the formulas OWCP currently utilizes to calculate the amount paid for non-hospital health care services, outpatient hospital services, and inpatient hospital services.[2] The Trust Fund currently pays for non-hospital and hospital services based on internally-derived payment formulas. The payment formulas in the proposed rule, however, are based on those utilized by CMS for

[2] Proposed § 725.709 is a codification of the current payment formula for prescription drugs. Since adoption of this proposed rule would not change current practices or policies, it would have no economic impact on providers. As a result, proposed § 725.709 is not included in this analysis.

the payment of services under the Medicare program, and are similar to the payment formulas utilized by OWCP in the other programs it administers. Thus, the proposed rule would more closely conform Trust Fund medical payments to industry-wide standards for medical bill payment and more accurately reflect prevailing community rates for authorized treatments and services.

This analysis provides the Department's estimate of the economic impact of the proposed rule, both on the economy as a whole and at the firm level. The Department invites comments on this analysis from all interested parties. The Department is particularly interested in comments addressing the Department's evaluation of the impact of the proposed rule on health care services providers and on miners' access to providers and services.

1. Data Considered

To determine the proposed rule's general economic impact, the Department calculated the amount that the Trust Fund actually paid to health care services providers for medical services performed in Fiscal Year (FY) 2014 (current practice), and the amount the Trust Fund would have paid for the same services using the proposed payment formulas. The Department then compared the amounts to measure potential impact. Overall, the proposed rule would have saved the Trust Fund $3,154,267 for services rendered in FY 2014.[3] Because payments are calculated differently depending upon the type of health care services provider being reimbursed, the analysis below consists of three sections: (1) Non-hospital health care services (primarily physician services, but also services of other health care professionals including providers of durable medical equipment and ambulance suppliers); (2) hospital outpatient services; and (3) hospital inpatient services. The providers included in the dataset are those that were actually paid for covered services in FY 2014, including 1,210 non-hospital providers, 184 hospitals providing outpatient services, and 156 hospitals providing inpatient services.

a. Non-Hospital Health Care Services

Under proposed § 725.708, the Department would pay for non-hospital health care services with fee schedules derived from those utilized by CMS for payment under the Medicare program. *See* 42 CFR part 414. The Department estimates that under the proposed payment formulas, non-hospital health care services providers would receive, in aggregate, slightly less in payments from the Trust Fund than under current practice. The Trust Fund paid $2,672,782 for the non-hospital health care services provided in FY 2014. *See* Table 1. The Department estimates that under proposed § 725.708, the Trust Fund would have paid $2,664,290 for non-hospital health care services, a total decrease of only $8,492 (0.3%), far less than a 1% reduction. *See* Table 1.

The Department estimates that non-hospital health care services providers in twelve states would experience a net aggregate reduction in payments from the Trust Fund, totaling $89,139. The largest decreases in dollar amount would occur in Kentucky ($39,338, a 4.5% decrease), Missouri ($17,056, a 40.9% decrease), and Virginia ($12,870, a 2.3% decrease). *See* Table 1. Nearly offsetting these reductions, however, providers in sixteen states would experience a net aggregate increase in payments from the Trust Fund, totaling $80,647. The largest increases by dollar amount would occur in Pennsylvania ($53,507, a 12.3% increase), Tennessee ($10,095, a 5.4% increase) and Illinois ($7,444, a 23.3% increase). *See* Table 1.

The aggregate payment decrease, $8,492, would represent a reduction in transfer payments from the Trust Fund to non-hospital health care services providers. This small aggregate reduction, however, represents the combination of reductions and increases spread over 1,210 non-hospital health care services providers.[4] The Department therefore believes that proposed § 725.708 will not significantly affect non-hospital providers, or create issues for miners seeking access to these health care services providers.

[3] The Trust Fund paid a total of $17,480,555 in FY 2014 for non-hospital health care services, outpatient hospital services, and inpatient hospital services. Of that total, it paid $2,672,782 for non-hospital services, $2,383,641 for outpatient hospital services, and $12,424,132 for inpatient hospital services. To provide context, in FY 2014, the Trust Fund also paid $152,397,971 in disability and survivor benefits under Part C of the BLBA.

[4] In Sections V and VI of this preamble, the Department uses the terms ''provider,'' ''entity,'' and ''firm'' interchangeably. The OWCP data used as part of the analyses in Sections V and VI is based on provider-level data as identified by provider number in its billing system. The U.S. Census Bureau and the U.S. Small Business Administration, by contrast, publish data (used to assess the impact of the proposed rule in Sections V and VI) on a firm-level basis. A firm may consist of multiple establishments or providers, and the Department is unable to identify firms in its data. The Department believes, however, that there is not a meaningful difference between ''providers'' and ''firms'' in this context because the great majority of non-hospital and hospital small firms that provide medical services to miners consist of single providers or establishments. As a result, the Department believes that the use of firm-level data instead of provider-level data does not materially impact its analysis and, if it has any effect, results in an overstatement of the proposed rule's economic impact.

Table 1: Comparison of Trust Fund Payments to Non-Hospital Health Care Services Providers for Services Performed 10/1/2013-9/30/2014 (Current Practice v. Estimated Payments Under the Proposed Rule).

State	Amount Billed By Providers[1]	Amount Paid Under Current Practice	Amount That Would Be Paid Under The Proposed Rule	Difference	Number of Providers
Alabama	$21,257	$13,740	$15,437	$1,697	22
Arkansas	$685	$482	$270	-$212	2
California	$96	$88	$37	-$51	1
Colorado	$15,484	$7,192	$7,604	$412	13
Florida	$18,123	$9,509	$11,037	$1,528	22
Georgia	$6,083	$3,292	$3,230	-$62	6
Illinois	$52,042	$31,961	$39,405	$7,444	41
Indiana	$209,099	$89,139	$78,556	-$10,582	43
Iowa	$1,176	$517	$710	$193	1
Kansas	$1,881	$605	$833	$228	2
Kentucky	$1,721,762	$871,962	$832,624	-$39,338	270
Maryland	$18,917	$10,535	$10,387	-$148	12
Michigan	$27,314	$11,636	$12,786	$1,151	19
Minnesota	$1,722	$910	$1,020	$110	1
Missouri	$80,132	$41,655	$24,599	-$17,056	11
Nevada	$1,669	$236	$352	$116	2
New Jersey	$4,906	$3,390	$4,136	$745	4
New Mexico	$1,572	$841	$1,037	$197	2
North Carolina	$27,476	$13,148	$12,703	-$445	12
Ohio	$41,692	$22,731	$24,968	$2,237	53
Pennsylvania	$782,783	$433,306	$486,813	$53,507	244
South Carolina	$3,964	$1,486	$728	-$757	3
Tennessee	$500,266	$188,604	$198,700	$10,095	118
Texas	$6,827	$3,107	$3,276	$168	2
Utah	$23,264	$9,761	$9,524	-$237	7
Virginia	$1,090,098	$550,299	$537,429	-$12,870	115
West Virginia	$622,121	$346,678	$339,297	-$7,381	178
Wyoming	$14,263	$5,973	$6,792	$819	4
Total	**$5,296,676**	**$2,672,782**	**$2,664,290**	**-$8,492**	**1,210**

Notes:
[1] These amounts reflect actual amounts billed, including bills presented for non-covered medical services.

b. Hospital Outpatient Services

Under proposed § 725.710, the Department would pay for outpatient services with an outpatient prospective payment system (OPPS) derived from the OPPS utilized by CMS for payment under the Medicare program. The Department estimates that under proposed § 725.710, there would be a reduction in payments from the Trust Fund to hospitals for outpatient services. Under current practice, the Trust Fund paid $2,383,641 for outpatient services rendered in FY 2014. The Department estimates that, under proposed § 725.710, the Trust Fund would have paid $664,098, a decrease of $1,719,543 (or 72%). *See* Table 2. The Department estimates that hospitals in twenty states would receive reduced payments. The largest decreases by dollar amount would occur in Kentucky ($902,425, a decrease of 74%), Virginia ($327,304, a decrease of 77%), West Virginia ($148,104, a decrease of 60%); and Pennsylvania ($85,169, a decrease of 71%). *See* Table 2. Colorado is the only state that would see an increase in payments.

The total estimated reduction in hospital outpatient payments is sizeable, but necessary to bring payments for black lung outpatient hospital care in line with industry standards. Under current practice, hospitals were paid, in aggregate, 431% of their costs for outpatient services performed in FY 2014, with payments to individual hospitals made at rates as

high as 1,559% of costs.[5] This divergence explains the need for a new payment formula.

While proposed § 725.710 would result in an aggregate decrease in the transfer payments from the Trust Fund to hospitals for outpatient services, hospitals would continue to be paid at rates they are currently accepting from other small third-party payers, including the other OWCP programs, and at rates above those paid by Medicare. In aggregate, hospitals would be paid approximately 120% of costs for outpatient services under the proposed rule.[6] The Department therefore believes that proposed § 725.710 will not affect miners' access to care. Moreover, providers being paid significantly above costs under the current practice are likely to be most impacted by proposed § 725.710. The Department, however, invites comments on these determinations. In particular, the Department seeks comments on whether any projected impact of the proposal on miners' access to outpatient services would be short-term or long-term.

Table 2: Comparison of Trust Fund Payments to Hospital Outpatient Services Providers for Services Performed 10/1/2013-9/30/2014 (Current Practice v. Estimated Payments Under the Proposed Rule).

State	Amount Billed By Providers[1]	Amount Paid Under Current Practice	Amount That Would Be Paid Under the Proposed Rule	Difference	Number of Providers
Alabama	$16,684	$6,368	$1,913	-$4,456	5
Colorado	$5,720	$1,239	$1,303	$65	3
Florida	$16,678	$9,609	$1,485	-$8,124	3
Georgia	$1,969	$1,002	$195	-$807	1
Illinois	$143,267	$109,908	$39,010	-$70,898	14
Indiana	$74,182	$62,530	$13,532	-$48,997	10
Kentucky	$1,663,284	$1,224,699	$322,274	-$902,425	35
Maryland	$2,027	$2,027	$1,044	-$982	1
Michigan	$1,515	$1,263	$601	-$663	1
Missouri	$6,096	$1,554	$434	-$1,120	2
New Jersey	$1,427	$354	$243	-$111	1
New Mexico	$1,209	$341	$311	-$30	1
North Carolina	$22,119	$7,272	$2,759	-$4,513	4
Ohio	$45,738	$41,173	$8,267	-$32,906	13
Oklahoma	$825	$460	$356	-$104	1
Pennsylvania	$192,582	$119,714	$34,545	-$85,169	27
Tennesee	$179,825	$125,028	$42,433	-$82,595	21
Utah	$632	$358	$93	-$265	2
Virginia	$524,313	$423,055	$95,751	-$327,304	11
West Virginia	$291,941	$245,465	$97,361	-$148,104	26
Wyoming	$344	$223	$188	-$35	2
Total	**$3,192,377**	**$2,383,641**	**$664,098**	**-$1,719,543**	**184**

Notes:
[1] These amounts reflect actual amounts billed, including bills presented for non-covered medical services.

c. Hospital Inpatient Services

Under proposed § 725.711, the Department would pay for hospital inpatient services under an inpatient prospective payment system (IPPS) derived from the IPPS utilized by CMS for payment under the Medicare program. The Department estimates that under proposed § 725.711, there would be a small reduction in payments from the Trust Fund to hospitals for inpatient services. Under current practice, the Trust Fund paid $12,424,132 for inpatient services rendered in FY 2014. *See* Table 3. The Department estimates that, under proposed § 725.711, the Trust Fund would have paid $10,997,900, a decrease of $1,426,232 (or 11.5%). *See* Table 3.

The Department estimates that hospitals in eight states would

[5] Total costs for hospital outpatient services performed in FY 2014 and paid for by the black lung program are estimated at $552,549 by multiplying actual billed reimbursable charges by hospital and state outpatient cost-to-charge ratios maintained by CMS in their most recent publically available Impact File.

[6] Total costs for hospital outpatient services performed in FY 2014 that would be paid for by the black lung program under the proposed rule are estimated at $552,549 by multiplying projected reimbursable charges by hospital and state outpatient cost-to-charge ratios maintained by CMS in their most recent publically available Impact File.

experience a net aggregate reduction of $2,301,580 in payments for inpatient services under proposed § 725.711. The largest decreases in dollar amount would occur in Kentucky ($1,291,411, a decrease of 26.2%), Virginia ($629,932, a decrease of 25.3%), and Florida ($205,315, a decrease of 71.9%). *See* Table 3. Hospitals in nine states would experience a net aggregate increase of $875,348 in payment for inpatient services under proposed § 725.711. The largest increases in dollar amount would occur in Alabama ($623,383, an increase of 152%), West Virginia ($86,455, an increase of 6.2%), and Pennsylvania ($79,664, an increase of 5.5%).

Several factors contribute to these projected changes in payments among the states. First, analysis reveals that although the average payment per covered inpatient stay would decrease under proposed § 725.711, the Trust Fund would also pay for almost twice as many inpatient stays as under the current system. This change is because the DRG methodology focuses on the primary purpose for a hospital stay, which would result in more hospital stays being classified as black-lung-related. By way of illustration, of the 996 inpatient stays that hospitals billed the black lung program for in FY 2014, the Trust Fund paid the full allowed amount for 427 stays and a portion of the full amount for an additional 199 stays. In contrast, under proposed § 725.711, the Trust Fund would pay for 825 inpatient stays, all paid at the full allowed amount.[7] Relatedly, because the cost of an individual inpatient stay may be quite high depending on the treatment provided, coverage of any given stay can greatly shift aggregate payments. For example, each lung transplant-related hospitalization occurring in FY 2014 for which the Trust Fund paid cost hundreds of thousands of dollars. Thus, covering or not covering even a single inpatient hospitalization can significantly increase or decrease aggregate Trust Fund payments. Finally, just as in the outpatient context, there is a wide disparity in pay-to-cost ratios among individual hospitals, with hospitals being paid up to 971% or more of costs under the current system.[8] The states with the largest payment decreases under proposed § 725.711 include hospitals that are currently being paid at rates significantly above cost. While proposed § 725.711 would result in an aggregate decrease in the transfer payments from the Trust Fund to hospitals for inpatient services, hospitals would continue to be paid at rates they are accepting from other small third-party payers, including the other OWCP programs, and at rates above those paid by Medicare. These rates would result in hospitals being paid, in aggregate, approximately 155% of costs for inpatient services.[9] The Department therefore believes that proposed § 725.711 will not significantly affect hospitals or affect miners' access to inpatient hospital care. The Department, however, invites comments on these determinations. In particular, the Department seeks comments on whether any projected impact of the proposal on miners' access to outpatient services would be short-term or long-term.

[7] The remaining 171 hospital stays billed to the Trust Fund were not covered stays (*i.e.,* they are not for the treatment of totally disabling pneumoconiosis) and therefore would not be paid for by the Trust Fund. In most circumstances, hospitals stays billed to, but not paid by, the Trust Fund are paid for by Medicare or another insurer.

[8] Total costs for hospital inpatient services performed in FY 2014 and paid for by the black lung program are estimated by multiplying actual billed reimbursable charges by hospital and state inpatient cost-to-charge ratios maintained by CMS in their most recent publically available Impact File.

[9] Total costs for hospital inpatient services performed in FY 2014 that would be paid for by the black lung program under the proposed rule are estimated at $7,095,760 by multiplying projected reimbursable charges by hospital and state inpatient cost-to-charge ratios maintained by CMS in their most recent publically available Impact File.

Table 3: Comparison of Trust Fund Payments to Hospital Inpatient Services Providers for Services Performed 10/1/2013-9/30/2014 (Current Practice v. Estimated Payments Under the Proposed Rule).

State	Amount Billed By Providers[1]	Amount Paid Under Current Practice	Amount That Would Be Paid Under the Proposed Rule	Difference	Number of Providers
Alabama	$3,545,778	$409,999	$1,033,382	$623,383	5
Colorado	$120,458	$4,238	$36,622	$32,384	3
Florida	$447,694	$285,364	$80,049	-$205,315	4
Illinois	$530,523	$141,665	$117,093	-$24,572	6
Indiana	$508,630	$189,608	$182,645	-$6,963	5
Iowa	$15,498	$1,118	$7,908	$6,790	1
Kentucky	$13,699,340	$4,924,531	$3,633,120	-$1,291,411	30
Missouri	$71,345	$65,811	$29,665	-$36,146	1
Michigan	$29,959	$2,804	$16,069	$13,264	2
Nevada	$3,870	$0	$1,443	$1,443	1
North Carolina	$302,626	$62,667	$73,675	$11,007	3
Ohio	$430,704	$152,408	$173,364	$20,956	8
Pennsylvania	$7,493,897	$1,440,520	$1,520,184	$79,664	30
Tennessee	$2,458,263	$851,512	$746,186	-$105,326	19
Utah	$21,462	$1,916	$0	-$1,916	1
Virginia	$5,033,404	$2,485,686	$1,855,754	-$629,932	11
West Virginia	$4,335,581	$1,404,286	$1,490,742	$86,455	26
Total	**$39,049,031**	**$12,424,132**	**$10,997,900**	**-$1,426,232**	**156**

Notes:

[1] These amounts reflect actual amounts billed, including bills presented for non-covered medical services.

2. Economic Impact Summary

The Department believes that the proposed rule will not have a significant impact on the economy as a whole, and will have only a de minimis impact on firms that provide black lung-related health care to entitled miners. The Department has used a $100 million dollar annual threshold for determining the proposed rule's significance. *See, e.g.,* E.O. 12866 (defining regulation that has annual effect on the economy of $100 million or more as ''significant''). As shown in Section V.A.1. of this preamble, the Department estimates the proposed rule would result in an aggregate annual reduction in payments from the Trust Fund of $3,154,297 ($8,492 in reduced payments to non-hospital providers, $1,719,543 in reduced payments for outpatient hospital services, and $1,426,232 in reduced payments for inpatient hospital services). Because this aggregate annual reduction in payments is far less than $100 million, the Department has determined that the proposed rule will not have a significant impact on the economy as a whole.

Likewise, the Department has determined that the proposed rule will have only a de minimis impact at the firm level. *See* Table 4. To determine the firm-level impact of the proposed rule, the Department first considered total industry revenues for both non-hospital health care services providers and hospitals. Non-hospital providers generated $827.9 billion in revenues, according to the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB) most recent data for 2012.[10] Dividing annual revenues by the number of firms in the sector in the entire U.S. (485,235),[11] non-hospital providers generated average annual revenues of $1.7 million per firm. *See* Table 4. A total of 1,210 non-hospital providers rendered services to entitled miners in FY 2014. *See* Table 1. Based on an analysis of the Trust Fund payment data, the Department estimates that 420 firms (out of 1,210) would receive net reductions in payments from the Trust Fund under the proposed rule.[12] The

[10] *See https://www.census.gov//econ/susb/data/susb2012.html.* There is no exact proxy for the non-hospital health care services provider category. The Department has used North American Industry Classification System (NAICS) code 621(Ambulatory Health Care Services) as the proxy for such providers. This category is over inclusive because it includes types of providers not used by entitled miners. It is, however, the most reasonable proxy because 91% of non-hospital health care services providers used by such miners are part of this category. The Department has performed the same analysis shown here at the 4-digit NAICS level and found that the conclusion of no significant impact did not change.

[11] *See https://www.census.gov//econ/susb/data/susb2012.html.*

[12] As discussed in Section V.A.1. of the preamble, the Department estimated the number of providers that could be negatively affected by the proposed rule based on the number of providers receiving reimbursements from the Trust Fund that would see a decrease in the amount of reimbursement using

Department estimates that the aggregate reduction in payments for these 420 negatively affected firms would be $373,156. *See* Table 4. Thus, the average reduction in payments to each negatively affected firm would be $888 (373,156 divided by 420), or 0.05% (888 divided by 1,700,000) of average firm revenue. *See* Table 4. The Department believes that this average reduction is de minimis and would not significantly affect non-hospital providers.

Hospitals generated $883.1 billion in revenues during 2012.[13] Dividing annual revenues by the number of firms in the sector (3,497),[14] hospital firms generated average annual revenues of $252.5 million. Based on Trust Fund payment data, OWCP found that a total of 184 hospital firms provided outpatient services to entitled miners in FY 2014. *See* Table 2. The Department estimates that 177 firms (out of 184) would receive net reductions in payments from the Trust Fund under the proposed rule.[15] The Department estimates that the aggregate reduction in payments for these 177 negatively affected firms would be $1,720,182. *See* Table 4. Thus, the average reduction in payments to each negatively affected hospital providing outpatient services would be $9,719 (1,720,182 divided by 177), or 0.004% (9,719 divided by 252.5 million) of average annual revenue for the negatively affected firms. *See* Table 4. The Department believes that this average reduction is de minimis and would not significantly affect hospital outpatient services providers.

With respect to inpatient hospital services, Trust Fund payment data showed that 156 hospitals provided such services to entitled miners in FY 2014. *See* Table 3. The Department estimates that 80 firms (out of 156) would receive net reductions in payments from the Trust Fund under the proposed rule.[16] The Department estimates that the aggregate reduction in payments for these 80 negatively affected firms would be $3,338,650. *See* Table 4. Thus, the average reduction in payments to each negatively affected hospital providing inpatient services would be $41,733 (3,338,650 divided by 80), or 0.016% (41,733 divided by 252.5 million) of average annual revenue. *See* Table 4. The Department believes that this average annual reduction in revenue is de minimis and would not significantly affect hospital inpatient services providers.

Finally, the Department does not believe that any reduction in payments from the Trust Fund to firms that provide both outpatient and inpatient hospital services would be significant. For example, if payments to a particular firm for outpatient services were reduced by $9,719 (the average reduction for all providers of outpatient services) and payments to the same firm for inpatient services were reduced by $41,733 (the average reduction for all providers of inpatient services), the combined reduction of $51,452 would represent only 0.2% (51,452 divided by 252.5 million) of average firm revenue. Notably, some firms that provide both types of services (outpatient and inpatient) may experience a reduction in payments for only one type of service, while simultaneously experiencing an offsetting increase in payments for the other type of service.

Neither does the Department believe that the rule's impact will increase over time. While the total amount of payments by the Trust Fund to providers for medical services and treatments may decrease over time as the number of entitled miners receiving benefits declines, the decrease in payments would result from the decline in the number of beneficiaries, not the proposed rule.[17]

In sum, the Department believes that the estimated aggregate annual reduction in Trust Fund payments of $3,154,297 will not have a significant impact on the economy. Similarly, the Department believes that the reduction in annual revenue for negatively affected firms (0.05% of average annual revenue for non-hospital health care services providers, 0.004% of average annual revenue for hospitals providing outpatient services, and 0.016% of average annual revenue for hospitals providing inpatient services) will not have a significant impact on those individual firms.

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the proposed formulas versus current practice. *See* Table 5 *infra* for the geographic distribution of negatively affected non-hospital providers.

[13] The Department has used NAICS code 622 (Hospitals) as the proxy for providers of both outpatient and inpatient services.

[14] *See https://www.census.gov//econ/susb/data/susb2012.html.*

[15] *See* Section V.A.1. of the preamble and n.11. *See* Table 6 *infra* for the geographic distribution of negatively affected outpatient hospital providers.

[16] *See* Section V.A.1. of the preamble and nn.11 & 14. *See* Table 7 *infra* for the geographic distribution of negatively affected inpatient hospital providers.

[17] For example, in FY 2005, the Trust Fund paid approximately $51.2 million to providers for medical services and treatments for 16,794 entitled miners. By FY 2014, Trust Fund payments had dropped to $17.5 million (not adjusted for inflation) for 6,189 entitled miners.

Table 4. Summary of Economic Impact

	Non-Hospital Health Care Services Providers	Hospitals Providing Outpatient Services	Hospitals Providing Inpatient Services
Industry Revenue	$827.9 billion	$881.3 billion	$881.3 billion
Number of Firms	485,235	3,497	3,497
Revenue per Firm	$1,700,000	$252.5 million	$252.5 million
Cumulative Cost of Rule for All Negatively Affected Firms	$373,156	$1,720,182	$3,338,650
Number of Negatively Affected Firms	420	177	80
Cost per Negatively Affected Firm	$888	$9,719	$41,733
Cost of Rule as % of Revenue per Negatively Affected Firm	0.050%	0.004%	0.016%

Source: U.S. Department of Labor, Office of Workers' Compensation Programs

B. Other Considerations

The Department considered numerous options and methods before proposing these payment formulas for the black lung program. The Department believes that the proposed formulas and methods best serve the interests of all stakeholders. The proposed rule would bring medical payments under the black lung program in line with today's industry-wide practice, protect the Trust Fund from excessive payments, and compensate health care services providers sufficiently to ensure that entitled miners have continued access to medical care. Thus, the adoption of the payment formulas, as set forth in proposed §§ 725.707–725.711, has multiple advantages.

In addition, the Department will realize some economies of scale by using payment formulas that are similar to those in OWCP's other compensation programs. Maintaining a wholly separate system for black lung medical bill payments has required increased administration and therefore increased costs. It has also led to disparities in provider reimbursements. The proposed payment formulas, like other modern medical payment methodologies, have built-in cost control mechanisms that help prevent inaccurate payments and would therefore preserve Trust Fund assets. Also, because the amounts paid under these formulas reflect industry standards, recouping medical benefits paid by the Trust Fund on an interim basis from liable operators and their insurance carriers should be routine. And by migrating to the new system, the Department hopes to shorten the time period for reimbursements, thus benefitting providers with prompt payment. Finally, the proposed rule will benefit claimants, liable operators, insurance carriers, medical service providers, and secondary medical payers simply by improving the clarity of the black lung medical bill payment process.

VI. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354. As a result, agencies must determine whether a proposed rule may have a ''significant'' economic impact on a ''substantial'' number of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. *See* 5 U.S.C. 603. If the agency estimates that a proposed rule would have a significant impact on a substantial number of small entities, then it must prepare a regulatory flexibility analysis as described in the RFA. *Id.* However, if a proposed rule is not expected to have a significant impact on a substantial number of small entities, the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605(b). The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The RFA does not define ''significant'' or ''substantial.'' 5 U.S.C. 601. It is widely accepted, however, that ''[t]he agency is in the best position to gauge the small entity impacts of its regulations.'' SBA Office of Advocacy, ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,'' at 18 (May 2012) (''SBA Guide for Government Agencies'').[18] One measure for determining whether an economic impact is ''significant'' is the percentage of revenue affected. For this rule, the Department used as a standard of significant economic impact whether the costs for a small entity equal or exceed 3% of the entity's annual revenue. Similarly, one measure for determining whether a ''substantial'' number of small entities are affected is the percentage of small entities affected on an industry-wide basis. For this rule, the Department has used as a standard

[18] Accessed at *http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.*

to measure a ''substantial number of small entities'' whether 15% or more of the small entities in a given industry are significantly affected. The regulatory flexibility analysis for this NPRM is based on these two measures.[19]

Although the proposed rule is not expected to have a significant economic impact on a substantial number of small entities, the Department has conducted this initial regulatory flexibility analysis to aid stakeholders in understanding the impact of the proposed rule on small entities and to obtain additional information on such impacts. The Department invites interested parties to submit comments on the analysis, including the number of small entities affected by the proposed rule, the cost estimates, and whether alternatives exist that would reduce the burden on small entities. In particular, because the Department does not have access to revenue data for affected providers (and, thus, based this analysis on nationwide revenue averages), the Department is particularly interested in receiving comments regarding the proposed rule's potential revenue impact on affected firms.

A. Description of the Reasons That Action by the Agency Is Being Considered

The Department's current regulations specify that payments for medical services and treatments must be paid at ''no more than the rate prevailing in the community [where the provider is located].'' 20 CFR 725.706(c). But the rules do not address how that rate should be determined. Currently, OWCP applies internally-derived formulas to determine payments for services and treatments under the BLBA. The current system, however, is difficult to administer and, in some instances, may not accurately reflect prevailing community rates. In addition, because the current payment formulas do not always reflect standard industry practice, the Department has encountered resistance from operators and insurance carriers when seeking reimbursement for medical benefits initially paid by the Trust Fund on an interim basis or when the Department seeks to enforce a final benefit award.

B. Objectives of, and Legal Basis for, the Proposed Rule

Section 426(a) of the BLBA authorizes the Secretary to ''issue such regulations as he deems appropriate to carry out the provisions of this title.'' 30 U.S.C. 936(a). The proposed rule adopts formulas for the payment of medical services and treatments under the black lung program that are derived from those used in the Medicare program and are similar to the payment formulas utilized in the other compensation programs that OWCP administers. The proposed payment formulas conform to current industry practice, and more accurately reflect prevailing community rates. The proposed rule, therefore, will help prevent inaccurate payments, control health care costs, streamline the processing of bills, and provide for similar payment policies and practices throughout all OWCP programs.

C. Number of Small Entities Affected

1. Introduction

The Regulatory Flexibility Act requires an agency to describe and, where feasible, estimate the number of small entities to which a proposed rule will apply. 5 U.S.C. 603(b)(3). Small entities include small businesses, small organizations, and small governmental jurisdictions. 5 U.S.C. 601(6). Under the RFA, small organizations are defined as not-for-profit, independently owned and operated enterprises, that are not dominant in their field. 5 U.S.C. 601(4); *see also* SBA Guide for Government Agencies at 14. To ensure it adequately addresses potential impact on small entities, the Department's analysis assumes that all not-for-profit entities that provide medical services to miners under the BLBA are independently owned and operated, not dominant in their field, and thus are small organizations regardless of their revenue size.

The data sources used in the Department's analysis are the Small Business Administration (SBA) Table of Small Business Size Standards,[20] the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB),[21] and the U.S. Census Bureau's Economic Census,[22] which provide annual data on the number of firms, employment, and annual revenue by industry. The industrial classifications most directly affected by this rule are: (1) Ambulatory Health Care Services (North American Industry Classification System (NAICS) code 621), which includes offices of physicians, outpatient care centers,[23] medical and diagnostic laboratories, and home health care services (collectively referred to as ''non-hospital health care services providers'' or ''non-hospital providers''); and (2) Hospitals (NAICS code 622).

2. The Department's Analysis

The Department estimated the number of small businesses of each provider type that could be negatively affected by the rule by multiplying (a) the percentage of small entities of that provider type in the industry as a whole by (b) the estimated number of black lung service providers of that type (both small and large entities) that could be negatively affected by the rule. The Department estimated the number of non-hospital and hospital providers that could be negatively affected by the proposed rule by comparing: (a) The amount that the Trust Fund actually paid to providers for medical services performed in Fiscal Year 2014 (current practice); and (b) the amount the Trust Fund would have paid to providers for the same services using the payment formulas in the proposed rule. *See* Section V.A.1. The next two subsections provide additional details on how the Department estimated the number of small, negatively impacted, non-hospital and hospital providers.

a. Non-Hospital Health Care Service Providers

According to SUSB data, there are 485,235 non-hospital health care services providers in the United States. Of that total, 482,584, or 99.5%, are classified as small businesses by the SBA (this includes both for-profit and not-for-profit businesses).[24] Of the remaining 2,651 non-hospital providers that are not classified as small under the SBA definition, 1.7%—or 45 (2,651 × 0.17)—are classified as not-for-profit by the Economic Census, and thus considered small organizations (*i.e.,* any not-for-profit entity that is independently owned and operated and

[19] The Department has used the threshold of 3% of revenues for the definition of significant economic impact and the threshold of 15% for the definition of substantial number of small entities affected in a number of recent rulemakings. *See, e.g.,* Wage and Hour Division, Establishing a Minimum Wage for Contractors, Notice of Proposed Rulemaking, 79 FR 34568, 34603 (June 17, 2014); Office of Federal Contract Compliance Programs, Government Contractors, Requirement To Report Summary Data on Employee Compensation, Notice of Proposed Rulemaking, 79 FR 46562, 46591 (Aug. 8, 2014). The 3% and 15% standards are also consistent with the standards utilized by various other Federal agencies in conducting their regulatory flexibility analyses. *See, e.g.,* Department of Health and Human Services Centers for Medicare & Medicaid Services, ''Medicare and Medicaid Programs; Regulatory Provisions To Promote Program Efficiency, Transparency, and Burden Reduction; Part II; Final Rule,'' 79 FR 27106, 27151 (May 12, 2014).

[20] *See http://www.sba.gov/content/small-business-size-standards.*

[21] *See https://www.census.gov/econ/susb/.*

[22] *See http://factfinder.census.gov/.*

[23] Outpatient care centers are distinct from hospitals that provide outpatient services.

[24] The SBA's small business size standards for subsectors within the ambulatory health care services industry range from $7.5 million to $38.5 million.

not dominant in its field). In total, the Department estimates that 482,629 non-hospital providers (482,584 classified as small under SBA revenue criteria, plus 45 additional not-for-profit providers) are small entities for purposes of the RFA. Thus, 99.5%, (482,629 divided by 485,235) of all non-hospital providers in the United States are classified as small entities within the meaning of the RFA.

To determine the number of small non-hospital providers that could be negatively impacted by the proposed rule, the Department multiplied the overall, industry-wide percentage of small, non-hospital providers (99.5%) by the number of non-hospital providers (both small and large) that the Department estimates could be negatively affected by the rule (420). *See* Table 5. That multiplication yielded an estimate that 418 small, non-hospital providers could be negatively affected by the rule. Table 5 provides information on all negatively impacted non-hospital providers, small and large, on a state-by-state basis.

Table 5: Comparison of Trust Fund Payments to Negatively Affected Non-Hospital Health Care Services Providers for Services Performed 10/1/2013-9/30/2014 (Current Practice v. Estimated Payments Under the Proposed Rule).

State	Amount Billed By Negatively Affected Providers[1]	Amount Paid to Negatively Affected Providers Under Current Practice	Amount That Would Be Paid to Negatively Affected Providers Under The Proposed Rule	Difference	Number of Negatively Affected Small Providers[2,3]	Number of Negatively Affected Providers	Number of Providers
Alabama	$2,231	$1,873	$1,042	-$831	8	8	22
Arkansas	$380	$380	$146	-$235	1	1	2
California	$96	$88	$37	-$51	1	1	1
Colorado	$9,594	$4,609	$3,689	-$920	5	5	13
Florida	$9,565	$5,646	$4,703	-$943	7	7	22
Georgia	$4,428	$2,109	$1,820	-$289	4	4	6
Illinois	$16,751	$11,521	$10,096	-$1,425	15	15	41
Indiana	$120,201	$52,751	$31,180	-$21,571	13	13	43
Iowa	N/A	N/A	N/A	N/A	0	0	1
Kansas	N/A	N/A	N/A	N/A	0	0	2
Kentucky	$741,034	$415,171	$274,020	-$141,152	96	96	270
Maryland	$8,861	$5,935	$3,626	-$2,309	4	4	12
Michigan	$6,236	$3,242	$2,575	-$667	9	9	19
Minnesota	N/A	N/A	N/A	N/A	0	0	1
Missouri	$58,511	$35,142	$16,356	-$18,786	6	6	11
Nevada	N/A	N/A	N/A	N/A	0	0	2
New Jersey	$130	$101	$39	-$62	2	2	4
New Mexico	N/A	N/A	N/A	N/A	0	0	2
North Carolina	$14,153	$8,087	$5,697	-$2,390	7	7	12
Ohio	$18,561	$11,811	$9,174	-$2,638	22	22	53
Pennsylvania	$216,092	$162,407	$138,619	-$23,788	79	79	244
South Carolina	$3,964	$1,486	$728	-$757	3	3	3
Tennessee	$97,484	$61,893	$44,958	-$16,935	46	46	118
Texas	$5,715	$2,532	$2,392	-$140	1	1	2
Utah	$20,678	$8,652	$7,774	-$879	4	4	7
Virginia	$527,257	$291,673	$201,962	-$89,711	35	35	115
West Virginia	$287,472	$166,771	$120,124	-$46,646	51	51	178
Wyoming	$71	$43	$12	-$31	1	1	4
Total	**$2,169,465**	**$1,253,923**	**$880,769**	**-$373,156**	**418**	**420**	**1,210**

Notes:

[1] These amounts reflect actual amounts billed, including bills presented for non-covered medical services.

[2] The estimated number of negatively affected small providers was derived by multiplying the number of negatively affected providers in each state by the percentage (99.5%) of non-hospital health care services providers categorized as small under RFA guidelines (i.e., including non-profit providers with revenues above the SBA threshold for small non-hospital entities).

[3] The estimated numbers of negatively affected small providers were rounded for clarity, so will not total 418 exactly.

b. Hospitals

According to SUSB data, there are 3,497 hospitals in the United States. Of that total, 1,547, or 44.2%, are classified as small businesses by the SBA (this includes both for-profit and not-for-profit businesses).[25] Of the remaining 1,950 hospitals that are not classified as small under the SBA definition, 87.9%—or 1,714 (1,950 × 0.879)—are classified as not-for-profit by the Economic Census, and thus considered small organizations (*i.e.* any not-for-profit entity that is independently owned and operated and not dominant in its field). In total, the Department estimates that 3,261 hospitals (1,547 classified as small under SBA revenue criteria, plus 1,714 additional not-for-profit hospitals) are small entities for purposes of the RFA. Thus, 93.3%, (3,261 divided by 3,497) of all hospitals in the United States are classified as small entities within the meaning of the RFA.

To determine the number of small hospitals that could be negatively impacted by the proposed rule, the Department multiplied the overall, industry-wide percentage of small hospitals (93.3%) by the number of hospitals (both small and large) that the Department estimates could be negatively affected by the rule.

The Department performed the above-described analysis separately for: (a) Hospitals providing outpatient services to entitled black lung patients; and (b) hospitals providing inpatient services to entitled black lung patients. Specifically, for outpatient providers, the Department estimated that a total of 177 hospitals could be negatively affected by the proposed rule and that, of that total, 165 (or 93.3%) are small hospitals. *See* Table 2, Table 6. Similarly, for inpatient providers, the Department estimated that a total of 80 hospitals could be negatively affected by the proposed rule and that, of that total, 75 (or 93.3%) are small hospitals.

Tables 6 and 7 provide information on all negatively impacted hospitals, small and large, on a state-by-state basis, addressing, respectively, hospitals providing outpatient services to black lung patients and hospitals providing inpatient services to black lung patients.

[25] SBA defines a hospital provider as small if it has $38.5 million or less in annual revenue.

Table 6: Comparison of Trust Fund Payments to Negatively Affected Hospital Outpatient Services Providers for Services Performed 10/1/2013-9/30/2014 (Current Practice v. Estimated Payments Under the Proposed Rule).

State	Amount Billed By Negatively Affected Providers[1]	Amount Paid to Negatively Affected Providers Under Current Practice	Amount That Would Be Paid to Negatively Affected Providers Under The Proposed Rule	Difference	Number of Negatively Affected Small Providers[2, 3]	Number of Negatively Affected Providers	Number of Providers
Alabama	$16,684	$6,368	$1,913	-$4,456	5	5	5
Colorado	$1,192	$556	$320	-$236	1	1	3
Florida	$16,678	$9,609	$1,485	-$8,124	3	3	3
Georgia	$1,969	$1,002	$195	-$807	1	1	1
Illinois	$139,426	$109,545	$38,410	-$71,136	11	12	14
Indiana	$74,182	$62,530	$13,532	-$48,997	9	10	10
Kentucky	$1,663,284	$1,224,699	$322,274	-$902,425	33	35	35
Maryland	$2,027	$2,027	$1,044	-$982	1	1	1
Michigan	$1,515	$1,263	$601	-$663	1	1	1
Missouri	$6,096	$1,554	$434	-$1,120	2	2	2
New Jersey	$1,427	$354	$243	-$111	1	1	1
New Mexico	$1,209	$341	$311	-$30	1	1	1
North Carolina	$22,119	$7,272	$2,759	-$4,513	4	4	4
Ohio	$45,738	$41,173	$8,267	-$32,906	12	13	13
Oklahoma	$825	$460	$356	-$104	1	1	1
Pennsylvania	$192,163	$119,569	$34,394	-$85,174	24	26	27
Tennesee	$179,825	$125,028	$42,433	-$82,595	20	21	21
Utah	$632	$358	$93	-$265	2	2	2
Virginia	$524,313	$423,055	$95,751	-$327,304	10	11	11
West Virginia	$290,722	$245,093	$96,894	-$148,199	23	25	26
Wyoming	$188	$67	$32	-$35	1	1	2
Total	**$3,182,215**	**$2,381,923**	**$661,741**	**-$1,720,182**	**165**	**177**	**184**

Notes:

[1] These amounts reflect actual amounts billed, including bills presented for non-covered medical services.

[2] The estimated number of negatively affected small providers was derived by multiplying the number of negatively affected providers in each state by the percentage (93.3%) of hospital services providers categorized as small under RFA guidelines (i.e., including non-profit hospitals with revenues above the SBA threshold for small hospital entities).

[3] The estimated numbers of negatively affected small providers were rounded for clarity, so will not total 165 exactly.

Table 7: Comparison of Trust Fund Payments to Negatively Affected Hospital Inpatient Services Providers for Services Performed 10/1/2013-9/30/2014 (Current Practice v. Estimated Payments Under the Proposed Rule).

State	Amount Billed By Negatively Affected Providers[1]	Amount Paid to Negatively Affected Providers Under Current Practice	Amount That Would Be Paid to Negatively Affected Providers Under The Proposed Rule	Difference	Number of Negatively Affected Small Providers [2, 3]	Number of Negatively Affected Providers	Number of Providers
Alabama	$59,871	$44,963	$40,453	-$4,510	1	1	5
Colorado	n/a	n/a	n/a	n/a	0	0	3
Florida	$363,422	$277,218	$70,951	-$206,267	3	3	4
Illinois	$501,048	$138,504	$101,524	-$36,980	4	4	6
Indiana	$237,730	$163,254	$89,806	-$73,448	2	2	5
Iowa	n/a	n/a	n/a	n/a	0	0	1
Kentucky	$12,158,023	$4,507,961	$2,960,490	-$1,547,471	17	18	30
Michigan	n/a	n/a	n/a	n/a	0	0	2
Missouri	$71,345	$65,811	$29,665	-$36,146	1	1	1
Nevada	n/a	n/a	n/a	n/a	0	0	1
North Carolina	$116,562	$31,238	$11,460	-$19,778	2	2	3
Ohio	$280,703	$134,545	$103,752	-$30,793	3	3	8
Pennsylvania	$5,566,429	$978,185	$640,613	-$337,572	13	14	30
Tennessee	$1,824,847	$638,819	$461,001	-$177,818	13	14	19
Utah	$21,462	$1,916	$0	-$1,916	1	1	1
Virginia	$4,793,968	$2,401,580	$1,725,549	-$676,031	8	9	11
West Virginia	$1,286,638	$613,262	$423,343	-$189,919	7	8	26
Total	**$27,282,049**	**$9,997,257**	**$6,658,607**	**-$3,338,650**	**75**	**80**	**156**

Notes:

[1] These amounts reflect actual amounts billed, including bills presented for non-covered medical services.

[2] The estimated number of negatively affected small providers was derived by multiplying the number of negatively affected providers in each state by the percentage (93.3%) of hospital services providers categorized as small under RFA guidelines (i.e., including non-profit hospitals with revenues above the SBA threshold for small hospital entities).

[3] The estimated numbers of negatively affected small providers were rounded for clarity, so may not total 75 exactly.

D. Costs to Small Entities Affected

The Department estimates that the proposed rule will not result in a significant impact (defined as 3% or more of annual revenue) on a substantial number of small entities (defined as 15% or more of all negatively affected small entities in the relevant industry). The relevant industries are defined as non-hospital health care services providers and hospitals. The Department has determined that the proposed rule will not impose any additional reporting, recordkeeping, or other compliance costs on affected entities. With respect to the reduction in payments from the Trust Fund, the Department estimates that no small entities providing non-hospital health care services will experience a significant impact (a loss of 3% or more of annual revenues). As for hospitals, the Department estimates that hospitals with revenues/receipts between $100,000 and $499,900 providing outpatient services and hospitals with revenues/receipts between $100,000 and $999,999 providing inpatient services would experience a significant impact. Assuming that the affected hospitals exhibit the same revenue distribution as firms nationally, the Department estimates that only one small firm providing outpatient services and two small firms providing inpatient services will be significantly impacted. These entities do not constitute a substantial number (15% or more) of the total number of negatively affected small hospitals providing either outpatient or inpatient services.

1. Estimated Reporting, Recordkeeping, and Other Compliance Costs to Small Entities

Based on its analysis of available data, the Department has determined that the proposed rule will not impose any additional reporting, recordkeeping, or

other compliance costs on providers. The proposed procedures for the submission and payment of medical bills conform to current industry standards for the processing of such bills. Providers are familiar with the proposed procedures and already have adequate billing systems in place for use in connection with other programs such as Medicare. Moreover, a number of provisions in the proposed rule simply codify current practice. Thus, the Department has determined that the proposed rule would not impose any additional reporting, recordkeeping, or compliance costs on providers, regardless of firm size.

2. Estimated Costs to Small Entities From Changes in Payments by the Trust Fund

In order to determine whether the proposed rule would result in a significant impact on any small businesses, the Department first estimated the revenues for negatively affected small entities of each provider type (non-hospital and hospital service providers) and then determined whether the estimated impact on those firms was significant. *See* Section V.A.2. The Department does not have individual revenue data for black lung service providers, but does have SBA data on the distribution of firms across the industry by revenue size. The Department therefore estimated the number of small negatively affected firms of each provider type in different revenue/receipts bands, by multiplying the industry-distribution percentage of firms in those revenue/receipts bands by the number of negatively affected black lung providers of that type, accounting for the fact that all not-for-profit providers are classified as small entities. *See* Tables 8–10. The Department then determined whether the estimated cost to each firm, as calculated in Section V.A.2. of this preamble, was significant (a reduction in average annual revenue of 3% or more) to a firm in that revenue band. The Department determined that only 3 of the 658 negatively affected black lung providers in all provider categories were significantly impacted. *See* Tables 8–10, Table 11. The Department finally calculated whether the number of small providers of each type that would experience a significant impact as a result of the proposed rule represented a substantial percentage (15% or more) of all negatively affected small entities of that type, and determined that they did not. *See* Tables 8–10, Table 11.

a. Non-Hospital Health Care Services Providers

As discussed earlier, the Department estimates that 420 non-hospital health care services providers would experience a reduction in payments from the Trust Fund as a result of the proposed rule, and that 418 of these are estimated to be small entities. *See* VI.C.2.a., Table 4, Table 8, Table 11. Also, the Department estimates the annual cost of the proposed rule will be $888 for each negatively affected non-hospital health care services provider. *See* Section V.A.2., Table 4, Table 8, Table 11. The Department divided the estimated annual cost of the proposed rule to non-hospital health care services providers by the average revenue in each revenue band to estimate the average percentage of revenue lost by these providers. *See* Table 8. The Department acknowledges that uniformly applying the annual cost of the proposed rule across all negatively affected entities is an analytical assumption that likely does not reflect the true distribution of the costs of this proposed rule. However, OWCP does not have the data to develop a more accurate distribution of costs and believes that this proportional distribution likely overestimates the costs to the smallest providers. The costs of this proposed rule are small relative to the revenue and receipts of most providers and the impact of these costs might be hidden were OWCP to more heavily weight the distribution of costs towards larger firms. The Department believes this proportional distribution allows OWCP to focus this analysis on the impact on the smallest providers even though these impacts may be overstated. Based on these calculations, the Department does not believe that any of the negatively affected small entities providing non-hospital health care services will experience a significant impact (*i.e.,* a loss of 3% or more of annual revenue) from the proposed rule. *See* Table 8, Table 11. For example, even in the lowest revenue band (less than $100,000 in annual revenue), the average annual revenue reduction resulting from the proposed rule would be only 1.77% ($888 divided by $50,173). *See* Table 8. The number of small non-hospital health care services providers that would experience a significant impact (zero) is plainly not a significant percentage (15% or more) of all such negatively affected small entities.

Table 8: Costs to Negatively Affected Small Firms – Non-Hospital Health Care Services Providers

Firm Size[1, 2]	Number of All Industry Firms	Number of Negatively Affected Small Firms (418 Total)[3]	Annual Cost per Firm[4]	Annual Revenue for All Industry Firms	Average Revenue per Firm[5]	Annual Cost per Negatively Affected Firm as Percent of Revenue[6]
Firms with sales/receipts/revenue below $100,000	67,309	58	$888	$3,377,069,000	$50,173	1.77%
Firms with sales/receipts/revenue of $100,000 to $499,999	193,782	168	$888	$53,752,291,000	$277,385	0.32%
Firms with sales/receipts/revenue of $500,000 to $999,999	109,226	95	$888	$77,311,310,000	$707,811	0.13%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	74,584	65	$888	$112,002,453,000	$1,501,695	0.06%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	20,837	18	$888	$71,115,977,000	$3,412,966	0.03%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	6,554	6	$888	$38,847,269,000	$5,927,261	0.01%
Firms with sales/receipts/revenue of $7,500,000 to $9,999,999	3,173	3	$888	$26,328,703,000	$8,297,732	0.01%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	3,222	3	$888	$36,800,355,000	$11,421,588	0.01%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,604	1	$888	$24,776,590,000	$15,446,752	0.01%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	897	1	$888	$17,319,311,000	$19,308,039	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	641	1	$888	$14,927,993,000	$23,288,601	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	429	<1	$888	$11,900,102,000	$27,739,166	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	326	<1	$888	$9,749,213,000	$29,905,561	0.00%
Firms with sales/receipts/revenue of $40,000,000 or greater	45	<1	$888	$5,604,847	$124,367	0.71%

Notes:

[1] The U.S. Small Business Administration's small business size standards for subsectors within the ambulatory health care services industry range from $7.5 to $38.5 million. The Department used these thresholds to define small businesses in the analysis of the health care industry.

[2] Per the RFA definitions, not-for-profit, independently owned and operated firms of any size, that are not dominant in their field, are considered small. The revenue band of $40,000,000 or more includes only not-for-profits firms. The total number of firms (45) included in this revenue band was calculated by multiplying the percentage (1.7%) of not-for-profit firms in the non-hospital health care services industry by the total number of large firms (2,651) identified in the SBA data.

[3] The estimated numbers of negatively affected small firms were rounded for clarity, so will not total 418 exactly. Any fraction under one was denoted <1.

[4] The annual cost per firm ($888) was derived by calculating the total cost of the proposed rule (i.e., the total net decrease in payments summed over all negatively affected firms, $373,156) and dividing by the total number of negatively affected firms (420).

[5] The average revenue per firm was derived by dividing the total annual revenue for all industry firms by the number of industry firms.

[6] The annual cost per negatively affected firm as a percent of revenue was derived by dividing the annual cost per firm by the average revenue per firm.

b. Hospital Outpatient Service Providers

The Department estimates that 177 hospitals that provide outpatient services to entitled miners would experience a reduction in payments from the Trust Fund as a result of the proposed rule, and that 168 of these hospitals are small. *See* VI.C.2.b., Table 4, Table 9, Table 11. Also, the Department estimates the annual cost of the proposed rule will be $9,719 for each negatively affected hospital outpatient services provider.[26] *See* V.A.2., Table 4, Table 11. The Department divided the estimated annual cost of the proposed rule for negatively affected hospital outpatient services providers by the average revenue in each revenue band to estimate the average percentage of revenue lost by these providers. *See* Table 9. Based on these calculations, the Department estimates that only one provider (in the $100,000–$499,000 revenue band) will experience a significant impact from the proposed rule. *See* Table 9. The Department estimates that this firm would experience a reduction in revenue of 3.73% ($9,719 divided by $260,292). *See* Table 9. Because this single entity represents only 0.6% (1 divided by 165) of all negatively affected small outpatient service entities, however, the proposed rule will not have a significant effect on a substantial number (15% or more) of all negatively affected small hospital outpatient service providers. *See* Table 11.

Because revenue data for entities in the $0–100,000 revenue band is not available, *see* Table 9, the Department was unable to calculate whether the impact of the proposed rule on providers in that revenue band would be significant. Nonetheless, even assuming that the only negatively impacted entity in the $0–$100,000 revenue band also experienced a significant impact, only 1.2% (2 divided by 165) of negatively affected small entities would experience a significant impact. This impact is still less than the 15% threshold for determining whether a substantial number of all negatively affected small entities would experience a significant impact.

[26] As previously noted, the Department acknowledges that uniformly applying the annual cost of the proposed rule across all negatively affected entities likely overstates the impact on smaller providers. *See* Section VI.D.2.a. of the preamble.

Table 9: Costs to Negatively Affected Small Firms – Hospital Outpatient Services Providers

Firm Size[1,2]	Number of All Industry Firms	Number of Negatively Affected Small Firms (165 Total)[3]	Annual Cost per Industry Firm[4]	Annual Revenue for All Industry Firms[5]	Average Revenue per Firm[6]	Annual Cost per Negatively Affected Firm as Percent of Revenue[7]
Firms with sales/receipts/revenue below $100,000	15	1	$9,719	N/A	N/A	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	24	1	$9,719	$6,247,000	$260,292	3.73%
Firms with sales/receipts/revenue of $500,000 to $999,999	9	< 1	$9,719	$5,933,000	$659,222	1.47%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	13	1	$9,719	$24,443,000	$1,880,231	0.52%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	83	4	$9,719	$337,257,000	$4,063,337	0.24%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	137	7	$9,719	$847,157,000	$6,183,628	0.16%
Firms with sales/receipts/revenue of $7,500,000 to $9,999,999	153	8	$9,719	$1,311,989,000	$8,575,092	0.11%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	293	15	$9,719	$3,603,160,000	$12,297,474	0.08%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	243	12	$9,719	$4,175,289,000	$17,182,259	0.06%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	200	10	$9,719	$4,297,241,000	$21,486,205	0.05%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	154	8	$9,719	$3,992,287,000	$25,923,942	0.04%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	113	6	$9,719	$3,474,943,000	$30,751,708	0.03%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	110	6	$9,719	$3,979,151,000	$36,174,100	0.03%
Firms with sales/receipts/revenue of $40,000,000 or greater	1,714	87	$9,719	$753,319,701,000	$439,509,744	0.00%

Notes:

[1] The U.S. Small Business Administration's small business size standard for subsectors within the hospital industry is $38.5 million. The Department used this threshold to define small businesses in the analysis of the hospital industry.

[2] Per the RFA definitions, not-for-profit, independently owned and operated firms of any size, that are not dominant in their field, are considered small. The revenue band of $40,000,000 or more includes only not-for-profits firms. The total number of firms (1,714) included in this revenue band was calculated by multiplying the percentage (87.9%) of not-for-profit firms in the hospital industry by the total number of large firms (1,950) identified in the SBA data.

[3] The estimated numbers of negatively affected small firms were rounded for clarity, so will not total 165 exactly. Any fraction under one was denoted <1.

[4] The annual cost per firm ($9,719) was derived by calculating the total cost of the proposed rule (i.e., the total net decrease in payments summed over all negatively affected firms, $1,720,182) and dividing by the total number of negatively affected firms (177).

[5] The annual and average revenue per firm for firms with sales/receipts/revenue below $100,000 are not available on the Census website. Data for that revenue band were withheld to avoid disclosing information of individual businesses.

[6] The average revenue per firm was derived by dividing the total annual revenue for all industry firms by the number of industry firms.

[7] The annual cost per negatively affected firm as a percent of revenue was derived by dividing the annual cost per firm by the average revenue per firm.

c. Hospital Inpatient Services Providers

Finally, the Department estimates that 80 hospitals that provide inpatient services to entitled miners would experience an annual reduction in payments from the Trust Fund as a result of the proposed rule, and that 35 of these are small entities. *See* VI.C.2.b., Table 4, Table 10, Table 11. Also, the Department estimates the annual cost of the proposed rule will be $41,733 for each negatively affected hospital inpatient services provider. [27] *See* V.A.2., Tables 4, Table 11. The Department divided the estimated annual cost of the proposed rule on each negatively affected hospital inpatient services provider by the average revenue in each revenue band to estimate the average percentage of revenue lost by these providers. *See* Table 10. Based on these calculations, the Department estimates that only two entities (one in the $100,000–$499,999 revenue band and one in the $500,000–$999,999 revenue band) will experience a significant impact (greater than 3% of annual revenue) from the proposed rule. *See* Table 10. Because these two entities represent only 2.6% (2 divided by 75) of all negatively affected entities, however, the proposed rule will not a have significant effect on a substantial number (15% or more) of all negatively affected hospital inpatient services providers. *See* Table 11.

Because revenue data for entities in the $0–100,000 revenue band are not available, *see* Table 10, the Department was unable to calculate whether the impact of the proposed rule on providers in that revenue band would be significant. Assuming that the only negatively impacted entity in the $0–$100,000 revenue band also experienced a significant impact, only 4.0% (3 divided by 75) of all negatively affected small entities would experience a significant impact. This impact is still less than the 15% threshold for determining whether a substantial number of negatively affected small entities would experience a significant impact.

[27] As previously noted, the Department acknowledges that uniformly applying the annual cost of the proposed rule across all negatively affected entities likely overstates the impact on smaller providers. *See* Section VI.D.2.a. of the preamble; n.34.

Table 10: Costs to Negatively Affected Small Firms – Hospital Inpatient Services Providers

Firm Size[1,2]	Number of All Industry Firms	Number of Negatively Affected Small Firms (75 total)[3]	Annual Cost per Firm[4]	Annual Revenue for All Industry Firms [5]	Average Revenue per Firm[6]	Annual Cost per Negatively Affected Firms as Percent of Revenue[7]
Firms with sales/receipts/revenue below $100,000	15	< 1	$41,733	N/A	N/A	N/A
Firms with sales/receipts/revenue of $100,000 to $499,999	24	1	$41,733	$6,247,000	$260,292	16.03%
Firms with sales/receipts/revenue of $500,000 to $999,999	9	< 1	$41,733	$5,933,000	$659,222	6.33%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	13	< 1	$41,733	$24,443,000	$1,880,231	2.22%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	83	2	$41,733	$337,257,000	$4,063,337	1.03%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	137	3	$41,733	$847,157,000	$6,183,628	0.67%
Firms with sales/receipts/revenue of $7,500,000 to $9,999,999	153	4	$41,733	$1,311,989,000	$8,575,092	0.49%
Firms with sales/receipts/revenue of $10,000,000 to $14,999,999	293	7	$41,733	$3,603,160,000	$12,297,474	0.34%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	243	6	$41,733	$4,175,289,000	$17,182,259	0.24%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	200	5	$41,733	$4,297,241,000	$21,486,205	0.19%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	154	4	$41,733	$3,992,287,000	$25,923,942	0.16%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	113	3	$41,733	$3,474,943,000	$30,751,708	0.14%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	110	3	$41,733	$3,979,151,000	$36,174,100	0.12%
Firms with sales/receipts/revenue of $40,000,000 or greater	1,714	39	$41,733	$753,319,701,000	$439,509,744	0.01%

Notes:

[1] The U.S. Small Business Administration's small business size standard for subsectors within the hospital industry is $38.5 million. The Department used this threshold to define small businesses in the analysis of the hospital industry.

[2] Per the RFA definitions, not-for-profit, independently owned and operated firms of any size, that are not dominant in their field, are considered small. The revenue band of $40,000,000 or more includes only not-for-profits firms. The total number of firms (1,714) included in this revenue band was calculated by multiplying the percentage (87.9%) of not-for-profit firms in the hospital industry by the total number of large firms (1,950) identified in the SBA data.

[3] The estimated numbers of negatively affected small firms were rounded for clarity, so will not total 75 exactly. Any fraction under one was denoted <1.

[4] The annual cost per firm ($41,733) was derived by calculating the total cost of the proposed rule (i.e., the total net decrease in payments summed over all negatively affected firms, $3,338,650) and dividing by the total number of negatively affected firms (80).

[5] The annual and average revenue per firm for firms with sales/receipts/revenue below $100,000 are not available on the Census website. Data for that revenue band were withheld to avoid disclosing information of individual businesses.

[6] The average revenue per firm was derived by dividing the total annual revenue for all industry firms by the number of industry firms.

[7] The annual cost per negatively affected firm as a percent of revenue was derived by dividing the annual cost per firm by the average revenue per firm.

E. Summary

In summary, the Department estimates that the proposed rule will not have a significant impact on any small entity providing non-hospital health care services. In addition, it will have a significant impact on only one small hospital entity providing outpatient services and two providing inpatient services. For each category of provider, the percentage of small entities experiencing a significant impact (loss of 3% or more of annual revenue) from the proposed rule (0% for professional medical services, 0.6% for outpatient hospital services, and 2.6% for inpatient hospital services) does not represent a substantial number (15% or more) of all negatively affected small entities in that category.

Moreover, the Department's calculations likely overestimate the impact of the proposed rule on negatively affected small entities. The per-provider loss calculations are based on an average of all entities in each category, regardless of size. The Department presumes that larger entities—*i.e.,* those with revenue exceeding the SBA's thresholds—treat more entitled miners, and thus receive larger total payments from the Trust Fund than smaller entities. Thus, the actual per-provider cost for small entities in each provider category likely will be smaller than the estimates used by the Department in this analysis. To ensure adequate consideration of the impact on small entities, however, the Department used these unlikely, category-wide average cost estimates to determine whether the rule would have a significant economic impact on a substantial number of small entities.

Table 11: RFA Summary

	Non-Hospital Health Care Services Providers	Hospitals Providing Outpatient Services	Hospitals Providing Inpatient Services
Number of Small Firms	482,629	3,261	3,261
Number of Negatively Affected Small Firms	418	165	75
Cost Per Small Firm	$888	$9,719	$41,733
Number of Small Firms for Whom the Cost Is Significant (≥ 3% of Annual Revenue)	0	1	2
Percent of Negatively Affected Small Firms for Whom the Cost Is Significant	0.0%	0.6%	2.7%
Significant Impact on a Substantial Number of Small Firms (≥15% of Small Firms)?	No	No	No

Source: U.S. Department of Labor, Office of Workers' Compensation Programs

F. Identification of Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The Department is unaware of any rules that may duplicate, overlap, or conflict with the proposed rule.

G. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Impact of the Proposed Rule on Small Entities

The RFA requires the Department to consider alternatives to the proposed rule that would minimize any significant economic impact on small entities without sacrificing the stated objectives of the applicable statute. There is no basis in the statute for exempting small firms from payment rules or for providing different payment rules for small versus large firms. Moreover, providing different rules would defeat the proposed rule's stated objective: To employ modern payment methods and streamline the payment process, while protecting the limited resources of the Trust Fund.

H. Comments To Assist the Regulatory Flexibility Analysis

Although the Department estimates that the proposed rule would not have a significant economic impact (more than 3% of revenue) on a substantial number of small entities (more than 15% in the industry), the Department would appreciate feedback on the data, factors, and assumptions used in its analysis. Accordingly, the Department invites all interested parties to submit comments regarding the costs and benefits of the proposed rule, with particular attention to the effects of the rule on small entities.

VII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.,* directs agencies to assess the effects of Federal Regulatory Actions on State, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' 2 U.S.C. 1531. For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased expenditures by State, local, tribal governments, or increased expenditures

by the private sector of more than $100,000,000.

VIII. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' E.O. 13132, 64 FR 43255 (Aug. 4, 1999). The proposed rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' if promulgated as a final rule. *Id.*

IX. Executive Order 12988 (Civil Justice Reform)

The proposed rule meets the applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

X. Congressional Review Act

The proposed rule is not a ''major rule'' as defined in the Congressional Review Act, 5 U.S.C. 801 *et seq.* If promulgated as a final rule, 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 for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 20 CFR Part 725

Administrative practice and procedure, Black lung benefits, Claims, Coal miners' entitlement to benefits, Health care, Reporting and recordkeeping requirements, Survivors' entitlement to benefits, Total disability due to pneumoconiosis, Vocational rehabilitation, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 725 as follows:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

■ 1. The authority citation for part 725 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at sec. 701; Reorganization Plan No. 6 of 1950, 15 FR 3174; 30 U.S.C. 901 *et seq.,* 902(f), 921, 932, 936; 33 U.S.C. 901 *et seq.;* 42 U.S.C. 405; Secretary's Order 10–2009, 74 FR 58834.

■ 2. Amend § 725.308 as follows:
■ a. Remove paragraph (b);
■ b. Redesignate paragraph (c) as paragraph (b);
■ c. Remove from the second sentence in paragraph (c) ''However, except as provided in paragraph (b) of this section,''.
■ 3. In part 725, revise subpart J as follows:

Subpart J—Medical Benefits and Vocational Rehabilitation

Sec.

725.701 What medical benefits are available?
725.702 Who is considered a physician?
725.703 How is treatment authorized?
725.704 How are arrangements for medical care made?
725.705 Is prior authorization for medical services required?
725.706 What reports must a medical provider give to OWCP?
725.707 At what rate will fees for medical services and treatments be paid?
725.708 How are payments for professional medical services and medical equipment determined?
725.709 How are payments for prescription drugs determined?
725.710 How are payments for outpatient medical services determined?
725.711 How are payments for inpatient medical services determined?
725.712 When and how are fees reduced?
725.713 If a fee is reduced, may a provider bill the claimant for the balance?
725.714 How do providers enroll with OWCP for authorizations and billing?
725.715 How do providers submit medical bills?
725.716 How should a miner prepare and submit requests for reimbursement for covered medical expenses and transportation costs?
725.717 What are the time limitations for requesting payment or reimbursement for medical services or treatments?
725.718 How are disputes concerning medical benefits resolved?
725.719 What is the objective of vocational rehabilitation?
725.720 How does a miner request vocational rehabilitation assistance?

Subpart J—Medical Benefits and Vocational Rehabilitation

§ 725.701 What medical benefits are available?

(a) A miner who is determined to be eligible for benefits under this part or part 727 of this subchapter (*see* § 725.4(d)) is entitled to medical benefits as set forth in this subpart as of the date of his or her claim, but in no event before January 1, 1974. Medical benefits may not be provided to the survivor or dependent of a miner under this part.

(b) A responsible operator, or where there is none, the fund, must furnish a miner entitled to benefits under this part with such medical services and treatments (including professional medical services and medical equipment, prescription drugs, outpatient medical services, inpatient medical services, and any other medical service, treatment or supply) for such periods as the nature of the miner's pneumoconiosis and disability requires.

(c) The medical benefits referred to in paragraphs (a) and (b) of this section include palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis or attendant disability.

(d) An operator or the fund must also pay the miner's reasonable cost of travel necessary for medical treatment (to be determined in accordance with prevailing United States government mileage rates) and the reasonable documented cost to the miner or medical provider incurred in communicating with the operator, carrier, or OWCP on matters connected with medical benefits.

(e)(1) If a miner receives a medical service or treatment, as described in this section, for any pulmonary disorder, there will be a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis.

(2) The party liable for the payment of benefits may rebut the presumption by producing credible evidence that the medical service or treatment provided was for a pulmonary disorder apart from those previously associated with the miner's disability, or was beyond that necessary to effectively treat a covered disorder, or was not for a pulmonary disorder at all.

(3) An operator or the fund, however, cannot rely on evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment to defeat a request for coverage of any medical service or treatment under this subpart.

(4) In determining whether the treatment is compensable, the opinion of the miner's treating physician may be entitled to controlling weight pursuant to § 718.104(d).

(5) A finding that a medical service or treatment is not covered under this subpart will not otherwise affect the miner's entitlement to benefits.

§ 725.702 Who is considered a physician?

The term ''physician'' includes only doctors of medicine (MD) and doctors of osteopathy (DO) within the scope of their practices as defined by State law. No treatment or medical services performed by any other practitioner of the healing arts is authorized by this part, unless such treatment or service is authorized and supervised both by a physician as defined in this section and by OWCP.

§ 725.703 How is treatment authorized?

(a) Upon notification to a miner of such miner's entitlement to benefits, OWCP must provide the miner with a list of authorized treating physicians and medical facilities in the area of the miner's residence. The miner may select a physician from this list or may select another physician with approval of OWCP. Where emergency services are necessary and appropriate, authorization by OWCP is not required.

(b) OWCP may, on its own initiative, or at the request of a responsible operator, order a change of physicians or facilities, but only where it has been determined that the change is desirable or necessary in the best interest of the miner. The miner may change physicians or facilities subject to the approval of OWCP.

(c) If adequate treatment cannot be obtained in the area of the claimant's residence, OWCP may authorize the use of physicians or medical facilities outside such area as well as reimbursement for travel expenses and overnight accommodations.

§ 725.704 How are arrangements for medical care made?

(a) *Operator liability.* If an operator has been determined liable for the payment of benefits to a miner, OWCP will notify the operator or its insurance carrier of the names, addresses, and telephone numbers of the authorized providers of medical benefits chosen by an entitled miner, and require the operator or carrier to:

(1) Notify the miner and the providers chosen that the operator or carrier will be responsible for the cost of medical services provided to the miner on account of the miner's total disability due to pneumoconiosis;

(2) Designate a person or persons with decision-making authority with whom OWCP, the miner and authorized providers may communicate on matters involving medical benefits provided under this subpart and notify OWCP, the miner and providers of this designation;

(3) Make arrangements for the direct reimbursement of providers for their services.

(b) *Fund liability.* If there is no operator found liable for the payment of benefits, OWCP will make necessary arrangements to provide medical care to the miner, notify the miner and providers selected of the liability of the fund, designate a person or persons with whom the miner or provider may communicate on matters relating to medical care, and make arrangements for the direct reimbursement of the medical provider.

§ 725.705 Is prior authorization for medical services required?

(a) Except as provided in paragraph (b) of this section, medical services from an authorized provider which are payable under § 725.701 do not require prior approval of OWCP or the responsible operator.

(b) Except where emergency treatment is required, prior approval of OWCP or the responsible operator must be obtained before any hospitalization or surgery, or before ordering medical equipment where the purchase price exceeds $300. A request for approval of non-emergency hospitalization or surgery must be acted upon expeditiously, and approval or disapproval will be given by telephone if a written response cannot be given within 7 days following the request. No employee of the Department of Labor, other than a district director or the Chief, Medical Audit and Operations Section, DCMWC, is authorized to approve a request for hospitalization or surgery by telephone.

§ 725.706 What reports must a medical provider give to OWCP?

(a) Within 30 days following the first medical or surgical treatment provided under § 725.701, the provider must furnish to OWCP and the responsible operator or its insurance carrier, if any, a report of such treatment.

(b) In order to permit continuing supervision of the medical care provided to the miner with respect to the necessity, character and sufficiency of any medical care furnished or to be furnished, the provider, operator or carrier must submit such reports in addition to those required by paragraph (a) of this section as OWCP may from time to time require. Within the discretion of OWCP, payment may be refused to any medical provider who fails to submit any report required by this section.

§ 725.707 At what rate will fees for medical services and treatments be paid?

(a) All fees charged by providers for any medical service, treatment, drug or equipment authorized under this subpart will be paid at no more than the rate prevailing for the service, treatment, drug or equipment in the community in which the provider is located.

(b) When medical benefits are paid by the fund at OWCP's direction, either on an interim basis or because there is no liable operator, the prevailing community rate for various types of service will be determined as provided in §§ 725.708–725.711.

(c) The provisions of §§ 725.708–725.711 do not apply to charges for medical services or treatments furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

(d) If the provisions of §§ 725.708–725.711 cannot be used to determine the prevailing community rate for a particular service or treatment or for a particular provider, OWCP may determine the prevailing community rate by reliance on other federal or state payment formulas or on other evidence, as appropriate.

(e) OWCP must review the payment formulas described in §§ 725.708–725.711 at least once a year, and may adjust, revise or replace any payment formula or its components when necessary or appropriate.

(f) The provisions of §§ 725.707–725.711 apply to all medical services or treatments rendered on or after the effective date of this rule.

§ 725.708 How are payments for professional medical services and medical equipment determined?

(a)(1) OWCP pays for professional medical services based on a fee schedule derived from the schedule maintained by the Centers for Medicare & Medicaid Services (CMS) for the payment of such services under the Medicare program (42 CFR part 414). The schedule OWCP utilizes consists of: An assignment of Relative Value Units (RVU) to procedures identified by Healthcare Common Procedure Coding System/Current Procedural Terminology (HCPCS/CPT) code, which represents the work (relative time and intensity of the service), the practice expense and the malpractice expense, as compared to other procedures of the same general class; an assignment of Geographic Practice Cost Index (GPCI) values, which represent the relative work, practice expense and malpractice expense relative to other localities throughout the country; and a monetary

value assignment (conversion factor) for one unit of value for each coded service.

(2) The maximum payment for professional medical services identified by a HCPCS/CPT code is calculated by multiplying the RVU values for the service by the GPCI values for such service in that area and multiplying the sum of these values by the conversion factor to arrive at a dollar amount assigned to one unit in that category of service.

(3) OWCP utilizes the RVUs published, and updated or revised from time to time, by CMS for all services for which CMS has made assignments. Where there are no RVUs assigned, OWCP may develop and assign any RVUs that OWCP considers appropriate. OWCP utilizes the GPCI for the locality as defined by CMS and as updated or revised by CMS from time to time. OWCP will devise conversion factors for professional medical services using OWCP's processing experience and internal data.

(b) Where a professional medical service is not covered by the fee schedule described in paragraph (a) of this section, OWCP may pay for the service based on other fee schedules or pricing formulas utilized by OWCP for professional medical services.

(c) OWCP pays for medical equipment identified by a HCPCS/CPT code based on fee schedules or other pricing formulas utilized by OWCP for such equipment.

§ 725.709 How are payments for prescription drugs determined?

(a)(1) OWCP pays for drugs prescribed by physicians by multiplying a percentage of the average wholesale price, or other baseline price as specified by OWCP, of the medication by the quantity or amount provided, plus a dispensing fee.

(2) All prescription medications identified by National Drug Code are assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers, or another baseline price designated by OWCP.

(3) OWCP may establish the dispensing fee.

(b) If the pricing formula described in paragraph (a) of this section is inapplicable, OWCP may make payment based on other pricing formulas utilized by OWCP for prescription medications.

(c) OWCP may, in its discretion, contract for or require the use of specific providers for certain medications. OWCP also may require the use of generic equivalents of prescribed medications where they are available.

§ 725.710 How are payments for outpatient medical services determined?

(a)(1) Except as provided in paragraphs (b) and (c) of this section, OWCP pays for outpatient medical services according to Ambulatory Payment Classifications (APCs) derived from the Outpatient Prospective Payment System (OPPS) devised by the Centers for Medicare & Medicaid Services (CMS) for the Medicare program (42 CFR part 419).

(2) For outpatient medical services paid under the OPPS, such services are assigned according to the APC prescribed by CMS for that service. Each payment is derived by multiplying the prospectively established scaled relative weight for the service's clinical APC by a conversion factor to arrive at a national unadjusted payment rate for the APC. The labor portion of the national unadjusted payment rate is further adjusted by the hospital wage index for the area where payment is being made. Additional adjustments are also made as required or needed.

(b) If a compensable service cannot be assigned or paid at the prevailing community rate under the OPPS, OWCP may pay for the service based on fee schedules or other pricing formulas utilized by OWCP for outpatient services.

(c) This section does not apply to services provided by ambulatory surgical centers.

§ 725.711 How are payments for inpatient medical services determined?

(a)(1) OWCP pays for inpatient medical services according to pre-determined rates derived from the Medicare Inpatient Prospective Payment System (IPPS) used by the Centers for Medicare & Medicaid Services (CMS) for the Medicare program (42 CFR part 412).

(2) Inpatient hospital discharges are classified into diagnosis-related groups (DRGs). Each DRG groups together clinically similar conditions that require comparable amounts of inpatient resources. For each DRG, an appropriate weighting factor is assigned that reflects the estimated relative cost of hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(3) For each hospital discharge classified within a DRG, a payment amount for that discharge is determined by using the national weighting factor determined for that DRG, national standardized adjustments, and other factors which may vary by hospital, such as an adjustment for area wage levels. OWCP may also use other price adjustment factors as appropriate based on its processing experience and internal data.

(b) If an inpatient service cannot be classified by DRG, occurs at a facility excluded from the Medicare IPPS, or otherwise cannot be paid at the prevailing community rate under the pricing formula described in paragraph (a) of this section, OWCP may pay for the service based on fee schedules or other pricing formulas utilized by OWCP for inpatient services.

§ 725.712 When and how are fees reduced?

(a) A provider's designation of the code used to identify a billed service or treatment will be accepted if the code is consistent with the medical and other evidence, and the provider will be paid no more than the maximum allowable fee for that service or treatment. If the code is not consistent with the medical evidence or where no code is supplied, the bill will be returned to the provider for correction and resubmission or denied.

(b) If the charge submitted for a service or treatment supplied to a miner exceeds the maximum amount determined to be reasonable under this subpart, OWCP must pay the amount allowed by §§ 725.707–725.711 for that service and notify the provider in writing that payment was reduced for that service in accordance with those provisions.

(c) A provider or other party who disagrees with a fee determination may seek review of that determination as provided in this subpart (*see* § 725.718).

§ 725.713 If a fee is reduced, may a provider bill the claimant for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of the provisions of §§ 725.707–725.711 or otherwise in accordance with this subpart may not request reimbursement from the miner for additional amounts.

§ 725.714 How do providers enroll with OWCP for authorizations and billing?

(a) All non-pharmacy providers seeking payment from the fund must enroll with OWCP or its designated bill processing agent to have access to the automated authorization system and to submit medical bills to OWCP.

(b) To enroll, the non-pharmacy provider must complete and submit a Form OWCP–1168 to the appropriate location noted on that form. By completing and submitting this form, providers certify that they satisfy all applicable Federal and State licensure and regulatory requirements that apply

to their specific provider or supplier type.

(c) The non-pharmacy provider must maintain documentary evidence indicating that it satisfies those requirements.

(d) The non-pharmacy provider must also notify OWCP immediately if any information provided to OWCP in the enrollment process changes.

(e) All pharmacy providers must obtain a National Council for Prescription Drug Programs number. Upon obtaining such number, they are automatically enrolled in OWCP's pharmacy billing system.

(f) After enrollment, a provider must submit all medical bills to OWCP through its bill processing portal or to the OWCP address specified for such purpose and must include the Provider Number/ID obtained through enrollment, or its National Provider Number (NPI) or any other identifying numbers required by OWCP.

§ 725.715 How do providers submit medical bills?

(a) A provider must itemize charges on Form OWCP–1500 or CMS–1500 (for professional services, equipment or drugs dispensed in the office), Form OWCP–04 or UB–04 (for hospitals), an electronic or paper-based bill that includes required data elements (for pharmacies) or other form as designated by OWCP, and submit the form promptly to OWCP.

(b) The provider must identify each medical service performed using the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC) number, or the Revenue Center Code (RCC), as appropriate to the type of service. OWCP has discretion to determine which of these codes may be utilized in the billing process. OWCP also has the authority to create and supply codes for specific services or treatments. These OWCP-created codes will be issued to providers by OWCP as appropriate and may only be used as authorized by OWCP. A provider may not use an OWCP-created code for other types of medical examinations, services or treatments. (1) For professional medical services, the provider must list each diagnosed condition in order of priority and furnish the corresponding diagnostic code using the ''International Classification of Disease, 10th Edition, Clinical Modification'' (ICD–10–CM), or as revised.

(2) For prescription drugs or supplies, the provider must include the NDC assigned to the product, and such other information as OWCP may require.

(3) For outpatient medical services, the provider must use HCPCS codes and other coding schemes in accordance with the Outpatient Prospective Payment System.

(4) For inpatient medical services, the provider must include admission and discharge summaries and an itemized statement of the charges.

(c)(1) By submitting a bill or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described, necessary, appropriate, and properly billed in accordance with accepted industry standards. For example, accepted industry standards preclude upcoding billed services for extended medical appointments when the miner actually had a brief routine appointment, or charging for the services of a professional when a paraprofessional or aide performed the service; industry standards prohibit unbundling services to charge separately for services that should be billed as a single charge.

(2) The provider agrees to comply with all regulations set forth in this subpart concerning the provision of medical services or treatments and/or the process for seeking reimbursement for medical services and treatments, including the limitation imposed on the amount to be paid.

§ 725.716 How should a miner prepare and submit requests for reimbursement for covered medical expenses and transportation costs?

(a) If a miner has paid bills for a medical service or treatment covered under § 725.701 and seeks reimbursement for those expenses, he or she may submit a request for reimbursement on Form OWCP–915, together with an itemized bill. The reimbursement request must be accompanied by evidence that the provider received payment for the service from the miner and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a copy of the miner's canceled check (both front and back) or a copy of the miner's credit card receipt.

(b) OWCP may waive the requirements of paragraph (a) of this section if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the miner to obtain the required information.

(c) Reimbursements for covered medical services paid by a miner generally will be no greater than the maximum allowable charge for such service as determined under §§ 725.707–725.711.

(d) A miner will be only partially reimbursed for a covered medical service if the amount he or she paid to a provider for the service exceeds the maximum charge allowable. If this happens, OWCP will advise the miner of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the miner, or credit to the miner's account, the amount he or she paid which exceeds the maximum allowable charge.

(e) If the provider does not refund to the miner or credit to his or her account the amount of money paid in excess of the charge allowed by OWCP, the miner should submit documentation to OWCP of the attempt to obtain such refund or credit. OWCP may make reasonable reimbursement to the miner after reviewing the facts and circumstances of the case.

(f) If a miner has paid transportation costs or other incidental expenses related to covered medical services under this part, the miner may submit a request for reimbursement on Form OWCP–957 or OWCP–915, together with proof of payment.

§ 725.717 What are the time limitations for requesting payment or reimbursement for medical services or treatments?

OWCP will pay providers and reimburse miners promptly for all bills received on an approved form and in a timely manner. However, absent good cause, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the miner's eligibility for benefits is finally adjudicated, whichever is later.

§ 725.718 How are disputes concerning medical benefits resolved?

(a) If a dispute develops concerning medical services or treatments or their payment under this part, OWCP must attempt to informally resolve the dispute. OWCP may, on its own initiative or at the request of the responsible operator or its insurance carrier, order the claimant to submit to an examination by a physician selected by OWCP.

(b) If a dispute cannot be resolved informally, OWCP will refer the case to the Office of Administrative Law Judges for a hearing in accordance with this part. Any such hearing concerning authorization of medical services or treatments must be scheduled at the earliest possible time and must take precedence over all other hearing

requests except for other requests under this section and as provided by § 727.405 of this subchapter (*see* § 725.4(d)). During the pendency of such adjudication, OWCP may order the payment of medical benefits prior to final adjudication under the same conditions applicable to benefits awarded under § 725.522.

(c) In the development or adjudication of a dispute over medical benefits, the adjudication officer is authorized to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute under this subpart.

§ 725.719 What is the objective of vocational rehabilitation?

The objective of vocational rehabilitation is the return of a miner who is totally disabled by pneumoconiosis to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.720 How does a miner request vocational rehabilitation assistance?

Each miner who has been determined entitled to receive benefits under part C of title IV of the Act must be informed by OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request will be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501 through 702.508 of this chapter as is appropriate.

Dated: December 21, 2016.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2016–31382 Filed 1–3–17; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2009–0139]

RIN 2125–AF34

National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Maintaining Pavement Marking Retroreflectivity

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Supplemental notice of proposed amendments (SNPA); request for comments.

SUMMARY: The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated in FHWA regulations and recognized as the national standard for traffic control devices used on all streets, highways, bikeways, and private roads open to public travel. The FHWA proposed in an earlier notice of proposed amendment (NPA) to amend the MUTCD to include standards, guidance, options, and supporting information related to maintaining minimum levels of retroreflectivity for pavement markings. Based on the review and analysis of the numerous comments received in response to the NPA, FHWA has substantially revised the proposed amendments to the MUTCD and, as a result, is issuing this SNPA.

DATES: Comments must be received on or before May 4, 2017. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. In accordance with the Administrative Procedure Act, DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Satterfield, Office of Safety, *cathy.satterfield@dot.gov,* (708) 283–3552; or Mr. William Winne, Office of the Chief Counsel, *william.winne@dot.gov,* (202) 366–1397, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or access all comments received by the DOT online through *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days this year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.ofr.gov* and the Government Publishing Office's Web page at: *http://www.gpo.gov* and is available for inspection and copying, as prescribed in 49 CFR part 7, at the FHWA Office of Transportation Operations (HOTO–1), 1200 New Jersey Avenue SE., Washington, DC 20590. Furthermore, the text of the proposed revision is available on the MUTCD Internet Web site at *http://mutcd.fhwa.dot.gov.* The proposed additions are shown in blue text and proposed deletions are shown as red strikeout text. The complete current 2009 edition of the MUTCD is also available on the same Internet Web site. A copy of the proposed revision is included at the conclusion of the preamble in this document and is also available as a separate document under the docket number noted above at *http://www.regulations.gov.*

Executive Summary

I. Purpose of the Regulatory Action

Section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992) directed the Secretary of Transportation to ''revise the Manual on Uniform Traffic Control Devices to include—a standard for a minimum level of retroreflectivity that must be maintained for pavement markings and signs, which shall apply to all roads open to public travel.'' Improving safety and mobility throughout the transportation network are two of the core goals of the DOT. The purpose of FHWA's proposal to include minimum retroreflectivity levels in the MUTCD [1] is to advance safety and mobility by assisting with the nighttime visibility needs of drivers and improving the infrastructure's ability to work with Intelligent Transportation Systems (ITS) technologies. The final rule for maintaining minimum levels of retroreflectivity for traffic signs was issued on December 21, 2007, at 72 FR 72574. This proposed rule addresses driver visibility needs in terms of pavement markings.

II. Summary of the Major Provisions of the Regulatory Action in Question

This proposed rule would establish minimum retroreflectivity levels for pavement markings on all roads open to public travel with average annual daily traffic (AADT) volumes over 6,000 and speed limits of 35 mph or higher. Agencies or officials having jurisdiction would be required to develop and implement a method for maintaining pavement marking retroreflectivity at minimum levels. It would not require agencies or officials having jurisdiction to upgrade markings by a specific date, nor would it require them to ensure every marking is above the minimum retroreflectivity level at all times.

This SNPA includes revisions based on docket comments submitted as part of an NPA issued April 22, 2010, at 75 FR 20935. Retroreflectivity levels and locations were simplified from what was presented in the NPA to the following criteria making it easier to understand and implement:

—Requires a minimum retroreflectivity level of 50 mcd/m²/lx where statutory or posted speed limits are greater than or equal to 35 mph

—Recommends a minimum retroreflectivity level of 100 mcd/m²/lx where statutory or posted speed limits are greater than or equal to 70 mph

—Applies only to longitudinal lines (*e.g.,* center lines, edge lines, and lane lines).

III. Costs and Benefits

The FHWA has considered the costs and potential benefits of this rulemaking and believes the rulemaking is being implemented in a manner that fulfills our obligation under Section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992), while also providing flexibility for agencies. The estimated national costs are documented in the updated economic analysis report and the flexibility is documented in the new publication titled, ''Methods for Maintaining Pavement Marking Retroreflectivity.'' Both of these are available on the docket.

The MUTCD already requires that pavement markings that must be visible at night shall be retroreflective unless ambient illumination assures that the markings are adequately visible, and that all markings on Interstate highways shall be retroreflective. The proposed changes in the MUTCD would provide agencies the benefit of minimum retroreflective performance levels which are supported by research to make markings visible at night. Additionally, recent research findings indicate that maintenance of pavement marking retroreflectivity may have a positive effect on safety.

The economic analysis provides a national estimate of the costs and benefits to implement this rulemaking and to replace markings. Costs for individual agencies would vary based on factors such as the amount of pavement marking mileage subject to the standards and current pavement marking practices. The analysis estimates first year start-up implementation costs of $29.4 million for all affected State and local agencies to develop maintenance methods and purchase necessary equipment. In addition, annual measurement and management activities of $14.9 million nationwide are expected to determine which markings require replacement. In the second and following years, if agencies were to replace markings that do not meet the minimum retroreflectivity levels, despite the fact that there are no replacement compliance dates there would be an estimated increase of approximately $52.5 million per year nationally from current estimated pavement marking replacement expenditures. Therefore, this proposed rule would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The proposed changes in the MUTCD would provide additional guidance and clarification, while allowing flexibility in maintaining pavement marking retroreflectivity. The FHWA does not have enough information to determine the benefits of this document. The economic report summarizes findings from relevant research. The FHWA seeks comment on the issue.

Background

Pavement markings are one of the key methods of conveying information to the driver at night, conveying the location of the road center and edges, alignment information, presence of passing or no-passing zones, and indications that the driver is occupying the correct lane. The U.S. nighttime fatal crash rate is approximately three times that of the daytime crash rate, and safety studies [2] have shown that adding center line and edge line markings (or edge lines where only center lines were present) significantly reduces nighttime crashes. The MUTCD contains warrants indicating types of facilities that either shall or should have center line, edge line, or lane line markings. Therefore, FHWA has limited the proposed amendment to longitudinal markings to encompass center line, edge line, and lane line markings.

Per the MUTCD, markings that must be visible at night shall be retroreflective unless ambient illumination assures that the markings are adequately visible. All markings on Interstate highways shall be retroreflective. Retroreflectivity is the measure of an object's ability to reflect light back towards a light source along the same axis from which it strikes the object. In the case of retroreflective markings, incoming light from vehicle headlamps is reflected back towards the headlamps, and, more importantly, the driver's eyes, allowing the driver to see the pavement marking. Glass beads embedded in the marking material produces the retroreflective property of the pavement marking. The Coefficient of Retroreflected Luminance (R_L), which is measured in millicandelas per meter squared per lux (mcd/m²/lx), is the most common measurement. Retroreflectometers used in the United

[1] The current edition of the Manual on Uniform Traffic Control Devices can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/kno_2009r1r2.htm.*

[2] The paper titled ''The Benefits of Pavement Markings: A Renewed Perspective Based on Recent and Ongoing Research'' can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/roadway_dept/night_visib/pavement_visib/no090488/.*

States are based on CEN [3]-prescribed 30-meter geometry per ASTM Test Method E1710 [4].

Research has in some cases shown a correlation between increased retroreflectivity and reduced crashes, but has had limited success in quantifying that relationship. This is primarily due to the difficulty in what the level of retroreflectivity for the marking was at the time of a crash, along with the difficulty in accounting for other factors that may impact increases or reductions in crashes. Historically, agencies have not measured most of their pavement markings, and when they did it was typically to determine if newly installed markings met the standards of a contract. Once a pavement marking is installed, the retroreflectivity of the marking begins to degrade. The degradation rate is difficult to predict because some of the beads embedded in the marking become dislodged by traffic, obscured by dirt, or removed in snow plowing operations. In recent years, with mobile retroreflectometers available, a few agencies have more information on the level of retroreflectivity of their longitudinal pavement markings, including some information on markings that have been in place for some time. With this new data, agencies are better positioned to proactively manage their pavement markings.

The FHWA sponsored research to establish recommended minimum pavement marking retroreflectivity levels that is based on the nighttime driving needs of drivers, including older drivers [5]. One of the key conditions considered in the research was that a minimum preview time [6] of 2.2 seconds was needed for nighttime drivers to safely navigate their vehicles. The research used updated visibility modeling techniques and tools to determine minimum retroreflectivity levels for a number of scenarios. The research scope was limited to dark, dry, rural, straight roads and longitudinal pavement markings. In addition, FHWA held workshops [7] to solicit input on potential standards for minimum pavement marking retroreflectivity.

On April 22, 2010, at 75 FR 20935, FHWA published in the **Federal Register** an NPA to amend the MUTCD to include standards, guidance, options, and supporting information related to maintaining minimum levels of retroreflectivity for pavement markings. The NPA was issued in response to Section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992). Section 406 of the Act directed the Secretary of Transportation to ''revise the Manual on Uniform Traffic Control Devices to include—a standard for a minimum level of retroreflectivity that must be maintained for pavement markings and signs, which shall apply to all roads open to public travel.'' Improving safety and mobility throughout the transportation network are two of the core goals of the DOT. This SNPA would propose minimum retroreflectivity levels in the MUTCD to advance safety and mobility by meeting the nighttime visibility needs of drivers on our Nation's roads and improving the infrastructure's ability to work with ITS technologies. The final rule for maintaining minimum levels of retroreflectivity for traffic signs was issued on December 21, 2007, at 72 FR 72574. The sign retroreflectivity final rule, and Revision 2 of the 2009 MUTCD [8], requires agencies to implement and have continued use of an assessment or management method that is designed to maintain regulatory and warning sign retroreflectivity at or above the established minimum levels. This proposed rule addresses driver visibility needs in terms of pavement markings. The FHWA used knowledge it gained through the sign retroreflectivity rulemaking process to prepare the NPA, as well as this SNPA, for maintaining pavement marking retroreflectivity. This includes simplifying the minimum retroreflectivity levels, requiring the use of a method to maintain minimum retroreflectivity, and clarifying the types of longitudinal lines for which this proposed rule applies.

Since publishing the NPA, the need for improved pavement markings has become more apparent in relation to advanced driver assistance systems (ADAS) in vehicles. Numerous manufacturers have ADAS that include lane departure warning systems that use camera sensors to detect pavement markings to monitor the position of the vehicle. Automakers, suppliers, and research institutes have indicated in interviews that maintenance of pavement markings will be necessary to support vehicle automation. Michael J. Robinson of General Motors testified before the House Committee on Transportation and Infrastructure Subcommittee on Highway and Transit that, ''one of the key highway needs is to provide—at a minimum—clearly marked lanes and shoulders.'' [9] In the same hearing, former NHTSA Administrator Strickland spoke of how the autonomous vehicle will advance safety and specifically mentioned FHWA's efforts to improve the infrastructure to ''interact with and support automated or partially automated vehicles.'' [10] More recently, the American Association of State Highway and Transportation Officials (AASHTO) and SAE International (formerly the Society of Automotive Engineers) have formed a joint task force to develop a specification that includes criteria for road markings for vehicle cameras that detect and use lane markings for features such as Lane Departure Warning (LDW) and Lane Keeping Assist (LKA). The joint task force will use the information from National Cooperative Highway Research Program (NCHRP) 20–102(06), Road Markings for Machine Vision as a basis.[11]

The comment period for the NPA related to pavement marking

[3] CEN is the European Committee for Standardization.

[4] ASTM E1710, ''Standard Test Method for Measurement of Retroreflective Pavement Marking Materials with CEN-Prescribed Geometry Using a Portable Retroreflectometer'', is available through subscription or purchase at the following Internet Web site: *http://www.astm.org/*.

[5] The report titled, ''Updates to Research on Recommended Minimum Levels for Pavement Marking Retroreflectivity to Meet Driver Night Visibility Needs'' can be viewed at the following Internet Web site: *http://www.fhwa.dot.gov/publications/research/safety/07059/*.

[6] Preview time describes the distance a driver must be able to see pavement markings down the road in order to receive adequate information to perceive, process, and react to the information to safely guide the vehicle. Since this distance increases as the speed of the vehicle increases, preview time is used to express this distance for any speed.

[7] The summary report titled: ''Pavement Marking Retroreflectivity Workshops'' can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/roadway_dept/night_visib/pavement_visib/fhwasa08003/fhwasa08003.pdf*.

[8] Revision 2 of the 2009 MUTCD, 77 FR 28460 (May 14, 2012), revised certain information relating to target compliance dates for traffic control devices. It can be viewed at the following Internet Web site: *https://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11710.pdf*.

[9] Testimony of Michael J. Robinson, Vice President, Sustainability and Global Regulatory Affairs, before the House Committee on Transportation and Infrastructure Subcommittee on Highways and Transit, Hearing on How Autonomous Vehicles will Shape the Future of Surface Transportation, November 19, 2013 *http://transportation.house.gov/uploadedfiles/2013-11-19-robinson.pdf*.

[10] Testimony of The Honorable David L. Strickland, Administrator, National Highways Traffic Safety Administration, before the House Committee on Transportation and Infrastructure Subcommittee on Highways and Transit, Hearing on How Autonomous Vehicles will Shape the Future of Surface Transportation, November 19, 2013. *http://transportation.house.gov/uploadedfiles/2013-11-19-strickland.pdf*.

[11] More information regarding the scope and status of NCHRP 20–102 (06), Road Markings for Machine Vision is available at the following Internet Web site: *http://apps.trb.org/cmsfeed/TRBNetProjectDisplay.asp?ProjectID=4004*.

retroreflectivity closed on August 20, 2010. The FHWA received approximately 100 responses that were submitted to the docket containing nearly 700 individual comments on the NPA. The FHWA received comments from the National Committee on Uniform Traffic Control Devices (NCUTCD), AASHTO, State departments of transportation (State DOTs), the National Association of County Engineers (NACE), the American Traffic Safety Services Association (ATSSA), Advocates for Highway and Auto Safety (AHAS), the American Association of Retired Persons (AARP), city and county governmental agencies, consulting firms, private industry, associations, other organizations, and individual private citizens. The FHWA has reviewed and analyzed the comments that were received in preparing this SNPA.

State and local DOTs, as well as associations that represent them, submitted many comments expressing concern over key elements of the MUTCD language as proposed in the NPA. The commenters expressed confusion about which pavement markings would be required to meet minimum retroreflectivity values and concern over compliance dates for replacing deficient markings, the proposed minimum retroreflectivity levels, cost, and liability. Organizations comprised of safety advocates and some industry suppliers of pavement markings submitted comments suggesting that the NPA did not go far enough in establishing retroreflectivity standards. In consideration of all the comments, FHWA desires to simplify the proposed MUTCD language to provide clarity while improving safety and minimizing the financial burden and potential liability concerns expressed by the commenters, particularly local agencies responsible for maintaining pavement markings. The FHWA also has a responsibility to meet the congressional intent of Section 406 of the Department of Transportation and Related Agencies Appropriations Act as discussed above, with an appreciation for economic impact.

The AASHTO and NACE requested delaying the final rule for pavement marking retroreflectivity until AASHTO's Subcommittee on Traffic Engineering funds and completes a proposed research project intended to provide a synthesis of pavement marking retroreflectivity maintenance practices. The organizations and many of their members felt this project would produce actual measurement of in-service pavement marking retroreflectivity levels to compare with the minimum values proposed by FHWA. The project was completed under NCHRP Project 20–07 Task 310. The findings were published January 2013 in a report titled, ''Determination of Current Levels of Retroreflectance Attained and Maintained by State Departments of Transportation.'' [12]

In the NPA, it was noted that the proposed revisions regarding maintaining pavement marking retroreflectivity would be designated as Revision 1 to the 2009 edition of the MUTCD. Actual designation of revision numbers depends on the relative timing of final rules issued by FHWA related to the MUTCD.

As a result of the comments received in response to the NPA, FHWA concluded that significant changes to the proposed MUTCD language are warranted. As a result, FHWA is issuing this SNPA to provide the opportunity for public review and comment on the revised proposal. Docket comments and summaries of the FHWA's analyses and determinations are discussed below.

Proposed Supplemental Amendment

In this SNPA, FHWA proposes to continue with the following key concepts from the NPA:

- Implementation and continued use of a method that is designed to maintain pavement markings at or above specific minimum retroreflectivity levels would be the key factor indicating compliance with this section of the MUTCD.
- The minimum retroreflectivity levels would apply only to longitudinal pavement markings under dry conditions, specifically center lines, edge lines and lane lines.
- The method would not be required to include markings on roads with statutory or posted speed limits under 35 mph.
- Markings that are adequately visible due to ambient illumination may be excluded from the method.
- Acknowledges that there may be some locations or certain periods of time where markings may be below the minimum retroreflectivity levels.

The FHWA proposes the following key changes from the language proposed in the April, 2010, NPA:

- Remove the compliance date for replacing markings;
- Simplify conditions so there are only two retroreflectivity values (one being a STANDARD and one being GUIDANCE) that are based on posted speed limit only, and apply to both white and yellow longitudinal pavement markings;
- Simplify the STANDARD to one minimum retroreflectivity level of 50 mcd/m^2/lx that applies to roads with statutory or posted speeds of 35 mph and greater;
- Change the requirement for high-speed roadways from a STANDARD to GUIDANCE, and condense the various minimum retroreflectivity levels to one minimum retroreflectivity level of 100 mcd/m^2/lx;
- Add an OPTION for agencies to exclude roadways with volumes less than 6,000 vehicles per day (vpd) from the application of their methods to maintain retroreflectivity; and
- Remove the exception for roadways with raised reflective pavement markers (RRPMs).

An analysis of the comments and the resulting proposed changes are discussed in more detail in the following sections.

The definitions of the MUTCD Section 1A.13 are used here, particularly in reference to the terms STANDARD, GUIDANCE, OPTION, and SUPPORT. A STANDARD refers to a required, mandatory or specifically prohibitive practice regarding a traffic control device. STANDARD statements are sometimes modified by an OPTION statement. GUIDANCE denotes a recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or an engineering study indicates the deviation to be appropriate. An OPTION states a practice that is a permissive condition and may contain allowable modifications to a STANDARD or GUIDANCE statement while SUPPORT statements simply convey information.

This SNPA is being issued to provide an opportunity for public comment on these proposed amendments to the MUTCD. The FHWA requests comments on the proposed amendments to the MUTCD that are presented in this SNPA. After reviewing the comments received in response to the NPA and this SNPA, FHWA may issue a final rule concerning the proposed changes included in this document. In order to enable FHWA to appropriately review and address all comments, commenters should cite the Section and paragraph number of the proposed MUTCD text for each specific comment to the docket.

Section-by-Section Analysis

This section-by-section analysis includes a discussion of the proposed SNPA language and an analysis of the comments submitted to the NPA docket.

[12] The report titled, ''Determination of Current Levels of Retroreflectance Attained and Maintained by State Departments of Transportation,'' can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP20-07(310)_FR.pdf.*

Since Section 3A.03 contains the majority of the material specifically related to maintaining pavement marking retroreflectivity, that section is described first, followed by proposed changes to Section 1A.11 and the Introduction.

Section 3A.03 Maintaining Minimum Pavement Marking Retroreflectivity

1. The FHWA proposes to change the current section title to ''Maintaining Minimum Retroreflectivity'' to simplify the title and be consistent with the title for Sign Retroreflectivity in Section 2A.08 of the 2009 MUTCD.

2. The FHWA has revised the organization and content of the STANDARD statement from what was proposed in the NPA. Many commenters indicated there was confusion regarding which markings were included in the minimum retroreflectivity requirements and which minimum retroreflectivity values applied under specific roadway marking conditions. To reduce confusion, FHWA proposes to base the minimum pavement marking retroreflectivity values only on posted speed limits, rather than a combination of posted speed and type of roadway marking pattern as proposed in Table 3A–1 of the NPA. In conjunction with this change, FHWA proposes to refrain from incorporating a table such as the NPA's Table 3A–1 and instead simplify the requirement for maintaining pavement marking retroreflectivity by including the retroreflectivity values in the text. The proposed retroreflectivity values apply to both white and yellow pavement markings.

3. In the STANDARD statement, paragraph 1, FHWA proposes that a method designed to maintain retroreflectivity at or above 50 mcd/m^2/lx shall be used for longitudinal markings on roadways with statutory or posted speed limits of 35 mph or greater. The proposed STANDARD is a minimum level intended to meet driver visibility needs. Many agencies currently have goals to achieve higher initial levels of retroreflectivity based on driver preferences and other factors. There are also a few agencies with goals to maintain higher levels. This rulemaking should not be misconstrued as a recommendation to lower these goals, but rather to encourage all agencies to replace or retrace markings before they reach this bare minimum level. This should result in markings that are typically well above these retroreflectivity levels throughout their useful life. As in the NPA, this STANDARD applies only to longitudinal markings. Information regarding markings that may be excluded and clarification on markings to which this STANDARD does not apply are described in paragraphs 5 and 6 of the proposed MUTCD text.

The 50 mcd/m^2/lx requirement proposed for the STANDARD is based on research on pavement marking retroreflectivity requirements documented in publication FHWA–HRT–07–059, ''Updates to Research on Recommended Minimum Levels for Pavement Marking Retroreflectivity to Meet Driver Night Visibility Needs.'' [13] In this report, fully marked roadways (those having edge lines, center lines, and lane lines, as needed) were identified as requiring retroreflectivity levels of 40 mcd/m^2/lx for speeds of 50 mph and lower and 60 mcd/m^2/lx for speeds of 55 to 65 mph. One of the key conditions considered in the research was that a minimum preview time of 2.2 seconds was needed for nighttime drivers to safely navigate their vehicles. The value of 50 mcd/m^2/lx is also one of the minimum retroreflectivity values proposed in the NPA.

The FHWA received comments from NCUTCD, AASHTO, NACE and several State and local agencies opposed to the higher retroreflectivity values presented in the NPA. Some of those commenters suggested alternate minimum retroreflectivity values that ranged from 50 to 150 mcd/m^2/lx, depending on the pavement marking configuration and posted speed limit. The FHWA received comments from ATSSA, AARP, and AHAS suggesting higher retroreflectivity values than proposed in the NPA and suggesting that minimum retroreflectivity values for roads with posted speed limits less than 35 mph should also be established. Specific comments referred to studies indicating that drivers prefer pavement markings with a range of 80 to 130 mcd/m^2/lx. The proposed minimum level of 50 mcd/m^2/lx was selected based on driver needs derived from a requirement of 2.2 second preview time, rather than public attitude surveys. This minimum will improve the retroreflectivity of markings in jurisdictions where pavement markings are not currently being adequately maintained, without placing an undue burden on agencies that choose to maintain markings at higher levels.

The FHWA also believes that establishing one retroreflectivity value as a STANDARD, rather than several values, will facilitate implementation of this proposed rule. In terms of roadways with posted speed limits of less than 35 mph, FHWA received comments from NACE and 26 local agencies supporting FHWA's proposal that the minimum levels not apply to roads with posted speeds of less than 35 mph; whereas, AHAS and ATSSA questioned whether the FHWA was meeting the congressional intent by not requiring the method to apply to these roads. The FHWA believes there would be little benefit in requiring agencies to implement a method to maintain a specific minimum retroreflectivity level of markings on these roads because properly working vehicle headlamps typically provide adequate preview distance of the road itself for the short preview distance needed at these speeds. Therefore, the level of retroreflectivity of the pavement markings is not as critical at these lower speeds.

4. In the GUIDANCE statement, paragraph 2, FHWA proposes that a method designed to maintain retroreflectivity at or above 100 mcd/m^2/lx should be used for longitudinal markings on roadways with statutory or posted speed limits of 70 mph or greater. The GUIDANCE statement is included to encourage higher retroreflectivity levels for roadways with higher speeds. This is based on a preview time of 2.2 seconds, indicating drivers need longer viewing distances on higher speed roadways, which can be achieved by maintaining a higher level of retroreflective pavement markings. The 100 mcd/m^2/lx level is based on research of pavement marking retroreflectivity requirements documented in publication FHWA–HRT–07–059, ''Updates to Research on Recommended Minimum Levels for Pavement Marking Retroreflectivity to Meet Driver Night Visibility Needs.'' [14]

In Table 3A–1 of the NPA, FHWA also proposed separate minimum retroreflectivity values for two-lane roads with only center line markings. These separate minimum values were included to address driver needs for higher retroreflective center lines on facilities without edge lines. Based on the comments from agencies and their associations, this was one of the areas that caused confusion. Since this SNPA provides agencies with the option to exclude roadways with Annual Daily Traffic (ADT) less than 6,000 vpd from

[13] The report titled, ''Updates to Research on Recommended Minimum Levels for Pavement Marking Retroreflectivity to Meet Driver Night Visibility Needs'' can be viewed at the following Internet Web site: *http://www.fhwa.dot.gov/publications/research/safety/07059/*.

[14] The report titled, ''Updates to Research on Recommended Minimum Levels for Pavement Marking Retroreflectivity to Meet Driver Night Visibility Needs'' can be viewed at the following Internet Web site: *http://www.fhwa.dot.gov/publications/research/safety/07059/*.

their method (for reasons explained in item 8 below), and edge lines are required on rural arterials with an ADT of 6,000 vpd or greater and recommended for rural arterials and collectors with an ADT of 3,000 or greater, FHWA believes it is not necessary to include a higher minimum retroreflectivity level on two-lane roads with center lines only.

The NPA proposed minimum retroreflectivity value of 250 mcd/m²/lx for two-lane roads with only center line markings and speeds of 55 mph or higher was particularly controversial. The FHWA received comments from AASHTO, NCUTCD, NACE, as well as several State DOTs suggesting that it was not feasible with existing technologies to maintain a retroreflectivity level of 250 mcd/m²/lx. The AASHTO and nine State DOTs suggested reducing this value to 100 mcd/m²/lx; whereas, the NCUTCD and NACE suggested a value of 150 mcd/m²/lx. Typical State requirements for yellow pavement markings are less than 250 mcd/m²/lx due to the difficulty in achieving and sustaining this level of retroreflectivity with most available yellow marking materials. It is the intent of this GUIDANCE statement to encourage agencies to improve pavement marking conditions, and not to require public agencies to meet levels that would be impractical to maintain with existing technologies. In consideration of the factors discussed above, FHWA proposes that a value of 100 mcd/m²/lx or above should be maintained for longitudinal markings on all roadways with posted speed limits of 70 mph or greater, regardless of the roadway pavement marking configuration.

5. The FHWA proposes to delete Table 3A–1 that was included in the NPA because of the proposed simplified retroreflectivity values contained in Section 3A.03, paragraphs 1 and 2 of the MUTCD. Table 3A–1, as proposed in the NPA, included two exceptions to maintaining minimum pavement marking retroreflectivity. One exception provided that minimum retroreflectivity levels were not applicable to pavement markings on roadways with properly maintained RRPMs. Although this provision was supported by NCUTCD, AASHTO, and NACE, other organizations such as ATSSA, 3M, and AARP suggested that the use of RRPMs should not result in an exception to the required minimum retroreflectivity levels because there are no performance requirements for RRPMs.

After reviewing available research and considering the intended use and durability of RRPMs, FHWA proposes to delete the exception for roadways with RRPMs. The research conducted for pavement marking retroreflectivity indicates that even with RRPMs, a pavement marking retroreflectivity level of 40 to 50 mcd/m²/lx is still needed for peripheral-vision lane keeping tasks.[15] This level of retroreflectivity is consistent with the proposed SNPA language that requires an agency to maintain retroreflectivity at 50 mcd/m²/lx, rather than the higher values proposed in the NPA. If the exclusion for roadways with RRPMs were to remain, additional parameters would need to be considered. This would include parameters such as a minimum level of retroreflectivity for the RRPMs (for which there is currently insufficient research), spacing requirements (which varies in the MUTCD in accordance with the application), and maintenance requirements to replace missing or damaged devices. Setting such parameters for RRPMs is outside the scope of this rulemaking. Finally, the research [16] is based on dry pavement marking retroreflectivity. The RRPMs are commonly used to enhance wet nighttime delineation, which further indicates that RRPMs fall outside of the scope of this rulemaking effort. In reviewing this information, along with the comments submitted to the docket, it became clear that providing an exclusion for roadways with RRPMs introduced a level of unintended complexity to the proposed rule, and therefore FHWA does not propose an exclusion for roadways with RRPMs in the SNPA.

Although not included as an exception in the NPA, NCUTCD, AASHTO, NACE, nine State DOTs and a consultant suggested adding an exception for roadways with post-mounted delineators for the same reason that roads with RRPMs were excluded in the NPA. The commenters felt that roadside post-mounted delineators have greater target value when compared to RRPMs, and are easily replaced, in most cases, without obstructing the traffic lanes. The commenters suggested that delineators are also used in snow and winter conditions and provide added visibility of the roadway geometry. While FHWA believes that roadside delineators are a valuable traffic control device, they are placed on the side of the road at varying distances from the outside edge of the travel lane and do not provide the same level of lane delineation as pavement markings. As a result, FHWA does not propose an exclusion for roadways with delineators. As discussed above in regard to RRPMs, such an exclusion would introduce an unnecessary level of complexity and is outside the scope of this rulemaking.

The FHWA retains the proposed exclusion for roadways where ambient illumination assures that the pavement markings are visible. The FHWA believes that it is appropriate to maintain this exclusion in order to provide consistency with existing paragraph 3 of Section 3A.02 of the 2009 MUTCD which states, ''Markings that must be visible at night shall be retroreflective unless ambient illumination assures that the markings are adequately visible.'' [17] Additional information regarding this exclusion, including a discussion of the comments, is included in item 8 of this document.

6. The FHWA proposes in paragraph 3, GUIDANCE, to recommend that the method used to maintain retroreflectivity should be one or more of those described in a separate document titled, ''Methods for Maintaining Pavement Marking Retroreflectivity'' or developed from an engineering study based on the minimum retroreflectivity values in Paragraphs 1 and 2. A draft version of this document is available in the docket. In the NPA, FHWA proposed to include short descriptions of the recommended methods. However, FHWA believes more details are needed to fully describe the intent of the methods and to avoid misinterpretation. In an effort to simplify the MUTCD, FHWA believes it is more appropriate to refer MUTCD users to this supplemental document rather than trying to briefly summarize it in the MUTCD. An added benefit to this approach is that this document, which will be available on FHWA's Web site, will include detailed guidance on how to use the methods and inform agencies that other methods can be developed if they are tied to the minimum retroreflectivity levels through an engineering study. In addition to containing information describing the acceptable methods, this document also includes information about methods that are not acceptable for maintaining minimum pavement marking retroreflectivity because they cannot be tied to the minimum retroreflectivity levels, along with recommendations of items to consider

[15] The report titled, ''Updates to Research on Recommended Minimum Levels for Pavement Marking Retroreflectivity to Meet Driver Night Visibility Needs'' can be viewed at the following Internet Web site: *http://www.fhwa.dot.gov/publications/research/safety/07059/*.

[16] Ibid.

[17] The 2009 MUTCD can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov*.

and include in an agency's documentation of its method. The FHWA believes that by providing all of the pertinent information related to the methods to maintain pavement marking retroreflectivity in one place, users are more likely to obtain complete information and therefore make more informed decisions about the method(s) they use for maintaining minimum pavement marking retroreflectivity.

7. In paragraph 4, SUPPORT, the FHWA proposes to indicate that retroreflectivity levels for pavement marking are measured at an entrance angle of 88.76 degrees and an observation angle of 1.05 degrees, also referred to as 30-meter geometry, and that the units are reported in mcd/m^2/lx. The FHWA proposes to add this statement to capture these specifics regarding measurement and associated units of pavement marking retroreflectivity that were included as a note in Table 3A–1 of the NPA. For the reasons discussed in item 5 of this document, the FHWA proposes to delete Table 3A–1 in the SNPA, but this pertinent information is still needed, so the FHWA proposes this SUPPORT statement to retain the information.

8. In paragraph 5, OPTION, FHWA proposes to list several types of pavement markings that agencies may exclude from their method to maintain minimum pavement marking retroreflectivity. The pavement markings excluded from an agency's method under this OPTION are still required to be retroreflective unless otherwise excluded under MUTCD Section 3A.02. Items C through F of this OPTION statement refer to specific types of markings and remain unchanged from the NPA. Those types of markings are as follows: dotted extension lines (extending a longitudinal line through an intersection, major driveway or interchange area), curb markings, parking space markings, and shared-use path markings. These markings are effectively optional, and additional research would be needed to support establishment of minimum retroreflectivity levels for these markings.

In item A of this OPTION, FHWA proposes an exclusion for markings where ambient illumination assures that the markings are adequately visible. The FHWA proposes to relocate and reword this text from what appeared in the NPA to clarify its meaning. In Table 3A–1 of the NPA, FHWA included an exception for markings on roadways where continuous roadway lighting assures that the markings are visible. Since FHWA deleted Table 3A–1 from the SNPA, it is more appropriate to list this exclusion in proposed paragraph 5. The FHWA also proposes to use text in the OPTION statement that more closely matches the existing text in Section 3A.02, paragraph 3. Existing paragraph 3 of Section 3A.02 of the 2009 MUTCD also includes the statement, ''All markings on Interstate highways shall be retroreflective.'' Therefore, Interstate markings that are adequately visible due to lighting do not need to meet the minimum levels nor be included in an agency's method, but they do need to be retroreflective. Although NCUTCD, AASHTO, and NACE supported an exception for lighting in the NPA, AARP and a supplier suggested that the exception for roadways with roadway lighting would undermine the safety benefits of the proposed amendments. The FHWA proposes to retain the exclusion for lighting to provide agencies with the flexibility to illuminate roadways without the added burden of implementing a method for maintaining pavement marking retroreflectivity.

In item B of this OPTION, FHWA proposes to allow agencies the option to exclude markings on roadways with ADTs less than 6,000 vpd from their method. This change is in response to comments on the approach used in the NPA, which was based on the MUTCD warrants for longitudinal pavement markings. The warrants are based on roadway characteristics such as traffic volume, functional class, and pavement width. Pavement markings not included by these warrants were excluded from the method in the NPA, although the comments indicated this was not clear. The exclusion provided in item B, based solely on traffic volume, substitutes for the more complex exclusion based on warrants proposed in the NPA. This responds specifically to comments FHWA received from 2 local agencies and one road commission representing over 80 local agencies suggesting that low volume roads be excluded from meeting minimum pavement marking retroreflectivity values. The commenters' definition of ''low volume'' ranged from 3,000 to 6,000 vpd. The exclusion also responds to many comments that optional markings (those neither required nor recommended by the warrants) should be excluded from the method. The AHAS and two suppliers commented that these optional marking should not be excluded.

Another complicating factor in the NPA approach is that the MUTCD warrants require certain pavement markings under specific roadway conditions and recommend certain pavement markings under other roadway conditions. The FHWA received comments from NCUTCD, AASHTO, NACE, and over 40 State and local agencies pertaining to whether the standard should include only those pavement markings required in the MUTCD, or a combination of required and recommended pavement markings, as was proposed in the NPA. Some State and local DOTs suggested that if there were a requirement to maintain retroreflectivity on pavement markings that were only recommended (by means of a GUIDANCE statement) and not required, then their agency might elect not to install such recommended markings.

The FHWA conducted a thorough review of the MUTCD language related to required, recommended, and optional markings and determined that using a specific volume of traffic for the exclusion would be considerably easier for agencies to understand and implement than use of the warrants. By removing functional class and pavement width from the determination of whether a pavement marking is included in the method, the only consideration is the appropriate volume threshold to select. Because a volume of 6,000 vpd is the threshold above which a center line is required on an urban arterial and collector road (see Section 3B.02, paragraph 9) and the threshold above which rural arterials are required to have edge lines (see Section 3B.07, paragraph 1), FHWA believes that it is appropriate to establish 6,000 vpd as the volume above which a method for maintaining pavement marking retroreflectivity applies. The FHWA believes this is consistent with its goal of simplifying the language while meeting congressional intent and appreciating agency's resource concern. Because this is proposed as an OPTION statement, agencies could choose to include roadways with less than 6,000 vpd in their methods for maintaining minimum pavement marking retroreflectivity, as resources allow.

The NPA excluded additional markings that are generally not classified as longitudinal markings. Due to the reformatting of the MUTCD text in this SNPA, those markings are now addressed in a separate proposed SUPPORT statement, paragraph 6. A discussion of those markings and related comments appears in item 9 below.

9. The FHWA proposes a SUPPORT statement, paragraph 6, to clarify that the provisions of proposed Section 3A.03 do not apply to non-longitudinal pavement markings, and to specifically list several non-longitudinal types of

pavement markings that are excluded from this proposed rule. The following markings, which are the same as those presented in the NPA, would be listed in paragraph 6: transverse markings, words, symbol, and arrow markings, crosswalk markings, and chevron, diagonal, and crosshatch markings. The MUTCD does not require the use of these markings, so there is a concern that same agencies may choose to discontinue their use if minimum levels of retroreflectivity are established. The ATSSA, AARP, a State DOT, and a supplier disagreed with allowing agencies to exclude pavement markings such as, words, symbols, and arrows, crosswalks, railroad crossing markings, etc., because the commenters felt that these markings are important. Other than longitudinal markings, there are few markings required by the MUTCD. There is a concern that establishing minimum retroreflectivity levels for markings that are not required may result in some agencies choosing to discontinue their use. In addition, these markings are excluded because the existing body of research does not cover the retroreflectivity needs of drivers for non-longitudinal markings.

10. The FHWA proposes a SUPPORT statement, paragraph 7, that acknowledges that special circumstances will periodically cause pavement marking retroreflectivity to be below the minimum retroreflectivity levels. The FHWA proposed similar information in paragraphs 2 and 3 of the NPA. The FHWA received comments from NCUTCD, AASHTO, NACE, ATSSA, and more than 40 State and local agencies suggesting that the language be changed from a SUPPORT statement to a STANDARD statement to further assist them in potential liability defense, especially in light of the 2009 MUTCD language regarding the terms ''standard'' and ''engineering judgment.'' [18] Due to the issuance of Revision 1 of the 2009 MUTCD, FHWA believes that it is appropriate to retain this language as a SUPPORT statement. Within this SUPPORT statement, paragraph 7, FHWA proposes text that describes some of the occurrences that may cause pavement markings to periodically be below the minimum retroreflectivity levels. The items included in this statement are similar to those contained in paragraph 3 of the NPA, but are expanded to clarify additional circumstances in response to comments.

The FHWA proposes to add item A, isolated locations of abnormal degradation, to the list to address comments from NCUTCD and AASHTO suggesting that this item be added. The FHWA agrees that there may be isolated locations where pavement markings experience abnormal wear or degradation due to adjacent land uses or types of vehicles using the roadway, and that it is impractical to expect retroreflectivity levels to be continuously maintained at or above minimum levels at such locations.

The FHWA proposes to rephrase the text regarding pavement resurfacing, item B, to better explain that this rule is not intended to apply during periods preceding imminent resurfacing or reconstruction. The FHWA does not believe that it is a cost effective use of labor and materials to re-apply pavement markings immediately prior to resurfacing, rehabilitating or reconstructing a roadway.

In item C, FHWA proposes to include unanticipated events such as equipment breakdowns, material shortages, contracting problems, and other similar conditions to this listing. Although not included in the NPA, FHWA proposes to add these items based on comments from State and local agencies suggesting that these unanticipated events can and do occur. For example, in 2010 there was a global shortage of certain types of pavement marking materials. In addition, it is possible that a pavement marking contract could fall behind schedule if equipment malfunctions unexpectedly or if there is a problem with a contract. The FHWA believes that including such a provision is appropriate, because it is possible that unanticipated events beyond an agency's control may contribute to markings falling below the minimum levels.

Finally, FHWA proposes to add item D to address the loss of retroreflectivity due to snow maintenance operations. Snow maintenance operations include plowing as well as applying materials to roadway surfaces that may negatively impact pavement marking retroreflectivity. The AASHTO and 20 State and local DOTs, particularly those in northern tier States, expressed concern with maintaining prescribed retroreflectivity levels during the winter months. The commenters indicated that roadway maintenance activities such as snow plowing and placement of traction sand degrades the pavement markings at such time when replacement of the markings is impossible. Although the revised minimum levels of this SNPA should mitigate this concern, the results of NCHRP Project 20–07 indicate maintaining pavement marking retroreflectivity during winter months will continue to be a problem for at least some agencies in many snow belt States. The FHWA agrees with the stated concern and proposes to add this item to address the difficulty associated with maintaining pavement marking retroreflectivity during winter maintenance operations. While this is a more recurring type of retroreflectivity maintenance issue than those listed in items A through C, the schedule to restore markings is based largely on the weather in a particular year and can vary significantly by region.

Following the list of items, FHWA proposes to indicate that when these circumstances occur, compliance with Paragraphs 1 and 2 is achieved if a reasonable course of action is taken to restore such markings in a timely manner. The FHWA proposes this revised statement following the list of examples to clarify that compliance with the minimum pavement marking retroreflectivity levels may take such factors into consideration. The FHWA realizes that when such circumstances occur, agencies will need to schedule their resources and priorities in order to restore the pavement markings. The FHWA's intent is for agencies take an appropriate course of action in a timely manner.

Section 1A.11 Relation to Other Publications

11. The FHWA proposes to add a new publication titled, ''Methods for Maintaining Pavement Marking Retroreflectivity'' to the list of other publications that are useful sources. A draft version of this document is available in the docket. This draft publication is a supplemental document for informational purposes. The final version of this document will reflect any changes made to this proposed rule and will be published and distributed by FHWA. In the NPA, FHWA proposed to reference a summary of this report instead. The FHWA has reconsidered the intent and resulting content of this supplemental document, and proposes to reference this document which contains more information about the methods to be used for maintaining pavement marking retroreflectivity than can be adequately described in the MUTCD text or a summary document. Several State and local DOTs submitted specific questions and comments to the docket related to the methods as described in the proposed MUTCD text. Because FHWA proposes to simplify the MUTCD language in the SNPA, FHWA

[18] Revision 1 of the 2009 MUTCD was issued in May 2012 to address many of these concerns, well after the pavement marking retroreflectivity NPA was published in April 2010. The Revision 1 final rule is available at: *http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/html/2012-11712.htm.*

believes it is appropriate to reference a supplemental document that would be easily accessible on FHWA's Web site and would provide detailed guidance on how to implement the methods, rather than to provide partial information in the MUTCD text. See item 6 of this document for more information about the proposed publication ''Methods for Maintaining Pavement Marking Retroreflectivity.''

Introduction

In the Introduction, FHWA proposes to add to Table I–2 Target Compliance Dates Established by FHWA, a compliance date for new Section 3A.03 Maintaining Minimum Retroreflectivity. The FHWA proposes a compliance period of 4 years from the effective date of the Final Rule for this revision of the MUTCD for implementation and continued use of a method that is designed to maintain retroreflectivity of longitudinal pavement markings, and refers the reader to Paragraph 1. This proposed 4-year compliance period is similar to that proposed in the NPA. In the NPA, FHWA also proposed to include a compliance period for replacing markings that were found to be deficient by the agency's method for maintaining minimum pavement marking retroreflectivity. While ATSSA agreed with the compliance periods, the NCUTCD, AASHTO, NACE, members of those organizations, and two local agencies agreed with establishing a 4-year compliance period for establishing and using a method to maintain pavement marking retroreflectivity, but did not support a compliance date for replacing deficient markings. The FHWA believes that a 4-year compliance period for establishing and implementing such a method is appropriate; however, FHWA is no longer seeking to establish compliance dates for replacement of deficient markings as this should be established by agencies pursuant to their methods. This is consistent with Revision 2 of the 2009 MUTCD in regard to Minimum Retroreflectivity compliance dates for Traffic Signs. Without specific compliance dates in the MUTCD for replacing deficient markings, agencies would still need to replace or remark pavement markings they identify as not meeting the established minimum retroreflectivity values, but each agency would be allowed to establish a schedule for replacement based on resources and relative priorities. Agencies would need to establish their replacement schedules using the same level of consideration as they would any other engineering decision regarding maintenance of traffic control devices.

In consideration of the foregoing, FHWA proposes to revise the 2009 MUTCD text as follows:

Add a row to Table I–2 Target Compliance Dates Established by FHWA:

2009 MUTCD section Nos.	2009 MUTCD section title	Specific provision	Compliance date
3A.03	Maintaining Minimum Retroreflectivity.	Implementation and continued use of a method that is designed to maintain retroreflectivity of longitudinal pavement markings (see Paragraph 1).	4 years from the effective date of this revision of the MUTCD

Add new reference document to Section 1A.11 Relation to Other Publications: Section 1A.11

''Methods for Maintaining Pavement Marking Retroreflectivity,'' Report No. FHWA–SA–14–017 (FHWA)

Revise Section 3A.03 as follows:

Section 3A.03 *Maintaining Minimum Retroreflectivity*

Standard

01 Except as provided in Paragraph 5, a method designed to maintain retroreflectivity at or above 50 mcd/m^2/lx shall be used for longitudinal markings on roadways with statutory or posted speed limits of 35 mph or greater.

Guidance

02 Except as provided in Paragraph 5, a method designed to maintain retroreflectivity at or above 100 mcd/m^2/lx should be used for longitudinal markings on roadways with statutory or posted speed limits of 70 mph or greater.

03 The method used to maintain retroreflectivity should be one or more of those described in ''Methods for Maintaining Pavement Marking Retroreflectivity'' (see Section 1A.11) or developed from an engineering study based on the values in Paragraphs 1 and 2.

Support

04 Retroreflectivity levels for pavement markings are measured with an entrance angle of 88.76 degrees and an observation angle of 1.05 degrees. This geometry is also referred to as 30-meter geometry. The units of pavement marking retroreflectivity are reported in mcd/m^2/lx, which means millicandelas per square meter per lux.

Option

05 The following markings may be excluded from the provisions established in Paragraphs 1 and 2:

A. Markings where ambient illumination assures that the markings are adequately visible;

B. Markings on roadways that have an ADT of less than 6,000 vehicles per day;

C. Dotted extension lines that extend a longitudinal line through an intersection, major driveway, or interchange area (see Section 3B.08);

D. Curb markings;

E. Parking space markings; and

F. Shared-use path markings.

Support

06 The provisions of this Section do not apply to non-longitudinal pavement markings including, but not limited to, the following:

A. Transverse markings;

B. Word, symbol, and arrow markings;

C. Crosswalk markings; and

D. Chevron, diagonal, and crosshatch markings.

07 Special circumstances will periodically cause pavement marking retroreflectivity to be below the minimum levels. These circumstances include, but are not limited to, the following:

A. Isolated locations of abnormal degradation;

B. Periods preceding imminent resurfacing or reconstruction;

C. Unanticipated events such as equipment breakdowns, material shortages, contracting problems, and other similar conditions; and

D. Loss of retroreflectivity resulting from snow maintenance operations.

When such circumstances occur, compliance with Paragraphs 1 and 2 is still considered to be achieved if a reasonable course of action is taken to restore such markings in a timely manner.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received

after the comment closing date and will consider late comments to the extent practicable. In addition, FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulations and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that this action would be a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures because of the significant public interest in the MUTCD. Additionally, this action complies with the principles of Executive Order 13563. The FHWA has considered the costs and potential benefits of this rulemaking and believes the rulemaking is being implemented in a manner that fulfills our obligation under Section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102–388; October 6, 1992) and provides flexibility for agencies. The estimated national costs are documented in the updated economic analysis report, which is available as a separate document under the docket number noted in the title of this document at *http://www.regulations.gov.* The flexibility is documented in the new publication titled, ''Methods for Maintaining Pavement Marking Retroreflectivity,'' to which the MUTCD refers readers.

The MUTCD already requires that pavement markings that must be visible at night shall be retroreflective unless ambient illumination assures that the markings are adequately visible and that all markings on Interstate highways shall be retroreflective. The proposed changes in the MUTCD would provide additional guidance and clarification, while allowing flexibility in maintaining pavement marking retroreflectivity. The pavement markings excluded from the proposed rulemaking are not to be excluded from any other MUTCD standards. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public.

The economic analysis provides a national estimate of the costs to implement this rulemaking and to replace markings. Costs for individual agencies would vary based on factors such as the amount of pavement marking mileage subject to the standards and current pavement marking practices. The analysis estimates first year start-up implementation costs of $29.4 million for all affected State and local agencies to develop maintenance methods and purchase necessary equipment. In addition, annual measurement and management activities of $14.9 million nationwide are expected to determine which markings require replacement. In the second and following years, if agencies were to replace markings that do not meet the minimums despite the fact that there are no replacement compliance dates, there is an estimated increase of approximately $52.5 million per year nationally from current estimated pavement marking replacement expenditures. Therefore, this proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes would not create a serious inconsistency with any other Federal agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required, though FHWA has prepared an economic analysis, which has been placed in the docket. Although it is not possible to calculate the benefits specifically attributed to this proposal, numerous safety studies dating back to the 1970's clearly show that adding pavement markings to two lane highways reduces nighttime crashes, a result of those markings providing enough retroreflectivity to be visible to drivers at night. The limited safe speed on unmarked roads at night is a clear indication that there are also operational benefits of visible pavement markings both day and night. The FHWA believes that lives will be saved and injuries reduced by the improved maintenance of pavement marking retroreflectivity. As indicated in the economic analysis, a crash reduction factor is not available to estimate the safety benefits of maintaining pavement marking retroreflectivity. Lack of crash reduction factors associated specifically with retroreflectivity has limited the analysis to developing a range of potential benefit-cost ratios between 1 and 60.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed action on small entities, including small governments. This proposed action would apply to State and local DOTs in the execution of their highway programs, specifically with respect to the retroreflectivity of pavement markings. In addition, pavement marking improvement is eligible for up to 100 percent Federal-aid funding. This also applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). I hereby certify that this proposed action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

The FHWA analyzed this proposed amendment in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policymaking discretion of the States and local governments. Nothing in the MUTCD directly preempts any State law or regulation.

The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). The economic impacts analysis shows that implementing these standards would likely increase current pavement marking replacement expenditures by approximately $52.5 million per year for all State and local agencies nationwide. The estimates are based upon the assumption that the distribution of marking materials on a national basis is 75 percent paint, 20 percent thermoplastic, and 5 percent epoxy. There would also be an estimated cost of $14.9 million in annual measurement and management activities nationwide to ensure compliance with the minimum values. In addition, in the first year, before

annual implementation or replacement costs began, the State and local agencies are estimated to have nationwide start-up implementation costs of $29.4 million to develop maintenance methods and purchase measurement equipment. Finally, the compliance dates to replace markings that do not meet the minimum retroreflectivity have been eliminated. Although agencies will still need to replace these markings, their schedules would be based on their method for maintaining retroreflectivity as well as their resources and relative priorities. Therefore, this proposed rule would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $151 million or more in any one year. In addition, pavement marking replacement is eligible for up to 100 percent Federal-aid funding. This applies to local jurisdictions and tribal governments, pursuant to 23 U.S.C. 120(c). Further, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that this is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

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.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, to eliminate ambiguity, and to reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that might disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant effect on the quality of the environment and is categorically excluded under 23 CFR 771.117(c)(20).

Regulation Identifier Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Pavement markings, Traffic regulations.

Issued in Washington, DC under authority delegated in 49 CFR 1.85.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

For the reasons stated in the preamble, FHWA proposes to amend title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

■ 1. The authority for part 655 is revised to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315 and 402(a); 23 CFR 1.32; and 49 CFR 1.85.

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways [Amended]

■ 2. Revise § 655.601(d)(2)(i), to read as follows:

§ 655.601 Purpose

* * * * *

(d) * * *

(2) * * *

(i) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2009 edition, including Revision No. 1 and No. 2, dated May 2012, and No. [number to be inserted], dated [date to be inserted], FHWA.

* * * * *

[FR Doc. 2016–31249 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 18, 19, 24, 25, 26, 27, 28, and 30

[Docket No. TTB–2016–0013; Notice No. 167; Re: T.D. TTB–146]

RIN 1513–AC30

Changes to Certain Alcohol-Related Regulations Governing Bond Requirements and Tax Return Filing Periods

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; cross-reference to temporary rule.

SUMMARY: In a temporary rule published elsewhere in this issue of the **Federal Register**, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending its regulations relating to excise taxes imposed on distilled spirits, wines, and beer to implement certain changes made to the Internal Revenue Code of 1986 (IRC) by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). The temporary rule implements section 332 of the PATH Act, which amends the IRC to remove bond requirements and change tax return due dates for certain eligible excise taxpayers. In this document, TTB proposes to adopt the regulations in the temporary rule as a permanent regulatory change. The text of the regulations in the temporary rule serves as the text of the proposed regulations. This document also proposes to amend the regulations governing the submission of reports by certain eligible excise taxpayers. In this document, TTB is soliciting comments on the amendments adopted in the temporary rule and the amendments proposed in this notice of proposed rulemaking.

DATES: Comments must be received on or before March 6, 2017.

ADDRESSES: Please send your comments on this proposal to one of the following addresses. Comments submitted by other methods, including email, will not be accepted.

- *Internet: https://www.regulations.gov* (via the online comment form for this document as posted within Docket No. TTB–2016–0013 at ''*Regulations.gov*,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005. See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document, the temporary rule, selected supporting materials, and any comments TTB receives about this proposal at *https://www.regulations.gov* within Docket No. TTB–2016–0013. A direct link to this docket is posted on the TTB Web site at *https://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 167. You also may view copies of this document, the temporary rule, all related supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, contact Ben Birkhill, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–453–2265).

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers provisions in chapter 51 of the Internal Revenue Code of 1986, as amended (IRC), pertaining to the taxation of distilled spirits, wines, and beer (see title 26 of the United States Code (U.S.C.), chapter 51 (26 U.S.C. chapter 51)). TTB also regulates distilled spirits, wines, and malt beverages pursuant to the Federal Alcohol Administration Act (FAA Act). TTB administers the provisions of the IRC and FAA Act, and their implementing regulations, pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in administration and enforcement of these laws.

Sections 5001, 5041, and 5051 of the IRC (26 U.S.C. 5001, 5041, and 5051) impose tax on distilled spirits, wines, and beer produced in or imported into the United States. Generally, taxes are determined (*i.e.,* become due for payment) when they are removed from qualified facilities in the United States or imported as provided in sections 5006, 5043, and 5054 of the IRC (26 U.S.C. 5006, 5043, and 5054). Section 5061 of the IRC (26 U.S.C. 5061) governs the collection of tax due on distilled spirits, wines, and beer, including the time periods and due dates for paying such taxes by return. Under some circumstances, the IRC authorizes the removal of distilled spirits, wines, and beer from facilities in the United States without paying the excise taxes imposed on such products. For example, the IRC does not require payment of tax for certain transfers between qualified facilities in the United States as provided in sections 5212, 5362(b), and 5414 of the IRC (26 U.S.C. 5212, 5362(b), and 5414).

The PATH Act and the Temporary Rule

On December 18, 2015, the President signed into law the Consolidated Appropriations Act, 2016 (Public Law 114–113). Division Q of this Act is titled the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). Section 332 of the PATH Act amends the IRC to change tax return due dates and remove bond requirements for certain eligible taxpayers who pay excise taxes on distilled spirits, wines, and beer.

With respect to tax return due dates, section 332 amends section 5061(d) of the IRC to authorize a new annual return period for deferred payment of excise tax, in addition to the preexisting quarterly and semimonthly deferred payment periods authorized under that section. Deferred payment of tax refers to payment using one of these three return periods prescribed under the IRC rather than payment immediately each time the tax becomes due. As described above, taxes on distilled spirits, wines, and beer generally become due when the products are removed from qualified facilities in the United States or imported into the United States. To be eligible to use the annual or quarterly return periods, the taxpayer must reasonably expect to be liable for not more than $1,000 in excise taxes, in the case of annual returns, or $50,000 in excise taxes, in the case of quarterly returns, for the calendar year and must have been liable for not more than these respective quantities in the preceding calendar year. Since these $1,000 and $50,000 ceilings are based on liability for payment of taxes by return under section 5061 of the IRC, they do not include liability for taxes imposed but not necessarily due, such as liability associated with taxes imposed on distilled spirits, wines, and beer produced in or imported into the United States that have not been removed from qualified facilities on payment or determination of tax.

Section 332 of the PATH Act also amends several provisions of the IRC to remove bond requirements for certain taxpayers who are eligible to pay taxes on distilled spirits, wines, and beer using quarterly or annual return periods and who pay taxes on a deferred basis. Under section 332, these taxpayers are exempt from bond requirements with respect to distilled spirits and wine only to the extent those products are for nonindustrial use. The amended provisions relating to this bond exemption are sections 5173, 5351, 5401, and 5551 of the IRC.

In a temporary rule published elsewhere in this issue of the **Federal Register**, TTB is amending the

regulations in chapter I of title 27 of the Code of Federal Regulations (27 CFR) to implement section 332 of the PATH Act and to make several technical amendments to update certain bond-related provisions. The temporary rule amends regulations in 27 CFR parts 18, 19, 24, 25, 26, 27, 28, and 30. These amendments include incorporating the new annual return period into the regulations, clarifying the circumstances under which taxpayers are eligible for the bond exemption, and adding new provisions governing qualification and loss of eligibility for the bond exemption. The preamble of the temporary rule explains the proposed regulations in more detail, and this notice solicits comments on the amendments adopted in the temporary rule. The text of the regulations in the temporary rule serves as the text of the proposed regulations for purposes of this document.

Proposed Amendments to Reporting Requirements

In this document, TTB is also proposing to amend the regulations governing reporting requirements for distilled spirits plants (DSPs) and brewers in order to reduce unnecessary regulatory burden on some industry members who pay taxes using annual or quarterly return periods. TTB is also soliciting comments on whether to amend current reporting requirements for bonded wine cellars (including bonded wineries). These reporting provisions help protect the revenue by requiring regulated parties to submit information to TTB relating to their operations that are subject to regulation under the IRC. This section discusses current reporting requirements for these industry members and the proposed regulatory amendments.

Current Reporting Requirements

The regulations in 27 CFR parts 19, 24, and 25 govern the operations of DSPs, bonded wine cellars, and breweries in the United States. Under 27 CFR 19.632, DSP proprietors must submit to TTB certain monthly reports of operations. These reports are TTB Form 5110.40 (Monthly Report of Production Operations), TTB Form 5110.11 (Monthly Report of Storage Operations), TTB Form 5110.28 (Monthly Report of Processing Operations), and TTB Form 5110.43 (Monthly Report of Processing (Denaturing) Operations). Under the current regulations, DSPs may not file required reports less frequently than monthly.

Under 27 CFR 24.300(g), bonded wine cellars must generally file reports on a monthly basis using TTB Form 5120.17 (Report of Wine Premises Operations), but they may file reports quarterly or annually if they meet the criteria to do so. To be eligible to file reports on a quarterly basis, the proprietor must be filing quarterly tax returns, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 60,000 gallons for any one quarter during the calendar year when adding up certain wine on the proprietor's premises. The wine that must be taken into account for this purpose is wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report which increases the amount of wine to be accounted for. The wines that must be taken into account for this purpose are wines on which taxes are imposed but not necessarily due, since the wines are not reported as withdrawn on payment or determination of tax. To be eligible to file reports on an annual basis, the proprietor must be filing annual tax returns, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 20,000 gallons for any one month during the calendar year when adding up certain wine on the proprietor's premises. The wine that must be taken into account for this purpose is the same as the wine that must be taken into account for purposes of determining eligibility for quarterly reporting.

Under 27 CFR 25.297, each brewer must file a monthly report using TTB Form 5130.9 (Brewer's Report of Operations), unless the brewer is required to file reports on a quarterly basis. A brewer must file quarterly reports using TTB Form 5130.26 (Quarterly Brewer's Report of Operations) or TTB Form 5130.9 if the brewer was liable for not more than $50,000 in taxes with respect to beer in the preceding calendar year and reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. As referenced above, a brewer who meets these $50,000 ceilings is eligible to pay taxes quarterly under section 5061 of the IRC. Since these $50,000 ceilings are based on liability for payment of taxes by return under section 5061 of the IRC, they do not include liability for taxes imposed but not necessarily due.

Proposed Amendments and Solicitation of Comments

TTB is proposing to amend the reporting regulations applicable to DSPs and brewers, and TTB is soliciting comments on whether to amend the reporting regulations for bonded wine cellars. TTB proposes to amend the regulations to authorize new quarterly and annual reporting periods for certain DSPs, to authorize a new annual reporting period for certain brewers, and to change the existing quarterly reporting requirements for brewers. As discussed further below, the proposed criteria for quarterly and annual reporting by DSPs and brewers are modeled in part on the current criteria for quarterly and annual reporting by bonded wine cellars, with some modifications. TTB is soliciting comment on whether these modified criteria should be adopted for DSPs and brewers. TTB is also requesting comment on whether it should instead adopt criteria for quarterly and annual reporting by DSPs and brewers that resemble the requirements used for such reporting by bonded wine cellars (*i.e.,* by taking into account the sum of certain products listed on specific lines of proprietors' reports). In addition, TTB is soliciting comment on whether it should amend the current requirements for quarterly and annual reporting by bonded wine cellars so that the requirements are consistent with the proposed modified criteria for quarterly and annual reporting by DSPs and brewers.

Under the proposed amendments to §§ 19.632 and 25.297, DSPs and brewers must report monthly unless they are required to report quarterly or annually. Under the proposed amendments, DSPs and brewers must report quarterly for a calendar year if they file quarterly tax returns for that calendar year and if their liability for taxes on alcohol for which taxes have not been paid does not exceed $50,000 at any time during that calendar year. For purposes of the latter criterion, liability for taxes that have not been paid includes liability for taxes determined but not yet paid and liability for taxes imposed but not necessarily due for payment. Under the proposed amendments, DSPs and brewers must report annually if they file annual tax returns and if their liability for taxes on alcohol for which taxes have not been paid does not exceed $50,000 at any time during the calendar year. The purpose of these eligibility criteria is to reduce reporting burdens on taxpayers whose tax payments do not exceed the ceilings described above for paying taxes quarterly or annually and

whose liability for taxes that have not been paid does not exceed $50,000. As discussed below, both types of liability are relevant for determining required reporting frequency for revenue protection purposes.

The proposed criteria for quarterly and annual reporting in amended §§ 19.632 and 25.297 are modeled in part on the current criteria for quarterly and annual reporting by bonded wine cellars, which are based on both the frequency with which the proprietor pays taxes by return and the proprietor's liability for alcohol on which taxes have not been paid. Both factors are relevant for determining required reporting frequency because they relate to the proprietor's overall tax liability under the IRC. Generally, more frequent reporting is necessary for a proprietor who has greater tax liability because TTB needs more detailed information regarding the proprietor's operations for revenue protection purposes. More frequent reporting is necessary for proprietors who use more frequent return periods for paying tax because such proprietors generally have greater liability for taxes due for payment. In addition, since a proprietor's liability for taxes imposed but not necessarily due also raises revenue risks, this type of tax liability must also be taken into account for determining appropriate reporting frequency.

With respect to return periods, TTB believes it is appropriate to require that DSPs and brewers pay taxes on an annual or quarterly basis to be eligible to report on an annual or quarterly basis, respectively. This requirement under proposed §§ 19.632 and 25.297 is consistent with current reporting requirements for bonded wine cellars under § 24.300(g). With respect to liability for taxes imposed but not necessarily due, TTB has determined that the proposed $50,000 maximum discussed above for DSPs and brewers reporting quarterly and annually is necessary for revenue protection purposes. The $50,000 limit ensures that DSPs and brewers reporting quarterly or annually who pay excise taxes using quarterly or annual return periods do not engage in operations that involve significant tax liability for which the IRC does not require payment of tax, such as certain transfers of alcohol between qualified facilities in the United States (see sections 5212, 5362(b), and 5414 of the IRC). Since DSPs and brewers who report quarterly or annually meet the tax payment ceilings for the use of quarterly or annual return periods, TTB has determined that this $50,000 limit on taxes imposed but not necessarily due is appropriate for both quarterly and annual reporters. Quarterly and annual reporters will be subject to different tax payment ceilings based on the tax return period they use, and the $50,000 limit is simply intended to ensure that neither category of reporters engages in operations that involve significant tax liability for which the IRC does not require payment of tax.

The $50,000 maximum for DSPs and brewers under proposed §§ 19.632 and 25.297 is different from current quarterly and annual reporting requirements for bonded wine cellars. Under § 24.300(g), bonded wine cellars must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 60,000 gallons for any one quarter (in the case of quarterly reporting) or 20,000 gallons for any one month (in the case of annual reporting) when adding up certain wine on the proprietor's premises as described above. Because section 5041 of the IRC imposes several different tax rates on wine, the tax liability associated with these quantities may or may not exceed $50,000, depending on the circumstances. TTB is soliciting comment on whether there are wine-specific reasons for retaining the 60,000-gallon and 20,000-gallon limits in the regulations and whether it would instead be appropriate for consistency purposes to amend § 24.300(g) to incorporate the same $50,000 maximum that TTB is proposing for DSPs and brewers under §§ 19.632 and 25.297.

Finally, TTB is also requesting comment on whether it should amend § 24.300(g) to require (rather than simply allow) the use of quarterly and annual reporting periods for bonded wine cellars who meet the criteria to use them. Under the current regulations, such proprietors may choose to submit reports monthly even though they are eligible to report less frequently. TTB believes that requiring less frequent reporting for eligible proprietors would reduce reporting burdens on proprietors and would reduce report processing burdens on TTB. TTB is therefore soliciting comment on whether there are wine-specific reasons for continuing to allow the voluntary use of quarterly or annual reporting periods for bonded wine cellars that are eligible to use them.

Public Participation

Comments Sought

TTB requests comments from interested members of the public on the regulations adopted in the temporary rule and the additional regulatory amendments proposed in this document. In addition, TTB is requesting comments whether it should amend the current requirements for quarterly and annual reporting by bonded wine cellars so that the requirements are consistent with the criteria proposed in this document for quarterly and annual reporting by DSPs and brewers.

Submitting Comments

You may submit comments on this proposal by one of the following three methods:

- *Federal e-Rulemaking Portal:* You may electronically submit comments via the online comment form posted with this proposed rule within Docket No. TTB–2016–0013 on ''*Regulations.gov*,'' the Federal e-rulemaking portal. A direct link to that docket is available on the TTB Web site at *https://www.ttb.gov/spirits/spirits-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For information on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab.
- *Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 167 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments and considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to

determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this proposed rule, the temporary rule, and any online or mailed comments received about this proposal within Docket No. TTB–2016–0013 on the Federal e-rulemaking portal. A direct link to that docket is available on the TTB Web site at *https://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 167. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For information on how to use *Regulations.gov*, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may view copies of this proposed rule, the temporary rule, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies for 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments would reduce reporting requirements for certain proprietors described in this document. The proposed rule, if adopted, will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

Executive Order 12866

Certain TTB regulations issued under the IRC, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

Paperwork Reduction Act

The six collections of information associated with the proposed regulatory requirements discussed in this notice of proposed rulemaking (including the regulatory requirements relating to wine reporting on which TTB is seeking comment) have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned control numbers 1513–0007, 1513–0039, 1513–0041, 1513–0047, 1513–0049, and 1513–0053. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The proposed regulatory text in 27 CFR 19.632 contains alterations to the information collections currently approved under OMB control numbers 1513–0039, 1513–0041, 1513–0047, and 1513–0049. These control numbers cover, respectively, TTB Forms 5110.11, 5110.28, 5110.40, and 5110.43. If adopted, these revisions would provide for less frequent reporting by certain DSPs. Under the current regulations, DSPs must submit required reports on a monthly basis. Under the proposed regulatory amendments, a DSP would report quarterly if they file quarterly tax returns and would report annually if they file annual tax returns as long as, in either case, the DSP's liability for taxes on distilled spirits for which taxes have not been paid does not exceed $50,000 at any time during the calendar year. Taking into account the proposed regulatory amendments, TTB estimates the burden associated with these information collections as follows:

1513–0039

- *Estimated number of respondents:* 684 reporting monthly; 651 reporting quarterly; 424 reporting annually.
- *Estimated annual frequency of responses:* 12 for monthly reporting; 4 for quarterly reporting; 1 for annual reporting.
- *Estimated average annual total burden hours:* 11,236.

1513–0041

- *Estimated number of respondents:* 634 reporting monthly; 603 reporting quarterly; 392 reporting annually.
- *Estimated annual frequency of responses:* 12 for monthly reporting; 4 for quarterly reporting; 1 for annual reporting.
- *Estimated average annual total burden hours:* 20,824.

1513–0047

- *Estimated number of respondents:* 571 reporting monthly; 544 reporting quarterly; 354 reporting annually.
- *Estimated annual frequency of responses:* 12 for monthly reporting; 4 for quarterly reporting; 1 for annual reporting.
- *Estimated average annual total burden hours:* 18,764.

1513–0049

- *Estimated number of respondents:* 184 reporting monthly; 175 reporting quarterly; 114 reporting annually.
- *Estimated annual frequency of responses:* 12 for monthly reporting; 4 for quarterly reporting; 1 for annual reporting.
- *Estimated average annual total burden hours:* 3,022.

The proposed regulatory text in 27 CFR 25.297 contains alterations to the information collection currently approved under OMB control number 1513–0007. This control number covers TTB Forms 5130.9 and 5130.26. If adopted, these revisions would provide for less frequent reporting by certain brewers who file annual tax returns and would continue to authorize quarterly reporting by certain brewers who file quarterly tax returns. In the case of a brewer who reports quarterly or annually, the brewer's liability for taxes on beer for which taxes have not been paid must not exceed $50,000 at any time during the calendar year. Taking into account the proposed regulatory amendments, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 1,344 reporting monthly; 2,998 reporting quarterly; 1,956 reporting annually.
- *Estimated annual frequency of responses:* 12 for monthly reporting; 4 for quarterly reporting; 1 for annual reporting.
- *Estimated average annual total burden hours:* 22,557.

Finally, TTB is requesting comments on whether to amend § 24.300(g) so that the reporting requirements for bonded wine cellars on TTB Form 5120.17 are consistent with the proposed reporting

requirements for DSPs and brewers. The reporting requirements in § 24.300(g) are covered under OMB control number 1513–0053. Similar to the proposed amendments for DSPs and brewers, the current reporting provisions for bonded wine cellars require that the proprietor file tax returns quarterly or annually to be eligible for quarterly or annual reporting, respectively. In addition, the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 60,000 gallons for any one quarter (in the case of quarterly reporting) or 20,000 gallons for any one month (in the case of annual reporting) when adding up certain wine on the proprietor's premises. TTB is soliciting comment on whether to adopt the proposed $50,000 limit described above for DSPs and brewers in lieu of the 20,000-gallon and 60,000-gallon limits in the current regulations. TTB does not estimate that this change, if adopted, would result in changes in reporting burden for proprietors. We are, however, reporting an increase in the number of respondents to this collection to reflect the current number of proprietors who file the form. TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 2,316 reporting monthly; 4,733 reporting quarterly; 4,467 reporting annually.
- *Estimated annual frequency of responses:* 12 for monthly reporting; 4 for quarterly reporting; 1 for annual reporting.
- *Estimated average annual total burden hours:* 56,310.

Revisions of these six currently approved collections have been submitted to OMB for review. Comments on the revisions should be sent to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 or by email to *OIRA_submissions@omb.eop.gov.* A copy should also be sent to TTB by any of the methods previously described. Comments on the information collections should be submitted no later than March 6, 2017. Comments are specifically requested concerning:

- Whether the proposed revisions of the collections of information are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the proposed revisions of the collections of information;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed revision of the collection of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Drafting Information

Ben Birkhill of the Regulations and Rulings Division drafted this document with the assistance of other Alcohol and Tobacco Tax and Trade Bureau personnel.

List of Subjects

27 CFR Part 18

Alcohol and alcoholic beverages, Fruits, Reporting and recordkeeping requirements, Spices and flavorings.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 30

Liquors, Scientific equipment.

Proposed Regulatory Amendments

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, parts 18, 19, 24, 25, 26, 27, 28, and 30 as set forth below:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

■ 1. The authority citation for part 18 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5171–5173, 5178, 5179, 5203, 5351, 5354, 5356, 5511, 5552, 6065, 6109, 7805.

■ 2. [The proposed amendatory instructions and the proposed regulatory text for part 18 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

PART 19—DISTILLED SPIRITS PLANTS

■ 3. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 4. [With the addition of the amendatory instructions and proposed regulatory text set forth below, the

proposed amendatory instructions and the proposed regulatory text for part 19 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

§ 19.147 [Amended]

■ 5. In § 19.147, paragraph (d) is amended by removing the word ''monthly''.

■ 6. Section 19.632 is revised to read as follows:

§ 19.632 Submission of reports.

(a) *General.* Each proprietor must submit reports of its distilled spirits plant operations to TTB in accordance with paragraph (b) of this section. The proprietor must submit the original reports to TTB and must retain a copy for its records. The required report forms are as follows:

(1) Report of Production Operations, form TTB F 5110.40, except that no report is required when production operations are suspended as provided in § 19.292;

(2) Report of Storage Operations, form TTB F 5110.11;

(3) Report of Processing Operations, form TTB F 5110.28; and

(4) Monthly Report of Processing (Denaturing) Operations, form TTB F 5110.43.

(b) *Reporting periods.* Each proprietor must submit the reports specified in paragraph (a) of this section to the Director, National Revenue Center, not later than the 15th day following the last day of the reporting periods specified in this paragraph. A proprietor may submit reports in either paper format or electronically via TTB Pay.gov. The required reporting periods are as follows:

(1) *Monthly reporting periods.* Except in cases where the proprietor must submit reports covering each calendar quarter or calendar year of operations under paragraphs (b)(2) or (b)(3) of this section, a proprietor must submit reports covering for each month of operations.

(2) *Quarterly reporting periods.* A proprietor must submit reports covering each calendar quarter of operations if both of the following are true:

(i) The proprietor files quarterly tax returns pursuant to § 19.235; and

(ii) The proprietor's liability for tax on spirits for which taxes have not been paid does not exceed $50,000 at any time during the calendar year.

(3) *Annual reporting periods.* A proprietor must submit reports covering for each calendar year of operations if both of the following are true:

(i) The proprietor files annual tax returns pursuant to § 19.235; and

(ii) The proprietor's liability for tax on spirits for which taxes have not been paid does not exceed $50,000 at any time during the calendar year.

(c) *Loss of eligibility for quarterly or annual reporting*—(1) *General.* If a proprietor is using a reporting period under paragraph (b)(2) or (b)(3) of this section but becomes required to use a more frequent reporting period due to changes in the proprietor's return filing frequency or tax liability, the proprietor must:

(i) File the appropriate report form or forms beginning with the first quarterly or monthly reporting period during which the proprietor became required to report in that period; and

(ii) Concurrently file the appropriate report form or forms covering any previous quarters of the calendar year (in the case of a proprietor who was previously authorized to submit reports annually) or any previous months of the calendar quarter (in the case of a proprietor who was previously authorized to submit reports quarterly).

(2) *Required statement.* When filing the first quarterly or monthly report form or forms described in paragraph (c)(1)(i) of this section, a proprietor must state on the form or forms that the proprietor is increasing the frequency of its reporting and henceforth will submit quarterly or monthly reports, as applicable. The proprietor must then continue to file the appropriate form or forms for each subsequent quarter or month of that calendar year.

(d) *More frequent reporting required by TTB.* The appropriate TTB officer may at any time require a proprietor who is reporting quarterly or annually to report more frequently if there is a jeopardy to the revenue.

PART 24—WINE

■ 7. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 8. [The proposed amendatory instructions and the proposed regulatory text for part 24 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

PART 25—BEER

■ 9. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 10. [With the addition of the amendatory instructions and proposed regulatory text set forth below, the proposed amendatory instructions and the proposed regulatory text for part 25 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

■ 11. Section 25.297 is revised to read as follows:

§ 25.297 Report of Operations, Form 5130.9 or Form 5130.26.

(a) *Monthly report of operations.* Except as provided in paragraph (b) or (c) of this section, each brewer must prepare and submit a monthly report of brewery operations on Form 5130.9.

(b) *Quarterly report of operations.* A brewer must file quarterly Form 5130.9 or Form 5130.26 (or any successor forms) if both of the following are true:

(1) The brewer files quarterly tax returns pursuant to § 25.164; and

(2) The brewer's liability for tax on beer for which taxes have not been paid does not exceed $50,000 at any time during the calendar year.

(c) *Annual report of operations.* A brewer must file annual Form 5130.9 or Form 5130.26 (or any successor forms) if both of the following are true:

(1) The brewer files annual tax returns pursuant to § 25.164; and

(2) The brewer's liability for tax on beer for which taxes have not been paid does not exceed $50,000 at any time during the calendar year.

(d) *Loss of eligibility for quarterly or annual reporting*—(1) *General.* If a brewer using a reporting period under paragraph (b) or (c) of this section becomes required to use a more frequent reporting period, the brewer must:

(i) File the appropriate report form beginning with the first quarterly or monthly period during which the brewer became required to use that period; and

(ii) Concurrently file the appropriate report form or forms covering any previous quarters of the calendar year (in the case of a brewer who was previously authorized to submit reports annually) or any previous months of the

calendar quarter (in the case of a brewer who was previously authorized to submit reports quarterly).

(2) *Required statement.* When filing the first quarterly or monthly report described in paragraph (d)(1)(i) of this section, a brewer must state on the form that it is increasing the frequency of its reporting and henceforth will submit quarterly or monthly reports, as applicable. The brewer must then continue to file the appropriate form for each subsequent quarter or month of that calendar year.

(e) *More frequent reporting required by TTB.* The appropriate TTB officer may at any time require a brewer who is filing Form 5130.9 or Form 5130.26 quarterly or annually to file such reports more frequently if there is a jeopardy to the revenue.

(f) *Submission and retention.* The brewer may submit reports in either paper format or electronically via *TTB Pay.gov*. The brewer must retain a copy of Form 5130.9 or Form 5130.26 (or any successor form) in either paper or electronic format as part of the brewery records.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 12. The authority citation for part 26 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 13. [The proposed amendatory instructions and the proposed regulatory text for part 26 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 14. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6109, 6302, 7805.

■ 15. [The proposed amendatory instructions and the proposed regulatory text for part 27 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

PART 28—EXPORTATION OF ALCOHOL

■ 16. The authority citation for part 28 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5121, 5122, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6109, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

■ 17. [The proposed amendatory instructions and the proposed regulatory text for part 28 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

PART 30—GAUGING MANUAL

■ 18. The authority citation for part 30 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ 19. [The proposed amendatory instructions and the proposed regulatory text for part 30 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**].

Signed: December 21, 2016.

Mary G. Ryan,

Acting Administrator.

Approved: December 22, 2016.

Timothy E. Skud,

Deputy Assistant Secretary. (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–31415 Filed 1–3–17; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0561]

RIN 1625–AA09

Drawbridge Operation Regulation; Upper Mississippi River, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the draws of all bridges between Lock and Dam No. 14, mile 493.3, and Lock and Dam No. 10, mile 615.1, on the Upper Mississippi River by adding a 24-hour notice requirement for openings during the winter season. This proposed rule would allow the drawbridges to remain in the closed-to-navigation position for extended periods allowing the owners of the drawbridges to perform preventive maintenance that is essential to the safe operation of the drawbridges. This proposed rule would allow for flexibility in beginning these special operating schedules each year based on the arrival of winter weather.

DATES: Comments and related material must reach the Coast Guard on or before March 6, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0561 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of proposed rulemaking
SNPRM Supplemental notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

For 7 years the Coast Guard has issued temporary deviations requiring 24 hours advance notice to open for the three drawbridges between Lock and Dam No. 14, mile 493.3, and Lock and Dam No. 10, mile 615.1, on the Upper Mississippi River. The temporary deviations allowed the bridge owners to perform preventive maintenance during the winter season when there is less impact on navigation. Most recently, the temporary deviations for 2015 were published in the **Federal Register** in December, 2015 as follows: ''Drawbridge Operation Regulation; Upper Mississippi River, Clinton, IA'' and ''Drawbridge Operation Regulation; Upper Mississippi River, Dubuque, IA'' both published on December 4, 2015 (80 FR 75811); and ''Drawbridge Operation Regulation; Upper Mississippi River,

Sabula IA'' published on December 21, 2015 (80 FR 79260). The local mariners in this area have complied with these 24-hour advance notice deviations. Through this rule, under the authority in 33 U.S.C. 499 and 33 CFR 117.8, the Coast Guard is proposing to make these temporary deviations part of a permanent regulation. The Coast Guard proposes to do this by including the bridges between Lock and Dam No. 14 and Lock and Dam No. 10 in the regulation for specific requirements under 33 CFR 117.671(a), allowing the bridges to open on signal if at least 24 hours advance notice is given between on/or about December 15 through the last day of February each year. Through the same authorities, this rule proposes an amendment to 117.671(a) and (b) to change the beginning date for the special operating schedules for all drawbridges listed under this regulation.

The purpose of this proposed rulemaking is to eliminate the need for bridge owners to request a temporary deviation each year for the winter season in order to perform preventative maintenance that is essential to the safe operation for the drawbridges. Additionally, the proposed date change would allow flexibility in when to begin the special operating schedules each year based on the arrival of winter weather.

There are three bridges affected by this proposed change. The Clinton Railroad Drawbridge, mile 518.0, at Clinton, IA, provides a vertical clearance of 18.7 feet above normal pool in the closed-to-navigation position, the Sabula Railroad Drawbridge, mile 535.0, at Sabula, IA, provides a vertical clearance of 18.1 feet above normal pool in the closed-to-navigation position, and the Illinois Central Railroad Drawbridge, mile 579.9, at Dubuque, IA, provides a vertical clearance of 19.9 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted.

III. Discussion of Proposed Rule

This proposed rulemaking would change the operating schedule for three bridges by amending the regulations governing the Upper Mississippi River drawbridge operating requirements under 33 CFR 117.671(a) to include these bridges. Currently, this special operating schedule applies to the draws of all bridges on the Upper Mississippi River from Lock and Dam No. 10, mile 615.1 to Lock and Dam No. 2, mile 815.2. As proposed, the special operating schedule would be amended to include the draws of three additional bridges located between Lock and Dam No. 14, mile 493.3 to Lock and Dam No. 10, mile 615.1. This proposed rule would also change the language of 117.671(a) and (b) to begin the special operating schedules on or about December 15 each year instead of on December 15 each year. A notice of enforcement would be issued each year indicating the start date for the special operating schedule. The bridges that would be included in this amended special local regulation are the Clinton Railroad Drawbridge, mile 518.0, at Clinton, IA, the Sabula Railroad Drawbridge, mile 535.0, at Sabula, IA, and the Illinois Central Railroad Drawbridge, mile 579.9, at Dubuque, IA. Currently these bridges open on signal. This change would require the bridges to open on signal if at least 24 hours advance notice is given beginning on or about December 15 and lasting through the last day of February each year.

Winter conditions, such as ice on the Upper Mississippi River, coupled with annual closure of various lock and dams between mile 493.3 and 615.1, will preclude any significant navigation demands for the drawspan openings. There are no alternate routes for vessels transiting this section of the Upper Mississippi River and the bridges cannot open in case of emergency during preventative maintenance operations; the drawbridges would open if at least 24 hours advance notice is given. The regulatory text and changes we are proposing appear at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the availability for vessels to transit the bridge provided advanced notice is given. Moreover, the advanced notice requirement will be during the winter months, which is a time of year when vessel traffic is at its lowest as has been done in past years utilizing temporary deviations to provide for the change in bridge openings.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.671 to read as follows:

§ 117.671 Upper Mississippi River.

(a) The draws of all bridges between Lock and Dam No. 14, mile 493.3, and Lock and Dam No. 2, mile 815.2, shall open on signal; except that, from on or about December 15 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

(b) The draws of all bridges between Lock and Dam No. 2, mile 815.2 and Lock and Dam No. 1, mile 847.6, shall open on signal; except that, from on or about December 15 through the last day of February, the draws shall open on signal if at least 12 hours notice is given.

Dated: December 22, 2016.

D.R. Callahan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2016–31893 Filed 1–3–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–1019]

RIN 1625–AA00

Safety Zone; Apra Harbor, Guam

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the existing safety zones currently in effect at Naval Wharf Kilo in Apra Outer Harbor, Guam, by adding a 500-yard permanent safety zone, hereinafter referred to as Safety Zone D, to provide a buffer between the explosives regularly handled on Naval Wharf Kilo, and the general public and maritime operators. The addition of Safety Zone D would also reduce the frequency of enforcement of Safety Zones A and B. This action also eliminates from the regulation the requirement to post a sign when Safety Zones A or B are being

enforced; during such enforcement periods, notification will occur via a slight modification of the displayed visual indicators already codified in the existing regulation as well as via a broadcast notice to mariners. This rulemaking will better meet the needs of the community and reduce the frequency that restrictions must be imposed through the addition of a less restrictive permanent safety zone, thereby enhancing the safe and efficient use of Apra Outer Harbor Channel in the vicinity of Naval Wharf Kilo. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before February 21, 2017. Requests for public meetings must be received by the Coast Guard on or before January 30, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2016–1019 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Kristina Gauthier, Sector Guam Waterways Management Division, U.S. Coast Guard; telephone 671–255–4866, email *WWMGuam@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

In 1990, Safety Zone B was established around the newly constructed Naval Wharf Kilo. On February 10, 2015, the Coast Guard amended Apra Harbor safety zone regulation in 33CFR 165.1401 to remove the 680-yard permanent safety zone around Naval Wharf Kilo and add two intermittent safety zones, Safety Zones A and B, with arcs of 1,000 and 1,400 yards radius, respectively. Over the past 21 plus months, the Coast Guard has evaluated the effect of these changes and their impact on the waters in and around Naval Wharf Kilo. Based on this evaluation, the Coast Guard has determined that an additional amendment to 33 CFR 165.1401 providing a 500-yard permanent safety zone around Naval Wharf Kilo is necessary to enhance the safety of the waterway and reduce adverse impacts to the maritime community and general public. This amendment will also reduce the frequency of enforcement of Safety Zones A and B and eliminate from the regulation the requirement to post a sign during the enforcement periods of Safety Zones A or B; during such enforcement periods notification will occur via a slight modification of the displayed visual indicators already codified in the existing regulation as well as via a broadcast notice to mariners.

The purpose of this rulemaking is to ensure the safety of people and vessels in the navigable waters of Apra Outer Harbor within a 500–1,400 yard radius of Naval Wharf Kilo before, during, and after wharf operations. The Coast Guard proposes this rulemaking pursuant to its authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to amend 33 CFR 165.1401 to add Safety Zone D, a 500-yard permanent safety zone at Naval Wharf Kilo, to provide a buffer between the explosives regularly handled on Naval Wharf Kilo, and the general public and marine operators. Safety Zone D will greatly reduce the enforcement periods of Safety Zones A and B. Safety zones A and B will be enforced when the COTP determines that reasonable risks to the public exist that may be minimized through zone enforcement. Notification of enforcement of Safety Zones A will be provided via a red (BRAVO) flag by day or single red light by night. Notification of enforcement of Safety Zone B will be provided via 2 red (BRAVO) flags by day or 2 red lights by night. When Safety Zone A or B is enforced, the COTP will also provide notification via a broadcast notice to mariners. Signs stating ''Safety Zone A'' and ''Safety Zone B,'' respectively, will not be posted. During enforcement of any safety zone, no vessel or person may enter the zone without the express permission from the COTP or his designated representative. The proposed regulatory amendments appear at the end of this document.

IV. Regulatory Analyses

This proposed rule was developed after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders and we discuss first amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zones. The implementation of a 500-yard safety zone around Naval Wharf Kilo will drastically minimize the number of days that vessel traffic will be impacted under current parameters for activation of Safety Zone A. Vessel traffic will continue to be permitted to pass through Safety Zones A and B with the permission of the Captain of the Port. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the re-establishment of a permanent safety zone around Naval Wharf Kilo and the clarification of visual indicators utilized during the active implementation of Safety Zones A and B. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We plan to hold a public meeting to receive oral comments on this NPRM and will announce the date, time, and location in a separate document published in the **Federal Register**. If you signed up for docket email alerts mentioned in the paragraph above, you will receive an email notice when the public meeting notice is published and placed in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.1401, add paragraph (a)(3) and revise paragraph (b) to read as follows:

§ 165.1401 Apra Harbor, Guam—safety zones.

(a) * * *

(3) The following is designated Safety Zone D: The waters of Apra Outer Harbor encompassed within an arc of 500 yards radius centered at the center of Naval Wharf Kilo, located at 13 degrees 26′44.5″ N. and 144 degrees 37′50.7″ E. (Based on World Geodetic System 1984 Datum).

(b) *Regulations.* (1) Safety Zone A, described in paragraph (a) of this

section, will only be enforced when Coast Guard Sector Guam issues a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and Naval Wharf Kilo, and a vessel berthed at Naval Wharf Kilo, is displaying a red (BRAVO) flag by day or a red light by night.

(2) Safety Zone B described in paragraph (a) of this section will only be enforced when Coast Guard Sector Guam issues a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and Naval Wharf Kilo, and a vessel berthed at Naval Wharf Kilo, is displaying 2 red (BRAVO) flags by day or 2 red lights by night.

(3) Safety Zone D is permanent and will be enforced at all times.

(4) Under general regulations in § 165.23, during periods of enforcement, entry into the Safety Zones A and B as described in paragraph (a) of this section, is prohibited unless expressly authorized by the Captain of the Port, Guam or a designated representative. Entry into Safety Zone D is prohibited at all times unless expressly authorized by the Captain of the Port, Guam or a designated representative.

Dated: December 5, 2016.

James B. Pruett,

Captain, U.S. Coast Guard, Captain of the Port, Guam.

[FR Doc. 2016–31894 Filed 1–3–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2016–0479; FRL–9957–60–Region 5]

Air Plan Approval; Ohio; Redesignation of the Ohio Portion of the Cincinnati-Hamilton, OH-IN-KY Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to redesignate the Ohio portion of the Cincinnati-Hamilton, OH-IN-KY, nonattainment area (hereafter, ''the Cincinnati-Hamilton area'') to attainment for the 1997 fine particulate matter ($PM_{2.5}$) annual national ambient air quality standards (NAAQS or standard). The Ohio portion of the Cincinnati-Hamilton area includes Butler, Clermont, Hamilton, and Warren Counties. Because EPA has determined that the Cincinnati-Hamilton area is attaining the annual $PM_{2.5}$ standard, EPA is proposing to redesignate the area to attainment and also proposing several additional related actions. EPA is proposing to approve the Reasonably Available Control Measures (RACM)-Reasonably Available Control Technology (RACT) portion of Ohio's Cincinnati-Hamilton area attainment plan SIP revision as providing adequate RACM/RACT. EPA is proposing to approve an update to the Ohio state implementation plan (SIP), by updating the state's approved plan for maintaining the 1997 annual $PM_{2.5}$ NAAQS through 2027. EPA previously approved the base year emissions inventory for the Cincinnati-Hamilton area, and is proposing to approve Ohio's updated emission inventory which includes emission inventories for volatile organic compounds (VOCs) and ammonia. Ohio's approved maintenance plan submission includes a budget for the mobile source contribution of $PM_{2.5}$ and nitrogen oxides (NO_X) to the Cincinnati-Hamilton Ohio $PM_{2.5}$ area for transportation conformity purposes, which EPA is proposing to approve and update. EPA is proposing to take these actions in accordance with the Clean Air Act (CAA) and EPA's implementation rule regarding the 1997 $PM_{2.5}$ NAAQS.

DATES: Comments must be received on or before February 3, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0479 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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, please contact the person identified in the ''For Further Information Contact'' section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Joseph Ko, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7947, *ko.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

Contents

I. Background
II. What are the criteria for redesignation to attainment?
III. What is EPA's analysis of the state's request?
  1. Attainment
  2. Section 110 and Part D Requirements, and Approval SIP under Section 110(k) (Section 107(d)(3)(E)(ii) and (v))
  3. Permanent and Enforceable Reductions in Emissions (Section 107(d)(3)(E)(iii))
  4. Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))
  5. Motor Vehicle Emissions Budget (MVEBs) for the Mobile Source Contribution to $PM_{2.5}$ and NO_X
  6. Comprehensive Emissions Inventory
IV. EPA's Proposed Actions
V. Statutory and Executive Order Reviews

I. Background

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Cincinnati-Hamilton area (the Ohio portion being Butler, Clermont, Hamilton, and Warren Counties) as nonattainment for the 1997 annual $PM_{2.5}$ standard.

In this proposed redesignation, EPA takes into account two decisions of the D.C. Circuit. On August 21, 2012, in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), the D.C. Circuit vacated and remanded the Cross State Air Pollution Rule (CSAPR) and ordered EPA to continue administering the Clean Air Interstate Rule (CAIR) ''pending . . . development of a valid replacement.'' *EME Homer City* at 38. The D.C. Circuit denied all

petitions for rehearing in the case on January 24, 2013. In the second decision, on January 4, 2013, the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008). *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013).

II. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, or other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

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

EPA is proposing to redesignate the Ohio portion of the Cincinnati-Hamilton area to attainment of the 1997 annual $PM_{2.5}$ NAAQS, and is proposing to approve updates to Ohio's maintenance plan for the area and other related SIP revisions. EPA is also proposing to approve Ohio's RACM/RACT analysis. The bases for these proposed actions follow.

1. Attainment

In accordance with section 179(c) of the CAA, 42 U.S.C. 7509(c) and 40 CFR 51.1004(c), EPA is proposing to determine that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ NAAQS. This proposed determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2013–2015 monitoring period that shows this area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS.

Under EPA's regulations at 40 CFR 50.7, the annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the area.

EPA has reviewed the ambient air quality monitoring data in the Cincinnati-Hamilton area, consistent with the provisions of 40 CFR part 50, appendix T. EPA's review focused on data recorded in the EPA Air Quality System (AQS) database for the Cincinnati-Hamilton area for $PM_{2.5}$ nonattainment area from 2013–2015.

The Cincinnati-Hamilton area has nine monitors located in Butler (OH), Hamilton (OH), and Campbell (KY) Counties that reported design values from 2013–2015 for $PM_{2.5}$ that ranged from 9.5 to 11.2 $\mu g/m^3$ for the 1997 annual standard. The data are summarized shown in Table 1 below.

There are three additional monitor sites in Butler County that are not listed in Table 1 because the data from these sites are not used for redesignation purposes. On October 31, 2014, EPA determined that site 39–017–0020 was located within the immediate area of several facilities, and that the monitoring data from the site would no longer be compared to the annual $PM_{2.5}$ standard. On February 5, 2015, monitor site 39–017–0022 in Bulter County became active, but since it is a ''special purpose monitor'', it cannot be used for comparison to the NAAQS before 24 months, per 40 CFR 58.20. Additionally, a new monitor site, 39–017–0016, became active in 2016 but it was not included in Ohio's analysis because it does not yet have three years of valid data.

All monitors in the Cincinnati-Hamilton area recorded complete data in accordance with criteria set forth by EPA in 40 CFR part 50 appendix N, where a complete year of air quality data comprises four calendar quarters, with each quarter containing data from at least 75% capture of the scheduled sampling days. Data available are considered to be sufficient for comparison to the NAAQS if three consecutive complete years of data exist. Recently the state certified data for 2013–2015 show the area continues to attain the standard. Partial 2016 data for all relevant monitors also support a finding that the area continues to attain the standard.

TABLE 1—ANNUAL $PM_{2.5}$ DESIGN VALUES FOR THE CINCINNATI-HAMILTON AREA FOR 2013–2015

County/Site	Annual design values ($\mu g/m^3$)			
	Year			Average
	2013	2014	2015	2013–2015
Butler, OH:				
39–017–0003	11.1	11.3	10.3	10.9
39–017–0016	10.7	10.7	9.5	10.3
39–017–0019	11	11.2	10.2	10.8
Hamilton, OH:				
39–061–0006	10.1	10.3	9.3	9.9
39–061–0014	11.6	11.3	10.7	11.2
39–061–0040	10.6	10.4	9.2	10.1
39–061–0042	11.5	11.2	10.1	11
39–061–0010	10.5	10.4	9.2	10
Campbell, KY:				
21–037–3002	9.6	9.7	9.4*	9.5

*less than 75% capture in one quarter at the primary monitor, but substitution using a secondary monitor was completed resulting in an AQS 'valid' design value.

Based on the information summarized above, EPA has found that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ NAAQS.

2. Section 110 and Part D Requirements, and Approval SIP Under Section 110(k) (Section 107(d)(3)(E)(ii) and (v))

We have determined that, under section 110 of the CAA (general SIP requirements), Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Cincinnati-Hamilton area. We are also proposing to find, in accordance with section 107(d)(3)(E)(v), that the Ohio submittal meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA. In addition, we are proposing to find, in accordance with section 107(d)(3)(E)(ii), that all applicable requirements of the Ohio SIP for purposes of redesignation have been approved. As discussed above, EPA previously approved Ohio's 2005 emissions inventory as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these proposed determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and concluded that the Ohio SIP includes measures meeting those requirements and that they are fully approved under section 110(k) of the CAA.

a. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed as the applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996) and (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Ohio SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Ohio's SIP addressing section 110 requirements (including provisions addressing particulate matter), at 40 CFR 52.1870.

On December 5, 2007, Ohio made a submittal addressing ''infrastructure SIP'' elements required under CAA section 110(a)(2). EPA proposed approval of the December 5, 2007, submittal on April 28, 2011, at 76 FR 23757 and published final approval on July 13, 2011, at 76 FR 41075.

The remaining parts of the infrastructure SIPs required by section 110(a)(2) are not relevant to this redesignation, and are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Cincinnati-Hamilton area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's $PM_{2.5}$ redesignation request.

b. Part D Requirements

EPA has determined that, upon approval of the base year emissions inventories discussed in section III.6 of this rulemaking, the Ohio SIP will meet the applicable SIP requirements for the Cincinnati-Hamilton area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 4 of part D, found in sections 189 of the CAA, sets forth nonattainment requirements applicable for particulate matter nonattainment areas.

(i) RACM/RACT Requirements Under Section 172(c)(1)

Section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' The $PM_{2.5}$ Implementation Rule (72 FR 20586) requires that the subpart 1 RACM portion of the attainment plan SIP revision include the list of potential measures that a state considered and additional information sufficient to show that the state has met all requirements for the determination of what constitutes RACM in a specific nonattainment area. *See* 40 CFR 51.1010(a). Any measures that are necessary to meet these requirements that are not already either federally promulgated, part of the SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan SIP revision for the area.

In 1972, 1980, and 1991, Ohio promulgated RACM rules for particulate emissions from stationary sources. Ohio also has RACT rules found in OAC Chapter 3745–17. Lake Michigan Air Directors Consortium (LADCO), in consultation with two contractors, performed a series of studies exploring control measures for reducing both

ozone precursors and $PM_{2.5}$ precursors in Ohio, Illinois, Indiana, Michigan, and Wisconsin. Photochemical modeling was then conducted to assess the air quality benefits of the candidate control measures. In its attainment demonstration submitted on July 18, 2008, Ohio demonstrated that attainment would be achieved in the Cincinnati-Hamilton area by 2009, based on the modeling conducted by the LADCO project team. Because of the projected 2009 attainment date, it would not have been reasonably possible or practicable for Ohio to develop RACM/RACT requirements, promulgate regulations and implement a control program prior to 2009. Ohio concluded that its RACM/RACT analysis, based on LADCO modeling, demonstrates that current control measures in Ohio satisfy RACM/RACT for the 1997 annual $PM_{2.5}$ standard.

EPA has reviewed Ohio's RACM/RACT analysis and agrees that it indicates that no other reasonably available measures were available, or necessary, to attain or advance attainment of the standard. Because Ohio has demonstrated with modeling that no further control measures would advance the attainment date in the area, EPA is proposing to approve Ohio's RACM/RACT portion of the attainment plan SIP revision as providing adequate RACM/RACT consistent with the provisions of 40 CFR 51.1010(b).

EPA previously redesignated the Cincinnati-Hamilton area to attainment for the 1997 annual $PM_{2.5}$ standard, predicated in part on a finding that the RACM/RACT requirement (interpreted as reflecting those reasonable measures needed to attain the standard) was not an applicable requirement for purposes of redesignation of areas already meeting the standard. EPA has long interpreted that subpart 1 nonattainment planning requirements, including RACM, are not ''applicable for purposes of section 107(d)(3)(E)(ii) and (v) when an area is attaining the NAAQS, and, therefore, need not be approved into the SIP before EPA can redesignate the area. *See* 76 FR 80258.

On July 14, 2015, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) issued an opinion in *Sierra Club* v. *EPA,* 793 F.3d 656 (6th Cir. 2015), vacating EPA's redesignation of the Indiana and Ohio portions of the Cincinnati-Hamilton area to attainment for the 1997 $PM_{2.5}$ NAAQS on the basis that EPA had not approved subpart 1 RACM for the area into the SIP.[1] The Sixth Circuit vacated the redesignation of the Ohio and Indiana portion of the area based on its view that RACM/RACT must be considered an applicable requirement for designation purposes. Consistent with that ruling, EPA is now finding that Ohio has satisfied this applicable requirement.

(ii) Other Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Cincinnati-Hamilton area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's determination that the area has attained the 1997 annual $PM_{2.5}$ standard suspends the requirement to submit certain planning SIPs related to attainment, including: Attainment demonstration requirements, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA.

As a result, the only remaining requirements under section 172 to be considered are the emissions inventory requirement under section 172(c)(3), and the RACM/RACT requirement of section 172(c)(1) per the 6th circuit decision. As discussed previously, EPA is proposing to approve the VOCs and ammonia emissions inventories that Ohio submitted as satisfying the section 172(c)(3) requirement, and existing control measures as satisfying RACM/RACT requirements under section 172(c)(1).

No SIP provisions applicable for redesignation of the Cincinnati-Hamilton area are currently disapproved, conditionally approved, or partially approved. Ohio currently has a fully approved SIP for all requirements, as applicable for purposes of redesignation under the Sixth Circuit's Sierra Club decision.

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all states to consider all available control measures for all nonattainment areas and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration.

As noted above in the previous section, the Sixth Circuit concluded that ''a State seeking redesignation 'shall provide for the implementation' of RACM/RACT, even if those measures are not strictly necessary to demonstrate attainment with the $PM_{2.5}$ NAAQS. . . . If a State has not done so, EPA cannot 'fully approve[]' the area's SIP, and redesignation to attainment status is improper.'' *Sierra Club,* 793 F.3d at 670.

EPA is adhering to the Sixth Circuit's decision. Ohio has demonstrated that no further control measures would be necessary to advance the attainment date in the Cincinnati-Hamilton area, and EPA is proposing to approve existing control measures as satisfying RACM/RACT requirements under section 172(c)(1). A further discussion on RACM/RACT requirements can be found in the previous section entitled ''RACM/RACT Requirements Under Section 172(c)(1).''

The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of the Cincinnati-Hamilton redesignation because the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. The requirement to submit the section 172(c)(9) contingency measures is similarly not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio submitted a 2005 base year emissions inventory in the required attainment plan, and also updated the emissions inventory with VOCs and ammonia emissions from 2007. EPA previously approved the 2005 base year emissions inventory (76 FR 64825), and is proposing to approve the emissions inventory for VOCs and ammonia.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major

[1] The Court issued its initial decision in the case on March 18, 2015, and subsequently issued an amended opinion on July 14 after appeals for rehearing en banc and panel rehearing had been filed. The amended opinion revised some of the legal aspects of the Court's analysis of the relevant statutory provisions (section 107(d)(3)(E)(ii) and section 172(c)(1)), but the overall holding of the opinion was unaltered. On March 28, 2016, the Supreme Court denied a petition for certiorari from Ohio requesting review of the Sixth Circuit's decision.

stationary sources anywhere in the nonattainment area. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366), but has not approved updates since that time. Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that the Cincinnati-Hamilton area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Cincinnati-Hamilton area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we have found that Ohio's SIP meets the applicable requirements of section 110(a)(2) for purposes of redesignation.

(iii) Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State transportation conformity regulations must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA approved Ohio's transportation conformity SIPs on March 2, 2015 (80 FR 11134). In April 2010, EPA promulgated changes to 40 CFR 51.851, eliminating the requirement for states to maintain a general conformity SIP. Following this promulgation, EPA granted Ohio's request to remove its general conformity regulations from the SIP. *See* 80 FR 29968. EPA confirms that Ohio has met the applicable conformity requirements under section 176.

(iv) Subpart 4

On January 4, 2013, in *Natural Resources Defense Council* v. *EPA,* the D.C. Circuit remanded to EPA the ''Final Clean Air Fine Particle Implementation Rule'' (72 FR 20586, April 25, 2007) and the ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)'' final rule (73 FR 28321, May 16, 2008) (collectively, ''1997 $PM_{2.5}$ Implementation Rule''). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 $PM_{2.5}$ NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than the particulate-matter-specific provisions of subpart 4 of part D of title I.

EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble''). In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were, to an extent, ''subsumed by, or integrally related to, the more specific PM–10 requirements.'' 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify any additional requirements which would apply under subpart 4, we are considering the Cincinnati-Hamilton area to be a ''moderate'' $PM_{2.5}$ nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as ''moderate'' nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the area as a ''serious'' nonattainment area. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impact of subpart 4 requirements to those that would be applicable to moderate nonattainment areas.

Section 189(a) and (c) of subpart 4 applies to moderate nonattainment areas and includes the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM_{10}, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.[2] In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment new source review program is not considered an applicable requirement for redesignation, provided the area can maintain the standard with a PSD program after redesignation. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *See also* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,[3] when EPA evaluates a redesignation request under subpart 1 and/or 4, any area that is attaining the $PM_{2.5}$ standard is viewed as having satisfied the attainment planning

[2] The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation is discussed below.

[3] I.e., attainment demonstration, RFP, RACM, milestone requirements, contingency measures.

requirements for these subparts. For redesignations, EPA has for many years interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

> The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

''General Preamble for the Interpretation of Title I of the CAA Amendments of 1990''; (57 FR 13498, 13564, April 16, 1992).

The General Preamble also explained that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its September 4, 1992 Calcagni memorandum (Calcagni memorandum) that, ''[t]he requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.''

Elsewhere in this action, EPA proposes to determine that the area has attained the 1997 annual $PM_{2.5}$ standard. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4. Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under sections 172(c)(1) and 189(a)(1)(c), a RFP demonstration under section 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

$PM_{2.5}$ pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO_2 emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_X from power plants, mobile sources, and other combustion sources.

CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM_{10} shall also apply to PM_{10} precursors from those sources, except where EPA determines that major stationary sources of such precursors ''do not contribute significantly to PM_{10} levels which exceed the standard in the area.''

For a number of reasons, EPA believes that this proposed redesignation of the Cincinnati-Hamilton area is consistent with the Court's decision on this aspect of subpart 4. First, while the Court, citing section 189(e), stated that ''for a PM_{10} area governed by subpart 4, a precursor is 'presumptively regulated,' '' the Court expressly declined to decide the specific challenge to EPA's 1997 $PM_{2.5}$ implementation rule provisions regarding ammonia and VOCs as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular $PM_{2.5}$ nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

The Cincinnati-Hamilton area has attained the standard without any specific additional controls of VOCs and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM_{10} precursors.[4] As explained below, we do not believe that any additional controls of ammonia and VOCs are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). *See* 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOCs under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e) (57 FR 13542). EPA proposes to determine that Ohio has met the provisions of section 189(e) with respect to ammonia and VOCs as precursors. This proposed supplemental determination is based on our findings that: (1) The Cincinnati-Hamilton area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOCs are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.[5] In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual $PM_{2.5}$ standard, at present ammonia and VOCs precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 $PM_{2.5}$ standard in the Cincinnati-Hamilton area. *See* 57 FR 13539–42.

EPA notes that its 1997 $PM_{2.5}$ implementation rule provisions in 40 CFR 51.1002 were not directed at evaluation of $PM_{2.5}$ precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 annual $PM_{2.5}$ NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for ''presumptive regulation'' of ammonia and VOCs for $PM_{2.5}$ under the attainment planning provisions of subpart 4, those provisions do not require additional controls of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Ohio to address precursors differently than it has already would result in a different redesignation outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.,* states may determine that only certain precursors need be regulated for attainment and control purposes.[6] Courts have upheld this

[4] Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and adopt those measures that are deemed reasonably available.

[5] The Cincinnati-Hamilton area has reduced VOC emissions through the implementation of various SIP approved VOC control programs and various on-road and nonroad motor vehicle control programs.

[6] *See, e.g.,* ''Approval and Promulgation of Implementation Plans for California—San Joaquin Valley PM–10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM–10 Standards,'' 69 FR 30006 (May 26, 2004) (approving a PM_{10} attainment plan that impose

Continued

approach to the requirements of subpart 4 for PM_{10}.[7] EPA believes that application of this approach to $PM_{2.5}$ precursors under subpart 4 is reasonable. Because the Cincinnati-Hamilton area has already attained the 1997 annual $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors, EPA believes that, in the context of this redesignation, there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation to consider additional precursors under subpart 4 in evaluating this redesignation request, it would not affect EPA's approval here of Ohio's request for redesignation of the Cincinnati-Hamilton area. Moreover, the state has shown, and EPA is proposing to determine, that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. It follows that no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, Court decision as precluding redesignation of the Cincinnati-Hamilton area to attainment for the 1997 $PM_{2.5}$ NAAQS at this time.

EPA concludes that the area has met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

c. Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio's comprehensive VOCs and ammonia emissions inventories, EPA will have fully approved the Ohio SIP for the Cincinnati-Hamilton area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is approving Ohio's VOCs and ammonia comprehensive emissions inventories for the Cincinnati-Hamilton area as meeting the requirement of section 172(c)(3) of the CAA.

3. Permanent and Enforceable Reductions in Emissions (Section 107(d)(3)(E)(iii))

EPA believes that Ohio has demonstrated that the observed air quality improvement in the Cincinnati-Hamilton area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIPs, Federal measures, and other state-adopted measures.

In making this demonstration, Ohio has calculated the change in emissions between 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Cincinnati-Hamilton area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Cincinnati-Hamilton area and contributing areas have implemented, as discussed below.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

i. Federal Emission Control Measures

Reductions in direct emissions of $PM_{2.5}$ and in emissions of $PM_{2.5}$ precursors have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. EPA finalized this Federal rule in February 2000. These emission control requirements result in lower NO_X and SO_2 emissions from new cars and light duty trucks, including sport utility vehicles. Emission standards established under EPA's rules became effective between 2004 and 2009. EPA has estimated that, emissions of NO_X from new vehicles have decreased by the following percentages: Passenger cars (light duty vehicles)—77 percent; light duty trucks, minivans, and sports utility vehicles—86 percent; and, larger sports utility vehicles, vans, and heavier trucks—69 to 95 percent. EPA expects fleet-wide average emissions to decline by similar percentages as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline by up to 90 percent. VOCs emissions reductions will be approximately 12 percent for passenger cars; 18 percent for smaller SUVs, light trucks, and minivans; and 15 percent for larger SUVs, vans, and heavier trucks.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule, which was phased in between 2004 and 2007, includes standards limiting the sulfur content of diesel fuel. This rule is estimated to reduce NO_X emissions from diesel trucks and buses by approximately 40 percent. The level of sulfur in highway diesel fuel is also estimated to have dropped by 97 percent by mid-2006 due to this rule.

Nonroad Diesel Rule. In May 2004, EPA promulgated a new rule for large nonroad diesel engines, such as those used in construction, agriculture, and mining equipment, to be phased in between 2008 and 2014. Prior to 2006, nonroad diesel fuel averaged approximately 3,000 ppm sulfur. This rule limited nonroad diesel sulfur content to 15 ppm by 2010. It is estimated that compliance with this rule has cut emissions from nonroad diesel engines by more than 90%. This rule achieved some emission reductions by 2008 and was fully implemented by 2010. The reduction in fuel sulfur content also yielded an immediate reduction in sulfate particle emissions from all diesel vehicles.

ii. Control Measures in Contributing Areas

Given the significance of sulfates and nitrates in the Cincinnati-Hamilton area, the area's air quality is strongly affected by regulated emissions from power plants.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

CAIR and CSAPR. EPA proposed CAIR on January 30, 2004, at 69 FR 4566, promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO_2 and NO_X emissions and improve air quality in many areas across the Eastern United States. However, on July 11, 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (North Carolina v. EPA, 531 F.3d 836 (D.C. Cir. 2008)). EPA petitioned for a

controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

[7] *See, e.g., Assoc. of Irritated Residents* v. *EPA et al.,* 423 F.3d 989 (9th Cir. 2005).

rehearing, and the Court issued an order remanding CAIR and the CAIR FIPs to EPA without vacatur (North Carolina v. EPA, 550 F.3d 1176 (D.C. Cir. 2008)). The Court, thereby, left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion (id. at 1178). The Court directed EPA to ''remedy CAIR's flaws'' consistent with the July 11, 2008, opinion, but declined to impose a schedule on EPA for completing this action (id).

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and, thus, to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the eastern United States. As a general matter, because CSAPR is CAIR's replacement, emissions reductions associated with CAIR will for most areas be made permanent and enforceable through implementation of CSAPR.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014).

On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015) (*EME Homer City II*). The litigation over CSAPR ultimately delayed implementation of that rule for three years, from January 1, 2012, when CSAPR's cap-and-trade programs were originally scheduled to replace the CAIR cap-and-trade programs, to January 1, 2015. CSAPR's Phase 2 budgets were originally promulgated to begin on January 1, 2014, and are now scheduled to begin on January 1, 2017. As part of the remand, the D.C. Circuit found the Ohio 2014 NO_X budget was invalid, stating that based on EPA's own data, Ohio made no contribution to downwind states' nonattainment. On November 16, 2015, EPA proposed the CSAPR Update Rule (80 FR 75706) which, when finalized, will establish permanent and enforceable reduction through revised NO_X ozone season budgets for Ohio.

Because the emission reduction requirements of CAIR were enforceable through the 2011 control period, and because CSAPR has been promulgated to address the requirements previously addressed by CAIR and will achieve similar or greater reductions once finalized, EPA has determined that the EGU emission reductions that helped lead to attainment in the Cincinnati-Hamilton area can now be considered permanent and enforceable and that the requirement of CAA section 107(d)(3)(E)(iii) has been met.

b. Emission Reductions

Ohio developed an emissions inventory for NO_X, direct $PM_{2.5}$, and SO_2 for 2005, one of the years used to designate the area as nonattainment, and 2008, one of the years the Cincinnati-Hamilton area monitored attainment of the standard.

Emissions of SO_2 and NO_X from EGUs were derived from EPA's Clean Air Market's acid rain database. These emissions reflect Ohio's NO_X emission budgets resulting from EPA's NO_X SIP call. The 2008 emissions from EGUs reflect Ohio's emission caps under CAIR. All other point source emissions were obtained from Ohio's source facility emissions reporting.

Area source emissions for the Cincinnati-Hamilton area for 2005 were taken from periodic emissions inventories.[8] These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by LADCO. These growth factors were based on the U.S Department of Commerce Bureau of Economic Analysis (BEA) growth factors, with some updated local information.

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010, in conjunction with transportation model results developed by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI).

All emissions estimates discussed below were documented in the submittals and appendices to Ohio's redesignation request submittal of July 22, 2016. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, *http://www.regulations.gov,* for docket number EPA–R05–OAR–2016–0479, which includes a digital copy of Ohio's submittal.

Emissions data in tons per year (tpy) for the Cincinnati-Hamilton area are shown in Tables 2, 3, and 4 below.

TABLE 2—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR NO_X IN THE CINCINNATI-HAMILTON AREA

Sector	2005	2008	Net change (2008–2005)
EGU Point	55,930.44	46,853.89	−9,076.55
Non-EGU	10,371.70	9,790.50	−581.20
Non-road	12,417.57	10,561.92	−1,855.65
Other (Area)	7,810.74	7,975.67	164.93
Marine, Air, and Rail (MAR)	9,352.60	9,052.95	−299.65
On-road	71,919.89	64,471.22	−7,448.67

[8] Periodic emission inventories are derived by states every three years and reported to EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

TABLE 2—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR NO_X IN THE CINCINNATI-HAMILTON AREA—Continued

ector

Sector	2005	2008	Net change (2008–2005)
Total	167,802.94	148,706.15	−19,096.79

TABLE 3—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR SO_2 IN THE CINCINNATI-HAMILTON AREA

Sector	2005	2008	Net change (2008–2005)
EGU Point	218,395.56	98,334.17	−120,061.39
Non-EGU	15,532.09	13,483.92	−2,048.17
Non-road	1,057.16	416.87	−640.29
Area	3,494.39	3,520.77	26.38
MAR	1,092.58	982.82	−109.76
On-road	392.00	277.59	−114.41
Total	239,963.78	117,016.14	−122,947.64

TABLE 4—COMPARISON OF 2005 EMISSIONS FROM THE NONATTAINMENT YEAR AND 2008 EMISSIONS FOR AN ATTAINMENT YEAR FOR DIRECT $PM_{2.5}$ IN THE CINCINNATI-HAMILTON AREA

Sector	2005	2008	Net change (2008–2005)
EGU Point	2,062.91	1,633.15	−429.76
Non-EGU	1,352.79	1,458.52	105.73
Non-road	984.35	853.89	−130.46
Area	1,828.85	1,864.80	35.95
MAR	416.20	414.43	−1.77
On-road	2,810.30	2,679.85	−130.45
Total	9,455.40	8,904.64	−550.76

Table 2 shows reductions in NO_X emissions for the Cincinnati-Hamilton area by 19,096.79 tpy between 2005 (nonattainment year) and 2008 (attainment year). Table 3 shows that the Cincinnati-Hamilton area reduced SO_2 emissions by 122,947.64 tpy between 2005 and 2008. Table 4 shows reductions in direct $PM_{2.5}$ emissions for the Cincinnati-Hamilton area by 550.76 tpy between 2005 and 2008.

4. Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

EPA has fully approved an applicable maintenance plan that meets the requirements of section 175(a) on December 23, 2011. *See* 76 FR 80253. In conjunction with Ohio's request to redesignate the Cincinnati-Hamilton nonattainment area to attainment, Ohio has submitted an updated attainment inventory of the maintenance plan to reflect the provisions of subpart 4 (Title I, Part D) of the CAA, and EPA is updating the maintenance plan to 2027.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future $PM_{2.5}$ violations.

The Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: The attainment emissions inventory, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the

attainment year inventory. Calcagni memorandum, pp. 9–10.

As discussed in detail in the section below, the state's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2021. In addition, for the reasons set forth below, EPA believes that the state's submission, in conjunction with additional supporting information, further demonstrates that the area will continue to maintain the 1997 annual SO_2 NAAQS at least through 2027. Thus, any EPA action to finalize its proposed approval of the redesignation request and maintenance plans in 2017, will be based on a showing, in accordance with section 175A, that the state's maintenance plan provides for maintenance for at least ten years after redesignation.

b. Attainment Inventory

Ohio developed an emissions inventory for NO_X, direct $PM_{2.5}$, and SO_2 for 2008, one of the years in the period during which the Cincinnati-Hamilton area monitored attainment of the 1997 annual $PM_{2.5}$ standard, as described previously. The attainment level of emissions is summarized in Tables 2, 3, and 4, above. Ohio also included emissions inventories for VOCs and ammonia from 2007, in accordance with the provisions of Subpart 4 (Title I, Part D) of the CAA. These emissions are summarized in Table 6, in discussion of the maintenance plan below.

c. Demonstration of Maintenance

Ohio has a fully approved maintenance plan that meets the requirements of Section 175(A). *See* 76 FR 80253. Along with the redesignation request, Ohio submitted an updated attainment inventory to reflect the provision of subpart 4. Ohio's plan demonstrates maintenance of the 1997 annual $PM_{2.5}$ standard through 2021 by showing that current and future emissions of NO_X, directly emitted $PM_{2.5}$ and SO_2 in the area remain at or below attainment year emission levels. Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, its purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni memorandum, pp. 9–10.

As discussed in detail in the section below, Ohio's maintenance plan expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2021. In addition, for the reasons set forth below, EPA believes that the state's submission, in conjunction with additional supporting information, further demonstrates that the area will continue to maintain the $PM_{2.5}$ standard at least through 2027. Thus, if EPA finalizes its proposed approval of the redesignation request in 2017, it will be based on a showing, in accordance with section 175A, that the state's maintenance plan provides for maintenance for at least ten years after redesignation.

Ohio's plan demonstrates maintenance of the 1997 annual $PM_{2.5}$ NAAQS through 2021 by showing that current and future emissions of NO_X, directly emitted $PM_{2.5}$ and SO_2 for the area remain at or below attainment year emission levels.

The rate of decline in emissions of $PM_{2.5}$, NO_X, and SO_2 from the attainment year 2008 through 2021 indicates that the emissions inventory levels not only significantly decline between 2008 and 2021, but also will continue to decline through 2027 and beyond. $PM_{2.5}$ emissions in the nonattainment area are projected to decrease by 270.09 tpy in 2015 and 702.01 tpy in 2021. NO_X emissions in the nonattainment area are projected to decrease by 42,994.13 tpy in 2015 and 69,887.02 tpy in 2021. SO_2 emissions in the nonattainment area are projected to decline by 4,765.88 tpy in 2015 and 28,505.87 in 2021. These rates of decline are consistent with monitored and projected air quality trends; and emissions reductions achieved through emissions controls and regulations that will remain in place beyond 2027, and through fleet turnover that will continue beyond 2027, among other factors. EPA is proposing that the previously approved MVEBs are adequate for conformity purposes. See section 5 below for further details regarding MVEBs.

A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003). Ohio uses emissions inventory projections for the years 2018 and 2021 to demonstrate maintenance for the entire Cincinnati-Hamilton area. The projected emissions were estimated by Ohio, with assistance from LADCO and OKI, who used the MOVES2010 model for mobile source projections. Projection modeling of inventory emissions was done for the 2018 interim year emissions using estimates based on the 2009 and 2018 LADCO modeling inventory, using LADCO's growth factors, for all sectors. The 2021 maintenance year emission estimates were based on emissions estimates from the 2018 LADCO modeling. Table 5 shows the 2008 attainment base year emission estimates and the 2015 and 2021 emission projections for the Cincinnati-Hamilton area, taken from Ohio's July 22, 2016, submission.

TABLE 5—COMPARISON OF 2008, 2015 AND 2021 NO_X, DIRECT $PM_{2.5}$, AND SO_2 EMISSION TOTALS (tpy) FOR THE CINCINNATI-HAMILTON AREA

	SO_2	NO_X	$PM_{2.5}$
2008 (baseline)	117,016.14	148,706.15	8,904.64.
2015 (interim)	112,250.26	105,712.02	8,634.55.
2021 (maintenance)	88,510.27	78,819.13	8,202.63.
Projected Decrease (2021–2008)	28,505.87	69,887.02	702.01.
	24% decrease	47% decrease	8% decrease.

Table 5 shows that, for the period between 2008 and the maintenance projection for 2021, the Cincinnati-Hamilton area will reduce NO_X emissions by 69,887.02 tpy; direct $PM_{2.5}$ emissions by 702.01 tpy; and SO_2 emissions by 28,505.87 tpy. The 2021 projected emissions levels are significantly below attainment year inventory levels, and, based on the rate of decline, it is highly improbable that any increases in these levels will occur

in 2027 and beyond. Thus, the emissions inventories set forth in Table 5 show that the area will continue to maintain the 1997 annual $PM_{2.5}$ standard during the maintenance period and at least through 2027.

As Table 1 demonstrates, monitored $PM_{2.5}$ design value concentrations in the Cincinnati-Hamilton area are well below the NAAQS in the years beyond 2008, the attainment year for the area. Further, those values are trending downward as time progresses. Based on the future projections of emissions in 2015 and 2021 showing significant emissions reductions in direct $PM_{2.5}$, NO_X, and SO_2, it is very unlikely that monitored $PM_{2.5}$ values in 2027 and beyond will show violations of the NAAQS. Additionally, the 2013–2015 design values, which range from 9.5 to 11.2 µg/m^3, provide a sufficient margin in the unlikely event emissions rise slightly in the future.

Maintenance Plan Evaluation of Ammonia and VOCs

With regard to the redesignation of the Cincinnati-Hamilton area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOCs and ammonia as $PM_{2.5}$ precursors, EPA in this proposal is also considering the impact of the decision on the maintenance plan required under sections 175A and 107(d)(3)(E)(iv). To begin with, EPA notes that the area has attained the 1997 annual $PM_{2.5}$ standard and that the state has shown that attainment of the standard is due to permanent and enforceable emission reductions.

EPA proposes to confirm that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 $PM_{2.5}$ standard in the Cincinnati-Hamilton area. EPA therefore believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013 decision is that of assessing the potential role of VOCs and ammonia in demonstrating continued maintenance in this area. As explained below, based upon documentation provided by the state and supporting information, EPA believes that the maintenance plan for the Cincinnati-Hamilton area need not include any additional emission reductions of VOCs or ammonia in order to provide for continued maintenance of the standard.

First, as noted above in EPA's discussion of section 189(e), VOCs emission levels in this area have historically been well-controlled under SIP requirements related to ozone and other pollutants. Second, total ammonia emissions throughout the Cincinnati-Hamilton area are very low, estimated to be less than 3,200 tpy. *See* Table 6 below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO_2, NO_X, and even direct $PM_{2.5}$ emissions from sources in the area. Third, as described below, available information shows that no precursor, including VOCs and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

Ohio's maintenance plan shows that emissions of direct $PM_{2.5}$, SO_2, and NO_X are projected to decrease by 702.01 tpy, 28,505.87 tpy, and 69,887.022 tpy, respectively, over the maintenance period. *See* Table 5 above. In addition, emissions inventories used in the regulatory impact analysis (RIA) for the 2012 $PM_{2.5}$ NAAQS show that VOCs and ammonia emissions are projected to decrease by 16,716 tpy and 119 tpy, respectively between 2007 and 2020. *See* Table 6 below. While the RIA emissions inventories are only projected out to 2020, there is no reason to believe that this downward trend would not continue through 2027. Given that the Cincinnati-Hamilton area is already attaining the 1997 annual $PM_{2.5}$ NAAQS even with the current level of emissions from sources in the area, the downward trend of emissions inventories would be consistent with continued attainment. Indeed, projected emissions reductions for the precursors that the state is addressing for purposes of the 1997 $PM_{2.5}$ NAAQS indicate that the area should continue to attain the NAAQS following the precursor control strategy that the state has already elected to pursue. Even if VOCs and ammonia emissions were to increase unexpectedly between 2020 and 2027, the overall emissions reductions projected in direct $PM_{2.5}$, SO_2, and NO_X would be sufficient to offset any increases. For these reasons, EPA believes that local emissions of all of the potential $PM_{2.5}$ precursors will not increase to the extent that they will cause monitored $PM_{2.5}$ levels to violate the 1997 $PM_{2.5}$ standard during the maintenance period.

TABLE 6—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSION TOTALS BY SOURCE SECTOR (tpy) FOR THE CINCINNATI-HAMILTON AREA [9]

Sector	VOC			Ammonia		
	2007	2020	Net change 2020–2007	2007	2020	Net change 2020–2007
fires	224	224	0	16	16	0
nonpoint	24,149	24,080	−69	2,158	2,223	65
nonroad	9,294	5,228	−4,066	13	15	2
onroad	20,317	8,041	−12,275	890	481	−409
point	5,138	4,831	−306	109	332	222
Total	59,121	42,404	−16,716	3,186	3,067	−119

In addition, available air quality modeling analyses show continued maintenance of the standard during the maintenance period. The current annual design values for the area range from 9.5 to 11.2 µg/m3 (based on 2013–2015 air quality data), which are well below the 1997 annual $PM_{2.5}$ NAAQS of 15 µg/m^3. Moreover, the modeling analysis conducted for the RIA for the 2012 $PM_{2.5}$ NAAQS indicates that the design values for this area are expected to continue to decline through 2020. In the RIA analysis, the highest 2020 modeled design value for the Cincinnati-Hamilton area is 10.5 µg/m^3. Given that precursor emissions are projected to decrease through 2027, it is reasonable to conclude that monitored $PM_{2.5}$ levels

[9] These emissions estimates were taken from the emissions inventories developed for the RIA for the 2012 $PM_{2.5}$ NAAQS which can be found in the docket.

in this area will also continue to decrease through 2027.

Thus, EPA believes that there is ample justification to conclude that the Cincinnati-Hamilton area should be redesignated, even taking into consideration the emissions of other precursors potentially relevant to $PM_{2.5}$. After consideration of the D.C. Circuit's January 4, 2013 decision, and for the reasons set forth in this notice, EPA proposes to approve the state's revised attainment inventory into the previously approved maintenance plan.

Based on the information summarized above, Ohio has adequately demonstrated maintenance of the 1997 $PM_{2.5}$ standard in this area for a period extending in excess of ten years from expected final action on Ohio's redesignation request. EPA finds that currently approved plan will provide for maintenance.

d. Monitoring Network

Ohio's approved maintenance plan includes additional elements. Ohio's plan includes a commitment to continue to operate its EPA-approved monitoring network, as necessary to demonstrate ongoing compliance with the NAAQS. As detailed above, there are nine monitors measuring $PM_{2.5}$ concentrations in the Cincinnati-Hamilton area, and eight of the nine are operated by Ohio. The one other monitor is located in Kentucky.

e. Verification of Continued Attainment

Ohio remains obligated to continue to quality-assure monitoring data and enter all data into the AQS in accordance with Federal guidelines. Ohio will use these data, supplemented with additional information as necessary, to assure that the area continues to attain the standard. Ohio will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions. Both of these actions will help to verify continued attainment in accordance with 40 CFR part 58.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all pollution control measures that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA. As described above in section III.4, Ohio's previously approved maintenance plan includes all necessary contingency measures required under section 175A(d). *See* 76 FR 80253.

Ohio further commits to conduct ongoing review of its data, and if monitored concentrations or emissions are trending upward, Ohio commits to take appropriate steps to avoid a violation if possible. Ohio commits to continue implementing SIP requirements upon and after redesignation.

EPA believes that Ohio's approved contingency measures, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

As required by section 175A(b) of the CAA, Ohio commits to submit to EPA an updated $PM_{2.5}$ maintenance plan eight years after redesignation of the Cincinnati-Hamilton area to cover an additional ten year period beyond the initial ten year maintenance period. As required by section 175A of the CAA, Ohio has also committed to retain the $PM_{2.5}$ control measures contained in the SIP prior to redesignation.

For all of the reasons set forth above, EPA determines that the approved maintenance plan is still applicable and meets all the contingency plan requirements of CAA section 175A.

5. Motor Vehicle Emissions Budget (MVEBs) for the Mobile Source Contribution to $PM_{2.5}$ and NO_X

a. How are MVEBs developed and what are the MVEBs for the Cincinnati-Hamilton area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for $PM_{2.5}$ nonattainment areas and for areas seeking redesignation to attainment of the $PM_{2.5}$ standard. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP, or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan and could also be established for an interim year or years. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform to the purpose of the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find adequate and/or approve the MVEBs for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves and/or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a MVEB, EPA must complete a thorough review of the SIP and conclude that the SIP will achieve its overall purpose. In this case, EPA must review Ohio's $PM_{2.5}$ maintenance plan and conclude that it will provide for maintenance of the 1997 annual $PM_{2.5}$ standard in the Cincinnati-Hamilton area.

The maintenance plans previously submitted by Ohio for the area contained $PM_{2.5}$ and NO_X MVEBs for the area for the year 2021. Ohio calculated the MVEBs using MOVES2010. These approved budgets are used in future conformity determinations and regional emissions analyses prepared by the OKI, and will have to be based on the use of MOVES2010 or the most recent version of MOVES required to be used in transportation conformity determinations.[10] The state has determined the 2021 MVEBs for the combined Ohio and Indiana portions of the Cincinnati-Hamilton area to be 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X. The Ohio and Indiana portion of the area included ''safety margins'' as provided for in 40 CFR 93.124(a) (described below) of 112.84 tpy for primary $PM_{2.5}$ and 2,836.65 tpy for NO_X in the 2021 MVEBs, respectively, to provide for on-road mobile source growth. Ohio did not provide emission budgets for SO_2, VOCs, and ammonia because it concluded, consistent with EPA's presumptions regarding these precursors, that emissions of these precursors from on-road motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

In the Cincinnati-Hamilton area, the motor vehicle budgets including the safety margins and motor vehicle emission projections for both NO_X and $PM_{2.5}$ are equal to the levels in the attainment year.

EPA has reviewed the previously approved budgets for 2021 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has reviewed the approved budgets and the maintenance plan, and EPA is determining that the 2021 direct $PM_{2.5}$ and NO_X budgets, including the requested safety margins for the Cincinnati-Hamilton area, are adequate for use in conformity.

b. What action is EPA taking on the submitted motor vehicle emissions budgets?

EPA previously approved Ohio's MVEBs for use to determine transportation conformity in the Cincinnati-Hamilton area and these budgets remain applicable. EPA has determined that the area can maintain attainment of the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period and no changes to the plan have been made. *See* 76 FR 80253.

6. Comprehensive Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory including direct PM and all four precursors (SO_2, NO_X, VOCs, and ammonia). EPA approved the Ohio 2005 base year emissions inventory on December 23, 2011 (76 FR 80253). This previously approved base year emissions inventory detailed emissions of $PM_{2.5}$, SO_2, and NO_X for 2005. Emissions inventories for VOCs and ammonia from 2007, taken from the RIA for the 2012 $PM_{2.5}$ NAAQS, have been added as part of this submittal in accordance with the provisions of subpart 4 (Title I, Part D) of the CAA. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources.

Based upon EPA's previous action and 2007 emissions inventory for VOCs and ammonia, the emissions inventory was complete and accurate, and met the requirement of CAA section 172(c)(3).

IV. EPA's Proposed Actions

EPA is proposing to take several actions related to redesignation of the Cincinnati-Hamilton area to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

EPA has previously approved Ohio's $PM_{2.5}$ maintenance plan and MVEBs for the Cincinnati-Hamilton area. EPA is proposing to determine that this plan and budgets are still applicable.

EPA has previously approved the 2005 primary $PM_{2.5}$, NO_X, and SO_2 base year emissions inventory. EPA is proposing to approve Ohio's updated emissions inventory which includes emissions inventories for VOCs and ammonia from 2007. EPA is proposing that Ohio meets the emissions inventory requirement under section 107(d)(3)(E)(iii).

EPA is proposing to approve the RACM/RACT portion of Ohio's prior Cincinnati-Hamilton area attainment plan SIP revision as providing adequate RACM/RACT consistent with the provisions of 40 CFR 51.1010(b), because Ohio has demonstrated with a RACM/RACT analysis that no further control measures would advance the attainment date in the area.

EPA is proposing that Ohio meets the requirements for redesignation of the Cincinnati-Hamilton area to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3)(E) of the CAA. EPA is thus proposing to grant Ohio's request to change the designation of its portion of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS.

If finalized, approval of the redesignation request would change the official designation of the Ohio portion of the Cincinnati-Hamilton area for the 1997 annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81, from nonattainment to attainment. If finalized, EPA would determine that the previously approved maintenance plan is still applicable to the Cincinnati-Hamilton area for the 1997 annual $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 proposes to approve state law as meeting Federal requirements and, if finalized, will not impose additional requirements beyond those imposed by state law. For that reason, this actions:

- 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);

[10] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 13, 2016.

Robert Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–31635 Filed 1–3–17; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1300

[Docket No. EP 528 (Sub-No. 1); Docket No. EP 665 (Sub-No. 1)]

Publication Requirements for Agricultural Products; Rail Transportation of Grain, Rate Regulation Review

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking; policy statement.

SUMMARY: Through this Notice of Proposed Rulemaking, the Surface Transportation Board (Board or STB) proposes amendments to its regulations governing the publication, availability, and retention for public inspection of rail carrier rate and service terms for agricultural products and fertilizer. The Board also clarifies its policies on standing and aggregation of claims as they relate to rate complaint procedures.

DATES: Comments are due February 21, 2017; replies are due by March 20, 2017.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 528 (Sub-No. 1), 395 E Street SW., Washington, DC 20423–0001. Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In November 2006, the Board held a hearing in *Rail Transportation of Grain,* Docket No. EP 665, as a forum for interested persons to provide views and information about grain transportation markets. The hearing was prompted by concerns regarding rates and service issues related to the movement of grain raised by Members of Congress, grain producers, and other stakeholders. In January 2008, the Board closed that proceeding, reasoning that guidelines for simplified rate procedures had recently been adopted [1] and that those procedures would provide grain shippers with a new avenue for rate relief. *Rail Transp. of Grain,* EP 665, slip op. at 5 (STB served Jan. 14, 2008). The Board noted, however, that it would continue to monitor the relationship between carriers and grain interests, and that, if future regulatory action were warranted, it would open a new proceeding. *Id.* at 5.

In *Rate Regulation Reforms,* EP 715 (STB served July 25, 2012), the Board proposed several changes to its rate reasonableness rules. However, based on the comments received in that docket from grain shipper interests, which in part stated that the proposed changes did not provide meaningful relief to grain shippers, the Board commenced a separate proceeding in *Rail Transportation of Grain, Rate Regulation Review,* Docket No. EP 665 (Sub-No. 1) in December 2013 to deal specifically with the concerns of grain shippers. The Board invited public comment on how to ensure that the Board's existing rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates. The Board also sought input from interested parties on grain shippers' ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary. The Board received comments and replies from numerous parties.

On May 8, 2015, the Board announced that it would hold a public hearing, and invited parties to discuss rate reasonableness accessibility for grain shippers, as well as other issues, including: Whether the Board should allow multiple agricultural farmers and other agricultural shippers to aggregate their distinct rate claims against the same carrier into a single proceeding, and whether the disclosure requirement for agricultural tariff rates should be modified to allow for increased transparency. The public hearing was held on June 10, 2015, and the Board received post-hearing supplemental comments from interested parties through June 24, 2015.

Although much of the commentary and testimony received pertained to existing or proposed rate relief methodologies for agricultural commodity shippers, the comments and

[1] *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir.), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

testimony also touched on various other issues related to the rail transportation of grain. In order to address the comments pertaining to rate relief methodologies, the Board issued an Advance Notice of Proposed Rulemaking, which proposed to develop a new rate reasonableness methodology for use in very small disputes, in a decision served on August 31, 2016, in Docket Nos. EP 665 (Sub-No. 1) and EP 665 (Sub-No. 2). Additionally, based on the comments and testimony received regarding other issues related to the rail transportation of grain,[2] the Board today proposes amendments to its regulations on publication of rates for agricultural products and fertilizer in a new proceeding, Docket No. EP 528 (Sub-No. 1), and sets forth policy statements regarding aggregation of claims and standing. The Board's proposals and clarifications with respect to these issues are discussed below. Finally, the Board is terminating the proceeding in Docket No. EP 665 (Sub-No. 1).

Notice of Proposed Rules Regarding Agricultural Rate Publication

In the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, Congress eliminated the tariff requirements that were formerly applicable to rail carriers and imposed instead certain obligations to disclose common carriage rates and service terms. One of these requirements, applicable only to the transportation of agricultural products, is that rail carriers must publish, make available, and retain for public inspection, their common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms. 49 U.S.C. 11101(d). The statute states that the term ''agricultural products'' includes grain, as defined in 7 U.S.C. 75 and all products thereof, and fertilizer. *Id.*

The Board adopted regulations to implement the requirements of § 11101(d), in *Disclosure, Publication, & Notice of Change of Rates & Other Service Terms for Rail Common Carriage,* 1 S.T.B. 153 (1996). Those regulations are codified at 49 CFR 1300.5. Under those regulations, the information required to be published ''must include an accurate description of the services offered to the public; must provide the specific applicable rates (or the basis for calculating the specific applicable rates), charges, and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment (or to any given group of shipments).'' 49 CFR 1300.5(b). Rail carriers also must make the information available, without charge during normal business hours, at offices where they normally keep rate information, 49 CFR 1300.5(c), and to all persons who have subscribed to a publication service operated either by the rail carrier itself or by an agent acting at the rail carrier's direction, 49 CFR 1300.5(d).[3]

In announcing the June 2015 hearing in Docket No. EP 665 (Sub-No. 1), the Board invited parties to discuss whether there are any ways in which the Board could create greater transparency for grain shippers regarding how railroads set rates. Specifically, the Board invited parties to address the disclosure requirements for agricultural rates under 49 CFR 1300.5 and whether this requirement should be modified to allow for increased transparency.

Shippers generally had differing opinions as to the availability of agricultural tariff rates and their transparency. On the one hand, ARC asserts that there is a ''[n]eed for increased access to railroad public documents such as tariffs which serve to provide education (to agricultural producers, small and large elevators, and merchandisers)'' and for ''access to more complete summaries of transportation contracts, and operational data.'' (ARC Opening, V.S. Whiteside 8.) In its testimony, ARC raised concerns that certain public rates were no longer available for review online and stated that, although it was recently able to view a Class I railroad's rates online, it no longer is able to do so, even after registering through the railroad's Web site. (Hr'g Tr. 353:1–17, June 10, 2015.) NGFA, on the other hand, testified that Class I railroads make their tariffs available online and searchable and, although some Class I railroad tariffs may be more ''user-friendly'' than others, the Class I's tariffs are publicly available. (Hr'g Tr. 181:2–9, June 10, 2015.)

The Class I railroads that addressed this issue generally state that their common carrier agricultural rates are available online to varying degrees. At the June 2015 hearing, CSXT testified that its ''tariff [rates] are readily available on the internet'' and that, in the company's experience, the tariff [rates] are used by companies of varying sizes for many different reasons. (Hr'g Tr. 280:7–19, June 10, 2015.) BNSF stated that its ''tariff rates are available to all of our shippers that ship on us.'' (Hr'g Tr. 251:3–12, June 10, 2015.)

Based on the comments and testimony received, the Board proposes amendments to 49 CFR 1300.5 to update the publication requirements for the transportation of agricultural products and fertilizer in a new proceeding, Docket No. EP 528 (Sub-No. 1). These publication requirements, adopted in 1996, should be revised to reflect the fact that Class I railroads often use company Web sites and/or applications to disseminate information to customers and the general public. The 1996 decision adopting the current rules discussed publication methods that likely were more prevalent at the time (*i.e.,* subscription services and maintenance of paper documents at physical railroad offices). Given the changes in the commonly used methods to disseminate information and the fact that some railroads already have agricultural rate and service information on their Web sites, the Board believes it is appropriate to update our regulations to reflect these modern practices. All rail carriers would continue to be required to make the required information available to the public at their offices as well.

The Board's proposed amendments to 49 CFR 1300.5 are set forth below. Under our proposed change to § 1300.5(c), Class I rail carriers would be required to make publicly available online the information that is currently required under § 1300.5(a), which includes currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to such rates, charges, and service terms for agricultural products and fertilizer.[4]

The proposal would also continue to require that this information be made available to ''any person'' that seeks such information, as currently required by § 1300.5(c), so that the rate information published online would be readily available to anyone, regardless of whether a person is a current or potential customer or receiver of a railroad.[5] In addition, the Board

[2] For a list of the numerous parties that have participated in the Docket No. EP 665 (Sub-No. 1) proceeding at various stages, as set forth below. To the extent this decision refers to parties by abbreviations, those abbreviations are listed below.

[3] The Board noted when adopting these regulations that the publication requirements were applicable only to non-exempted agricultural products and fertilizer. *Disclosure,* 1 S.T.B. at 160. Many agricultural commodities and products have been exempted as a class from the Board's regulation. *See* 49 CFR 1039.10.

[4] We do not propose to require Class II and III carriers to comply with the online publication requirement, as this may be a significant burden to Class II and III carriers that do not have Web sites.

[5] The Board does not propose restricting railroads from using a registration feature to view tariff information online. However, under the proposed rules, the Board would expect that such registration be structured in a manner that allows any person

proposes amendments to 49 CFR 1300.5 that would direct parties that are having difficulty accessing the tariff rates for agricultural commodities and fertilizer to contact the Board's Office of Public Assistance, Government Affairs, and Compliance.

The Board invites public comment on these proposed changes and whether additional changes are needed to promote greater rate transparency consistent with § 11101(d).

Clarification of Aggregation of Claims and Standing Issues

In response to its December 2013 request for comments in Docket No. EP 665 (Sub-No. 1), the Board received comments related to whether grain producers as indirect purchasers of rail transportation have the legal right to file rate complaints under 49 U.S.C. 11701(b). The Board also received comments on the ability of groups of producers or elevators to bring claims, or the ability of State Attorneys General to act on behalf of agricultural producers in a state. In its May 8, 2015 hearing notice, the Board invited parties to discuss whether the Board should allow multiple agricultural producers and other agricultural shippers to aggregate their distinct rate claims against the same carrier into a single proceeding.

Shippers and government entities agree that Board clarification on the legal standing of grain producers (or other indirect purchasers of rail transportation) to file rate complaints and aggregate their claims would be beneficial. ARC requested that the Board confirm that grain producers have the legal right to file rate complaints, and that such complaints are not subject to dismissal due to the absence of direct damage to the complainant. (ARC Opening, V.S. Whiteside 28.) According to ARC, such confirmation would reassure many grain producers who may be unsure of whether they would have standing to file a rate case. (*Id.*) Similarly, NGFA argued that aggregation of claims would allow parties that do not ''directly pay the rate but feel the brunt of the rate to bring claims.'' (Hr'g Tr. 171:6–14, June 10, 2015.) NGFA stated that without further clarification from the Board, standing would be a deterrent to agricultural producers filing a rate case.[6] (Hr'g Tr. 171–72, June 10, 2015.)

Additionally, USDA suggests that the Board amend its rate challenge procedures to allow ''groups of agricultural producers, groups of elevators, or State Attorneys General to act on behalf of agricultural producers in that State.'' (USDA Opening 10.) To the same end, the Montana Department of Agriculture testified that parties must be allowed to aggregate their claims in order to capitalize on economies of scale. (Hr'g Tr. 71:7–9, June 10, 2015.) The Montana Department of Agriculture testified that allowing real parties of interest that are similarly situated to bring an aggregated claim would not only increase efficiency for the Board and protect rail carriers from piecemeal litigation, but also allow State Attorneys General to bring claims on behalf of shippers and producers without ''fear [of] retaliation'' or ''regard to shareholder profits'' and with the resources and the transportation expertise needed to effectively pursue a just remedy.[7] (Hr'g Tr. 71:11–22, June 10, 2015.)

Rail carriers generally do not oppose shippers' request for clarification on aggregation of claims and standing, although some railroads state that Board precedent is clear on these issues and does not require further explanation. For instance, NSR comments that 49 U.S.C. 11701(b) is clear that third parties may bring rate cases even if they did not pay directly for the transportation in question, but states that it nonetheless does not oppose the Board ''reaffirming the principle that on a case-by-case basis a party can bring a rate challenge . . . [if] it can demonstrate a sufficient nexus to the rate at issue . . . .'' [8] (NSR Reply 7.) Similarly, UP states that the Board ''could clarify that a party need not sustain damages to file a rate complaint, so long as the party would otherwise have standing.'' (UP Reply 38; *see also* AAR Reply 24–25.)

BNSF, however, opposes shippers' requests for clarification on standing. BNSF argues that only parties directly responsible for freight charges may seek damages in rate cases and that, for parties seeking non-damage forms of relief, whether they have standing is a ''highly fact-specific'' determination for which there is no basis in the record. (BNSF Reply 2–3.)

The Board will address standing and aggregation of claims, as the questions raised by some of the comments suggest that clarification would be beneficial. Under 49 U.S.C. 11701(b), a person, including a governmental authority, may file a complaint with the Board about a violation of part A, subtitle IV of title 49 by a rail carrier providing transportation or service subject to the Board's jurisdiction. Under § 11701(b), the Board may not dismiss such a complaint because of the ''absence of direct damage to the complainant.'' Thus, the statute permits parties to bring a rate complaint, even if they have not been directly harmed or did not directly pay for the transportation for which relief is sought. Accordingly, grain producers (and other indirectly harmed complainants) that file rate complaints cannot be disqualified due to the absence of direct damage.

At the same time, complainants that allege indirect harm in rate complaints must still have standing in order to proceed with a complaint, which is determined by the Board on a case-by-case basis. In making such determinations, the Board is ''not bound by the strict requirements of standing that otherwise govern judicial proceedings,'' but it may still look to the courts' test to determine whether a party has standing to bring an action. *See Riffin—Acquis. & Operation Exemption—in York Cty., Pa.,* FD 34501, et al., slip op. at 5 (STB served Feb. 23, 2005) (citing *N.C. R.R.—Pet. to Set Trackage Comp. & Other Terms & Conditions—Norfolk S. Ry.,* FD 33134, slip op. at 2 n.9 (STB served May 29, 1997); *Mo. Pac. R.R.—Aban.—in Douglas Champaign & Vermillion Ctys., Ill.,* AB 3 (Sub-No. 103), slip op. at 3 n.4 (ICC served Nov. 3, 1994)). When a complainant files a rate complaint, the Board may consider, for instance, whether the complainant has suffered an injury in fact, whether the injury is fairly traceable to the defendant's challenged conduct, and whether the injury is one likely to be redressed through a favorable decision. *See Riffin,* FD 34501, et al., slip op. at 5 (citing *Lujan* v. *Defs. of Wildlife,* 504 U.S. 555, 560–61 (1991)). Indirect damage, therefore, is not a bar to grain producers or other indirect purchasers of rail transportation bringing a complaint, but such complainants must still establish

to view the tariffs for agricultural commodities and fertilizer.

[6] NGFA and other parties also raise issues related to ''whether parties who indirectly suffer from rate increases can receive reparations.'' (Hr'g Tr. 172:8–21, June 10, 2015.) UP, for its part, requested that, if the Board clarifies that indirect purchasers of rail transportation can file rate complaints, the Board also clarify that parties that did not pay the rate may not recover reparations. (UP Reply 38.) The Board is not addressing the issue of reparations in this decision.

[7] The Montana Department of Agriculture also testified that a rule mandating arbitration for certain cases could require aggregated claims with a value of less than $500,000 brought by fewer than 15 farmers to be subject to mandatory arbitration, though we do not address arbitration in this decision. (Hr'g Tr. 73:15–19, June 10, 2015.)

[8] NSR also asserted that the Board should not extend standing to ''parties with insignificant connections to the transportation'' or ''permit other attempts to combine unrelated transportation into a single rate challenge.'' (NSR Reply 7, Aug. 25, 2014.)

that they have standing to proceed with a complaint.

Given that agricultural producers have previously been found to have standing to challenge the rail transportation rate for their grain, the Board expects that other producers would be able to establish standing as well. *See McCarty Farms, Inc.* v. *Burlington N., Inc.,* 91 F.R.D. 486 (D. Mont. 1981). Grain producers should be able to establish standing because, as various commenters acknowledge, the price the producers are paid by elevators for their grain is generally affected at least to some extent by the transportation rate the railroad charged to the grain elevators.[9]

For parties who have standing, the Board sees no reason not to permit the aggregation of claims where appropriate. Indeed, the Board has previously conducted proceedings involving class action claims, *see McCarty Farms,* and acknowledged its ability to do so, *see NSL, Inc.* v. *Whitlock,* NOM 41997 et al., slip op. at 5 (STB served Apr. 5, 2000). Therefore, in response to comments received in this proceeding, the Board confirms that parties may seek to aggregate their rate claims. In determining whether to permit the aggregation of claims, the Board will consider, on a case-by-case basis, factors such as, whether the claims or defenses involve common questions of law or fact, whether administrative efficiencies could be achieved through aggregation, and the number of claims being aggregated.

Terminating Docket No. EP 665 (Sub-No. 1)

As explained earlier, the Board sought input from interested parties regarding effective rate relief ideas for grain shippers in Docket No. EP 665 (Sub-No. 1). With respect to comments that addressed the Board's existing or proposed rate methodologies, the Board recently issued an Advance Notice of Proposed Rulemaking to explore a new rate reasonableness methodology. *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2) (STB served Aug. 31, 2016). In addition, the present decision addresses agricultural rate publication, standing, and aggregation of claims, which were also raised in Docket No. EP 665 (Sub-No. 1). While these two decisions do not purport to address every suggestion offered in Docket No. EP 665 (Sub-No. 1), the Board considered all of the comments that were received in determining how to proceed at this time. Therefore, the Board will terminate Docket No. EP 665 (Sub-No. 1) in the interest of administrative finality.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. §§ 601–604. In its Notice of Proposed Rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' § 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board's proposed regulations in Docket No. EP 528 (Sub-No. 1) would clarify and update existing procedures related to the publication of rates for agricultural products and fertilizers and, therefore, do not mandate or circumscribe additional conduct for small entities. To the extent that the Board's proposal imposes a new requirement in the form of requiring rate information to be published online, that requirement is limited to Class I rail carriers.[10] Therefore, the Board certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as defined by the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

List of Subjects in 49 CFR Part 1300

Administrative practice and procedure, Agricultural commodities, Railroads, Reporting and recordkeeping requirements.

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. Comments regarding the proposed rules are due by February 21, 2017. Replies are due by March 20, 2017.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

4. The Board issues the policy statement set forth above.

5. The proceeding in Docket No. EP 665 (Sub-No. 1) is terminated.

6. This decision is effective on the day of service.

By the Board, Chairman Elliott, Vice Chairman Miller and Commissioner Begeman. Vice Chairman Miller commented with a separate expression.

Raina S. Contee,

Clearance Clerk.

Vice Chairman Miller, Commenting

In *Petition of Norfolk Southern Railway and CSX Transportation, Inc. to Institute a Rulemaking Proceeding to Exempt Railroads from Filing Agricultural Transportation Contract Summaries,* EP 725 (STB served Aug. 11, 2014), I committed to work with agency staff to explore whether the format of the summaries could be made more useful and ensure whether the carriers were properly complying with the filing requirements. I have since discussed with staff the idea of compiling the summary requirements into one source that would allow stakeholders to view the contract summary information collectively. However, because the carriers each report information differently, and because some of the

[9] *See* NGFA Opening 7–8 (''[T]he rail transportation rates and terms are established between the elevator/aggregator and the railroad, with the cost of rail transportation typically being borne ultimately by the producer/farmer in the price paid by the elevator for the crop. . . . As rail rates are increased, the price that a captive elevator will pay for the farmer's crop usually decreases by a commensurate amount.''); ARC Opening 9 (''[I]f rail rates on merchandise shipments rise, the cost may be borne by millions of customers paying a few cents more at Walmart and similar stores. For grain, the rail rate buck tends to stop with farmers.''); NSR Reply 6–7 (''NS understands that for some agricultural commodities, grain elevators or other parties actually contract for the transportation, even though farmers may be price takers and thus receive higher or lower prices for their crop based on the cost of transportation.''); USDA Opening 4 (''It is well established that transportation costs can have a direct impact on agricultural producers' profits . . . . Agricultural producers in remote areas have few transportation alternatives, and the price they receive for their products is net of transportation . . . .''); BNSF Reply, V.S. Wilson 8 (acknowledging that rail rates are one factor influencing prices that grain producers receive for their grain).

[10] Effective June 30, 2016, for the purpose of RFA analysis, the Board defines a ''small business'' as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $36,633,120 or less when adjusted for inflation using 2015 data. Class II rail carriers have annual operating revenues of less than $250 million but in excess of $20 million in 1991 dollars, or $457,913,998 and $36,633,120 respectively, when adjusted for inflation using 2015 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

individual fields in one summary can contain pages of information, creating a single source has proven difficult. As for compliance, the staff of the Board's Office of Governmental Affairs, Public Assistance, and Compliance (OPAGAC) has been monitoring the summaries to ensure that they are being properly filed. I will continue to hold briefings with the OPAGAC staff to be made aware of any issues with the summaries that arise.

Additionally, in the course of developing this NPRM, I considered a number of ideas on how to modify the contract summary requirements so that they would provide more value, as well as address issues that are not currently covered by the existing regulations. However, the record here does not contain sufficient information that would help us to even begin making changes. Without such information, I am hesitant to tinker with the existing regulations. Accordingly, I ultimately decided that it would not be advisable to urge the Board to propose changes to the current requirements at this time.

Participants in Docket No. EP 665 (Sub-No. 1)

The Board received comments and testimony from the following parties in Docket No. EP 665 (Sub-No. 1).

Opening comments were received from:

- Alliance for Rail Competition (ARC) (joined by Montana Wheat and Barley Committee, National Farmers Union, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Grain Producers Association, Idaho Wheat Commission, Montana Farmers Union, North Dakota Corn Growers Association, North Dakota Farmers Union, South Dakota Corn Growers Association, South Dakota Farmers Union, Minnesota Corn Growers Association, Minnesota Farmers Union, Wisconsin Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, Oregon Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, Washington Grain Commission, Wyoming Wheat Marketing Commission, USA Dry Pea and Lentil Council, and National Corn Growers Association)
- Association of American Railroads (AAR)
- BNSF Railway Company (BNSF)
- CSX Transportation, Inc. (CSXT)
- National Grain and Feed Association (NGFA)
- Norfolk Southern Railway Company (NSR)
- Union Pacific Railroad Company (UP)
- U.S. Department of Agriculture (USDA)

Reply comments were received from:

- AAR
- Agribusiness Association of Iowa, Agribusiness Council of Indiana, Agricultural Retailers Association, American Bakers Association, American Farm Bureau Federation, American Feed Industry Association, American Soybean Association, California Grain and Feed Association, Corn Refiners Association, Institute of Shortening and Edible Oils, Kansas Cooperative Council, Kansas Grain and Feed Association, Grain and Feed Association of Illinois, Michigan Agribusiness Association, Michigan Bean Shippers Association, Minnesota Grain And Feed Association, Missouri Agribusiness Association, Montana Grain Elevators Association, National Council of Farmer Cooperatives, National Farmers Union, National Oilseed Processors Association, Nebraska Grain and Feed Association, North American Millers' Association, North Dakota Grain Dealers Association, Northeast Agribusiness and Feed Alliance, Ohio Agribusiness Association, Oklahoma Grain and Feed Association, Pacific Northwest Grain and Feed Association, Pet Food Institute, South Dakota Grain and Feed Association, Texas Grain and Feed Association, USA Rice Federation, and Wisconsin Agribusiness Association (collectively, AAI)
- ARC (joined by the same parties that joined its opening comment as well as the Nebraska Corn Growers Association)
- BNSF
- CSXT
- Kansas City Southern Railway Company
- NGFA
- NSR
- Jay L. Schollmeyer for and on behalf of SMART–TD General Committee of Adjustment (SMART–TD)
- Texas Trading and Transportation Services, LLC, dba TTMS Group, together with Montana Grain Growers Association (TTMS Group)
- UP
- USDA

Testimony at the June 10, 2015 hearing was received from:

- AAR
- ARC
- BNSF
- Canadian National Railway Company
- Canadian Pacific Railway Company
- CSXT
- Michigan Agri-Business Association [11]
- Montana Department of Agriculture
- NGFA
- NSR
- SMART–TD
- Transportation Research Board of the National Academy of Sciences
- TTMS Group
- UP
- USDA

Supplemental comments were received from:

- AAR
- ARC (joined by the same parties that joined its opening comment)
- NSR

[11] Written testimony only.

List of Subjects in 49 CFR Part 1300

Administrative practice and procedure, Agricultural commodities, Railroads, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, of the Code of Federal Regulations by revising part 1300 to read as follows:

PART 1300—DISCLOSURE, PUBLICATION, AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR RAIL COMMON CARRIAGE

■ 1. Revise the authority citation for part 1300 to read as follows:

Authority: 49 U.S.C. 1321 and 11101(f).

§ 1300.5 [Amended]

■ 2. Amend § 1300.5 by adding two sentences at the end of paragraph (c) to read as follows:

§ 1300.5 Additional publication requirement for agricultural products and fertilizer.

* * * * *

(c) * * * If a rail carrier is a Class I rail carrier, it must also make the information available to any person online. Persons having difficulty accessing this information should either send a written inquiry addressed to the Director, Office of Public Assistance, Government Affairs, and Compliance or should telephone the Board's Office of Public Assistance, Government Affairs, and Compliance.

* * * * *

[FR Doc. 2016–31906 Filed 1–3–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BG38

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 36

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

ACTION: Notice of availability; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 36 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 36 would modify the special management zone (SMZ) procedure in the FMP to allow for the designation of spawning SMZs; modify the FMP framework procedures to allow spawning SMZs to be established or modified through the framework process; establish spawning SMZs off North Carolina, South Carolina, and Florida; establish transit and anchoring provisions in the spawning SMZs; and establish a sunset provision for most of the spawning SMZs. Amendment 36 would also move the boundary of the existing Charleston Deep Artificial Reef Marine Protected Area (MPA). The purpose of Amendment 36 is to protect spawning snapper-grouper species and their spawning habitat, and to reduce bycatch and bycatch mortality for snapper-grouper species, including speckled hind and warsaw grouper.

DATES: Written comments on Amendment 36 must be received by March 6, 2017.

ADDRESSES: You may submit comments on Amendment 36 identified by ''NOAA–NMFS–2016–0153,'' by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Go to w*ww.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0153, click the* ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

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

Electronic copies of Amendment 36 may be obtained from *www.regulations.gov* or the SERO Web site at *http://sero.nmfs.noaa.gov.* Amendment 36 includes an environmental assessment, Regulatory Flexibility Act analysis, regulatory impact review, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS SERO, telephone: 727–824–5305, or email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by Amendment 36 was prepared by the Council and, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council developed Amendment 36 to protect spawning snapper-grouper species and their spawning habitat by prohibiting fishing for or harvest of snapper-grouper species in certain areas year-round in Federal waters of the South Atlantic. Areas designated for protection would include habitat characteristics, bottom topography (hard and live bottom), and currents that provide essential fish habitat important for spawning snapper-grouper species. The Council determined that protecting spawning snapper-grouper and their associated habitats would allow these species to produce more larvae, and may subsequently increase snapper-grouper populations.

The Council also developed Amendment 36 to reduce bycatch and bycatch mortality of snapper-grouper species, including speckled hind and warsaw grouper. The snapper-grouper fishery in the South Atlantic is a highly regulated, multi-species fishery. Discards in the fishery can occur due to regulations, such as closed seasons, possession or size limits, or from catch and release of these species. For snapper-grouper species prohibited from harvest, such as speckled hind and warsaw grouper, fish discarded due to regulations are considered bycatch. The deep-water snapper-grouper species are further impacted due to high discard mortality rates (low survivability due to barotrauma). The Council concluded that prohibiting the use of certain fishing gear in specified areas where snapper-grouper are known to occur and possibly spawn would reduce encounters with these species and subsequently provide protection for reproduction. Spawning SMZs could provide long-term beneficial biological and socio-economic effects if spawning fish are sufficiently protected.

The Council has identified a total of five areas proposed to be considered as spawning SMZs in the South Atlantic off North Carolina, South Carolina, and Florida. These areas have been identified based on the documented occurrence of snapper-grouper species and analysis of spawning data, recommendations from the Council's MPA Expert Work Group and Snapper-Grouper Advisory Panel, as well as cooperative research and public recommendations.

Amendment 36 also contains a 10-year sunset provision that would apply to most of the proposed spawning SMZs. The sunset provision would allow for most of the spawning SMZs to expire 10 years following the implementation date unless they are renewed. When deciding whether to renew a spawning SMZ, the Council may consider the evidence of spawning by snapper-grouper species in the spawning SMZ and whether a spawning SMZ is being monitored. The Council concluded that a 10-year sunset provision would help to ensure that spawning SMZs are monitored and evaluated during this period to document snapper-grouper spawning within the sites.

The Council developed a system management plan (SMP) for the spawning SMZs proposed in Amendment 36. The SMP describes in

detail the monitoring and evaluation requirements for the proposed spawning SMZs. The Council recognizes that monitoring the proposed spawning SMZs by academic, state, or NMFS personnel is necessary to evaluate their effectiveness; therefore, the SMP outlines the potential monitoring partners and their roles.

In addition to the spawning SMZs proposed for a similar purpose through Amendment 36, the Council originally designated the Charleston Deep Artificial Reef MPA, located off South Carolina, in Amendment 14 to the Snapper-Grouper FMP (74 FR 1621, January 13, 2009) to add protected snapper-grouper habitat and contribute to adding fish biomass. Recently, the State of South Carolina worked with the U.S. Army Corps of Engineers to modify the boundary of this site to include additional substrate material that was sunk by the state in the area of this MPA. The State of South Carolina requested the Council shift the boundary of the existing Charleston Deep Artificial Reef MPA to match the new boundary of the artificial reef site. Amendment 36 would align the Charleston Deep Artificial Reef MPA boundary with the site permitted by the U.S. Army Corps of Engineers, while retaining the size of the current MPA. Amendment 36 would move the existing boundary around the Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) to the northwest.

Actions Contained in Amendment 36

Amendment 36 includes actions to modify the SMZ procedure in the FMP to allow for the designation of spawning SMZs; modify the FMP framework procedures to allow spawning SMZs to be established or modified through the framework process; and establish spawning SMZs off North Carolina, South Carolina, and Florida. Additional actions in Amendment 36 would establish transit and anchoring provisions in the spawning SMZs, and establish a sunset provision for most of the spawning SMZs. The amendment would also move the existing Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) northwest to match the permitted site boundary.

Modify the SMZ Procedures in the FMP to Allow Designation of Spawning SMZs

The existing SMZ procedure in the FMP addresses the use of certain gear in areas including artificial reefs, fish attraction devices, and other modified areas of habitat for fishing. Possession limits can also be regulated in SMZs. Amendment 36 would allow the Council to designate important spawning areas as spawning SMZs to provide additional protection to some existing Essential Fish Habitat-Habitat Areas of Particular Concern for snapper-grouper species. The Council concluded that designating areas as spawning SMZs is important to protect snapper-grouper species and habitat where these species spawn. Furthermore, the Council concluded that the spawning SMZs in Amendment 36 would enhance reproduction for snapper-grouper species and thus increase the number of larvae that are produced by the species.

Modify the FMP Framework Procedures for Spawning SMZs

Amending the FMP can require more detailed analyses and requires a lengthier prescribed timeline prior to implementation. However, the current FMP contains framework procedures to allow the Council to modify certain management measures, such as annual catch limits and other management measures, via an expedited process (see 50 CFR 622.194; 56 FR 56016, October 31, 1991). Currently, SMZs cannot be modified under the framework process, so any changes to SMZs are required to be done through an FMP amendment. In Amendment 36, the Council has decided to include changes to spawning SMZs, such as boundary modifications and the establishment or removal of spawning SMZs, under the framework process. For example, this proposed action would allow the Council to remove a spawning SMZ if monitoring efforts do not document evidence of spawning snapper-grouper species within the boundary. The proposed revisions to the FMP framework procedures would also allow the Council to remove the proposed 10-year sunset provision for a proposed spawning SMZ if monitoring efforts document snapper-grouper species' spawning inside a spawning SMZ. The Council has decided that changing spawning SMZs through an expedited process can have beneficial biological and socio-economic impacts, especially if the changes respond to newer information, such as spawning locations for snapper-grouper species. The Council has concluded that the framework process will allow adequate time for the public to comment on any proposed change related to a spawning SMZ.

Establish Spawning SMZs off North Carolina, South Carolina, and Florida

The existing South Atlantic SMZs restrict the use of certain fishing gear in areas including artificial reefs, fish attraction devices, and other modified areas of habitat for fishing (50 CFR 622.182). Possession limits can also be regulated in SMZs. The original FMP established SMZs for artificial reefs to restrict certain fishing gear in those areas (48 FR 49463, August 31, 1983). Currently, there are no spawning SMZs for snapper-grouper in the South Atlantic. Amendment 36 proposes to establish five snapper-grouper spawning SMZs in the South Atlantic off North Carolina, South Carolina, and Florida.

Fishing for or harvest of snapper-grouper species within the proposed spawning SMZs would be prohibited year-round. Certain other activities in the spawning SMZs would be restricted, including transiting with snapper-grouper species on board and anchoring.

Another purpose of spawning SMZs is to reduce bycatch and bycatch mortality of snapper-grouper species, including speckled hind and warsaw grouper. Currently, retention of speckled hind and warsaw grouper is prohibited in Federal waters in the South Atlantic. Prohibiting the targeting or harvest of snapper-grouper species in specified areas where these species are known to occur and possibly spawn would reduce encounters with these deep-water species and provide protection for reproduction. The Council concluded that protecting snapper-grouper species within the spawning SMZs could enhance the opportunity for these species to reproduce and provide more larvae into the environment. Spawning SMZs would also allow opportunities to monitor population changes in snapper-grouper species and further refine protection of spawning habitat.

Establish Transit and Anchoring Provisions in Spawning SMZs

Amendment 36 would allow vessels to transit through the proposed spawning SMZs with snapper-grouper species on board when fishing gear is properly stowed. ''Properly stowed'' means that trawl or try nets and the attached doors must be out of the water, but would not be required to be on deck or secured below deck. Terminal gear (hook, leader, sinker, flasher, or bait) used with automatic reels, bandit gear, buoy gear, handline, or rod and reel would have to be disconnected and stowed separately from such fishing gear and sinkers would have to be disconnected from down riggers and stowed separately. Vessels in the spawning SMZs would be prohibited from fishing for, harvest, or possession of snapper-grouper species year-round in these areas. Except for the experimental artificial reefs Area 51 and Area 53 off South Carolina proposed as spawning SMZs, persons on board a vessel would not be allowed to anchor,

use an anchor or chain, or use a grapple and chain while in spawning SMZs. Fishermen would continue to be allowed to troll for pelagic species such as dolphin, tuna, and billfish in spawning SMZs.

Establish a Sunset Provision for the Spawning SMZs

Amendment 36 would establish a 10-year sunset provision for the establishment of the proposed spawning SMZs, except for the Area 51 and Area 53 Spawning SMZs, which will remain in effect indefinitely. Thus, except for the latter two areas, the proposed spawning SMZs and their associated management measures would be effective for 10 years following the implementation of a final rule for Amendment 36. For the proposed spawning SMZs and management measures subject to the sunset provision to extend beyond 10 years, the Council would need to evaluate the effectiveness of the spawning SMZs for conserving and protecting spawning snapper-grouper species, and subsequently take further action. The Council will regularly evaluate all of the spawning SMZs over the 10-year period. They concluded that this period was an appropriate timeframe to monitor the sites and determine whether a sufficient level of spawning by snapper-grouper species occurs to justify continued protection as spawning SMZs.

Move the Existing Charleston Deep Artificial Reef MPA

Amendment 36 would move the existing Charleston Deep Artificial Reef MPA 1.4 mi (2.3 km) northwest to match the boundary of the U.S. Army Corps of Engineers' permitted artificial reef area at that location. The size of the MPA would remain the same. The Council originally designated the current area as an artificial reef site in Amendment 14. The State of South Carolina has worked with the U.S. Army Corps of Engineers to modify the boundary of this site to include material recently sunk by the state in the area and has requested the Council shift their boundary of the existing Charleston Deep Artificial Reef MPA to match the new boundary of the U.S. Army Corps of Engineers' permitted artificial reef area.

A proposed rule that would implement measures outlined in Amendment 36 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish a proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 36 for Secretarial review, approval, and implementation. Comments on Amendment 36 must be received by March 6, 2017. Comments received during the respective comment periods, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 36. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: December 29, 2016.

Alan D. Risenhoover,

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

[FR Doc. 2016–31896 Filed 1–3–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160614521–6999–01]

RIN 0648–BF96

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment to Regulations Implementing the Coastal Pelagic Species Fishery Management Plan; Change to Pacific Mackerel Management Cycle From Annual to Biennial

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

ACTION: Proposed rule.

SUMMARY: The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) states that each year the Secretary will publish in the **Federal Register** the final specifications for all stocks in the actively managed stock category, which includes Pacific mackerel. NMFS is proposing to change the management framework for Pacific mackerel to set specifications biennially instead of on an annual basis from the 2017 fishing season forward.

DATES: Comments must be received by February 3, 2017.

ADDRESSES: You may submit comments on this document identified by NOAA–NMFS–2016–0053, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0053,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.

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

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific mackerel fishery in the U.S. Exclusive Economic Zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the CPS FMP. The FMP states that each year the Secretary will publish in the **Federal Register** the specifications for all stocks in the actively managed stock category, which includes Pacific mackerel. In 2013 the Pacific Fishery Management Council (Council) recommended that the harvest specification process for Pacific mackerel move from a 1-year management cycle to a 2-year management cycle beginning in 2015. The Council recommended this revision to the management cycle under the CPS FMP's framework mechanism, which allows such changes by rulemaking without formally amending the fishery management plan itself. NMFS published the annual specifications for Pacific mackerel for the 2015–16 and 2016–17 fishing seasons to keep pace with the schedule of the fishery, and is now proposing to change the annual notice requirement under the framework

mechanism of the CPS FMP. This change will allow 2 years of harvest specifications to be implemented with one rulemaking, beginning with the 2017 fishing season.

The CPS FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which in conjunction with the overfishing limit (OFL), acceptable biological catch (ABC) and annual catch limit (ACL) rules in the FMP are used to manage harvest levels for Pacific mackerel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. Annual estimates of biomass are an explicit part of these various harvest control rules, therefore, annual stock assessments are currently conducted for Pacific mackerel to provide annual estimates of biomass. Then, during public meetings each year, the estimated biomass for Pacific mackerel from these assessments is presented to the Council's CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. Based on these recommendations, NMFS implements these catch specifications for each fishing year and publishes the specifications annually.

Little new information is available for informing Pacific mackerel stock assessments from one year to the next. Therefore, stock assessment scientists at the Southwest Fisheries Science Center along with the SSC determined that conducting stock assessments annually is not necessary to manage Pacific mackerel sustainably; conducting assessments every 2 years can provide the necessary scientific information to continue to manage the stock sustainably. Annual landings of Pacific mackerel have also remained at historically low levels with landings averaging 5,000 mt over the last 10 years, well below the annual quotas over this time period. This highlights that the biomass of this stock is not being greatly impacted by fishing pressure. Low landings since 2011 are also one of the limitations of the recent stock assessments because they result in limited fishery-dependent sample information to feed into the stock assessment.

This proposed action would change the review and implementation schedule for setting Pacific mackerel harvest specifications as well as the stock assessment cycle, allowing NMFS to implement 2 years of catch specifications with a single notice and comment rulemaking. The Council would also review the Pacific mackerel biomass estimates every 2 years. Reviewing biomass estimates and implementing catch specifications for 2 years at a time instead of 1 would allow NMFS and the Council to use available time and resources in a more efficient manner, while still preserving the conservation and management goals of the FMP, and using the best available science. If this proposal is approved, NMFS would set biennial specifications from the 2017 fishing season forward.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The small entities that would be affected by the proposed action are the vessels that harvest Pacific mackerel as part of the West Coast CPS finfish fleet and are all considered small businesses under the above size standards. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N. latitude; Point Arena, California) of the fishery. Currently there are 56 vessels permitted in the Federal CPS limited entry fishery off California of which about 25 to 39 vessels have been annually engaged in harvesting Pacific mackerel in recent years (2009–2015). For those vessels that caught Pacific mackerel during that time, the average annual per vessel revenue has been about $1.25 million. The individual vessel revenue for these vessels is well below the threshold level of $11 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner.

This proposed action changes the management schedule for Pacific mackerel to allow 2 years of specifications to be set at one time. The general procedures for setting specifications as described in the CPS FMP (public meetings, periodic reviews of the estimates of stock biomass, tracking catch, etc.) remain unchanged. This action is not expected to have significant direct or indirect socioeconomic impacts because harvest limits and management measures influencing ex-vessel revenue and personal income, such as the general harvest control rules for actively managed species in the CPS FMP remain unchanged by this proposed action. Instead, the proposed action only changes the timing the specifications are set from an annual to biennial process.

Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 28, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.508, add paragraph (e) to read as follows:

§ 660.508 Annual specifications.

* * * * *

(e) Pacific mackerel. Every 2 years the Regional Administrator will determine, and publish in the **Federal Register**, harvest specifications for 2 consecutive fishing seasons for Pacific mackerel.

[FR Doc. 2016–31900 Filed 1–3–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 2
Wednesday, January 4, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Bridger-Teton Resource Advisory Committee (RAC) will meet in Kemmerer, Wyoming and Afton, Wyoming. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/btnf/workingtogether/advisorycommittees*.

DATES: The meeting will be held on January 31, 2017, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Lincoln County Courthouse, 925 Sage Avenue, Suite 301, Kemmerer, Wyoming; and the Lincoln County Branch Office, Conference Room, 421 Jefferson Avenue, Afton, Wyoming. The public is welcome to attend in person or via teleconference. For anyone who would like to attend via teleconference, please visit the Web site listed in the **SUMMARY** section or please contact the person listed under **FOR FURTHER INFORMATION**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Kemmerer Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Adriene Holcomb, Designated Federal Officer, by phone at 307–828–5110, or via email at *aholcomb@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects under Title II of the Act.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Adriene Holcomb, District Ranger, 308 US Highway 189, Kemmerer, Wyoming, 83101; by email to *aholcomb@fs.fed.us,* or via facsimile to 307–828–5135.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: December 22, 2016.

Adriene Holcomb,

District Ranger.

[FR Doc. 2016–31869 Filed 1–3–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Bridger-Teton Resource Advisory Committee (RAC) will meet in Kemmerer, Wyoming and Afton, Wyoming. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/btnf/workingtogether/advisorycommittees*.

DATES: The meeting will be held on January 30, 2017, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Lincoln County Courthouse, 925 Sage Avenue, Suite 301, Kemmerer, Wyoming; and the Lincoln County Branch Office, Conference Room, 421 Jefferson Avenue, Afton, Wyoming. The public is welcome to attend in person or via teleconference. For anyone who would like to attend via teleconference, please visit the Web site listed in the **SUMMARY** section or please contact the person listed under **FOR FURTHER INFORMATION**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Kemmerer Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Adriene Holcomb, Designated Federal Officer, by phone at 307–828–5110, or via email at *aholcomb@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects under Title II of the Act.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Adriene Holcomb, District Ranger, 308 US Highway 189, Kemmerer, Wyoming, 83101; by email to *aholcomb@fs.fed.us,* or via facsimile to 307–828–5135.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: December 22, 2016.

Adriene Holcomb,

District Ranger.

[FR Doc. 2016–31867 Filed 1–3–17; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

[Docket No. 161102999–6999–01]

Privacy Act of 1974, New System of Records

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice of a new Privacy Act system of records: COMMERCE/DEPT–27, Investigation and Threat Management Records.

SUMMARY: The Department of Commerce (Department) is issuing this notice of its intent to establish a new system of records entitled ''COMMERCE/DEPARTMENT–27, Investigation and Threat Management Records.'' This action is being taken to update the Privacy Act notice and Department Notice to Amend All Privacy Act System of Records. We invite the public to comment on the items noted in this publication. This system allows the Department of Commerce to conduct investigations and analyses to identify and/or assess critical threats to the Department's mission, operations, or activities; prevent or mitigate such threats from adversely affecting Department personnel, facilities, property, or assets through strategic and tactical approaches; and collaborate with other national security and law enforcement entities as appropriate.

DATES: To be considered, written comments must be submitted on or before February 3, 2017. Unless comments are received, the new system of records will become effective as proposed on February 13, 2017. If comments are received, the Department will publish a subsequent notice in the **Federal Register** within 10 days after the comment period closes, stating that the current system of records will remain in effect until publication of a final action in the **Federal Register**.

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

Email: MHarman@doc.gov. Include ''Privacy Act COMMERCE/DEPT–27, Investigation and Threat Management Records'' in the subtext of the message.

Fax: (202) 482–4979, marked to the attention of Mr. Michael Harman.

Mail: Mr. Michael Harman, Office of Security, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 1067, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael Harman, as noted in the **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION: This notice announces the Department's proposal for a new system of records being established under the Privacy Act of 1974 for Investigation and Threat Management Records. This new system of records is to account for the collection, maintenance, and use of information in connection with mission critical threats to the Department.

In a notice of proposed rulemaking, which is published separately in today's **Federal Register**, the Department is proposing to exempt records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). The Department is instituting this new system of records in accordance with the Privacy Act of 1974, as amended, Title 5 United States Code (U.S.C.) 552(e)(4) and (11); and Office of Management and Budget (OMB) Circular A–130, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals.

The system will be effective as proposed, on the date in the **DATES** section of this notice, unless comments are received which would require a contrary determination. If comments are received, the Department will publish a subsequent notice in the **Federal Register** within 10 days after the comment period closes, stating that the current system of records will remain in effect until publication of a final action in the **Federal Register**.

COMMERCE/DEPT–27

SYSTEM NAME:

Investigation and Threat Management Records.

SECURITY CLASSIFICATION:

Unclassified, controlled unclassified information, for official use only, law enforcement sensitive, and classified.

SYSTEM LOCATIONS:

Departmental Office of Security, OS, Herbert C. Hoover Building, Washington, DC 20230.

Office of Security, 551 John Carlyle Street, Alexandria, VA 22314.

Office of Security, 100 Bureau Drive, Gaithersburg, MD 20899.

Office of Security, 1315 East-West Highway, Silver Spring, MD 20910.

Office of Security, 325 Broadway St. Boulder, CO 80305.

Office of Security, 4600 Silver Hill Road, Suitland, MD 20746.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system include Department employees, former employees, and prospective employees; political appointees; research associates and guest workers; interns and detailees to the Department; foreign nationals and locally employed staff working for or with Department employees, and are assigned to or salaried by other U.S. government agencies in locations worldwide; employees of contractors used, or which may be used, by the Department; employees, principal Officers, and company information of contractors/businesses retained, or which may be retained by the Department, to include subcontractors; individuals who have access, had access, will require access, or attempt access to any Department owned or leased facility, communications equipment, or information technology system; employees of other U.S. government agencies, foreign officials, or members of the public who visit the Department or have or may have other associations with the Department; family members, dependents, relatives, and individuals with a personal association to Department employees, former employees, and prospective employees; principal Officers and employees of organizations, firms, or institutions which were recipients or beneficiaries, or prospective recipients or beneficiaries, of grants, loans, or loan guarantee programs of the Department; sub-grantees, lessees, licensees or other

persons engaged in business with the Department; and nominees, members, and former members of public advisory committees, boards, trade missions and export councils that may be part of the Department or associated with Department function.

The system also includes current and former employees of the Department and such other persons and entities whose association with the Department relates or may relate to the alleged violations of the Department's policies, rules of conduct, or any other criminal or civil misconduct, which affects the integrity, facilities, information, or assets of or within the Department. The identities of individuals and the files associated with them may be: (1) Received by referral; or (2) Initiated at the discretion of the Investigations and Threat Management Division (''ITMD'') in the conduct of assigned duties, and include all of the categories listed in the preceding paragraph, as well as the following: Employees or contractors of other U.S. government agencies, named and unnamed, who are working with or supporting the investigative or intelligence functions of the ITMD; individuals identified in U.S. visa, border, immigration and naturalization benefit data, including arrival and departure data, that are included in results seeking Department-related individuals; individuals identified by U.S. or foreign information or intelligence reporting that are included in results seeking Department-related individuals; individuals who are: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants; and parties who have been identified by the ITMD or by other agencies, constituent units of the Department, and members of the general public in connection with the authorized functions of the ITMD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories in this system include individual identifying records, which may include some or all of the following: Names and aliases; phone numbers, addresses and other contact information; date and place of birth; Social Security number; driver license, vehicle identification, and license plate numbers; visa, passport, and citizenship records, data, and documents; physical characteristics, sex, gender, and ethnicity; education, employment and military service history; salary and duty station; human resource and personnel data; affiliations; travel history; tax and financial records; credit references and credit records; medical history; records related to drug and alcohol use; biometric data; license and permit records, data, and documents; criminal and arrest records; dates and purpose of visits to foreign countries; names of spouses, relatives, references, affiliations, and personal associates; activities; special access program requests; facility and computer access logs; clearance adjudication and investigation data; and security and suitability materials.

Investigative files may include additional information such as allegations and referrals received and method received; publically and privately obtained internet data and items posted to social networking sites; information from background investigations; incidents involving unauthorized access to classified national security information (''classified''); individual identifying records; facility access logs; information processing use and activity records; classified and unclassified intelligence reports; activities having a potential bearing on the security of Department operations domestic and abroad, to include those involving criminal or foreign intelligence activities; photographic images, videos, audio recordings, CDs, DVDs, tapes; email and text messages; letters, emails, memoranda, notes, forms, and reports; exhibits, evidence, statements, affidavits, and correspondence; subpoena and grand jury information; materials and information on subjects of inquiries or investigations conducted by or on behalf of other Federal agencies; activities other agencies believe may have a bearing on U.S. foreign policy interests; reports of policy, physical, information, or cyber security violations or infractions, and recommendations for remedial actions and mitigation; activities and records related to Department cyber infrastructure, intrusion and network defense; litigants in civil suits and criminal prosecutions of interest to the ITMD; other documentation pertaining to investigative or analytical efforts by the ITMD to identify threats to the Department's personnel, property, facilities, and information; and all other data included in inquiries or investigations into possible illegal activity or violation conducted by the ITMD.

This system also includes investigation case control and management documents that serve as the basis for conducting investigations, such as documents requesting the investigation and documents used in case management control such as case inventories, lead sheets, other tasking documents, and transfer forms; intelligence requirements, analysis, and reporting; operational records; articles, open source data, and other published information on individuals and events of interest to the ITMD.

Records related to the Department's Insider Threat Program regarding the unauthorized disclosure of sensitive and classified information may include all categories mentioned above, and unclassified and classified insider threat inquiries, investigations and activities; counterintelligence complaints, inquiries and investigations; potential threats to Department resources and information assets; incoming referrals; referrals to internal and external partners; indicator data sets from Department bureaus and operating units; analytical thresholds, triggers, and analysis of records; statistical reports; information collected through information technology records, information assurance, enterprise audit, or continuous evaluation; Department component information and reporting about potential insider threats regarding personnel user names and aliases, levels of network access, audit data, logs and information regarding Department electronic devices; all other documents, reports, and correspondence received, generated or maintained in the course of managing insider threat activities and conducting investigations; and other unclassified and classified insider threat requirements per Executive Order 13587.

Other classified and unclassified files which may not be related to investigative functions and may include legal guidance; U.S. and foreign information and intelligence assessments and reporting; particularly sensitive or protected information, including information held by special access programs, intelligence, law enforcement, inspector general, or other sources or programs; vulnerability, risk, and threat information and assessments; Department acquisition and supply chain risk management information; ITMD budgetary and program management files and metrics; training materials; final versions and drafts of regulations, policies, and laws; employee travel schedules and foreign travel briefings; other briefing and debriefing statements; certifications pertaining to qualifications for employment, including but not limited to education, firearms, first aid, and CPR; deputation records; Freedom of Information Act and Privacy Act requests, and congressional inquiries to the Office of Security; executive correspondence; hiring actions; contractual agreements and information; nondisclosure agreements; performance evaluations and disciplinary files;

payroll data; travel authorization and voucher reports; and documentation related to security controls, internal procedures, and policies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1501 *et. seq.*; 28 U.S.C. 533–535; 44 U.S.C. 3101 (Records Management); 5 U.S.C. 301 (Departmental Regulations); 5 U.S.C. 7311 (Suitability, Security, and Conduct); 5 U.S.C. 7531–33 (Adverse Actions, Suspension and Removal, and Effect on Other Statutes); 18 U.S.C. (Crimes and Criminal Procedures); Executive Order 10450 (Security Requirements for Government Employment); Executive Order 13526 and its predecessor orders (Classified National Security Information); Executive Order 12968 (Access to Classified Information); HSPD–12, 8/27/04 (Homeland Security Presidential Directive); Executive Order 13356, 8/27/04 (Strengthening the Sharing of Terrorism Information to Protect Americans); Executive Order 13587 (Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information); Public Law 108–458 (Intelligence Reform and Terrorism Prevention Act of 2004); Intelligence Authorization Act for FY 2010, Public Law 111–259; Title 50 U.S.C. 402a, Coordination of Counterintelligence Activities; Executive Order 12829 (National Industrial Security Program); Committee for National Security System Directive 505 (Supply Chain Risk Management); Presidential Memorandum National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs.

PURPOSES:

This system is used by authorized personnel to maintain records that reflect and support the ITMD mission, including various law enforcement and intelligence functions related to identifying, assessing, and/or managing the Department's mission critical security threats. Threats to the Department's mission include those posed by influential criminal activity; foreign intelligence and security services and non-state actors; terrorism; and extremist groups or unstable persons. Threats also include significant events that may require the Department to take emergency action, such as geopolitical crises, natural disasters, and pandemics. This system will: manage all matters relating to the storage, facilitation and enabling of documentation of activities associated with proactive and reactive assessments, complaints, inquiries, and investigations; process and house information and intelligence; identify risks, vulnerabilities, and threats to Department and information assets and activities; and track referrals of potential interest to internal and external partners. It will provide a basis for the development and recommendation of solutions to deter, detect, and/or mitigate potential risks, vulnerabilities, and threats identified; provide statistical reports of ITMD actions; and meet other reporting requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed, as a routine use, to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

6. A record in this system of records which contains medical information may be disclosed, as a routine use, to the medical advisor of any individual submitting a request for access to the record under the Act and 15 CFR part 4, subpart b, if, in the sole judgment of the Department, disclosure could have an adverse effect upon the individual, under the provision of 5 U.S.C. 552a(f)(3) and implementing regulations at 15 CFR 4.26.

7. A record in this system of records may be disclosed, as a routine use, to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record in this system of records may be disclosed, as a routine use, to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

9. A record in this system of records may be disclosed, as a routine use, to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

10. A record in this system may be transferred, as a routine use, to the Office of Personnel Management: For personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

11. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services Administration (GSA), or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations

governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Department) directive. Such disclosure shall not be used to make determinations about individuals.

12. A record in this system of records may be disclosed to appropriate agencies, entities and persons when: (1) It is suspected or determined that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or whether systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and to prevent, minimize, or remedy such harm.

13. A record in this system of records may be disclosed to any other agency or department of the Federal Government pursuant to statutory intelligence responsibilities.

14. A record in this system of records may be disclosed to any Federal, state, municipal, foreign or international law enforcement or other relevant agency or organization for law enforcement or counterterrorism purposes: threat alerts and analyses, protective intelligence and counterintelligence information, information relevant for screening purposes, and other law enforcement and terrorism-related information as needed by appropriate agencies of the Federal government, states, or municipalities, or foreign or international governments or agencies.

15. A record in this system of records may be disclosed to any Federal agency following a response to its subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

16. A record from this system of records may be disclosed, as a routine use, to representatives of the Department of Justice (DOJ) or of any other agency that is responsible for representing Department interests in connection with judicial, administrative or other proceedings. This includes circumstances in which (1) the ITMD; (2) any employee of the ITMD in his or her official capacity; (3) any employee of the ITMD in his or her individual capacity, where DOJ has agreed to represent or is considering a request to represent the employee; or (4) the United States or any of its components, is a party to pending or potential litigation or has an interest in such litigation; in which the Department or the ITMD is likely to be affected by the litigation, or in which the Department or the ITMD determines that the use of such records by the DOJ is relevant and necessary to the litigation; provided, however, that in each case, the Department or the ITMD determines that disclosure of records to the DOJ or representative is a use of the information that is compatible with the purpose for which the records were collected.

17. Records may also be disclosed to representatives of DOJ and other U.S. Government entities, to the extent necessary, to obtain their advice on any matter relevant to an ITMD investigation.

18. A record in this system of records may be disclosed, as a routine use, to any source from which additional information is requested, either private or governmental, to the extent necessary to solicit information relevant to any investigation or inquiry.

19. A record in this system of records may be disclosed, as a routine use, to representatives of the Office of Personnel Management, the Office of Special Counsel, the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, the Office of Government Ethics, and other Federal agencies in connection with their efforts to carry out their responsibilities to conduct examinations, investigations, and/or settlement efforts, in connection with administrative grievances, complaints, claims, or appeals filed by an employee, and such other functions promulgated in 5 U.S.C. 1205–06.

20. A record in this system of records may be disclosed, as a routine use, to the Departments of the Treasury and Justice in circumstances in which ITMD seeks to obtain, or has in fact obtained, an ex parte court order to obtain tax return information from the Internal Revenue Service.

21. A record in this system of records may be disclosed, as a routine use, to appropriate Congressional Committees in furtherance of their respective oversight functions.

22. A record in this system of records may be disclosed, as a routine use, to student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for the Department of Commerce and/or its agencies, as authorized by law, as needed to perform their assigned Agency functions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are on paper and/or in digital or other electronic form. Paper records are stored in secure rooms and storage cabinets or safes, and electronic records are stored as electronic/digital media and stored in secure file-servers within controlled environments. Both paper and electronic/digital records are accessed only by authorized personnel.

RETRIEVABILITY:

Electronic searches may be performed by search criteria that include case numbers, names of individuals or organizations, Department-assigned identifier, and other key word search variations. Paper records are retrieved by indices cross-referenced to file numbers or other identifiers.

SAFEGUARDS:

Paper records are kept in locked cabinets located in secure rooms in guarded buildings, and used only by authorized screened personnel. Access to computerized files is password-protected and under the direct supervision of the system manager and is available only within the secure, access controlled rooms by authorized personnel.

RETENTION AND DISPOSAL:

Retention of the records varies depending upon the specific kind of record involved. The records are retired or destroyed in accordance with current published records schedules of the Department of Commerce and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

The ITMD and Departmental Classified System Owners, depending on type of record, located at the Herbert C. Hoover Building, Washington, DC 20230.

NOTIFICATION PROCEDURE:

An individual requesting notification of existence of records on himself or herself should send a signed, written inquiry to the Deputy Chief FOIA Officer and Department Privacy Act Officer, Room 52010, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

RECORD ACCESS PROCEDURES:

An individual requesting access to records on himself or herself should send a signed, written inquiry to the same address as stated in the Notification Procedure section above. The request letter should be clearly marked, ''PRIVACY ACT REQUEST.'' The written inquiry must be signed and notarized or submitted with certification of identity under penalty of perjury. Requesters should specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request inquiry to the same address as stated in the Notification Procedure section above. Requesters should reasonably identify the records, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. The Department's rules for access, for contesting contents, and for appealing initial determination by the individual concerned appear in 15 CFR part 4, Appendix B.

RECORD SOURCE CATEGORIES:

Subject individuals; other Department of Commerce operating units; OPM, FBI and other Federal, state and local agencies; individuals and organizations that have pertinent knowledge about the subject; and those authorized by the individual to furnish information.

These records may contain information obtained from the individual; persons having knowledge of the individual; persons having knowledge of incidents or other matters of investigative interest to the Department; other U.S. law enforcement agencies and court systems; pertinent records of other Federal, state, or local agencies or foreign governments; pertinent records of private firms or organizations; the intelligence community; and other public sources. The records also contain information obtained from interviews, review of records, and other authorized investigative techniques.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), all information about an individual in the record which meets the criteria stated in 5 U.S.C. 552a(j)(2) are exempted from the notice, access and contest requirements of the agency regulations and from all parts of 5 U.S.C. 552a except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). Pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) on condition that the 5 U.S.C. 552a(j)(2) exemption is held to be invalid, all investigatory material in the record which meets the criteria stated in 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent disclosure of classified information as required by Executive Order 13526, to assure the protection of the President, to prevent subjects of investigation from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of information, and to avoid endangering these sources and law enforcement personnel.

Michael J. Toland,

Department of Commerce, Deputy Chief FOIA Officer, Department Privacy Act Officer.

[FR Doc. 2016–31315 Filed 12–30–16; 4:15 pm]

BILLING CODE 3510–BX–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Partial Rescission of Countervailing Duty Administrative Review; 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 countervailing duty (CVD) order on certain pasta from Italy, in part, for the period of review (POR) January 1, 2015, through December 31, 2015, based on the timely withdrawal of requests for review by seven companies; the administrative review continues for Liguori Pastificio dal 1820 S.p.A. (Liguori).

DATES: Effective January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2016, the Department published the notice of opportunity to request an administrative review of the CVD order on certain pasta from Italy for the POR January 1, 2015, through December 31, 2015.[1] On July 29, 2016, Pastificio Zaffiri S.r.l. (Zaffiri), Pastificio Andalini, S.p.A. (Andalini), Premiato Pastificio Afeltra S.r.l. (Afeltra), La Fabbrica della Pasta di Gagnano S.A.S. di Antonio Moccia (La Fabbrica), Pastifico Labor S.R.L. (Labor), and GR.A.M.M. S.R.L. (GR.A.M.M.) each requested that the Department conduct an administrative review of their exports of subject merchandise.[2] On August 1, 2016, Liguori and Tesa SrL (Tesa) also requested that the Department conduct an administrative review of their exports of subject merchandise.[3] Pursuant to the requests received, and in accordance with 19 CFR 351.213(b), the Department initiated an administrative review of GR.A.M.M., La Fabbrica, Liguori, Andalini,, Labor, Zaffiri, Afeltra, and Tesa.[4]

On November 7, 2016, Tesa timely withdrew its request for administrative review.[5] On December 12, 2016, La Fabbrica, GR.A.M.M., Labor, Afeltra, Zaffiri, and Andalini timely withdrew their requests for an administrative review.[6]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 43584 (July 5, 2016).

[2] *See* letter from Zaffiri, re: ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Pastificio Zaffiri S.r.l.,'' dated July 29, 2016; *see also* letter from Andalini, re: ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Pastificio Andalini, S.p.A.,'' dated July 29, 2016; *see also* letter from Afeltra, re: ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Premiato Pastificio Afeltra S.r.l.,'' dated July 29, 2016; *see also* letter from La Fabbrica, re: ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by La Fabbrica della Pasta di Gagnano S.A.S.,'' dated July 29, 2016; *see also* letter from Labor, re: ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by Labor S.R.L.,'' dated July 29, 2016; *see also* letter from GR.A.M.M., re: ''Certain Pasta from Italy, C–475–819; Request for Administrative Review by GR.A.M.M. S.R.L.,'' dated July 29, 2016.

[3] *See* letter from Liguori, re: Certain Pasta from Italy: Countervailing Duty Administrative Review Request,'' dated August 1, 2016; *see also* letter from Tesa, re: ''Pasta from Italy; Request for Administrative Review,'' dated August 1, 2016.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720 (September 12, 2016).

[5] *See* letter from Tesa, ''Pasta from Italy: Withdrawal of request for administrative review,'' dated November 7, 2016.

[6] *See* letter from La Fabbrica della Pasta di Gragnano S.A.S., re: ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by La Fabbrica della Pasta

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, requests for review were withdrawn, and parties withdrew their requests within 90 days of the publication date of the notice of initiation. Therefore, in accordance with 1 9 CFR 351.213(d)(1), we are rescinding this review with respect to Tesa, La Fabbrica, GR.A.M.M., Labor, Afeltra, Zaffiri, and Andalini. The administrative review will continue with respect to Liguori.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of certain pasta from Italy. For the companies for which this review is rescinded, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing 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 15 days after the date of publication of this notice in the **Federal Register**.

Notifications

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an 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 terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(l) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 35l.213(d)(4).

Dated: December 28, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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di Gragnano S.A.S.,'' dated December 12, 2016; *see also* letter from GR.A.M.M. Srl, re: Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by GR.A.MM. Srl,'' dated December 12, 2016; *see also* letter from Labor Srl, re: ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Labor Srl,'' dated December 12, 2016; *see also* letter from Premiato Pastificio Afeltra S.r.l., re: ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Premiato Pastificio Afeltra S.rl.,'' dated December 12, 2016; *see also* letter from Pastificio Zaffiri S.r.l., re: ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Pastificio Zaffiri S.r.l..,'' dated December 12, 2016; see also letter from Pastifico Andalini, S.p.A., re: ''Certain Pasta from Italy, C–475–819; Withdrawal of Request for Administrative Review by Pastificio Andalini, S.p.A.,'' dated December 12, 2016.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–873]

Certain Cold-Rolled Steel Flat Products From Japan: Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') has initiated a changed circumstances review of, and is preliminarily revoking, in part, the antidumping duty (''AD'') order on certain cold-rolled steel flat products from Japan with respect to certain light gage cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM A424 Type 1. The Department invites interested parties to comment on these preliminary results.

DATES: Effective January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3434.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2016, the Department published an AD order on certain cold-rolled steel flat products from Japan.[1]

On November 14, 2016, members of the domestic cold-rolled steel industry, ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation (collectively, ''domestic producers'' or ''Petitioners'' [2]), requested that the Department conduct a changed circumstances review, to revoke, in part, the AD order on certain cold-rolled steel flat products from Japan with respect to certain light gage cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM A424 Type 1. We did not receive comments from any other party.

Scope of the Order

The products covered by this order are certain cold-rolled (coldreduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

[1] *See Certain Cold-Rolled Steel Flat Products from Japan and the People's Republic of China: Antidumping Duty Orders,* 81 FR 45956 (July 14, 2016).

[2] Each of these domestic producers was a petitioner in the investigation on cold-rolled steel flat products from Japan. *See Certain Cold-Rolled Steel Flat Products from Japan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 81 FR 11747, 11748 n. 10 (March 7, 2016).

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, motor lamination steels, Advanced High Strength Steels (''AHSS''), and Ultra High Strength Steels (''UHSS''). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AI–ISS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Ball bearing steels; [3]
- Tool steels; [4]
- Silico-manganese steel; [5]
- Grain-oriented electrical steels (''GOES'') as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.[6]
- Non-Oriented Electrical Steels (''NOES''), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[7]

Also excluded from the scope of this order is ultra-tempered automotive steel, which is hardened, tempered, surface polished, and meets the following specifications:

- Thickness: less than or equal to 1.0 mm;
- Width: less than or equal to 330 mm;
- Chemical composition:

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	Less than or equal to 0.03	Less than or equal to 0.006.

- Physical properties:

Width less than or equal to 150mm.	Flatness of less than 0.2% of nominal strip width.
Width of 150 to 330mm.	Flatness of less than 5 mm of nominal strip width.

- *Microstructure:* Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite;
- *Surface roughness:* Less than or equal to 0.80 μm Rz;
- *Non-metallic inclusion:*
  - Sulfide inclusion less than or equal to 0.04% (area percentage);
  - Oxide inclusion less than or equal to 0.05% (area percentage); and
- The mill test certificate must demonstrate that the steel is proprietary grade ''PK'' and specify the following:
  - The exact tensile strength, which must be greater than or equal to

[3] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[4] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[5] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[6] *See Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (July 22, 2014) (''*Grain-Oriented Electrical Steel from Germany, Japan, and Poland*''). This determination defines grain-oriented electrical steel as ''a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.''

[7] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (December 3, 2014) (''*Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*''). The orders define NOES as ''cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.''

1600 N/mm²;
- The exact hardness, which must be greater than or equal to 465 Vickers hardness number;
- The exact elongation, which must be between 2.5% and 9.5%; and
- Certified as having residual compressive stress within a range of 100 to 400 N/mm².

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and CBP purposes only. The written description of the scope of the order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act''), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, a final affirmative determination that resulted in an AD order which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.222(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

At the request of the domestic industry, and in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(b), the Department is initiating a changed circumstances review of certain cold-rolled steel flat products from Japan to determine whether partial revocation of the antidumping duty order is warranted with respect to certain light gage cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM A424 Type 1. In accordance with section 751(b) of the Act and 19 CFR 351.221(c)(3), we have determined that expedited action is warranted because the record contains information necessary to make a preliminary finding.

The five domestic producers named above assert that they account for ''substantially all'' of the cold-rolled steel production in the United States. Because there is no record information that contradicts this claim, in accordance with section 751(b) of the Act and 19 CFR 351.222(g)(1)(i), we find that Petitioners comprise substantially all of the production of the domestic like product.[8]

Petitioners have expressed a lack of interest in the order, in part, with respect to certain light gage cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM A424 Type 1.[9] Because this changed circumstances request was filed less than 24 months after the date of publication of notice of the final determination in an investigation, pursuant to 19 CFR 351.216(c), the Department must determine whether good cause exists. We find that the Petitioners' affirmative statement of no interest in the order with respect to certain light gage cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM A424 Type 1 constitutes good cause for the conduct of this review. Based on the expression of no interest by Petitioners and in the absence of any objection by any other interested parties, we have preliminarily determined that substantially all[10] of the domestic industry of the like product has no interest in the continued application of the antidumping duty order on certain cold-rolled steel flat products to the merchandise that is subject to this request. Accordingly, we are notifying the public of our intent to revoke, in part, the antidumping duty order as it relates to imports of certain light gage cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM A424 Type 1. Therefore, we intend to change the scope of the order on cold-rolled steel flat products from Japan to include the following exclusion:[11]

Also excluded from the scope of this order is certain cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM 424 Type 1 and having the following characteristics:

—continuous annealed cold-reduced steel in coils with a thickness of between 0.30 mm and 0.36 mm, that is in in widths either from 875 mm to 940 mm or from 1,168 to 1,232 mm;
—a chemical composition, by weight, of:
—not more than 0.004% carbon;
—not more than 0.010% aluminum;
—0.006%–0.010% nitrogen
—0.012%–0.030% boron
—0.010%–0.025% oxygen
—less than 0.002% of titanium;
—less than 0.002% by weight of vanadium;
—less than 0.002% by weight of niobium,
—less than 0.002% by weight of antimony;
—a yield strength of from 179.3 MPa to 344.7 MPa;
—a tensile strength of from 303.7 MPa to 413.7 MPa,
—a percent of elongation of from 28% to 46% on a standard ASTM sample with a 5.08 mm gauge length;
—a product shape of flat after annealing, with flat defined as less than or equal to 1 I unit with no coil set. As set forth, in ASTM A568, Appendix X5 (alternate methods for expressing flatness).[12]

[8] *See* Letter from the Domestic Industry, ''Certain Cold-Rolled Steel Flat Products from Japan—Changed Circumstances Review and Parital Revocation Request,'' dated November 14, 2016 at page 5.

[9] Id. at page 4.

[10] In its administrative practice, the Department has interpreted ''substantially all'' to mean at least 85 percent of the total production of the domestic like product covered by the order. *See, e.g., Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634, 27635 (May 12, 2011).

[11] For a full description of the scope, *see* Appendix I.

[12] The Department intends to adopt the exclusionary language included in the proposed amended scope that Petitioners submitted on December 13, 2016. *See* Letter from the Domestic Industry, ''Certain Cold-Rolled Steel Flat Products from Japan—Changed Circumstances Review and Partial Revocation Request—Proposed Amended Scope Language,'' dated December 13, 2016 at Attachment.

Public Comment

Interested parties are invited to provide comments to comment on these preliminary results. Written comments may be submitted to the Department no later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, limited to issues raised in such comments, may be filed with the Department no later than 10 days after the comments are filed. All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (''ACCESS'').[13] An electronically filed document must be received successfully in its entirety by ACCESS, by 5 p.m. Eastern Time on the due dates set forth in this notice.

In accordance with 19 CFR 351.216(e), the Department intends to issue the final results of this changed circumstance review within 270 days after the date on which this review was initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review.

If final revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond.[14] The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review and notice are in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 351.221(b)(1) and (4), and 351.222(g).

Dated: December 27, 2016.

Paul Piquado

Assistant Secretary for Enforcement and Compliance.

Appendix I

The products covered by this order are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, motor lamination steels, Advanced High Strength Steels (''AHSS''), and Ultra High Strength Steels (''UHSS''). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Ball bearing steels; [1]
- Tool steels; [2]
- Silico-manganese steel; [3]
- Grain-oriented electrical steel (''GOES'') as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland.*[4]
- Non-Oriented Electrical Steels (''NOES''), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China,*

[13] *See,* generally, 19 CFR 351.303.

[14] *See* 19 CFR 351.22(g)(4).

[1] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[2] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[3] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[4] *See Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (Dep't Commerce July 22, 2014) (''*Grain-Oriented Electrical Steel from Germany, Japan, and Poland*''). This determination defines grain-oriented electrical steel as ''a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.''

Germany, Japan, the Republic of Korea, Sweden, and Taiwan.[5]

Also excluded from the scope of this order is ultra-tempered automotive steel, which is hardened, tempered, surface polished, and meets the following specifications:

- *Thickness:* less than or equal to 1.0 mm;
- *Width:* less than or equal to 330 mm;
- *Chemical composition:*

Weight %	0.90–1.05	0.15–0.35	0.30–0.50	Less than or equal to 0.03	Less than or equal to 0.006.

- *Physical properties:*

Width less than or equal to 150mm.	Flatness of less than 0.2% of nominal strip width.
Width of 150 to 330mm.	Flatness of less than 5 mm of nominal strip width.

- *Microstructure:* Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite;
- *Surface roughness:* less than or equal to 0.80 to μm Rz;
- *Non-metallic inclusion:*
  - Sulfide inclusion less than or equal to 0.04% (area percentage)
  - Oxide inclusion less than or equal to 0.05% (area percentage); and
- The mill test certificate must demonstrate that the steel is proprietary grade ''PK'' and specify the following:
  - The exact tensile strength, which must be greater than or equal to 1600 N/mm^2;
- The exact hardness, which must be greater than or equal to 465 Vickers hardness number;
- The exact elongation, which must be between 2.5% and 9.5%; and
- Certified as having residual compressive stress within a range of 100 to 400 N/mm^2.

Also excluded from the scope of this order is certain cold-rolled flat-rolled steel for porcelain enameling meeting the requirements of ASTM A424 Type 1 and having each of the following characteristics:

- Continuous annealed cold-reduced steel in coils with a thickness of between 0.30 mm and 0.36 mm that is in widths either from 875 mm to 940 mm or from 1,168 to 1,232 mm;
- a chemical composition, by weight, of:
  - not more than 0.004% carbon;
  - not more than 0.010% aluminum;
  - 0.006%–0.010% nitrogen
  - 0.012%–0.030% boron
  - 0.010%–0.025% oxygen
  - less than 0.002% of titanium;
  - less than 0.002% by weight of vanadium;
  - less than 0.002% by weight of niobium,
  - less than 0.002% by weight of antimony;
- a yield strength of from 179.3 MPa to 344.7 MPa;
- a tensile strength of from 303.7 MPa to 413.7 MPa;
- a percent of elongation of from 28% to 46% on a standard ASTM sample with a 5.08 mm gauge length;
- a product shape of flat after annealing, with flat defined as less than or equal to 1 I unit with no coil set as set forth in ASTM A568, Appendix X5 (alternate methods for expressing flatness).

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000. The HTSUS subheadings above are provided for convenience and CBP purposes only. The written description of the scope of the order is dispositive.

[FR Doc. 2016–31890 Filed 1–3–17; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (Dep't Commerce Dec. 3, 2014) (''*Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*''). The orders define NOES as ''cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.''

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF094

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Notice of Intent To Prepare an Environmental Impact Statement; Scoping Process; Request for Comments

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

ACTION: Notice of intent to prepare a draft environmental impact statement and initiate scoping process; request for comments.

SUMMARY: The New England Fishery Management Council announces its intent to prepare, in cooperation with NMFS, a draft environmental impact statement consistent with the National Environmental Policy Act. A draft environmental impact statement may be necessary to provide analytic support for Amendment 5 to the Northeast Skate Complex Fishery Management Plan. This notice alerts the interested public of the scoping process for a potential draft environmental impact statement and outlines opportunity for public participation in that process.

DATES: Written and electronic scoping comments must be received on or before March 6, 2017.

ADDRESSES: Written scoping comments on Amendment 5 may be sent by any of the following methods:

- *Email to the following address: comments@nefmc.org;*
- *Mail to* Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; or
- *Fax to* (978) 465–3116.

Requests for copies of the Amendment 5 scoping document and

other information should be directed to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492.

The scoping document is accessible electronically via the Internet at *http://www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council, working through its public participatory committee and meeting processes, anticipates the development of an amendment that may require an environmental impact statement (EIS) to meet applicable criteria in the Council on Environmental Quality regulations and guidance for implementing the National Environmental Policy Act (NEPA). Amendment 5 will consider limited access to the skate (bait and non-bait) fishery.

The Northeast Skate Complex is comprised of seven species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate), managed as a single unit along the east coast from Maine to Cape Hatteras, NC. The skate bait fishery primarily targets little skate, with a small component of winter skate catch. The non-bait fishery, including the wing fishery, primarily targets winter skate.

Following the first skate stock assessment in 1999, the Northeast Skate Complex Fishery Management Plan was adopted in 2003. Amendment 3 established an annual catch limit and annual catch target for the skate complex, total allowable landings for the skate bait and non-bait fisheries, seasonal quotas for the bait fishery, new possession limits, and in-season possession limit triggers.

The skate fishery is an open access fishery—any vessel may join or leave the fishery at any time. Skate fishermen are concerned that increasingly strict regulations in other fisheries—particularly in the Northeast Multispecies (groundfish) fishery where several stocks are overfished and subject to strict catch restrictions—might cause these fishermen to switch their fishing effort onto skates. An increase in effort in the skate fishery could cause the fishery to harvest its catch limit in a shorter time period, trigger reduced skate trip limits, or have other negative economic impacts on current participants since developing skate markets could be negatively impacted by a flood of product.

A control date for the bait fishery was established on July 30, 2009 (74 FR 37977). A control date for the non-bait fishery was established on March 31, 2014 (79 FR 18002). The control dates may be used as a reference date for future management measures related to such rulemaking.

The Council has initiated the development of this amendment to address three issues:

- Limited access qualification criteria that would determine whether vessels may target skate. These criteria may differ by stock or management area and may treat older history differently than newer history;
- Limited access permit conditions (transfers, ownership caps, 'history' permits, etc.); and
- Permit categories and associated measures.

The amendment's objective would be to establish qualification criteria for skate (bait and non-bait ''wing'') fishing permits and possibly different qualification criteria or catch limits for each fishery, considering how they operate differently. For example, in the wing fishery, it may be desirable to have different permit tiers that distinguish between skate vessels that currently target skate, historically targeted, and/or vessels that catch and land small quantities. Qualification criteria might include several factors such as, but not limited to, the time period vessels have participated in the fishery (possibly using the control dates established for this fishery), historic levels of landings, and dependency on the fishery.

The Council may consider limiting access to the skate (bait and non-bait) fishery in a manner that may affect individual permit holder access to skates depending on the qualification criteria and other permit conditions developed. Based on individual fishing history, a vessel that has targeted skate may be distinguished differently from a vessel that caught and landed skates while fishing for other species. Landing limits for qualifiers and non-qualifiers could therefore be more consistent with the type of fishing that these vessels conduct in order to minimize discarding and economic effects. For example, the bait skate fishery currently requires a letter of authorization, but has substantially larger landing limits than the wing fishery. Some historic participants in the Northeast Skate Complex fisheries also may desire limited access privileges (a catch share program, for example).

Following the scoping period, the Council and its Skate Committee will identify the specific goals and objectives of the amendment and develop alternatives to meet the purpose and need of the action. With input from its committees and the public, the Council would select a range of alternatives to implement limited access in the skate fishery.

Public Comment

All persons affected by or otherwise interested in Northeast skate management are invited to comment on the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or by attending one of the six scoping meetings for this amendment. Scoping consists of identifying the range of actions, alternatives, and impacts to be considered. At this time in the process, the Council believes that the alternatives considered in Amendment 5 should include limited access to the skate fishery. After the scoping process is completed, the Council will begin development of Amendment 5 and, if necessary, will prepare a draft EIS to analyze the impacts of the range of alternatives under consideration. Impacts may be direct, individual, or cumulative.

The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the draft EIS. In addition to soliciting comment on this notice, the public will have the opportunity to comment on the measures and alternatives being considered by the Council through public meetings and public comment periods consistent with NEPA, the Magnuson-Stevens Fishery Conservation and Management Act, and the Administrative Procedure Act. Any amendment developed and approved by the Council would have to be approved and implemented by NMFS.

The Council will take and discuss scoping comments on this amendment at the public meetings listed in Table 1.

TABLE 1—AMENDMENT 5 PUBLIC SCOPING MEETING INFORMATION

Meeting date and time	Meeting location
Portsmouth, NH, Tuesday, January 24, 2017, 5:00 p.m. *(or immediately following the Council Meeting).*	Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801 04101, Telephone: (603) 431–2300.
Via Webinar, Tuesday, January 31, 2017, 6:00–8:00 p.m	Webinar Hearing, Register to participate: *https://global.gotomeeting.com/join/194149773*, Call in info: Toll: +1 (646) 749–3122, Access Code: 194–149–773.
Buzzards Bay, MA, Tuesday, February 7, 2017, 6:00 p.m.–8:00 p.m	Mass Maritime, 101 Academy Drive, Buzzards Bay, MA 02532, Telephone: (508) 830–5000.
Narragnasett, RI, Thursday, February 9, 2017, 6:00 p.m.–8:00 p.m	Graduate School of Oceanography, Coastal Institute Building—Hazard Room, 215 S Ferry Rd, Narragansett, RI 02882, Telephone: (401) 874–6222.
Montauk, NY, Wednesday, February 15, 2017, 6:00 p.m.–8:00 p.m	Montauk Playhouse Community Center Foundation, Inc., 240 Edgemere St., Montauk, New York 11954, Telephone: (631) 668–1124.
Cape May, NJ, Thursday, February 16, 2017, 6:00 p.m.–8:00 p.m	Grand Hotel of Cape May, 1045 Beach Avenue, Cape May, NJ 08204, Telephone: (609) 884–5611.

A scoping document with additional background information is available on the Council's Web site at *http://www.nefmc.org/management-plans/skates* or may be obtained by contacting the Council. Additional information on the scoping meetings can be accessed online *at http://www.nefmc.org/.*

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least five days prior to each meeting date.

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

Dated: December 29, 2016.

Alan D. Risenhoover,

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

[FR Doc. 2016–31864 Filed 1–3–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on Wednesday and Thursday, January 18–19, 2017. Public registration will begin at 8:45 a.m. on each day. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.*

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting will be held in Room M2. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil,* phone: 571–256–9004.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the twelfth meeting of the Government-Industry Advisory Panel with additional meetings possible for February and March. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Final review of tension point information papers; (2) Rewrite FY17 NDAA 2320 and 2321 language; (3) Discuss final report frame work and future collaboration; (4) Comment Adjudication & Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the January 18–19 meeting will be available as requested or at the following site: *https://database.faca.gov/committee/meetings.aspx?cid=2561.* It will also be distributed upon request.

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting

will begin upon publication of this meeting notice and end three business days (January 13) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on January 18–19. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than five (5) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: December 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–31905 Filed 1–3–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2017–2018 Award Year Deadline Dates

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.038, 84.033, and 84.007.

SUMMARY: The Secretary announces the 2017–2018 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the ''campus-based programs'').

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve them in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Electronic Announcements,'' the Department will continue to provide additional information for the individual deadline dates listed in the table under the *Deadline Dates* section of this notice. You will also find the information on the Information for Financial Aid Professionals (IFAP) Web site at *www.ifap.ed.gov.*

Deadline Dates: The following table provides the 2017–2018 award year deadline dates for the submission of applications, reports, waiver requests, and other documents for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or waiver, as appropriate.

2017–2018 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2016–2017 funds and the request for supplemental FWS funds for the 2017–2018 award year.	The Reallocation Form is located on the "Setup" tab of the Fiscal Operations Report and Application to Participate (FISAP) at the eCampus-Based Web site: *https://cbfisap.ed.gov*.. The Reallocation Form must be submitted electronically through the eCampus-Based Web site	August 14, 2017.
2. The 2018–2019 FISAP (reporting 2016–2017 expenditure data and requesting funds for 2018–2019).	The FISAP is located at the eCampus-Based Web site: *https://cbfisap.ed.gov*. The FISAP must be submitted electronically through the eCampus-Based Web site. The FISAP's signature page must be signed by the institution's Chief Executive Officer (CEO), either electronically or on a printed copy with an original signature. If the FISAP signature page is mailed, it must be sent to: FISAP Administrator, 8405 Greensboro Drive, Suite 1020, McLean, VA 22102.	September 29, 2017.
3. The Work Colleges Program Report of 2016–2017 award year expenditures.	The Work Colleges Program Report is located on the "Setup" tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov*. The report must be submitted electronically through the eCampus-Based Web site. It must be signed by the institution's CEO, either electronically or on a printed copy with an original signature. If the Work Colleges Program Report signature page is mailed, it must be submitted by one of the following methods: *Hand deliver to:* U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, ATTN: Work Colleges Coordinator, 830 First Street NE., Room 64F2, Washington, DC 20002; or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453	September 29, 2017.
4. The 2016–2017 Financial Assistance for Students with Intellectual Disabilities Expenditure Report.	The Financial Assistance for Students with Intellectual Disabilities Expenditure Report is located on the "Setup" tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov*. The report must be submitted electronically through the eCampus-Based Web site. It must be signed by the institution's CEO, either electronically or on a printed copy with an original signature. If the Financial Assistance for Students with Intellectual Disabilities Expenditure Report signature page is mailed, it must be submitted by one of the following methods: *Hand deliver to:* U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, ATTN: Comprehensive Transition and Postsecondary Program, 830 First Street NE., Room 64F2, Washington, DC 20002; or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	September 29, 2017.
5. The 2018–2019 FISAP Edit Corrections and Perkins Cash on Hand Update as of October 31, 2017.	The FISAP is located at the eCampus-Based Web site: *https://cbfisap.ed.gov*. The FISAP Edit Corrections and Perkins Cash on Hand Update must be submitted electronically through the eCampus-Based Web site.	December 15, 2017.
6. Request for a waiver of the 2018–2019 award year penalty for the underuse of 2016–2017 award year funds.	The request for a waiver is located in part II, section C of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov*. The request and justification must be submitted electronically through the eCampus-Based Web site.	February 5, 2018.
7. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2018–2019 award year.	The Institutional Application and Agreement for Participation in the Work Colleges Program can be found on the "Setup" tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov*. The application and agreement must be submitted electronically through the eCampus-Based Web site. It must be signed by the institution's CEO, either electronically or on a printed copy with an original signature. If the Institutional Application and Agreement for Participation in the Work Colleges Program signature page is mailed, it must be submitted by one of the following methods:	March 5, 2018.

2017–2018 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
8. Request for a waiver of the FWS Community Service Expenditure Requirement for the 2018–2019 award year.	*Hand deliver to:* U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, ATTN: Work Colleges Coordinator, 830 First Street NE., Room 64F2, Washington, DC 20002; or *Mail to:* The address listed above for hand delivery. However, please use ZIP Code 20202–5453. The FWS Community Service waiver request is located on the ''Setup'' tab of the FISAP at the eCampus-Based Web site: *https://cbfisap.ed.gov.* The request and justification must be submitted electronically through the eCampus-Based Web site.	April 23, 2018.

Notes:
- The deadline for an electronic submission is 11:59:00 p.m. (Washington, DC time) on the applicable deadline date. A transmission must be completed and accepted by 11:59:00 p.m. to meet the deadline.
- A paper document that is sent through the U.S. Postal Service must be postmarked, or you must have a mail receipt stamped by the applicable deadline date.
- A paper document that is delivered by a commercial courier must be received no later than 4:30:00 p.m. (Washington, DC time) on the applicable deadline date.
- The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), or another unusual circumstance has on an institution in meeting a deadline.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit a paper document, if permitted, by mail or by hand delivery (or from a commercial courier), we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A dated shipping label, invoice, or receipt from a commercial courier.

(4) Any other proof of mailing or delivery acceptable to the Secretary.

If you mail a paper document through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from you or a commercial courier between 8:00:00 a.m. and 4:30:00 p.m., Washington, DC time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific ''Electronic Announcements'' posted on the Department's IFAP Web site (*http://ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook, posted on the Department's IFAP Web site.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Program, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 2 CFR part 3485.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Pat Stephenson, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Union Center Plaza, Room 64F2, Washington, DC 20202–5453. Telephone: (202) 377–3782 or via email: *pat.stephenson@ed.gov.*

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.*

Dated: December 29, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–31907 Filed 1–3–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–434]

Application To Export Electric Energy; Southwest Power Pool, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Southwest Power Pool, Inc. (SPP or Applicant) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before February 3, 2017.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On November 14, 2016, DOE received an application from SPP for authority to transmit electric energy from the United States to Canada on an emergency basis for five years using existing international transmission facilities owned by Basin Electric Power Cooperative. SPP is a FERC approved Regional Transmission Organization (RTO).

In its application, SPP states that Basin Electric, a utility currently holding an Export Authorization issued by the Department in EA–64, became a full transmission-owning member of SPP on October 1, 2015. Upon the October 1, 2015 integration of Basin Electric into SPP, SPP began administering transmission service over and assumed functional control of Basin Electric's transmission system, while Basin Electric retains actual ownership and operational control of its transmission facilities. Through Basin Electric's membership in SPP, electricity transmission transactions along Basin Electric's transmission facilities are now governed by SPP's Tariff. The electric energy that SPP proposes to export to Canada would be surplus energy in excess of SPP's load requirements. The existing international transmission facilities to be utilized by SPP have previously been authorized by Presidential permit PP–64 issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning SPP's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–434. An additional copy is to be provided directly to Matthew Harward, Attorney, Southwest Power Pool, Inc., 201 Worthen Drive, Little Rock, AR 72223 and Matthew J. Binette, Victoria M. Lauterbach, and Brett K. White, Wright & Talisman, P.C., 1200 G Street NW., Suite 600, Washington, DC 20005.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC, on December 28, 2016.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–31884 Filed 1–3–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL17–25–000]

Dayton Power and Light Company AES Ohio Generation, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On December 21, 2016, the Commission issued an order in Docket No. EL17–25–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether the Revised Reactive Rate Schedule of Dayton Power and Light Company may be unjust and unreasonable. *Dayton Power and Light Company, et al.,* 157 FERC ¶ 61,231 (2016).

The refund effective date in Docket No. EL17–25–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL17–25–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: December 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31842 Filed 1–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–005]

North American Electric Reliability Corporation; Notice of Filing

Take notice that on November 14, 2016, the North American Electric Reliability Corporation submitted an annual report on Find, Fix, Track and Report and Compliance Exception programs, in accordance with the Federal Energy Regulatory Commission's (Commission) Orders.[1]

Any person desiring to intervene or to protest this filing must file in

[1] *North American Electric Reliability Corp,* 143 FERC ¶ 61,253 (2013), *North American Electric Reliability Corp,* 148 FERC ¶ 61,214 (2014), and *North American Electric Reliability Corp,* Docket No. RC11–6–004, (Nov. 13, 2015) (delegated letter order).

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 11, 2017.

Dated: December 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–31882 Filed 1–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–652–000]

Lightstone Marketing LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lightstone Marketing LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 17, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31843 Filed 1–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–93–001; EC16–94–001.

Applicants: Atlas Power Finance, LLC, Dynegy Inc., Energy Capital Partners III, LLC, GDF Suez Energy North America, Inc.

Description: Compliance Filing of Atlas Power Finance, LLC, et al.

Filed Date: 12/27/16.

Accession Number: 20161227–5158.

Comments Due: 5 p.m. ET 1/10/17.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG17–36–000.

Applicants: Innovative Solar 42, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Innovative Solar 42, LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5229.

Comments Due: 5 p.m. ET 1/13/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1836–009; ER10–1841–009; ER10–1843–009; ER10–1844–009; ER10–1845–009; ER10–1897–009 ER10–1905–009; ER10–1918–009; ER10–1925–009; ER10–1927–009; ER10–1950–009; ER10–1964–009 ER10–1965–009; ER10–1970–009; ER10–1971–033; ER10–1972–009; ER10–1983–009; ER10–1984–009 ER10–1991–009; ER10–2005–009; ER10–2006–010; ER10–2078–010; ER11–26–009; ER11–4462–024 ER12–1660–009; ER12–631–011; ER13–2458–004; ER13–2461–004.

Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Butler Ridge Wind Energy Center, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Mower County, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, Garden Wind, LLC, Hawkeye Power Partners, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, NEPM II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Power Marketing, LLC, Osceola Windpower, LLC, Osceola Windpower

II, LLC, Pheasant Run Wind, LLC, Story Wind, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, White Oak Energy LLC, Windpower Partners 1993, LLC.

Description: Notification of Non-material Change in Status of the NextEra Resource Entities.

Filed Date: 12/23/16.

Accession Number: 20161223–5303.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: ER12–569–014; ER10–1849–013; ER10–1887–013 ER10–1920–015; ER10–1928–015; ER10–1952–013; ER10–1961–013; ER10–1971–032; ER10–2720–015 ER11–2037–013; ER11–4428–015; ER11–4462–023; ER12–1228–015; ER12–1880–014; ER12–2227–013; ER12–895–013; ER13–2474–009; ER13–712–015; ER14–2707–010; ER14–2708–011; ER14–2709–010; ER14–2710–010; ER15–1925–007; ER15–2676–006; ER15–30–008; ER15–58–008; ER16–1440–004; ER16–1672–004; ER16–2190–002; ER16–2453–003.

Applicants: Blackwell Wind, LLC, Brady Interconnection, LLC, Brady Wind, LLC, Breckinridge Wind Project, LLC, Cedar Bluff Wind, LLC, Chaves County Solar, LLC, Cimarron Wind Energy, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Ensign Wind, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Sooner Wind, LLC, Gray County Wind Energy, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, Mammoth Plains Wind Project, LLC, Minco Wind Interconnection Services, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Palo Duro Wind Interconnection Services, LLC, Palo Duro Wind Energy, LLC, Roswell Solar, LLC, Seiling Wind Interconnection Services, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Steele Flats Wind Project, LLC, NEPM II, LLC, NextEra Energy Power Marketing, LLC.

Description: Notification of Non-material Change in Status of the NextEra Resources Entities.

Filed Date: 12/23/16.

Accession Number: 20161223–5352.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: ER17–681–000.

Applicants: Enel Trading North America, Inc.

Description: Baseline eTariff Filing: Enel Baseline Filing to be effective 1/27/2017.

Filed Date: 12/27/16.

Accession Number: 20161227–5058.

Comments Due: 5 p.m. ET 1/17/17.

Docket Numbers: ER17–682–000.

Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Jan 2017 Membership Filing to be effective 12/1/2016.

Filed Date: 12/27/16.

Accession Number: 20161227–5059.

Comments Due: 5 p.m. ET 1/17/17.

Docket Numbers: ER17–683–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 802—Agreement with Montana DOT (Rouse—Oak/Story Mill Project) to be effective 2/27/2017.

Filed Date: 12/27/16.

Accession Number: 20161227–5060.

Comments Due: 5 p.m. ET 1/17/17.

Docket Numbers: ER17–684–000.

Applicants: Arizona Public Service Company.

Description: Notice of Cancellation of Arizona Public Service Company—Rate Schedule No.46.

Filed Date: 12/23/16.

Accession Number: 20161223–5351.

Comments Due: 5 p.m. ET 1/13/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–31880 Filed 1–3–17; 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 corporate filings:

Docket Numbers: EC17–42–000.

Applicants: 96WI 8ME, LLC.

Description: Clarification Letter to December 2, 2016 Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of 96WI 8ME, LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5345.

Comments Due: 5 p.m. ET 12/30/17.

Docket Numbers: EC17–53–000.

Applicants: The Potomac Edison Company.

Description: Application of The Potomac Edison Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act and Request for Limited Waiver of the Part 33 Filing Requirements.

Filed Date: 12/23/16.

Accession Number: 20161223–5335.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: EC17–54–000.

Applicants: West Penn Power Company.

Description: Application of West Penn Power Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act and Request for Limited Waiver of the Part 33 Filing Requirements.

Filed Date: 12/23/16.

Accession Number: 20161223–5336.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: EC17–55–000.

Applicants: Monongahela Power Company.

Description: Application of Monongahela Power Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act and Request for Limited Waiver of the Part 33 Filing Requirements.

Filed Date: 12/23/16.

Accession Number: 20161223–5337.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: EC17–56–000.

Applicants: Metropolitan Edison Company.

Description: Application of Metropolitan Edison Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act and Request for Limited Waiver of the Part 33 Filing Requirements.

Filed Date: 12/23/16.

Accession Number: 20161223–5338.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: EC17–57–000.

Applicants: Pennsylvania Electric Company.

Description: Application of Pennsylvania Electric Company for Authorization Pursuant to Section 203(A)(1)(B) of the Federal Power Act and Request for Limited Waiver of the Part 33 Filing Requirements.

Filed Date: 12/23/16.

Accession Number: 20161223–5339.

Comments Due: 5 p.m. ET 1/13/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2124–016.

Applicants: Spring Canyon Energy LLC.

Description: Triennial Report for the Northwest Region of Spring Canyon Energy LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5331.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10–2125–017.

Applicants: Judith Gap Energy LLC.

Description: Triennial Report for the Northwest Region of Judith Gap Energy LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5330.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10–2128–016.

Applicants: Wolverine Creek Energy LLC.

Description: Triennial Report for the Northwest Region of Wolverine Creek Energy LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5333.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10–2129–012.

Applicants: Grays Harbor Energy LLC.

Description: Triennial Report for the Northwest Region of Grays Harbor Energy LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5343.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10–2132–016.

Applicants: Willow Creek Energy LLC.

Description: Triennial Report for the Northwest Region of Willow Creek Energy LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5329.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10–2135–012.

Applicants: Spindle Hill Energy LLC.

Description: Triennial Report for the Northwest Region of Spindle Hill Energy LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5332.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10–2727–004; ER10–2729–006; ER10–1469–005; ER13–785–004; ER10–1453–005; ER13–713–004; ER10–1459–009; ER10–2728–006; ER10–1451–004; ER10–1474–004; ER10–2687–004; ER10–1467–005; ER10–1478–006; ER10–1473–004; ER10–2688–007; ER10–1468–005; ER10–2689–007.

Applicants: Allegheny Energy Supply Company, LLC, Buchanan Generation, LLC, The Cleveland Electric Illuminating Company, FirstEnergy Generation, LLC, FirstEnergy Generation Mansfield Unit 1 Corp., FirstEnergy Nuclear Generation, LLC, FirstEnergy Solutions Corp., Green Valley Hydro, LLC, Jersey Central Power & Light, Metropolitan Edison Company, Monongahela Power Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, The Potomac Edison Company, The Toledo Edison Company, West Penn Power Company.

Description: Triennial Market Power Update Analysis of FirstEnergy Companies.

Filed Date: 12/23/16.

Accession Number: 20161223–5346.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER10–2764–016.

Applicants: Vantage Wind Energy LLC.

Description: Triennial Report for the Northwest Region of Vantage Wind Energy LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5342.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER16–1720–002.

Applicants: Invenergy Energy Management LLC.

Description: Triennial Report for the Northwest Region of Invenergy Energy Management LLC.

Filed Date: 12/23/16.

Accession Number: 20161223–5341.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER16–2186–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Response to December 12, 2016 Request for Additional Information of Deseret Generation & Transmission Co-operative, Inc.

Filed Date: 12/23/16.

Accession Number: 20161223–5347.

Comments Due: 5 p.m. ET 1/13/17.

Docket Numbers: ER17–679–000.

Applicants: Western Interconnect LLC.

Description: § 205(d) Rate Filing: Commencement Date Revision Filing to be effective 12/28/2016.

Filed Date: 12/27/16.

Accession Number: 20161227–5053.

Comments Due: 5 p.m. ET 1/17/17.

Docket Numbers: ER17–680–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Part 1 of Two-Part Filing of NCPC Rule Revisions for Sub-Hourly Settlement to be effective 3/1/2017.

Filed Date: 12/27/16.

Accession Number: 20161227–5056.

Comments Due: 5 p.m. ET 1/17/17.

Docket Numbers: ER17–680–001.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Tariff Amendment: Part 2 of Two-Part Filing of NCPC Rule Revisions for Sub-Hourly Settlement to be effective 3/31/2017.

Filed Date: 12/27/16.

Accession Number: 20161227–5057.

Comments Due: 5 p.m. ET 1/17/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 27, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–31841 Filed 1–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1801–003: ER10–2370–002; ER10–1805–004; ER10–1808–004.

Applicants: The Connecticut Light and Power Company, NSTAR Electric Company, Public Service Company of New Hampshire, Western Massachusetts Electric Company.

Description: Updated Market Power Analysis for Northeast Region of the Eversource Companies.

Filed Date: 12/27/16.

Accession Number: 20161227–5164.

Comments Due: 5 p.m. ET 2/27/17.

Docket Numbers: ER10–2010–005; ER10–1714–008.

Applicants: PPL Electric Utilities Corporation, LG&E Energy Marketing Inc.

Description: Triennial Market Power Update of the PPL Northeast Companies.

Filed Date: 12/27/16.

Accession Number: 20161227–5161.

Comments Due: 5 p.m. ET 2/27/17.

Docket Numbers: ER10–2607–004; ER10–2626–003.

Applicants: Old Dominion Electric Cooperative, Inc., TEC Trading, Inc.

Description: Updated Market Power Analyses in Northeast Region of the ODEC Entities.

Filed Date: 12/23/16.

Accession Number: 20161223–5355.

Comments Due: 5 p.m. ET 2/21/17.

Docket Numbers: ER11–47–007; ER10–2981–007; ER11–41–007; ER11–46–010; ER12–1540–005; ER12–1541–005; ER12–1542–005; ER12–1544–005; ER12–2343–005; ER13–1896–011; ER14–2475–004; ER14–2476–004; ER14–2477–004; ER14–594–009; ER16–323–003.

Applicants: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Wheeling Power Company, AEP Texas Central Company, AEP Texas North Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Ohio Power Company, AEP Energy Partners, Inc., AEP Retail Energy Partners LLC, AEP Energy, Inc., AEP Generation Resources Inc., Ohio Valley Electric Corporation.

Description: Updated Market Power Analysis in the PJM balancing area authority of the AEP MBR Companies.

Filed Date: 12/27/16.

Accession Number: 20161227–5162.

Comments Due: 5 p.m. ET 2/27/17.

Docket Numbers: ER17–685–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Queue #Y1–077, First Revised Service Agreement No. 3645 to be effective 11/28/2016.

Filed Date: 12/28/16.

Accession Number: 20161228–5081.

Comments Due: 5 p.m. ET 1/18/17.

Docket Numbers: ER17–686–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–12–28_MISO Transmission Owners Agreement and Bylaw Revisions to be effective 2/27/2017.

Filed Date: 12/28/16.

Accession Number: 20161228–5083.

Comments Due: 5 p.m. ET 1/18/17.

Docket Numbers: ER17–687–000.

Applicants: NRG Wholesale Generation LP.

Description: Tariff Cancellation: Notice of Termination for Rate Schedule FERC No. 5 to be effective 7/12/2016.

Filed Date: 12/28/16.

Accession Number: 20161228–5091.

Comments Due: 5 p.m. ET 1/18/17.

Docket Numbers: ER17–688–000.

Applicants: NRG Wholesale Generation LP.

Description: Tariff Cancellation: Notice of Termination for FERC Electric Tariff, Original Volume No. 7 to be effective 3/1/2016.

Filed Date: 12/28/16.

Accession Number: 20161228–5092.

Comments Due: 5 p.m. ET 1/18/17.

Docket Numbers: ER17–689–000.

Applicants: NRG Wholesale Generation LP.

Description: Tariff Cancellation: Notice of Termination for Rate Schedule FERC No. 8 to be effective 2/2/2016.

Filed Date: 12/28/16.

Accession Number: 20161228–5093.

Comments Due: 5 p.m. ET 1/18/17.

Docket Numbers: ER17–690–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–12–28_SA 2983 Entergy Louisiana-Entergy Louisiana GIA (J396) to be effective 12/29/2016.

Filed Date: 12/28/16.

Accession Number: 20161228–5102.

Comments Due: 5 p.m. ET 1/18/17.

Docket Numbers: ER17–691–000.

Applicants: Midcontinent Independent System Operator, Inc., ITC Midwest LLC.

Description: § 205(d) Rate Filing: 2016–12–28_SA 2883 ITC Midwest-MidAmerican 1st Rev FSA (H009) to be effective 1/1/2017.

Filed Date: 12/28/16.

Accession Number: 20161228–5104.

Comments Due: 5 p.m. ET 1/18/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–31881 Filed 1–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC17–1–000]

Commission Information Collection Activities; Comment Request for Generic Clearance for the Collection of Qualitative Feedback on Commission Service Delivery

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Federal Energy Regulatory Commission (the Commission or FERC) is coordinating the development of the following proposed Generic Information Collection Request (ICR): FERC–153, ''Generic Clearance for the Collection of Qualitative Feedback on Commission Service Delivery'' for approval under the Paperwork Reduction Act (PRA).[1] This notice announces that FERC intends to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection. Previously, the Commission previously published a 60-day notice in the **Federal Register** on October 12, 2016 and received no comments.

DATES: Comments on the collection of information are due by February 3, 2017.

ADDRESSES: Comments filed with OMB, identified by the Docket No. IC17–1–000, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Commission, in Docket No. IC17–1–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact

[1] 44 U.S.C. 3501 *et seq.*

FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: This notice announces that FERC intends to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection. Previously, the Commission previously published a 60-day notice in the **Federal Register** (81 FR 70402, 10/12/2016) and received no comments.

Title: FERC–153, Generic Clearance for the Collection of Qualitative Feedback on Commission Service Delivery.

OMB Control No.: To be determined.

Type of Request: New generic information collection.

Abstract: The proposed information collection provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, we mean data that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. This collection will allow for ongoing, collaborative and actionable communications between FERC and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Commission's services will be unavailable.

The Commission will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- The collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Commission (if released, the Commission must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study.

As a general matter, this information collection will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This information collection is subject to the PRA. The Commission generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information which does not display a valid OMB Control Number. See 5 CFR 1320. OMB authorization for an information collection cannot be for more than three years without renewal.

Type of Respondents/Affected Public: Individuals and households; Businesses or other for-profit and not-for-profit organizations; State, Local, or Tribal government.

Estimate of Annual Burden: [2] The Commission estimates the annual public reporting burden and cost for the information collection as:

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

ESTIMATED ANNUAL BURDEN FOR GENERIC CLEARANCE

	Number of respondents	Number of responses per respondent	Total number of responses	Average burden minutes per response	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
Generic Clearance	15,000	1	15,000	6	[3] 1,500

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–31662 Filed 1–3–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Integrated System Rate Schedule

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Deputy Secretary has approved and placed into effect on an interim basis Rate Order No. SWPA–71, which provides the following Integrated System Non-Federal Transmission Service (NFTS) Rate Schedule: *Rate Schedule NFTS–13A, Wholesale Rates for Non-Federal Transmission Service.*

FOR FURTHER INFORMATION CONTACT: Mr. Marshall Boyken, Senior Vice President, Chief Operating Officer, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6646, *marshall.boyken@swpa.gov,* or facsimile transmission (918) 595–6646.

SUPPLEMENTARY INFORMATION: Pursuant to Delegation Order Nos. 00–037.00A, effective October 25, 2013, and 00–001.00F, effective November 17, 2014, Rate Order No. SWPA–71, is approved and placed into effect on an interim basis for the period January 1, 2017, through September 30, 2017, pursuant to the following rate schedule: *Rate Schedule NFTS–13A, Wholesale Rates for Non-Federal Transmission Service,* which supersedes the existing Rate Schedule NFTS–13, Wholesale Rates for Non-Federal Transmission Service.

Southwestern Power Administration's (Southwestern) Administrator has determined that an additional section within Southwestern's Integrated System NFTS Rate Schedule is necessary to better align Southwestern's rate schedule with standard practices utilized by the Southwest Power Pool, Inc. (SPP) Regional Transmission Organization. The new section 2.3.6 establishes a procedure for determining an Annual Revenue Requirement (ARR) for customers that choose to contract for Network Integration Transmission Service (NITS) on Southwestern's transmission system pursuant to the SPP Open Access Transmission Tariff (OATT).

The NFTS–13 Rate Schedule included a stated rate for NITS that is calculated by dividing Southwestern's monthly revenue requirement, derived from Southwestern's NFTS ARR identified within the Southwestern 2013 Integrated System Power Repayment Studies (PRS), by the net transmission capacity available for NITS. Modifying Southwestern's rate schedule to include an ARR for SPP NITS, rather than applying a stated rate better aligns with standard practices utilized by SPP. Therefore, in place of applying the NITS stated rate for SPP NITS on Southwestern's transmission system, the proposed Section 2.3.6 includes a procedure for determining and updating an SPP NITS ARR, as a portion of Southwestern's NFTS ARR, based on the amount of revenue assumed to be recovered on an annual basis from NITS customers in each approved PRS. If additional customers choose to contract for SPP NITS on Southwestern's transmission system, the new Section 2.3.6 methodology updates the SPP NITS ARR. The title of the NFTS–13 Rate Schedule was changed to NFTS–13A to reflect the addition of Section 2.3.6.

The Southwestern 2013 PRS indicated that rates (total Southwestern NFTS ARR) prescribed by NFTS–13, Wholesale Rates for Non-Federal Transmission Service, as approved in Docket No. EF14–1–000, for the period October 1, 2013, through September 30, 2017, are sufficient to meet repayment criteria and will have no impact on the amortization or status of repayment forecasted in the Southwestern 2013 PRS and will not require rate changes. Revenues based on current rates remain sufficient to meet repayment criteria.

The Southwestern Administrator has followed Title 10, Part 903, Subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions,'' in connection with the rate schedule revisions. The public was advised by notice published in the **Federal Register** (81 FR 75814), November 1, 2016, of the proposed rate schedule change and of the opportunity to provide written comments for a period of 30 days ending December 1, 2016. One customer provided comments during the period of public participation related to the proposed rate schedule change, which consisted of some clarifying questions that Southwestern answered and one comment on phrasing that Southwestern acknowledged.

Information regarding this rate proposal, including studies and other supporting material, and comments received is available for public review in the offices of Southwestern Power Administration, Williams Tower I, One West Third Street, Tulsa, Oklahoma 74103. Following review of Southwestern's proposal within the Department of Energy, I approve Rate Order No. SWPA–71.

[2] 1,500 hours = 90,000 minutes.

Dated: December 23, 2016.

Elizabeth Sherwood-Randall,

Deputy Secretary.

United States of America

Department of Energy

Deputy Secretary

In the matter of: Southwestern Power Administration Integrated System Non-Federal Transmission Service Rate Schedule Rate Order No. SWPA–71

ORDER CONFIRMING, APPROVING AND PLACING REVISED POWER RATE SCHEDULES IN EFFECT ON AN INTERIM BASIS

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00A, the Secretary of Energy delegated to the Administrator of Southwestern the authority to develop power and transmission rates, delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Pursuant to that delegated authority, the Deputy Secretary has issued this interim rate order.

BACKGROUND

In July 2013, Southwestern completed its review of the adequacy of the current rate schedules for the Integrated System and finalized its 2013 Power Repayment Studies (2013 PRS). The studies indicated that the proposed rates would meet cost recovery criteria for the Integrated System, including the identified Non-Federal Transmission Service (NFTS) Annual Revenue Requirement (ARR). The Federal Energy Regulatory Commission (FERC) confirmation and approval of the following Integrated System rate schedules was provided in a FERC order issued in Docket No. EF14–1–000 on January 9, 2014,[1] for the period October 1, 2013, through September 30, 2017:

Rate Schedule P–13, Wholesale Rates for Hydro Peaking Power

Rate Schedule NFTS–13, Wholesale Rates for Point-to-Point and Network Transmission Service

Rate Schedule EE–13, Wholesale Rate for Excess Energy

Based on operations under the approved rate schedules, the Administrator determined that an additional section outlining a new methodology within Southwestern's Integrated System Non-Federal Transmission Service (NFTS–13) Rate Schedule is necessary to better align Southwestern's rate schedule with standard practices utilized by the Southwest Power Pool, Inc. (SPP) Regional Transmission Organization. A new section 2.3.6 is proposed that establishes a procedure for determining an ARR for customers that choose to contract for Network Integration Transmission Service (NITS) on Southwestern's transmission system pursuant to the SPP Open Access Transmission Tariff (OATT).

The new Section 2.3.6 does not change Southwestern's NFTS ARR, as determined in its 2013 PRS, but rather replaces the current stated-rate for SPP NITS with a revenue-requirement based methodology that includes determining the SPP NITS ARR portion of Southwestern's NFTS ARR. Furthermore, the new Section 2.3.6 affects only those customers that choose to contract for SPP NITS on Southwestern's transmission system under the SPP OATT.

The designation of the aforementioned rate schedule has been revised from NFTS–13 to NFTS–13A to reflect that an addition has been made.

Southwestern followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' (Part 903) in connection with the proposed Rate Schedule NFTS-13A. An opportunity for customers and other interested members of the public to review and comment on the proposed rate schedule was announced by notice published in the **Federal Register** November 1, 2016, (81 FR 75814), with written comments due by December 1, 2016. One customer provided comments during the period of public participation related to the proposed rate schedule change, which consisted of some clarifying questions that Southwestern answered and one comment on phrasing that Southwestern acknowledged.

DISCUSSION

The NFTS–13 Rate Schedule includes a stated rate for NITS that is calculated by dividing Southwestern's monthly revenue requirement, derived from Southwestern's NFTS ARR identified within the 2013 PRS, by the net transmission capacity available for NITS. Modifying Southwestern's rate schedule to include an ARR for SPP NITS, rather than applying a stated rate, better aligns with standard practices utilized by SPP. Therefore, in place of applying the NITS stated rate for SPP NITS on Southwestern's transmission system, the new Section 2.3.6 in NFTS–13A includes a procedure for determining and updating an SPP NITS ARR, as a portion of Southwestern's NFTS ARR, based on the amount of revenue assumed to be recovered on an annual basis from NITS customers in each approved PRS. If additional customers choose to contract for SPP NITS on Southwestern's transmission system, the proposed Section 2.3.6 methodology updates the SPP NITS ARR.

COMMENTS AND RESPONSES

Southwestern received comments from one customer during the period of public participation related to the proposed rate schedule change, which consisted of some clarifying questions that Southwestern answered and one comment on phrasing that Southwestern acknowledged. Southwestern made no change to the proposed rate schedule as a result of the questions and comment received. The questions and comment, with Southwestern's responses in underlined text, are detailed below.

Questions:

1. Will NITS for delivery to loads within Southwestern's system only be available under the terms of the SPP OATT? *Yes, for new transmission service. Additionally, as current Southwestern transmission service agreements expire (for grandfathered service or service under Southwestern's OATT), they will not be renewed; so if continued service is desired, it would be under a new SPP OATT agreement.*

If not, under what conditions may a customer elect to take Southwestern NITS? *Per Southwestern's agreement with SPP, which is filed as Attachment AD of the SPP OATT, new Southwestern OATT NITS agreements will not be entered into.*

2. Approximately how many MWs of Southwestern NITS Capacity are currently reserved? *66 MW is currently reserved as NITS under both the Southwestern and SPP OATTs.*

3. Will current Southwestern NITS customers be allowed to renew their Southwestern NITS Agreement(s), or will they transition to SPP NITS? *As current Southwestern transmission service agreements expire (for*

[1] 146 FERC ¶62,016

grandfathered service or service under Southwestern's OATT), they will not be renewed; so if continued service is desired, it would be under a new SPP OATT agreement, per SPP OATT Attachment AD.

4. Do you expect Section 2.3.5. to apply to both SPP NITS and Southwestern NITS? I believe the peak billing demand methodology is different. *Section 2.3.5 applies to Southwestern NITS only. The new Section 2.3.6 applies to SPP NITS only.*

5. My understanding is that SPP bills NITS load on a 12CP basis, whereas, Southwestern bills NITS load on a 1CP basis (per 2.3.5). Is it correct that NITS Transmission Customers on Southwestern's system will pay less for SPP NITS service than for equivalent Southwestern NITS service? *Southwestern NITS customers are billed on a 1 CP basis and SPP NITS customers are billed on 12 CP basis, both in accordance with their respective OATT's.*

As to whether or not SPP NITS will cost less than Southwestern NITS, several factors will have to be assessed to make that determination, including the entities' proportion of load at the time of the monthly CP and the amount of transmission service reserved that was transitioned to SPP NITS (per the proposed Section 2.3.6). Additionally, entities choosing to utilize SPP NITS will be subject to various SPP charges (i.e. Schedule 11) that may add cost to the SPP NITS. The analysis of these costs can only be determined by the particular customer and their unique set of circumstances. Therefore, a statement that conveys certainty of a lower cost for SPP NITS cannot be made.

Comment:

1. There are several general references in the proposed NFTS–13A to Network Integration Transmission Service. In a few instances, the document refers to SPP NITS or Southwestern NITS. I think it would be good to clarify in each instance if we are referring to SPP NITS, Southwestern NITS, or both. *Comment acknowledged. We will review the language and ensure the final rate schedule has clarity between SPP NITS and Southwestern NITS.*

AVAILABILITY OF INFORMATION

Information regarding this rate schedule change is available for public review in the offices of Southwestern Power Administration, Williams Tower I, One West Third Street, Tulsa, Oklahoma 74103.

ADMINISTRATOR'S CERTIFICATION

The revised rate schedule will repay all costs of the Integrated System including amortization of the power investment consistent with the provisions of Department of Energy Order No. RA 6120.2. In accordance with Delegation Order Nos. 00–037.00A, effective October 25, 2013, and 00–001.00F, effective November 17, 2014, and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Integrated System rate schedule is consistent with applicable law and the lowest possible rates consistent with sound business principles.

ENVIRONMENT

The Southwestern NEPA Compliance Officer determined that the currently-approved Integrated System rates fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment. No additional evaluation of the environmental impact of the proposed rate schedule changes was conducted because no change in anticipated revenues was contemplated.

ADMINISTRATIVE PROCEDURES

The Administrative Procedure Act (5 U.S.C. 553(d)) (APA) prescribes that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except (1) a substantive rule that grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. For the reasons stated in the paragraph that follows, the Department of Energy (DOE) finds good cause to waive the 30-day delay in effective date because a 30-day delay would be unnecessary.

In this action, Southwestern updates the method for charging non-Federal transmission customers who choose to contract for SPP NITS on Southwestern's transmission system under the SPP OATT from a stated rate to a revenue-requirement based charge, to better align with standard practices utilized by SPP. Because the NFTS–13A rate schedule change will result in no change in anticipated revenues, it is considered a ''minor rate adjustment'' pursuant to 10 CFR part 903, subpart A, and Southwestern has treated it as such in the rate schedule actions to date. A ''minor rate adjustment'' is defined as a rate adjustment that (1) will produce less than 1 percent change in the annual revenues of the power system; or (2) is for a power system that has either annual sales normally less than 100 million kilowatt hours or an installed capacity of less than 20,000 kilowatts. When consistent with the APA, DOE regulations also provide that the effective date of rate schedules put into effect on an interim basis by the Deputy Secretary may be sooner than 30 days after the Deputy Secretary's decision when making a minor rate adjustment.

Additionally, DOE emphasizes that there were no substantive issues or concerns raised during the public comment period for the NFTS–13A rate schedule action.

ORDER

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective January 1, 2017, the Southwestern Integrated System Rate Schedule NFTS–13A which shall remain in effect on an interim basis through September 30, 2017, or until the FERC confirms and approves the rates on a final basis.

Dated: December 23, 2016.
Elizabeth Sherwood-Randall,
Deputy Secretary.

[FR Doc. 2016–31885 Filed 1–3–17; 8:45 am]

BILLING CODE 6450–01–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 January 27, 2017.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *American Pacific Bancorp, Inc.,* Harrisburg, Illinois; to become a bank holding company by acquiring 67 percent of Main Street Bancshares, Inc., Harrisburg, Illinois, and thereby indirectly acquiring Grand Rivers Community Bank, Grand Chain, Illinois.

Board of Governors of the Federal Reserve System, December 29, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–31913 Filed 1–3–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 18, 2017.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Bryant James Gingrich 2012 Irrevocable Trust, the Bryant James Gingrich 2016 Irrevocable Trust, and Bryant James Gingrich, acting in his capacity as trustee of both trusts,* all of Alva, Oklahoma; *the Chad Wisdom McManus 2012 Irrevocable Trust, the Chad Wisdom McManus 2016 Irrevocable Trust, and Chad Wisdom McManus, acting in his capacity as trustee of both trusts,* all of Enid, Oklahoma; *and the Kelsey Grace Gingrich 2012 Irrevocable Trust, the Kelsey Grace Hunter 2016 Irrevocable Trust, and Kelsey Grace Hunter (née Gingrich), acting in her capacity as trustee of both trusts,* all of Edmond, Oklahoma; to acquire voting shares of Grace Investment Company, Inc., Alva, Oklahoma, and thereby join the existing Peggy J. Wisdom Family Control Group previously approved to control 25 percent or more of the voting shares of Grace Investment Company, Inc. Grace Investment Company, Inc. is the parent holding company of Alva State Bank and Trust Company, Alva, Oklahoma; First National Bank in Okeene, Okeene, Oklahoma; and The First State Bank, Kiowa, Kansas.

Board of Governors of the Federal Reserve System, December 29, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–31914 Filed 1–3–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

IoT Home Inspector Challenge

AGENCY: Federal Trade Commission.

ACTION: Notice; public challenge.

SUMMARY: The Federal Trade Commission (''FTC'') announces a prize competition that challenges the public to create a technical solution (''tool'') that consumers can deploy to guard against security vulnerabilities in software on the Internet of Things (''IoT'') devices in their homes. The tool would, at a minimum, help protect consumers from security vulnerabilities caused by out-of-date software. Contestants have the option of adding features, such as those that would address hard-coded, factory default or easy-to-guess passwords. The prize for the competition is up to $25,000, with $3,000 available for each honorable mention winner(s). Winners will be announced on or about July 27, 2017.

DATES: The deadline for registering and submitting entries is May 22, 2017 at 12:00 p.m. EDT. Further instructions and requirements regarding the registration and submission process will be provided on the Contest Web site (*ftc.gov/iothomeinspector*).

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, 202–326–2127, Division of Privacy and Identity Protection, Bureau of Consumer Protection, FTC; 600 Pennsylvania Ave. NW., Mailstop CC–8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The FTC IoT Home Inspector Challenge (the ''Contest'') encourages the public to create a tool that consumers can deploy to guard against security vulnerabilities in software on the IoT devices in their homes. The tool would, at a minimum, help protect consumers from security vulnerabilities caused by out–of-date software. The competition's purpose is to stimulate innovation and progress in protecting and empowering consumers against security risks associated with IoT devices in the home.

A. Background

Every day, American consumers use Internet-connected devices [1] to make their homes ''smarter.'' Consumers can remotely program their smart home devices to turn on their lights, start the oven, and turn on soft music so they return to a comfortable environment when they get home from work. Smart video monitors enable consumers to remotely view their homes, pets, or children. Smart fire and burglar alarms address safety issues through sensors and alerts. And smart thermostats can automatically adjust temperature settings depending on the time of day and presence of people in the house. To tie all these devices together, smart home platforms are also beginning to proliferate across the marketplace.

While these smart devices enable enormous convenience and safety benefits, they can also create security risks. For example, press reports from October 2016 demonstrated how smart devices could be used in ''botnets'' to disrupt the Internet.[2] This incident demonstrated that lax IoT device security can threaten not just device owners, but the entire Internet. In another incident, a group of hackers allegedly gained unauthorized access to routers manufactured by the tech company ASUS and left a text file warning stating, ''Your Asus router (and your documents) can be accessed by anyone in the world with an internet connection.'' [3] The FTC announced a

[1] As used herein, ''Internet-connected,'' ''IoT,'' or ''smart'' devices are devices other than desktop or laptop computers or smartphones.

[2] *See, e.g.,* ''Americans uneasy with IoT devices like those used in Dyn DDoS attack, survey finds,'' Tech Crunch, Darrell Etherington (October 24, 2016) (stating that a ''coordinated botnet attack effectively choked internet access to a large number of popular sites'' and was attributed ''in large part due to the spread of connected Internet of Things (IoT) devices''), *available at https://techcrunch.com/2016/10/24/americans-uneasy-with-iot-devices-like-those-used-in-dyn-ddos-attack-survey-finds/.*

[3] ''ASUS Settles FTC Charges That Insecure Home Routers and ''Cloud'' Services Put Consumers'

settlement with ASUS last year, alleging that the company did not maintain reasonable security, resulting in threats to personal information. Further, there have been numerous reported incidents where the live feeds from consumers' smart cameras have been available on the Internet. One company whose cameras were allegedly vulnerable in this manner, TRENDnet, was the subject of an earlier Commission law enforcement action.[4]

Consumers themselves are uneasy about the security risks of IoT devices. One recent survey found that more than 40% of respondents are ''not confident at all'' that IoT devices are safe, secure, and able to protect personal information.'' Fifty percent of consumers surveyed said that ''concerns about the cybersecurity of an IoT device have discouraged them from purchasing one.'' [5]

The Commission staff has previously recommended that IoT device manufacturers take appropriate steps to address the security of their devices. It has recommended that, among other things, companies in the IoT space: (1) Build security into their devices at the outset; (2) train employees on good security practices; (3) ensure downstream privacy and data protections through vendor contracts and oversight; (4) apply defense-in-depth strategies that offer protections at multiple levels and interfaces; and (5) put in place reasonable access controls.[6] The FTC's *Careful Connections* and *Start with Security* publications offer more detailed guidance.[7]

One important component of IoT security is updating and providing security patches. If products do not have the latest security updates, they can be vulnerable to outside threats. Today, although some devices are updated automatically, many devices require consumers to take steps in order to install the update or make necessary adjustments.[8] To be able to take these steps, consumers must have a certain level of technical expertise. In particular, consumers must know how to check for security updates and install them. The problem of how to simplify this task is compounded by the thriving market in this area: There are many different types of software (even within a single device), ways to configure devices, and approaches to updating.[9] As devices within the home multiply, the task of updating devices could become increasingly daunting.

B. The Competition

With this Contest, the FTC seeks to encourage the development of a technical tool to assist consumers with ensuring that IoT devices in the home are running up-to-date software. Such a tool might be a physical device that the consumer adds to his or her home network that checks and installs updates for other IoT devices on that home network. It might be an app or cloud-based service that allows consumers to submit IoT device model numbers, and, based on that input, provides information on how the consumer can install updates. A dashboard or other user interface might inform the consumer about which devices were up-to-date already, those that had unpatched software vulnerabilities, and even those that the manufacturer no longer supported.

The Contest is subject to all applicable laws and regulations. Registering to enter the Contest constitutes Contestant's full agreement to these official rules and to decisions of the Sponsor (as defined below), which are final and binding in all matters related to the Contest. Winning a Prize is contingent upon fulfilling all requirements set forth in the official rules.

1. Sponsor Organization

A. Sponsor: Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

2. Eligibility

A. To participate in the Contest:

(i) Contestants may compete as individuals or as teams of individuals, if they meet all eligibility requirements set forth in Sections 2.A–D. To be eligible to win a Prize, Contestants must meet the additional prize eligibility requirements set forth in Section 9.

(ii) Contestants must comply with all terms and conditions of the official rules.

(iii) Contestants must own or have access at their own expense to a computer, an Internet connection, and any other electronic devices, documentation, software, or other items that Contestants may deem necessary to create and enter a Submission (as defined in Section 4 below).

(iv) Each team must appoint one individual (the ''Representative'') to represent and act on behalf of said team, including by entering a Submission (as outlined below). The Representative must be duly authorized to submit on behalf of the team, and must represent and warrant that he or she is duly authorized to act on behalf of the team.

(v) An individual may enter the Contest only once, either on an individual basis or as a member of one team.

(vi) No individual or team may enter the Contest on behalf of a corporation or other non-individual legal entity.

B. Those ineligible to participate:

The following individuals (including any individuals participating as part of a team) are *not* eligible regardless of whether they meet the criteria set forth above:

(i) any individual under the age of 18 at the time of submission;

(ii) any individual who employs any of the Contest Judges as an employee or agent;

(iii) any individual who owns or controls an entity for whom a Contest Judge is an employee, officer, director, or agent;

(iv) any individual who has a material business or financial relationship with any Contest Judge;

(v) any individual who is a member of any Contest Judge's immediate family or household;

(vi) any employee, representative or agent of the Sponsor and all members of the immediate family or household of any such employee, representative, or agent;

(vii) any Federal employee acting within the scope of his or her

Privacy At Risk,'' FTC press release (February 23, 2016), *available at https://www.ftc.gov/news-events/press-releases/2016/02/asus-settles-ftc-charges-insecure-home-routers-cloud-services-put.*

[4] ''FTC Approves Final Order Settling Charges Against TRENDnet, Inc.,'' FTC press release (February 7, 2014), *available at https://www.ftc.gov/news-events/press-releases/2014/02/ftc-approves-final-order-settling-charges-against-trendnet-inc.*

[5] *See, e.g.,* ''New ESET/NCSA Survey Explores the Internet of (Stranger) Things,'' ESET/National Cyber Security Alliance study, *available at https://www.eset.com/us/resources/detail/survey-internet-of-stranger-things/* and *https://cdn3.esetstatic.com/eset/US/resources/press/ESET_ConnectedLives-DataSummary.pdf.*

[6] ''Internet of Things: Privacy and Security in a Connected World,'' FTC Staff Report (January 2015), *available at https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things-privacy/150127iotrpt.pdf.*

[7] Start with Security: A Guide for Businesses,'' (''Start with Security''), *available at https://www.ftc.gov/tips-advice/business-center/guidance/start-security-guide-business*; ''Careful Connections: Building Security in the Internet of Things,'' *available at https://www.ftc.gov/tips-advice/business-center/guidance/careful-connections-building-security-internet-things.*

[8] ''They Keep Coming Back Like Zombies': Improving Software Updating Interfaces,'' Arunesh Mathur, Josefine Engel, Sonam Sobti, Victoria Chang, and Marshini Chetty, Univ. of Maryland, College Park, *available at https://www.usenix.org/system/files/conference/soups2016/soups2016-paper-mathur.pdf.*

[9] More details about these technical issues can be found in material related to the National Telecommunications & Information Administration's Multistakeholder Process for IoT Security and Upgradeability and Patching, *available at https://www.ntia.doc.gov/other-publication/2016/multistakeholder-process-iot-security.*

employment, or as may otherwise be prohibited by Federal law (employees should consult their agency ethics officials);

(viii) any individual or team that used Federal facilities or consulted with Federal employees to develop a Submission, unless the facilities and employees were made available to all Contestants participating in the Contest on an equitable basis; and

(ix) any individual or team that used Federal funds to develop a Submission, unless such use is consistent with the grant award, or other applicable Federal funds awarding document. If a grantee using Federal funds enters and wins this Contest, the prize monies shall be treated as program income for purposes of the original grant in accordance with applicable Office of Management and Budget Circulars. Federal contractors may not use Federal funds from a contract to develop a Submission for this Challenge.

The Sponsor will, in its sole discretion, disqualify any individual or team that meets any of the criteria set forth in Section 2.B.

C. For purposes hereof:

(i) the members of an individual's immediate family include such individual's spouse, children and step-children, parents and step-parents, and siblings and step-siblings; and

(ii) the members of an individual's household include any other person who shares the same residence as such individual for at least three (3) months out of the year.

D. Pursuant to the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, 15 U.S.C. 3719, Contest Prizes (as defined in Section 8 below) may be awarded only to individuals and teams of individuals who are citizens or permanent residents of the United States, subject to verification by the Sponsor before Prizes are awarded (see Section 9 below).

3. Registration Requirement for All Contestants

A. Contestants must register no later than 12:00 p.m. EDT *May 22, 2017* (''Contest Deadline''), to participate in the Contest.

B. To enter, every Contestant, including each member of a team, must register by submitting a form, available on the Contest Web site (''Registration Form''), to verify that he or she has read and agreed to abide by the official rules and meets the eligibility requirements. Additional information and requirements about the registration process will be provided on the Contest Web site.

C. After a Contestant registers, the Sponsor will send a confirmation message to the email address provided by the Contestant. The Contestant should use the confirmation message to verify the email address that he or she provided in order to receive important Contest updates.

D. In the event of a dispute pertaining to this Contest, the authorized account holder of the email address listed at registration will be deemed to be the Contestant. The ''authorized account holder'' is the natural person assigned an email address by an Internet access provider, online service provider, or other organization responsible for assigning email addresses for the domain associated with the submitted address. Contestants may be required to provide more information as evidence that they are the authorized account holder.

4. Submission

A. Parts of the Submission:

The Submission must contain three components that should describe the technical tool the Contestant has developed to assist consumers with security.

(i) A title and a brief text description (''abstract'') of how the tool functions, which will be made public and should be easy for the public to understand. It must not be more than one page, with font size of no less than 11 points and margins of no less than one inch.

(ii) A link to the Contestant's video that is publicly available on Youtube.com or Vimeo.com demonstrating how the tool works. It must not be more than five (5) minutes long.

(iii) A detailed written description of the tool that enables Judges to evaluate how well it works, how user-friendly it is, and how scalable it is (''Detailed Explanation''), including how the tool will avoid or mitigate any additional security risks that it itself might introduce into the consumer's home. It must not be more than 15 pages, with font size of not less than 11 points and margins of no less than one inch.

See Section 7 (Submission Requirements) for further details.

The Submission itself shall not contain information revealing the Contestant's identity, such as a name, address, employment information, or other identifying details, except that Contestants may include their own voice or image in the video. Additional information and requirements about the Submission process will be provided on the Contest Web site.

B. Submission Deadlines:

Contestants must enter their Submissions by the Contest Deadline, 12:00 p.m. EDT *May 22, 2017.* Any Submissions entered following the Contest Deadline, as determined solely by the Sponsor, shall be disqualified. The judging period will commence after the Contest Deadline.

C. Terms for Submissions:

(i) All parts of the Submission must be submitted together in a single email by the Contest Deadline.

(ii) Contestants must use the email address provided on their Registration Form (or in the case of a team, the email address on the team Representative's Registration Form).

(iii) No part of a Submission, including any records, platforms, technologies, or licenses required to evaluate the Submission, may require the Sponsor or Contest Judges to spend money or otherwise obtain anything of value; or to execute or enter into any binding agreement not otherwise provided for under these Rules.

(iv) Submissions from a team must be indicated as such when entering a Submission.

(v) Submissions must be in English, except that textual or video material in a language other than English will be accepted if accompanied by an English translation of the text or video—within the existing page limits for the Submission.

(vi) Any solution that was publicly available prior to January 4, 2017, is not eligible for entry in the Contest, unless the tool submitted incorporates significant new functionality, features, or changes. Contestants must identify any portion of the tool that was publicly available and—within the existing page limits for the Submission—include a narrative description of the new functionality, features, or changes with any such Submission.

(vii) Submissions must not:

a. violate applicable law;

b. depict hatred;

c. be in bad taste;

d. denigrate (or be derogatory toward) any person or group of persons or any race, ethnic group, or culture;

e. threaten a specific community in society, including any specific race, ethnic group, or culture;

f. incite violence or be likely to incite violence;

g. contain vulgar or obscene language or excessive violence;

h. contain pornography, obscenity, or sexual activity; or

i. disparage the Sponsor.

(viii) Submissions must be free of malware and other security threats. Contestant agrees that the Sponsor may

conduct testing on each Submission to determine whether malware or other security threats may be present.

(ix) Any Submission that fails to comply with these requirements, as determined by the Sponsor in its sole discretion, may be disqualified.

(x) Once a Submission has been submitted, Contestant may not access or make any changes or alterations to the Submission.

(xi) A Contestant may submit only one Submission, as either an individual or a member of a team.

(xii) By entering a Submission, Contestant represents, warrants, and agrees that the Submission is the original work of the Contestant and complies with the official rules. Contestant further represents, warrants, and agrees that any use of the Submission by the Sponsor and Contest Judges (or any of their respective partners, subsidiaries, and affiliates) as authorized by these official rules, does not:

a. infringe upon, misappropriate or otherwise violate any intellectual property right or proprietary right including, without limitation, any statutory or common law trademark, copyright or patent, nor any privacy rights, nor any other rights of any person or entity;

b. constitute or result in any misappropriation or other violation of any person's publicity rights or right of privacy.

5. Submission Rights

A. Subject to the licenses described below, any applicable intellectual property rights to a Submission will remain with the Contestant.

B. By entering a Submission to this Contest, Contestant grants to the Sponsor a non-exclusive, irrevocable, royalty-free and worldwide license to use the Submission, any information and content submitted by the Contestant, and any portion thereof, and to display the tool title, text description and the video through the Contest Web site, during the Contest and after its conclusion. The Contestant agrees that the foregoing constitutes solely a condition of the Contestant's participation in the Contest, and that the Contest is not a request for or acquisition of any property or services or any other matter subject to federal procurement requirements.

6. Winner Selection and Judging

A. All Submissions will be judged by an expert panel of judges (the ''Contest Judges'' or ''Judges'') selected by the Sponsor at the Sponsor's sole discretion. The Sponsor reserves the right to substitute or modify the judging panel, or extend or modify the Judging Period, at any time for any reason.

B. All Contest Judges shall be required to remain fair and impartial. Any Contest Judge may recuse him or herself from judging a Submission if the Contest Judge or the Sponsor considers it inappropriate, for any reason, for the Contest Judge to evaluate a specific Submission or group of Submissions.

C. A Contestant's likelihood of winning will depend on the number and quality of all of the Submissions, as determined by the Contest Judges using the criteria in these official rules.

D. The Submissions will be judged in two phases: the ''Initial Phase'' and the ''Final Phase.'' For the Initial Phase, Judges will only assess the Contestants' videos and abstracts, without the Detailed Explanation. Only those Contestants judged to be within the top 20 scores for the Initial Phase are eligible to compete in the Final Phase (''Finalists''), where the Detailed Explanations will be judged.

E. Judges will use the criteria outlined in Section 7, below.

F. The Sponsor reserves the right to review the Contest Judges' decision and to withhold any Prize if the Sponsor determines, in its sole discretion, that no Submission appropriately or adequately fulfills the stated goals and purposes of the Contest or there is any other procedural, legal, or other reason that the Prize should not be awarded.

G. The Sponsor reserves the right to change the announcement dates with or without prior notice for any reason. Prizes, however, will not be awarded, and winners will not be named, until the Sponsor verifies eligibility for receipt of each Prize in accordance with Section 9 below. The Sponsor will announce verified winners on or about July 27, 2017, and the results will be made available at the Contest Web site.

7. Submission Content Requirements

The Submission must meet other requirements as described in this document, including Sections 4 and 6, stating that Submissions must not include any unauthorized proprietary or copyrighted material (including copyrighted music without permission).

A. Threshold Solution Criteria.

Contestants will develop a tool that would, at a minimum, help protect consumers from security vulnerabilities caused by out of date software on IoT devices in their homes. Submissions must provide a technical solution, rather than a policy or legal solution. The tool must work on home IoT devices that currently exist on the market. The tool must protect information it collects both in transit and at rest. The Submission must address how the tool will avoid or mitigate any additional security risks that the tool itself might introduce into the consumer's home by, for example, probing the home network or facilitating software upgrades. Submissions that do not address the tool's security and the other items described in this paragraph as Threshold Solution Criteria will not be considered for the Prize.

B. Phase-Specific Requirements

(i) Initial Phase: Abstract and Video

a. The Abstract. The abstract should include a title for the Submission and a brief explanation of how the tool functions.

b. The Video. Although the solution requires a tool that should work with multiple IoT devices, the video need only demonstrate how the tool would be used with one (1) IoT device that is likely to be found in consumers' homes. The video must address the Judging Criteria below and: (i) State what the tool is specifically designed to do; (ii) describe the set-up for the demonstration and any assumptions the Contestant has made about the capabilities and limitations of the device(s) for the demonstration; and (iii) explain what impact the tool would have on software of IoT devices beyond what is demonstrated in the video.

(ii) Final Phase: Detailed Explanation, Abstract and Video

In the Final Phase, in addition to looking at the abstract and video, the Judges will review the Detailed Explanation. The Detailed Explanation must provide sufficient material so that the Judges can evaluate the tool properly for how well it works, how user-friendly it is, and how scalable it is. The Detailed Explanation may include a detailed description; pseudocode; a description of algorithms and/or formulas; or material (such as diagrams) to show how the tool would function. It should include a description of testing methodology and results of any tests of the tool's effectiveness. It should also discuss a strategy for development and deployment.

C. The Submission will be assessed using the following Judging Criteria:

(i) *How well does it work?* (60 points out of 100 total score)

a. How well does your Submission address each of these four (4) components?

(1) Recognizing what IoT devices are operating in the consumer's home. A tool may automatically recognize devices or provide instructions for consumer input.

(2) Determining what software version is already on those IoT devices. A tool

may automatically recognize the software version or provide instructions for consumer input.

(3) Determining the latest versions of the software that should be on those devices. The Submission must lay out a feasible plan for finding sources of information about what version should be on the device and explain the technical means by which that information would be procured. If the Submission relies upon databases that do not currently exist, the plan for developing those sources must be realistic and feasible.

(4) Assisting in facilitating updates, to the extent possible. Contestants might rely upon the consumer to take steps or contact the device manufacturer to facilitate the update. If the tool conveys information to a third party, such as a device manufacturer, the tool must also allow for consumer control of the flow of that information.

b. WILDCARD: If your Submission does not address the four components above, but offers a technical solution to address vulnerabilities caused by unpatched or out-of-date software of IoT devices in the home, the Contestant may demonstrate how that tool would work and argue for the superiority of the tool based on its level of innovation and impact on IoT security in the home. Any such WILDCARD option would also need to meet the criteria set forth in sections 7(ii)–(iii) (user friendliness and scalability requirements).

c. Whether the Submission includes the four components identified above or is a WILDCARD option, Judges will award more points to Submissions based on the extent to which they identify potential challenges with implementing the tool and describe how the Contestant plans to address those challenges. Judges will also award more points for tools that address both situations where a manufacturer has failed to provide support for the software on a device as well as where the manufacturer does provide support.

(ii) *How user-friendly is your tool?* (20 points out of 100 total score)

a. How easy is your tool for the average consumer, without technical expertise, to set up and use? In assessing how easy the tool would be to use, the Judges will take into consideration whether functions are performed automatically, without action by the consumer.

b. In analyzing the user-friendliness of the tool, the Judges will also take into consideration how well the tool does the following:

(1) Displays or conveys [10] information about which devices it has assessed.

(2) Accurately communicates the risk mitigation provided by the tool (*e.g.,* it should not give the impression that it solves all security problems).

(3) Allows consumers to control any information being sent to a third party, to the extent that any such information is being sent. This includes making short, but accurate, disclosures about the information flow.

c. Judges will award more points to Submissions that show the content of any consumer interface and decision points, as well as the methodology and results of user tests (*e.g.* surveys, focus groups, online user studies) demonstrating that the average consumer would be likely to understand such interface and information it conveys.[11]

(iii) *How scalable is your tool?* (20 points out of 100 total score)

a. The Submission must explain how the tool could be used for products other than those addressed specifically in the Submission.

b. Judges will award more points to Submissions that also explain how the tool would stay up-to-date. Judges will award more points to Submissions demonstrating tools that work on multiple types of devices (*e.g.,* cameras, thermostats, refrigerators), devices from different manufacturers, devices using different protocols (*e.g.,* WiFi, Bluetooth), and both newly released devices and legacy versions.

(iv) *Optional items* (up to 10 bonus points)

a. The Submission may also address other ways to help consumers guard against broader security vulnerabilities in IoT device software in their homes. For example, a tool might:

(1) Find and facilitate changes to mitigate vulnerabilities in the existing configurations of devices in the home (*e.g.,* determine whether particular IoT devices in the home have hard-coded, factory default or easy-to-guess passwords, and provide specific instructions for consumers to address the issue).

(2) Provide purchasers of IoT devices an easy way to know whether their new devices include elements already known to be easily compromised before they make a purchase.

(3) Address the problem of software or firmware updates that have been offered by a developer but not yet incorporated by a device manufacturer.

(4) Differentiate between security updates and other updates.

(5) Convey information about levels of urgency of installing patches based on the criticality of a vulnerability;

(6) Tailor information to specific user groups (*e.g.,* by providing technically sophisticated consumers access to additional information about the nature of the security issues addressed in the update);

(7) Convey information about product recalls made for other reasons;

(8) Convey other available information about the security of devices, such as benchmark security scores; [12] or

(9) Convey information about the type of data collected by the device, how it is used and shared, and any associated privacy policies.

D. In order to be considered for a Prize, Submissions must receive a score greater than zero in each required category (how well it works, how user-friendly it is, and how scalable it is). If the Contest Judges determine that no Submission satisfies each required category, no one will be deemed eligible for any Prize. In addition, Judges have the discretion to award up to 10 bonus points for optional features.

E. The Contestant whose Submission earns the highest overall score in the Final Phase will be named the Top Prize Winner identified below in Section 8, if the Contestant satisfies the verification requirements described in Section 9. If the Contestant does not satisfy the verification requirements, the Top Prize may be awarded to the next highest scorer who satisfies the verification requirements, at the Sponsor's discretion.

F. Up to three (3) Contestants in the Final Phase who meet the Section 9 verification requirements may be awarded the Honorable Mention Prizes—described below in Section 8—at the Sponsor's discretion. The Sponsor has discretion to award Honorable Mention Prizes to Contestants who (1) have the next highest scores in the Final Phase, or (2) have the highest score in any one category because of a significant innovation. If the Contestant does not satisfy the verification requirements, the Honorable Mention Prize may be awarded to the next highest scorer who satisfies the verification requirements, at the Sponsor's discretion.

[10] The consumer must have a way of knowing what is being assessed, so they do not have a false sense of assurance about a device that was not even evaluated by the tool. This process might also expose unauthorized devices.

[11] For more information on communicating with consumers, *see, e.g., Putting Disclosures to the Test* (Sept. 15, 2016), *available at https://www.ftc.gov/testingdisclosures.*

[12] For example, a tool could use security scoring mechanisms developed by such entities as the Cyber Independent Testing Lab (CITL) (*http://cyber-itl.org/blog/*).

G. In the event of a tie between or among two or more Submissions where the Contestants meet the verification requirements, the relevant Prize identified below in Section 8 will be divided equally between the tied Contestants.

8. Prizes

Winner	Prize amount	Quantity
Top Prize	Up to US $25,000	Up to 1.
Honorable Mention(s)	US $3,000	Up to 3.

A. If no eligible Submissions are entered in the Contest, no Prizes will be awarded. (See also Section 6.F. above.) The Sponsor retains the right to make a Prize substitution (including a non-monetary award) in the event that funding for the Prize or any portion thereof becomes unavailable. No transfer or substitution of a Prize is permitted except at the Sponsor's sole discretion. In the case of a team Prize, it will be the responsibility of the winning team's Representative to inform the Sponsor how to allocate the Prize amongst the team, as the Representative deems it appropriate.

B. Each Contestant hereby acknowledges and agrees that the relationship between the Contestant and the Sponsor is not a confidential, fiduciary, or other special relationship, and that the Contestant's decision to provide the Contestant's Submission to Sponsor for the purposes of this Contest does not place the Sponsor and its respective agents in a position that is any different from the position held by the members of the general public, except as specifically provided in these official rules.

C. Winners (including any winning team members) are responsible for reporting and paying all applicable federal, state, and local taxes. It is the sole responsibility of winners of $600 or more to provide information to the Sponsor in order to facilitate receipt of the award, including completing and submitting any tax forms when necessary. It is also the sole responsibility of winners to satisfy any applicable reporting requirements. The Sponsor reserves the right to withhold a portion of the Prize amount to comply with tax laws.

D. All payments shall be made by electronic funds transfer or other means determined by the Sponsor.

9. Verification of Eligibility for Receipt of a Prize

A. All prize awards are subject to Sponsor verification of the winner's identity, eligibility, and participation in the creation of the tool. The Sponsor's decisions are final and binding in all matters related to the Contest. In order to receive a Prize, a Contestant will be required to complete, sign and return to the Sponsor affidavit(s) of eligibility and liability release, or a similar verification document (''Verification Form''). (In the case of a team, the Representative and all participating members must complete, sign and return to the Sponsor the Verification Form.) In addition, social security numbers must be collected from the winner (including any winning team members) pursuant to 31 U.S.C. 7701 in order to issue a payment.

B. Contestants potentially qualifying for a Prize will be notified and sent the Verification Form using the email address submitted at registration, starting on or about July 20, 2017. The Sponsor reserves the right to change the time period to send the Verification Form without providing any prior notice. In the case of a team, the notification will only be sent to the Representative. If a notification is returned as undeliverable, the Contestant or team may be disqualified at the Sponsor's sole discretion.

C. At the sole discretion of the Sponsor, a Contestant or team forfeits any Prize if:

(i) The Contestant fails to provide the Verification Form within ten (10) business days of receipt of the email notification discussed above (or in the case of a team, any team member) fails to provide the Verification Form within ten business days of receipt of the email notification;

(ii) the Contestant (or in the case of a team, any team member) does not timely communicate with the Sponsor to provide payment information and all other necessary information within ten business days of receiving a request for such information;

(iii) such individual or team Representative is contacted and refuses the Prize;

(iv) the Prize is returned as undeliverable; or

(v) the Submission of the winner, the winner, or any member of a winner's team is disqualified for any reason.

D. In the event of a disqualification, Sponsor, at its sole discretion, may award the applicable Prize to an alternate Contestant. The disqualification of one (or more) team members at any time for any reason may result in the disqualification of the entire team and of each participating member at the sole discretion of the Sponsor.

10. Entry Conditions and Release

A. By registering, each Contestant (including, in the case of a team, all participating members) agree(s):

(i) To comply with and be bound by these official rules; and

(ii) that the application of the judging criteria, evaluation of the Submissions, and final selection of the winners is a matter of discretion of the Contest Judges and Sponsor, and that their respective decisions are binding and final in all matters relating to this Contest.

B. By registering, each Contestant (including, in the case of a team, all participating members) agree(s) to release, indemnify, and hold harmless the Sponsor, and any other individuals or organizations responsible for sponsoring, fulfilling, administering, advertising, or promoting the Contest, including their respective parents, subsidiaries, and affiliated companies, if any, and all of their respective past and present officers, directors, employees, agents and representatives (hereafter the ''Released Parties'') from and against any and all claims, expenses, and liabilities (including reasonable attorneys' fees and costs of Submission preparation) arising out of or relating to a Contestant's entry, creation of Submission or entry of a Submission, participation in the Contest, acceptance or use or misuse of the Prize, and the disclosure, broadcast, transmission, performance, exploitation, or use of Submission as authorized or licensed by these official rules. Released claims include all claims whatsoever including, but not limited to (except in cases of willful misconduct): Injury, death, damage, or loss of property, revenue or profits, whether direct, indirect, or consequential, arising from the Contestant's participation in a competition, whether the claim of injury, death, damage, or loss arises through negligence, mistake, or otherwise. This release does not apply to claims against the Sponsor arising out

of the unauthorized use or disclosure by the Sponsor of intellectual property, trade secrets, or confidential business information of the Contestant.

C. Without limiting the foregoing, each Contestant (including, in the case of a team, all participating members) agrees to release all Released Parties of all liability in connection with:

(i) any incorrect or inaccurate information, whether caused by the Sponsor's or a Contestant's electronic or printing error or by any of the equipment or programming associated with or utilized in the Contest;

(ii) technical failures of any kind, including, but not limited to, malfunctions, interruptions, or disconnections in phone lines, Internet connectivity, or electronic transmission errors, or network hardware or software or failure of the Contest Web site, or any other platform or tool that Contestants or Contest Judges choose to use;

(iii) unauthorized human intervention in any part of the entry process or the Contest;

(iv) technical or human error that may occur in the administration of the Contest or the processing of Submissions; or

(v) any injury or damage to persons or property that may be caused, directly or indirectly, in whole or in part, from the Contestant's participation in the Contest or receipt or use or misuse of any Prize. If for any reason any Contestant's Submission is confirmed to have been erroneously deleted, lost, or otherwise destroyed or corrupted, the Contestant's sole remedy is to request the opportunity to resubmit its Submission. The request will be addressed at the sole discretion of the Sponsor if the contest submission period is still open.

D. Based on the subject matter of the Contest, the type of work that it possibly will require, and the low probability that any claims for death, bodily injury, or property damage, or loss could result from Contest participation, the Sponsor determines that Contestants are not required to obtain liability insurance or demonstrate fiscal responsibility in order to participate in this Contest.

11. Publicity

Participation in the Contest constitutes consent to the use by the Sponsor, their agents' and any other third parties acting on their behalf, of the Contestant's name (and, as applicable, those of all other members of the team that participated in the Submission), Submission video, and Submission abstract for promotional purposes in any media, worldwide, without further payment or consideration. Furthermore, a Contestant's likeness, photograph, voice, opinions, comments, and hometown and state of residence (and, as applicable, those of all other members of the team that participated in the Submission) may be used for the Sponsor's promotional purposes if the Contestant provides consent. In addition, the Sponsor reserves the right to make any disclosure required by law.

12. General Conditions

A. Each Contestant agrees that the Sponsor is vested with the sole authority to interpret and apply these rules.

B. Sponsor reserves the right, in its sole discretion, to cancel, suspend, or modify the Contest, or any part of it, with or without notice to the Contestants, if any fraud, technical failure, or any other unanticipated factor or factors beyond Sponsor's control impairs the integrity or proper functioning of the Contest, or for any other reason. The Sponsor reserves the right at its sole discretion to disqualify any individual or Contestant that the Sponsor finds to be tampering with the entry process or the operation of the Contest, or to be acting in violation of these official rules or in a manner that is inappropriate, not in the best interests of this Contest, or in violation of any applicable law or regulation.

C. Any attempt by any person to undermine the proper functioning of the Contest may be a violation of criminal and civil law, and, should such an attempt be made, the Sponsor reserves the right to take proper legal action, including, without limiting, referral to law enforcement, for any illegal or unlawful activities.

D. The Sponsor's failure to enforce any term of these official rules shall not constitute a waiver of that term. The Sponsor is not responsible for incomplete, late, misdirected, damaged, lost, illegible, or incomprehensible Submissions or for address or email address changes of the Contestants. Proof of sending or submitting is not proof of receipt by Sponsor.

E. In the event of any discrepancy or inconsistency between the terms and conditions of the official rules and disclosures or other statements contained in any Contest materials, including but not limited to the Contest Web site or point of sale, television, print or online advertising, the terms and conditions of the official rules shall prevail.

F. The Sponsor reserves the right to amend the terms and conditions of the official rules at any time, including the rights or obligations of the Contestants and the Sponsor. The Sponsor will post the terms and conditions of the amended official rules on the Contest Web site (''Corrective Notice''). As permitted by law, any amendment will become effective at the time the Sponsor posts the amended official rules.

G. Excluding Submissions, all intellectual property related to this Contest, including but not limited to trademarks, trade-names, logos, designs, promotional materials, Web pages, source codes, drawings, illustrations, slogans, and representations are owned or used under license by the Sponsor. All rights are reserved. Unauthorized copying or use of any copyrighted material or intellectual property without the express written consent of the relevant owner(s) is strictly prohibited.

H. Should any provision of these official rules be or become illegal or unenforceable under applicable Federal law, such illegality or unenforceability shall leave the remainder of these official rules unaffected and valid. The illegal or unenforceable provision may be replaced by the Sponsor with a valid and enforceable provision that, in the Sponsor's sole judgment, comes closest to and best reflects the Sponsor's intention in a legal and enforceable manner with respect to the invalid or unenforceable provision.

13. Disputes

Subject to the release provisions in these official rules, Contestant agrees that:

A. any and all disputes, claims, and causes of action arising out of or connected with this Contest, any Prizes awarded, the administration of the Contest, the determination of winners, or the construction, validity, interpretation, and enforceability of the official rules shall be resolved individually;

B. any and all disputes, claims, and causes of action arising out of or connected with this Contest, any Prizes awarded, the administration of the Contest, the determination of winners, or the construction, validity, interpretation, and enforceability of the official rules shall be resolved pursuant to Federal law;

C. under no circumstances will Contestants be entitled to, and Contestants hereby waive, all rights to claim, any punitive, incidental, and consequential damages and any and all rights to have damages multiplied or otherwise increased.

14. Privacy

The Sponsor may collect personal information from the Contestant when he or she enters the Contest. Such personal information is subject to the

privacy policy located here: *http://www.ftc.gov/site-information/privacy-policy*.

15. Contact Us

Please visit the Contest Web site for further Contest information and updates.

Jessica Rich,

Director, Bureau of Consumer Protection.

[FR Doc. 2016–31731 Filed 1–3–17; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 161 0077]

C.H. Boehringer Sohn AG & Co. KG; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 27, 2017.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/FTC/chboehringersohnagcokgconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''C.H. Boehringer Sohn AG & Co. KG File No. 1610077—Consent Agreement'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/FTC/chboehringersohnagcokgconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''C.H. Boehringer Sohn AG & Co. KG File No. 1610077—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael Barnett (202–326–2362), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 28, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 27, 2017. Write ''C.H. Boehringer Sohn AG & Co. KG File No. 1610077—Consent Agreement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/FTC/chboehringersohnagcokgconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''C.H. Boehringer Sohn AG & Co. KG File No. 1610077—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 27, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from C.H. Boehringer Sohn

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

AG & Co. KG (''Boehringer Ingelheim''), which is designed to remedy the anticompetitive effects of Boehringer Ingelheim's acquisition of the Merial Animal Health business (''Merial'') from Sanofi. Under the terms of the proposed Decision and Order (''Order'') contained in the Consent Agreement, Boehringer Ingelheim is required to divest its relevant U.S. companion animal vaccine business to Eli Lily and Company, which participates in the animal health industry through its Elanco Animal Health (''Elanco'') division. Boehringer Ingelheim is also required to divest its U.S. Cydectin parasiticide product to Bayer AG (''Bayer'').

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again evaluate the proposed Consent Agreement, along with the comments received, in order to make a final decision as to whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

The Transaction

Pursuant to an Exclusivity Agreement dated December 15, 2015, Boehringer Ingelheim proposes to swap its consumer health care business for Sanofi's Merial animal health business (the ''Proposed Acquisition''). In the proposed swap, Boehringer Ingelheim obtains Merial, valued at $13.53 billion, and Sanofi obtains Boehringer Ingelheim's Consumer Health Care business unit, valued at $7.98 billion, as well as cash compensation of $5.54 billion. The Commission alleges in its Complaint that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the U.S. markets for two types of animal health products: (1) Companion animal vaccines—which include various canine, feline, and rabies vaccines—and (2) cattle and sheep parasiticides. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the Proposed Acquisition.

The Parties

Headquartered in Germany, Boehringer Ingelheim is one of the world's leading pharmaceutical companies. It manufacturers, researches, develops and markets an array of human and animal health products. The company's animal health division, Boehringer Ingelheim Vetmedica, Inc., is the sixth-largest animal health supplier in the world.

Sanofi is a multinational pharmaceutical company headquartered in Gentilly, France. The company develops and markets a diverse portfolio of products, including pharmaceuticals, human vaccines, and, through its subsidiary Merial, animal health products. Merial is the fourth-largest animal health supplier in the world.

The Relevant Products and Structure of the Markets

Companion Animal Vaccines

There are three classes of companion animal vaccines in which to analyze the effects of the Proposed Acquisition: Canine vaccines, feline vaccines, and rabies vaccines. A vaccine is a version of an antigen that triggers an immune response to the antigen but not the disease, causing the animal to develop an immunity that prevents the disease. Only vaccines containing an antigen of a specific virus can provide the desired immunity response to that virus and the corresponding disease. No substitute product immunizes against a disease. Nor is treatment following infection a substitute for the vaccinations at issue. For these reasons, each vaccine containing an antigen to immunize against a particular disease constitutes a relevant market in which to analyze the effects of the acquisition.

Canine vaccines prevent specific illnesses in dogs. The Proposed Acquisition raises competitive concerns in the markets for seven canine vaccines: Canine distemper virus, canine parvovirus, leptospirosis, canine adenovirus, canine parainfluenza virus, canine coronavirus, and borreliosis (''Lyme disease''). In addition, the proposed transaction raises future competition concerns in the canine vaccine market for *Bordetella bronchiseptica* bacterium, in which Boehringer Ingelheim currently competes and Merial is the most likely entrant in the near future. The canine vaccine markets are highly concentrated. Boehringer Ingelheim, Merial, Zoetis, Inc. (''Zoetis''), and Merck & Co. (''Merck'') are the only four suppliers offering or likely to offer canine vaccines in the United States. In 2015, Boehringer Ingelheim, Merial, Zoetis and Merck had market shares of approximately 30%, 11%, 35%, and 24%, respectively, of all revenues from canine vaccines sold in the United States and comparable shares in each relevant market, except *Bordetella bronchiseptica* bacterium, where Merial is the next likely entrant. The Proposed Acquisition would reduce the number of current or likely competitors in each market from four to three.

Feline vaccines prevent diseases common to cats. The transaction raises competitive concerns in the feline vaccine markets for five diseases: Panleukopenia, calicivirus, viral rhinotracheitis, *Chlamydia psittaci* bacterium, and feline leukemia. The feline vaccine industry in the United States is highly concentrated with the same four market participants—Boehringer Ingelheim, Merial, Zoetis, and Merck—as the canine vaccine industry. In 2015, these four companies had market shares of approximately 28%, 33%, 16%, and 23%, respectively, of all revenues from feline vaccines sold in the United States and comparable shares in each relevant market. The proposed transaction would combine the two leading feline vaccine suppliers, reducing the number of competitors in each market from four to three.

The rabies virus, transmitted through bites from infected animals, triggers a fatal neurological condition culminating in paralysis, respiratory failure, and eventual death. Because this fatal disease is transmittable to humans, most U.S. states have mandatory rabies vaccination requirements. Regular vaccination for all animals is the only means of protection, and there are no substitutes for rabies vaccines. All rabies vaccines are approved for use in both dogs and cats, although some are approved for use in additional species as well. The market for the sale of rabies vaccines in the United States is highly concentrated. Boehringer Ingelheim, Merial, Zoetis, and Merck are the only four significant suppliers of rabies vaccines in the United States, with market shares of 10%, 65%, 13%, and 12% of revenues, respectively.

Cattle and Sheep Parasiticides

Parasiticides prevent and control outbreaks of parasites such as worms, flies, lice, and ticks.

Cattle Parasiticides

Parasiticides are a key part of cattle health care regimens. If left unchecked, parasites reduce milk production in dairy cattle and prevent weight gain in beef cattle. There are two primary types of cattle parasiticides: Macrocyclic lactones, which prevent both internal and external parasites, and benzimidazoles, which prevent only internal parasites. Because macrocyclic lactones reach a much broader spectrum of parasites, other parasiticides, including benzimidazoles, are not viable substitutes.

Boehringer Ingelheim, Merial, and Zoetis are the three primary participants in the macrocyclic lactone cattle parasiticide market, and the Proposed Acquisition would combine the two most significant competitors. Merial, the market leader, offers three brands: Ivomec, Eprinex, and LongRange. After Merial, Boehringer Ingelheim is the next largest supplier of macrocyclic lactone cattle parasiticides. Boehringer Ingelheim's sole product is Cydectin, a parasiticide that is functionally identical to Ivomec and Eprinex for beef cattle. Zoetis also offers a macrocyclic lactone product, Dectomax, that is similar to the products of Merial and Boehringer Ingelheim. Merial, Boehringer Ingelheim and Zoetis accounted for 45%, 22%, and 17% of revenues, respectively, of U.S. sales in 2015. Beyond these three companies, multiple manufacturers produce generic versions of Merial's Ivomec. Although these generic products are significantly cheaper than the branded products, they have limited competitive significance. Many customers prefer the branded products because the branded product manufacturers offer valuable technical support, field support, and education. In addition, many customers also perceive the generic products to be inferior and unreliable, preferring to pay a higher price for the guaranteed success of branded products.

Merial and Boehringer Ingelheim are the only two macrocyclic lactone cattle parasiticide suppliers that offer ''zero-day milk withhold'' products—Cydectin and Eprinex, respectively. The Proposed Acquisition would eliminate the competition between them, effectively leaving dairy cattle customers with a sole supplier.

Sheep Parasiticides

Sheep parasiticides are critical for optimizing wool and meat production. Sheep parasiticides utilize the same compounds as cattle parasiticides, but use a different route of administration. Because a sheep's wool and skin prevent the absorption of topical products and the thickness of a sheep's wool makes injections difficult, customers view oral administration as the only viable option for sheep parasiticides. Both macrocyclic lactones and benzimidazoles can be used as sheep parasiticides, but benzimidazoles are not economic substitutes for macrocyclic lactones in most cases because they do not treat external parasites and are less efficacious.

Merial and Boehringer Ingelheim are the two primary suppliers of macrocyclic lactone sheep parasiticides. Boehringer Ingelheim offers Cydectin Oral Drench and Merial offers Ivomec Oral Drench. Following the Proposed Acquisition, the merged firm would control more than 78% of this market. The other macrocyclic lactone sheep parasiticides are generic versions of the Merial product, which are of limited competitive significance.

Relevant Geographic Market

The United States is the relevant geographic market in which to assess the competitive effects of the Proposed Acquisition. The USDA must approve companion animal vaccines before they are sold in the United States. Cattle and sheep parasiticides must be approved by the FDA before being sold in the United States. Thus, products sold outside the United States, but not approved for sale in the United States, are not alternatives for U.S. consumers.

Entry

Entry into the U.S. markets for companion animal vaccines and cattle and sheep parasiticides would not be timely, likely or sufficient in magnitude, character and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. Three major obstacles stand in the way of a prospective entrant into the relevant markets: Lengthy development periods, FDA and USDA approval requirements, and difficulty of establishing a brand name and reputation and convincing veterinarians to prescribe new products.

Effects of the Acquisition

The Proposed Acquisition would cause significant competitive harm to consumers in the relevant U.S. markets for companion animal vaccines and cattle and sheep parasiticides by eliminating actual or future, direct, and substantial competition between Boehringer Ingelheim and Merial. The transaction would increase the likelihood that Boehringer Ingelheim will be able to unilaterally exercise market power, increase the likelihood of coordinated interaction between or among suppliers, and increase the likelihood that consumers will pay higher prices.

The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects by requiring Boehringer Ingelheim to divest its relevant companion animal vaccine business and certain of its cattle and sheep parasiticides assets to Elanco and Bayer, respectively.

Under the proposed Order, Boehringer Ingelheim will divest its relevant U.S. rights and interests in its companion animal vaccine business to Elanco no later than ten days after the consummation of the Proposed Acquisition or on the date on which the proposed Order becomes final, whichever is earlier. Similarly, the proposed Order requires Boehringer Ingelheim to divest all of its respective U.S. rights and interests in its parasiticide product, Cydectin, to Bayer. These divestitures include all regulatory approvals, brand names, marketing materials, confidential business information, customer information, and other assets associated with marketing and selling both products. To ensure the divestitures are successful, the proposed Order requires Boehringer Ingelheim to secure all third-party consents and waivers required to permit both buyers to conduct business with the divested assets. Additionally, Elanco and Bayer also will have the right to interview and offer employment to employees associated with the divested businesses.

Elanco is an experienced supplier in the global animal health industry and has the resources and expertise to replicate Boehringer Ingelheim's role in the companion animal vaccine markets. In 2015, Elanco generated approximately $1 billion in revenue. Elanco currently offers a limited portfolio of companion animal pharmaceutical products such as parasiticides, pain relievers, and dermatological products. Elanco, however, is not a meaningful participant in any of the companion animal vaccines subject to divestiture, and its proposed acquisition of those assets will complement and expand its existing companion animal portfolio. Elanco is well positioned to replicate immediately Boehringer Ingelheim's competitive position in all companion animal vaccine markets.

Bayer is similarly well qualified to replicate Boehringer Ingelheim's competitive position in the United States with respect to the Cydectin product line. Bayer is currently the fifth-largest animal health company both worldwide and in the United States. Bayer had 2015 worldwide sales of $1.6 billion, of which $595 million derived from its animal health business. Bayer does not currently offer a parasiticide that controls external and internal parasites to cattle and sheep farmers. However, Bayer offers a variety of other products to cattle and sheep farmers, such as ear tags and external parasite control products.

The Commission has agreed to appoint a Monitor to ensure that Boehringer Ingelheim complies with all of its obligations pursuant to the Consent Agreement and to keep the

Commission informed about the status of the transfer of the rights and assets to Elanco and Bayer.

The Commission's goal in evaluating possible purchasers of divested rights and assets is to maintain the competitive environment that existed prior to the Proposed Acquisition. If the Commission determines that either buyer is not an acceptable acquirer, or that the manner of the divestiture is not acceptable, the proposed Order requires the parties to unwind the sale and then divest the products to another Commission-approved acquirer within six months of the date that the proposed Order becomes final. The proposed Order further allows the Commission to appoint a trustee in the event the parties fail to divest the products.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2016–31848 Filed 1–3–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice Designating State Title IV–D Child Support Agencies as "Public Bodies"

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice designates state IV–D child support agencies as public bodies authorized to perform specific functions of the Central Authority under Article 6(3) of the the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (Convention).and specifies functions to be performed by the state agencies in relation to applications under the Convention.

ADDRESSES: Interested parties may submit written comments on this notice to the United States Central Authority for International Child Support, Department of Health and Human Services, Office of Child Support Enforcement, 330 C Street SW., 5th Floor, Washington, DC 20201. Comments received will be available for public inspection at this address from 9:00 a.m. to 5:00 p.m. EST, Monday through Friday.

DATES: The Convention will enter into force for the United States on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: The Division of Policy and Training, Office of Child Support Enforcement, Administration for Children and Families, 330 C Street SW., 5th Floor, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The President signed the Instrument of Ratification on August 30, 2016, and the United States of America deposited its Instrument of Ratification of the Convention on September 7, 2016. The Convention will enter into force for the United States on January 1, 2017. Section 459A of the Social Security Act (42 U.S.C. 659a) and Executive Order 13752, 81 FR 90181 (Dec. 8, 2016) designate the Department of Health and Human Services as the Central Authority of the United States for purposes of the Convention, and authorize the Secretary of Health and Human Services to perform all lawful acts that may be necessary and proper in order to execute the functions of the Central Authority. Article 6(3) of the Convention authorizes the designation of public bodies to perform specific functions under the Convention, subject to the supervision of the Central Authority. The Executive Order specifically authorizes the designation of the state agencies responsible for implementing an approved State Plan under title IV–D of the Social Security Act, 42 U.S.C. 651 *et seq.,* as public bodies authorized to perform specific functions in relation to applications under the Convention. All states have enacted the Uniform Interstate Family Support Act of 2008 (UIFSA 2008) to enable uniform implementation of the Convention in the United States.

Under authority delegated by the Secretary for administration of the title IV–D program, I hereby designate the state title IV–D child support agencies as public bodies authorized to perform functions related to applications under the Convention in accordance with UIFSA 2008, title IV–D and title IV–D regulations, and guidance and instructions, subject to the supervision of the federal Office of Child Support Enforcement. Such functions shall include the provision of support enforcement services to applicants under the Convention, including: Transmitting and receiving applications under the Convention; initiating or facilitating the institution of proceedings with respect to applications; establishing paternity and support orders; recognizing, modifying, and enforcing such orders; collecting and distributing payments under such orders; and providing administrative and legal services without cost to applicants.

Statutory Authority: Section 459(a) of the Social Security Act (42 U.S.C. 659(a)

Dated: December 29, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2016–31895 Filed 1–3–17; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Technical Electronic Product Radiation Safety Standards Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Technical Electronic Product Radiation Safety Standards Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Technical Electronic Product Radiation Safety Standards Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until December 24, 2018.

DATES: Authority for the Technical Electronic Product Radiation Safety Standards Committee will expire on December 24, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD, 20993–0002, 301–796–6639, *Shanika.Craig@fda.hhs.gov*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Technical Electronic Product Radiation Safety Standards Committee. The

committee is a non-discretionary Federal advisory committee established to provide advice and consultation to the Commissioner. The Commissioner of Food and Drugs is charged with the administration of the Radiation Control for Health and Safety Act of 1968. This Act creates the Technical Electronic Product Radiation Safety Standards Committee and requires the Commissioner to consult with the Committee before prescribing standards for radiation emissions from electronic products. This Committee provides advice and consultation to the Commissioner of Food and Drugs on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products, and may recommend electronic product radiation safety standards to the Commissioner for consideration.

The Committee shall consist of a core of 15 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of science or engineering applicable to electronic product radiation safety. Members will be invited to serve for overlapping terms of up to 4 years. Terms of more than two years are contingent upon the renewal of the Committee by appropriate action prior to its expiration. The core of voting members will include five members selected from governmental agencies, including State and Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor. A quorum shall consist of 10 members, of which at least 3 shall be from the general public, 3 from the government agencies, and 3 from the affected industries.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Radiation-EmittingProducts/TechnicalElectronicProductRadiationSafetyStandardsCommittee/default.htm.* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: December 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31847 Filed 1–3–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–4437]

In-Use Stability Studies and Associated Labeling Statements for Multiple-Dose Injectable Animal Drug Products; Draft 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 draft guidance for industry (GIF) #242 entitled ''In-Use Stability Studies and Associated Labeling Statements for Multiple-Dose Injectable Animal Drug Products.'' The purpose of in-use stability testing is to establish a period of time during which a multiple-dose drug product may be used while retaining acceptable quality specifications once the container is opened (*e.g.,* after a container has been needle-punctured). This draft guidance reflects the Agency's current thinking on how to formulate in-use statements, as well as how to design and carry out in-use stability studies to support these in-use statements, for multiple-dose injectable drug products intended for use in animals. This current thinking pertains to both generic drug products and pioneer drug products regardless of whether or not the pioneer reference listed new animal drug (RLNAD) currently has an in-use statement on the labeling.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 6, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–4437 for ''In-Use Stability Studies and Associated Labeling Statements for Multiple-Dose Injectable Animal Drug Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://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 Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kevin Rice, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0680, *kevin.rice@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft GIF #242 entitled ''In-Use Stability Studies and Associated Labeling Statements for Multiple-Dose Injectable Animal Drug Products.'' The purpose of in-use stability testing is to establish a period of time during which a multiple-dose drug product may be used while retaining acceptable quality specifications once the container is opened (*e.g.,* after a container has been needle-punctured). This draft guidance reflects the Agency's current thinking on how to formulate in-use statements, as well as how to design and carry out in-use stability studies to support these in-use statements, for multiple-dose injectable drug products intended for use in animals. This current thinking pertains to both generic drug products and pioneer drug products regardless of whether or not the pioneer RLNAD currently has an in-use statement on the labeling.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''In-Use Stability Studies and Associated Labeling Statements for Multiple-Dose Injectable Animal Drug Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032. The collections of information in 21 CFR part 511 have been approved under OMB control number 0910–0117. The collections of information in sections 512(b) and (n) of the Federal Food, Drug, and Cosmetic Act have been approved under OMB control number 0910–0669.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *https://www.regulations.gov*.

Dated: December 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31855 Filed 1–3–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4232]

Battery Safety Concerns in Electronic Nicotine Delivery Systems; Public Workshop; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Public workshop; establishment of public docket; request for data, information, and comments.

SUMMARY: The Food and Drug Administration (FDA) Center for Tobacco Products (CTP) is announcing several actions concerning issues related to batteries used in electronic nicotine delivery systems (ENDS), including electronic cigarettes (e-cigarettes). These actions are intended to give CTP staff an opportunity to hear from the public, including tobacco product manufacturers, importers, researchers, and academic investigators, about ENDS battery safety concerns (*e.g.,* overheating, fire, explosion), risk mitigation, and design parameters. Additionally, FDA is interested in information related to communication to consumers and the general public related to ENDS battery safety concerns. FDA is announcing a public workshop on ENDS batteries and safety hazards. The 2-day public workshop will include presentations and panel discussions about ENDS battery safety concerns as well as how potential safety hazards and risks are communicated to consumers and the general public. In conjunction with the public workshop, FDA is establishing a public docket to gather data and information on hazards and risks associated with the use of batteries in ENDS. Regardless of attendance at the public workshop, interested parties are invited to submit comments, including data and research.

DATES: The public workshop will be held on April 19 and 20, 2017, from 8:30 a.m. to 4:30 p.m. Individuals who wish to attend the public workshop must register by March 17, 2017. Electronic or written comments to the docket will be accepted until May 22, 2017.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine

security check procedures will be performed. For parking, transportation, security, and information regarding special accommodations due to a disability, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm*.

You may submit comments to the public docket as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–4232 for ''Battery Safety Concerns in Electronic Nicotine Delivery Systems (ENDS) Public Workshop; Establishment of a Public Docket; Request for Comments.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://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: Joanna Randazzo, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4411A, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *CTPRegulations@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (Tobacco Control Act), amending the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and giving FDA authority to regulate tobacco product manufacturing, distribution, and marketing. The FD&C Act also gives FDA the ability, through rulemaking, to regulate additional products that meet the legal definition of a tobacco product. On May 10, 2016, FDA published a final rule entitled ''Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products'' (81 FR 28974) that became effective on August 8, 2016. Under this rule, newly deemed tobacco products, such as ENDS, are now subject to the provisions of the Tobacco Control Act that apply automatically to all products that meet the statutory definition of a tobacco product in section 201(rr) of the FD&C Act.

FDA has become aware of recent reports of battery-related safety events such as exploding batteries in ENDS, which include e-cigarettes. As a result, FDA is interested in gaining knowledge about ENDS battery safety hazards and controls, including internal and external battery-related factors, specifications, safety, and design parameters of the ENDS apparatus. In addition, FDA is interested in understanding how these risks currently are communicated to consumers, as well as how they may be communicated in the future, in an effort to determine the most effective method to address these problems. FDA is announcing a public workshop and establishing a public docket to gather data and information on hazards and risks associated with the use of batteries in ENDS. Regardless of attendance at the public workshop, interested parties are invited to submit comments, supported by research and data, regarding the topics for discussion at the public workshop (see section II). Information related to workshop presentations and discussion topics, including specific questions to be addressed at the workshop, can be found at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm*. The information gathered through this public docket may be used by FDA in considering future actions.

II. Public Workshop on Battery Safety Concerns in ENDS

FDA is announcing a 2-day public workshop to gather scientific information and stimulate discussion about hazards and risks associated with

the use of batteries in ENDS, including e-cigarettes. In particular, the workshop seeks to gather information, including research and data, on: (1) ENDS battery safety concerns (*e.g.,* overheating, fire, explosion, other modes of failure); (2) factors that contribute to ENDS battery failures; and (3) information on ENDS design features and other parameters that may impact the occurrence of these failures. The workshop is intended to better inform FDA about the hazards and risks associated with the use of batteries in ENDS. FDA is seeking input from a broad group of stakeholders, including, but not limited to: Scientific and medical experts; ENDS manufacturers, importers, distributors, wholesalers, and retailers; manufacturers of batteries for ENDS and other consumer products; state, and local government agencies; and other interested stakeholders, such as academic researchers and public health organizations.

Topics for Discussion: The public workshop will include presentations and panel discussions regarding substantive scientific information, specifically relating to hazards and risks associated with the use of batteries in ENDS, including e-cigarettes. Topics to be addressed include, for example: (1) Factors that contribute to failure of rechargeable and non-rechargeable ENDS batteries resulting in overheating, fire, explosion, or other modes of failure (this may include factors relating to batteries, charging equipment, components and parts such as voltage and temperature controllers or other circuitry, other ENDS design features, user modification of ENDS, and e-liquids), and what influence these factors have on the mode of failure (*e.g.,* battery overheating versus explosion); (2) safety features (*e.g.,* circuit protection, charging safety features) and battery standards that may be applied to ENDS batteries to limit their potential for overheating, fire, explosion, or other mode of failure; (3) changes, improvements, and innovations to battery and ENDS design that would limit the potential for overheating, fire, explosion, or other mode of failure; (4) other public health risks associated with ENDS batteries (*e.g.,* leakage); (5) ENDS design changes that could mitigate public health risks upon battery failure; (6) battery safety information that is communicated to ENDS consumers and the general public; and (7) best practices to effectively communicate potential risks associated with ENDS batteries to consumers and the general public (*e.g.,* via labeling, instructions for use, warnings). Additional information related to workshop presentations and discussions topics, including specific questions, can be found at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm*.

Attendance and Registration: To attend the workshop in person or by Webcast, individuals must register by submitting either an electronic or written request no later than March 17, 2017. Please submit electronic requests to register at *https://www.surveymonkey.com/r/FDACTP_ENDS_Battery_Workshop*. Persons without Internet access may send written requests for registration to Dhanya John, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Building 71, Rm. G335, Silver Spring, MD 20993–0002. Requests for registration must include the prospective attendee's name, title, affiliation, address, email address if available, and telephone number. Registration is free and you may register to either attend in-person or view the live Webcast. For registrants with Internet access, confirmation of registration will be emailed to you no later than March 21, 2017. For additional information regarding public workshop location and attendance capacities please refer to *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm*.

Presenters and Panelists: FDA is interested in gathering scientific information from individuals with a broad range of perspectives on technical topics to be discussed at the workshop. To be considered to serve as a presenter, please provide the following:

- A brief abstract for each presentation: The abstract should identify the specific topic(s) to be addressed and the amount of time requested.
- A one-page biosketch that describes and supports your scientific expertise on the specific topic(s) being presented, nature of your experience and research in the scientific field, positions held, and any program development activities.

Panelists will discuss their scientific knowledge on the questions and presentations in each session. To be considered to serve as a panelist, please provide a one-page biosketch that describes and supports your scientific expertise on the specific topic(s) being presented, nature of your experience and research in the scientific field, positions held, and any program development activities.

If you are interested in serving as a presenter or a panelist, please submit the above information, along with the topic(s) on which you would like to speak, to *workshop.CTPOS@fda.hhs.gov* by February 17, 2017.

Oral Presentations by Members of the Public: This workshop will include a public comment session. Persons wishing to present during the public comment session must make this request at the time of registration and should identify the topic they wish to address from among those topics under consideration, which are identified in section II of this document. FDA will do its best to accommodate requests to present. FDA urges individuals and organizations with common interests to consolidate or coordinate their comments, and request a single time for a joint presentation. Requesters with Internet access and who have submitted a working email address will receive an email regarding their request to speak during the public comment session by March 21, 2017.

Transcripts: A transcript of the proceedings will be available after the workshop at *http://www.fda.gov/TobaccoProducts/NewsEvents/ucm238308.htm* as soon as the official transcript is finalized. It also will be posted to the docket at *https://www.regulations.gov*.

III. Additional Opportunities To Speak With FDA

As is always the case, we welcome entities interested in meeting with FDA to discuss any of these ENDS battery safety topics to contact FDA directly. To facilitate such meetings, you may submit requests for an informal meeting to the attention of the Director, Office of Science, CTP, via email to *AskCTP@fda.hhs.gov* or U.S. mail to the following address: Food and Drug Administration, Center for Tobacco Products, Document Control Center, 10903 New Hampshire Ave., Building 71, Rm. G335, Silver Spring, MD 20993–0002. Please prominently identify your request as ''ENDS battery informal meeting.'' Please refer to section II for more information regarding submitting comments to the public docket.

Dated: December 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31857 Filed 1–3–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4487]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consumer and Healthcare Professional Identification of and Responses to Deceptive Prescription Drug Promotion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled, ''Consumer and Healthcare Professional Identification of and Responses to Deceptive Prescription Drug Promotion.''

DATES: Submit either electronic or written comments on the collection of information by March 6, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://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 *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–4487 for ''Consumer and Healthcare Professional Identification of and Responses to Deceptive Prescription Drug Promotion.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Consumer and Healthcare Professional Identification of and Responses to Deceptive Prescription Drug Promotion—OMB Control Number 0910—NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to

conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

Prescription drug promotion sometimes includes false or misleading (*i.e.,* deceptive [1]) claims, images, or other presentations; for instance, representations that a drug is more effective or less risky than is demonstrated by appropriate evidence. A number of empirical studies have examined the occurrence and influence of deceptive promotion, both in regard to prescription drugs (Ref. 1 and 2) and other products (Ref. 3 and 4). No research to our knowledge, however, has investigated the ability of consumers and healthcare professionals (HCPs) to independently identify deceptive prescription drug promotion. The ability to identify such promotion has important public health implications. If unable to identify deceptive promotion, consumers may ask their HCPs to prescribe specific drugs that they would not otherwise request. Likewise, HCPs unable to identify deceptive promotion may prescribe specific drugs that they would not otherwise prescribe. In the case that consumers and HCPs are able to identify deceptive promotion, then they may instead be equipped to incorporate such information into their medication decisions, and perhaps even report deceptive promotion to appropriate government regulators who can take corrective action. The FDA Bad Ad program, for example, encourages HCPs to report deceptive prescription drug promotion (Ref. 5), a goal which requires that HCPs successfully identify such promotion when it appears in the course of their duties. Likewise, similar programs could be implemented for consumers to report deceptive prescription drug promotion to FDA. Reports of deceptive promotion are useful to FDA because they allow investigators to focus their efforts in an era where the amount of promotion far exceeds the resources available to monitor everything.

The proposed project involves two studies examining participants' ability to detect and report deceptive (*i.e.,* false or misleading) presentations in prescription drug promotion. The studies will be conducted concurrently and will focus on different health conditions. Each study will be administered to two separate populations (*i.e.,* HCPs and consumers affected by the condition). HCPs will view mock pharmaceutical Web sites targeted toward physicians and consumers will view mock consumer-targeted pharmaceutical Web sites. The goal will be to keep the HCP and consumer-targeted Web sites as similar as possible, but to include content that is appropriate for the target audience. For example, HCP Web sites may contain more statistical information or medical terminology. A professional firm will create all mock Web sites such that they are indistinguishable from currently available prescription drug Web sites.

Study 1 and 2 Sample. Study 1 will sample consumers diagnosed with chronic pain that has lasted at least 3 months. Chronic pain has an incidence rate of roughly 11 percent (Ref. 6). Study 2 will sample consumers diagnosed with obesity, defined as body mass index greater than or equal to 30 (35 percent incidence; Ref. 7). The HCP samples for both studies will include physicians whose primary medical specialty is either primary care or internal medicine and whose responsibilities involve direct patient care at least 50 percent of the time. For both consumers and HCPs, pretest participants will not be eligible for the main study.

Pretesting. Pretesting will take place before the main studies to evaluate the procedures and measures used in the main studies. Each of the two pretests will have the same design as its respective main study (pretest 1 for Study 1 and pretest 2 for Study 2). The purpose of both pretests will be to: (1) Ensure that the mock Web sites are understandable, viewable, and delivering intended messages; (2) identify and eliminate any challenges to embedding the mock Web sites within the online survey; (3) ensure that survey questions are appropriate and meet the analytical goals of the research; and (4) pilot test the methods, including examining response rates and timing of survey. The two pretests will be conducted simultaneously. Based on pretest findings, we will refine the mock Web sites, survey questions, and data collection process, as necessary, to optimize the full-scale study conditions.

Main Studies. The proposed design for the main studies, including sample sizes, is summarized below and described next.

STUDY 1—DEGREE OF DECEPTION BASED ON THE NUMBER OF DECEPTIVE CLAIMS

Population	Experimental condition			
	None (control)	Fewer violations	More violations	Total
HCPs	125	125	125	375
Consumers w/chronic pain	125	125	125	375

STUDY 2—TYPE OF DECEPTION BASED ON IMPLICIT AND EXPLICIT CLAIMS

Population	Experimental condition			
	None (control)	Implicit	Explicit	Total
HCPs	125	125	125	375
Obese consumers	125	125	125	375

[1] Our use of the term *deceptive* is not meant to imply equivalence (or lack thereof) with use of the same term by the U.S. Federal Trade Commission. As defined in this document, we use this term to refer to presentations that are considered false or misleading within the context of prescription drug promotion.

The purpose of Study 1 is to assess consumer and HCP response to promotional Web sites with varying levels of false or misleading presentations. In Study 1, degree of deception will be manipulated over three levels by altering the number of deceptive claims (none, fewer, more). It is possible that consumers and HCPs are only able to identify ads as deceptive when they include a greater number of violations, whereas ads with few violations may not be identified as deceptive. The experimental stimuli will be in the form of a Web page for a fictitious drug targeted toward consumers who have chronic pain or toward HCPs. The deceptive Web sites will contain various types of violations. The Web site with fewer violations will contain a subset of the deceptive claims, imagery, or other presentations included in the Web site with more violations. For example, if the fewer-violations Web site includes two violations, then the more-violations Web site will include the same two violations plus two or three additional violations (in the form of claims and/or graphics).

Study 1 will help FDA address several key questions:

- What proportion of consumers and HCPs correctly identify a promotional piece as deceptive? Does the ability to identify deceptive promotion vary depending on the number of deceptive claims in a promotional piece?
- Does the degree of deception affect consumers' and HCPs' attitudes and behavioral intentions toward the promoted drug, including intended reporting to regulatory authorities?
- Is the effect of deceptive promotional pieces mediated by a person's ability to identify a promotional piece as deceptive (that is, do people who recognize a piece as deceptive discount the information in the piece, thereby adjusting their attitudes and intentions toward the product)?

Whereas Study 1 focused on the *level* of deception (based solely on the number of false or misleading claims), Study 2 focuses on the *type* of deception (implicit versus explicit). Many deceptive promotional claims are implicit rather than being explicitly false (Ref. 1 and 4). An implicit claim suggests or implies an unstated piece of information. An explicit claim fully and clearly expresses information and leaves nothing to be implied. Study 2 will compare perceptions and beliefs that consumers and HCPs hold about a drug following exposure to one of three versions of a prescription drug Web site: (1) An explicitly false Web site, (2) a factually true but implicitly misleading Web site, or (3) a Web site with no deceptive claims (the control group).

As with Study 1, we envision a pair of one-way factorial experiments, one conducted with a sample of consumers and the other with HCPs. Similar to Study 1, Study 2 will investigate how misleading implicit claims and explicitly false claims in prescription drug promotional pieces influence a person's ability to detect and respond appropriately to deception. The experimental stimuli will be in the form of a mockup of a pharmaceutical Web site targeted toward the relevant experimental population, obese consumers or HCPs who treat obese patients. The drug profile, including indication, risks, and logo branding will be fictitious. For the implicit misleading claim manipulations, we are interested in whether people infer false beliefs from the implicit communications.

Study 2 will help FDA address several key questions:

- What proportion of consumers and HCPs correctly identify a promotional piece as deceptive? Does the ability to identify deceptive promotion vary depending on whether deceptive claims in a promotional piece are explicit versus implicit?
- Does the type of deception affect consumers' and HCPs' attitudes and behavioral intentions toward the promoted drug, including intended reporting to regulatory authorities?
- Is the effect of deceptive promotional pieces mediated by a person's ability to identify a promotional piece as deceptive (that is, do people who recognize a piece as deceptive discount the information in the piece, thereby adjusting their attitudes and intentions toward the product)?

Measurement. Identifying how to measure consumers' and HCPs' ability to identify deceptive promotion as well as their reaction to such promotion is fundamental to achieving the research goals. A literature review revealed the importance of using a variety of measures to capture detection of deception. For direct measures, we will incorporate questions that ask participants to indicate whether there was any deception in the promotional piece and to rate the promotional piece in terms of how deceptive, credible, or trustworthy it was. Additionally, we will include claim-specific direct measures that allow people to click on any part of the Web site that they deem deceptive. Using responses to this variable, we can assess whether participants think there is any deception in a promotional piece; in instances where they do think there is deception, we can assess what aspects of the Web site contributed to that belief. We will also include indirect measures that identify whether participants believed the Web site expressed particular claims (*e.g.,* claim recognition) as well as participants' beliefs about the veracity of any deceptive claims (*e.g.,* claim truth, agreement, or acceptance). Moreover, we will assess whether participants believe the messages merit reporting to regulatory authorities (that is, FDA). To examine differences between experimental conditions, we will conduct inferential statistical tests such as analysis of variance. A copy of the draft questionnaire is available upon request.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pilot study screener completes	4,286 (chronic pain) 714 (obesity) 612 (HCP)	1	5,612	0.03 (2 minutes)	187
	5,612 total				
Main study screener completes	10,714 (chronic pain) 1,786 (obesity) 1,531 (HCP)	1	14,031	0.03 (2 minutes)	468

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
	14,031 total				
Pilot study completes	150 (chronic pain) 150 (obesity) 300 (HCP)	1	600	0.33 (20 minutes)	200
	600 total				
Main study completes	375 (chronic pain) 375 (obesity) 750 (HCP)	1	1,500	0.33 (20 minutes)	500
	1,500 total				
Total					1,355

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. Faerber, A.E. and D.H. Kreling. ''Content Analysis of False and Misleading Claims in Television Advertising for Prescription and Nonprescription Drugs.'' *Journal of General Internal Medicine,* 2014. 29(1): 110–118.
2. Symonds, T., C. Hackford, and L. Abraham. ''A Review of FDA Warning Letters and Notices of Violation Issued for Patient-Reported Outcomes Promotional Claims Between 2006 and 2012.'' *Value in Health,* 2014. 17: 433–437.
3. Mitra, A., M.A. Raymond, and C.D. Hopkins. ''Can Consumers Recognize Misleading Advertising Content in a Media Rich Online Environment?'' *Psychology & Marketing,* 2008. 25(7): 655–674.
4. Hastak, M., and M.B. Mazis. ''Deception by Implication: A Typology of Truthful but Misleading Advertising and Labeling Claims.'' *Journal of Public Policy & Marketing,* 2011. 30(2): 157–167.
5. O'Donoghue, A.C., V. Boudewyns, K.J. Aikin, E. Geisen, et al. ''Awareness of the FDA's Bad Ad Program and Education Regarding Pharmaceutical Advertising: A National Survey of Prescribers in Ambulatory Care Settings.'' *Journal of Health Communication,* 2015. 20: 1330–1336.
6. Nahin, R.L. ''Estimates of Pain Prevalence and Severity in Adults: United States, 2012.'' *Journal of Pain,* 2015. 16(8): 769–780.
7. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics (2015). ''Healthy Weight, Overweight, and Obesity Among Adults Aged 20 and Over, By Selected Characteristics: United States, Selected Years 1988–1994 hrough 2009–2012 [Table].'' In *Health, United States, 2014* with special feature on adults aged 55–64 (pp. 214–220; DHHS Publication No. 2015–1232). Retrieved from *http://www.cdc.gov/nchs/data/hus/hus14.pdf.*

Dated: December 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–31845 Filed 1–3–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: January 31, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry A Study Section.

Date: January 31–February 1, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Anita Szajek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–827–6276, *anita.szajek@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–14–264 Global Omics Approaches Targeting Adverse Pregnancy and Neonatal Outcomes Utilizing Existing Cohorts.

Date: January 31, 2017.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *steeleln@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–31849 Filed 1–3–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2592–16; DHS Docket No. USCIS–2015–0005]

RIN 1615–ZB61

Extension and Redesignation of the Republic of Yemen for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of the Republic of Yemen (Yemen) for Temporary Protected Status (TPS) for 18 months, from March 4, 2017, through September 3, 2018, and redesignating Yemen for TPS for 18 months, effective March 4, 2017, through September 3, 2018. Through this Notice, DHS also sets forth procedures necessary for Yemeni nationals (or aliens having no nationality who last habitually resided in Yemen) either to re-register under the extension, if they already have TPS, and to apply for renewal of their Employment Authorization Documents (EAD) with U.S. Citizenship and Immigration Services (USCIS) or submit an initial registration application under the redesignation and apply for an EAD.

DATES: *Extension of Designation of Yemen for TPS:* The 18-month extension of the TPS designation of Yemen is effective March 4, 2017, and will remain in effect through September 3, 2018. The 60-day re-registration period runs from January 4, 2017 through March 6, 2017.

Redesignation of Yemen for TPS: The redesignation of Yemen for TPS is effective March 4, 2017, and will remain in effect through September 3, 2018, a period of 18 months. The 180-day initial registration period for new applicants under the Yemen TPS redesignation runs from January 4, 2017 through July 3, 2017.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- You can find specific information about this extension and redesignation of Yemen for TPS by selecting ''Yemen'' from the menu on the left side of the TPS Web page. You can also contact Guillermo Roman-Riefkohl, TPS Program Manager, Waivers and Temporary Services Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060; or by phone at 202–272–1533 (this is not a toll-free number). Note: The phone number provided here is solely for questions regarding this TPS Notice. It is not for individual case status inquiries.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Government—U.S. Government
IJ—Immigration Judge
INA—Immigration and Nationality Act
OSC—U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services

The extension allows TPS beneficiaries to retain TPS through September 3, 2018, so long as they continue to meet the eligibility requirements for TPS. The redesignation of Yemen expands eligibility for TPS to include individuals who have been continuously residing in the United States since January 4, 2017. Previously, only individuals who had been continuously residing in the United States since September 3, 2015, were eligible for TPS under Yemen's designation. The Secretary has determined that an extension of Yemen's current designation for TPS is warranted because the conditions that supported its designation on the basis of ongoing armed conflict persist. Additionally, the Secretary has determined that a redesignation of Yemen for TPS is warranted due to the ongoing armed conflict and to the extraordinary and temporary conditions in Yemen that prevent Yemeni nationals from returning in safety. The redesignation will extend TPS protection to eligible individuals who have arrived in the United States after the eligibility cutoff dates established by Yemen's previous designation for TPS in September 2015. The redesignation is based on the Secretary's determinations under the statute that (1) there continues to be an ongoing armed conflict in Yemen and, due to such conflict, requiring the return of Yemeni nationals to Yemen would pose a serious threat to their personal safety, and (2) there are extraordinary and temporary conditions in Yemen that prevent Yemeni nationals from returning to Yemen in safety, and it is not contrary to the national interest of the United States to permit Yemeni nationals to remain temporarily in the United States.

For individuals who have already been granted TPS under Yemen's designation, the 60-day re-registration period runs from January 4, 2017 through March 6, 2017. USCIS will issue new EADs with a September 3, 2018, expiration date to eligible Yemen TPS beneficiaries who timely re-register and apply for EADs under this extension. Given the timeframes involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants will receive new EADs before their current EADs expire on March 3, 2017. Accordingly, through this Notice, DHS automatically extends the validity of EADs issued under Yemen's TPS designation for 6 months, through September 3, 2017, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and their impact on Employment Eligibility Verification (Form I–9) and E-Verify processes.

Under the redesignation, individuals who currently do not have TPS may submit an initial application during the 180-day initial registration period that runs from January 4, 2017 through July 3, 2017. In order to receive a grant of TPS, initial applicants under this redesignation must demonstrate that they have continuously resided in the United States since January 4, 2017 and

been continuously physically present in the United States since March 4, 2017, in addition to meeting all other TPS eligibility criteria.

Applications for TPS that were filed pursuant to Yemen's September 2015 TPS designation and remain pending on January 4, 2017 will be treated as initial applications under this 2016 redesignation. Individuals who have a pending initial Yemen TPS application do not need to file a new Application for Temporary Protected Status (Form I–821).

What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a country designated for TPS under the Immigration and Nationality Act (INA), or to eligible persons without nationality who last habitually resided in the designated country.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and may obtain work authorization, so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to permanent resident status.
- When the Secretary terminates a country's TPS designation, TPS benefits end, but former TPS beneficiaries continue to hold the same immigration status they maintained before TPS, if any (unless that status has since expired or been terminated), or any other lawfully obtained immigration status they received while registered for TPS.

When was Yemen designated for TPS?

On September 3, 2015, the Secretary designated Yemen for TPS based on ongoing armed conflict in the country that posed a serious threat to the personal safety of returning nationals. *See Designation of the Republic of Yemen for Temporary Protected Status,* 80 FR 53319 (Sept. 3, 2015). This announcement marks the first extension and the first redesignation of TPS for Yemen since its initial designation in September 2015.

What authority does the Secretary have to extend the designation of Yemen for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate U.S. Government (Government) agencies, to designate a foreign state (or part thereof) for TPS if the Secretary finds that certain country conditions exist.[1] The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a country's TPS designation, the Secretary, after consultation with appropriate Government agencies, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that a foreign state continues to meet the conditions for TPS designation, the designation may be extended for an additional period of 6, 12, or 18 months. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

What is the Secretary's authority to redesignate Yemen for TPS?

In addition to extending an existing TPS designation, the Secretary, after consultation with appropriate Government agencies, may redesignate a country (or part thereof) for TPS. *See* INA section 244(b)(1), 8 U.S.C. 1254a(b)(1); *see also* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i) (requiring that ''the alien has been continuously physically present since the effective date of *the most recent designation of the state*'') (emphasis added). This is one of numerous instances in which the Secretary, and prior to the establishment of DHS, the Attorney General, has simultaneously extended a country's TPS designation and redesignated the country for TPS. *See, e.g., Extension and Redesignation of Syria for Temporary Protected Status,* 81 FR 50533 (Aug. 1, 2016); *Extension and Redesignation of South Sudan for Temporary Protected Status,* 81 FR 4051 (Jan. 25, 2016); *Extension and Redesignation of Haiti for Temporary Protected Status,* 76 FR 29000 (May 19, 2011); *Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program,* 62 FR 16608 (Apr. 7, 1997) (discussing legal authority for redesignation of a country for TPS).

When the Secretary designates or redesignates a country for TPS, he or she also has the discretion to establish the date from which TPS applicants must demonstrate that they have been ''continuously resid[ing]'' in the United States. *See* INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii). This discretion permits the Secretary to tailor the ''continuous residence'' date to offer TPS to the group of eligible individuals that the Secretary deems appropriate.

The Secretary has determined that the ''continuous residence'' date for applicants for TPS under the redesignation of Yemen shall be January 4, 2017. Initial applicants for TPS under this redesignation must also show they have been ''continuously physically present'' in the United States since March 4, 2017, which is the effective date of the Secretary's redesignation of Yemen. *See* INA section 244(c)(1)(A)(i), 8 U.S.C. 1254a(c)(1)(A)(i). For each initial TPS application filed under the redesignation, the final determination of whether the applicant has met the ''continuous physical presence'' requirement cannot be made until March 4, 2017. USCIS, however, will issue EADs, as appropriate, during the registration period in accordance with 8 CFR 244.5(b) to individuals who file their applications before March 4, 2017.

Why is the Secretary extending the TPS designation for Yemen and simultaneously redesignating Yemen for TPS through September 3, 2018?

DHS, in consultation with the Department of State, has conducted a thorough review of conditions in Yemen. Based on this review, the Secretary has determined that an 18-month extension of Yemen's designation for TPS is warranted because the conditions that supported its designation on the basis of ongoing armed conflict persist. Ongoing armed conflict within Yemen continues to pose a serious threat to the personal safety of returning nationals.

Furthermore, redesignation is warranted due to the continued deterioration of the conditions for civilians in Yemen and the resulting need to offer protection to individuals who have arrived in the United States after the eligibility cutoff dates established by Yemen's previous designation for TPS in September 2015. The redesignation is based on the dual statutory grounds of (1) ongoing armed conflict in Yemen and, due to such conflict, requiring the return of Yemen

[1] As of March 1, 2003, in accordance with section 1517 of title XV of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions transferred from the Department of Justice to DHS ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (codifying the Homeland Security Act of 2002, tit. XV, section 1517).

nationals to Yemen would pose a serious threat to their personal safety and (2) extraordinary and temporary conditions, stemming from the conflict and exacerbated by natural disasters, also prevent Yemeni nationals from returning to Yemen in safety and it is not contrary to the national interest of the United States to permit Yemeni nationals to remain temporarily in the United States.

In July 2014, the Houthis, a group from the northern region of Yemen opposed to the government, began a violent territorial expansion across Yemen. The Houthis took over the capital, Sana'a, in September 2014, consolidating control of Yemeni government ministries, infrastructure, and security forces. The conflict between the Houthis and the government escalated in March 2015, when a coalition of more than ten countries, led by Saudi Arabia, initiated air strikes against the Houthis. Since the March 2015 escalation, thousands have been killed and tens of thousands wounded. Out of a 2015 population of approximately 26.7 million, 3 million Yemenis have been internally displaced, and more than 180,000 people have fled the country.

The ongoing conflict has deepened Yemen's difficult economic and humanitarian situation. More than 80 percent of Yemenis require some form of humanitarian assistance. The food security situation has significantly deteriorated over the last year, with over 14- million people food insecure. The conflict has also severely impacted the delivery of basic services, including health services, water, sanitation, and education. Infrastructure damage as a result of the conflict has further constrained service delivery and relief efforts, as roads, bridges, flood control systems, health facilities, airports, and schools have been damaged or destroyed in the conflict. Even if a political resolution to the conflict is reached, Yemen will be faced with tremendous reconstruction needs. Additionally, thousands of landmines have been placed during the conflict, with mine clearance likely taking years to complete.

Many hospitals and health facilities have closed due to damage, destruction, or shortages of critical supplies or staff. Those that remain open struggle to function fully. The shortage in health care is disproportionately affecting children under five, pregnant women, and people with chronic diseases. A lack of fuel to pump clean water and conflict-related destruction and damage to water networks has left people unable to meet their basic water, hygiene, and sanitation needs, leading to an increased risk of disease outbreaks. There is now a cholera outbreak in Yemen; the number of suspected cases ballooned to 1,410 within three weeks of the outbreak being declared. Almost half of all school-aged children in Yemen are unable to attend school, largely due to the destruction of school buildings, or because the buildings are being used to shelter displaced persons or by warring parties to the conflict.

In addition to conflict-related damage, since Yemen's initial designation for TPS in September 2015, natural disasters have also contributed to infrastructure damage. Yemen was hit by two tropical cyclones, Chapala and Megh, in November 2015, inundating Yemen with 24 inches of rain in 48 hours, an amount seven times the annual average. Heavy rains again pounded Yemen on April 13–14, 2016. These storms caused loss of life; injuries; flooding; mudslides; damage to infrastructure; and shortages of food, water, medical supplies, and fuel.

Based upon this review and after consultation with appropriate Government agencies, the Secretary has determined that:

- The conditions that supported the September 3, 2015 designation of Yemen for TPS continue to be met. *See* INA section 244(b)(3)(A) and (C), 8 U.S.C. 1254a(b)(3)(A) and (C).
- There is ongoing armed conflict in Yemen and, due to such conflict, requiring the return of Yemen nationals to Yemen would pose a serious threat to their personal safety. *See* INA section 244(b)(1)(A), 8 U.S.C. 1254a(b)(1)(A).
- There are extraordinary and temporary conditions in Yemen that prevent Yemeni nationals from returning to Yemen in safety, and it is not contrary to the national interest of the United States to permit Yemeni nationals to remain temporarily in the United States. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The existing designation of Yemen for TPS should be extended for an additional 18-month period from March 4, 2017 through September 3, 2018. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).
- Yemen should be redesignated for TPS for an 18-month period on the statutory bases of ongoing armed conflict and extraordinary and temporary conditions, effective March 4, 2017 through September 3, 2018. *See* INA section 244(b)(1)(A) and (C), and (b)(2); 8 U.S.C. 1254a(b)(1)(A) and (C), and (b)(2).
- TPS applicants must demonstrate that they have continuously resided in the United States since January 4, 2017 and been continuously physically present in the United States since March 4, 2017.
- There are approximately 1,000 current Yemen TPS beneficiaries who may apply for re-registration and be eligible to retain their TPS under the extension.
- It is estimated that an additional 150–450 individuals may become newly eligible for TPS under the redesignation.

Notice of Extension of the TPS Designation of Yemen and Redesignation of Yemen for TPS

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate Government agencies, that the conditions that supported Yemen's designation for TPS in September 2015 based on the ongoing armed conflict in Yemen continue to be met. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). I also have determined that there are extraordinary and temporary conditions in Yemen that prevent Yemeni nationals from returning to Yemen in safety, and that it is not contrary to the national interest of the United States to permit Yemeni nationals to remain temporarily in the United States. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). On the basis of these determinations, I am simultaneously extending the existing TPS designation of Yemen for 18 months from March 4, 2017, through September 3, 2018, and redesignating Yemen for TPS for the same 18-month period. *See* INA section 244(b)(1)(A) and (C), and (b)(2); 8 U.S.C. 1254a(b)(1)(A) and (C), and (b)(2). I have also determined that to be eligible for TPS under the redesignation, individuals must demonstrate that they have continuously resided in the United States since January 4, 2017. *See* INA section 244(c)(1)(A)(ii), 8 U.S.C. 1254a(c)(1)(A)(ii).

Jeh Charles Johnson,

Secretary.

I am currently a Yemen TPS beneficiary. What should I do?

If you are a current TPS beneficiary whose TPS application was approved prior to January 4, 2017, then you need to file a re-registration application under the extension if you wish to maintain TPS benefits through September 3, 2018. You must use the Application for Temporary Protected Status (Form I–821) to re-register for TPS. The 60-day open reregistration period will run from January 4, 2017 through March 6, 2017.

I have a pending initial TPS application filed during the Yemen TPS registration period that ran from September 3, 2015, through March 1, 2016. What should I do?

If your TPS application is still pending on January 4, 2017, then you do *not* need to file a new Application for Temporary Protected Status (Form I–821). Pending TPS applications will be treated as initial applications under this redesignation. Therefore, if your TPS application is approved, you will be granted TPS through September 3, 2018. If you have a pending TPS application *and* you wish to have an EAD valid through September 3, 2018, please refer to Table 1 to determine whether you should file a new Application for Employment Authorization (Form I–765).

TABLE 1—FORM AND EAD INFORMATION FOR PENDING TPS APPLICATIONS

If . . .	And . . .	Then . . .
You requested an EAD during the previous initial registration period for Yemen TPS.	You received an EAD with Category C19 or A12.	You must file a new Application for Employment Authorization (Form I–765) with the fee (or fee waiver request) if you wish to have a new EAD valid through Sept. 3, 2018.
	You did not receive an EAD with Category C19 or A12.	You do not need to file a new Application for Employment Authorization (Form I–765). If your TPS application is approved, your Application for Employment Authorization (Form I–765) will be approved through Sept. 3, 2018.
You did not request an EAD during the previous initial registration period for Yemen TPS.	You wish to have an EAD valid through Sept. 3, 2018.	You must file a new Application for Employment Authorization (Form I–765) with the fee (or fee waiver request).
	You do not wish to have an EAD valid through Sept. 3, 2018.	You do not need to file a new Application for Employment Authorization (Form I–765).

I am not a current TPS beneficiary, and I do not have a TPS application pending. What are the procedures for initial registration for TPS under the Yemen redesignation?

If you are not a current Yemen TPS beneficiary, nor do you have a pending TPS application with USCIS, you may submit your TPS application during the 180-day initial registration period that will run from January 4, 2017 through July 3, 2017.

Required Application Forms and Fees To Register or Re-Register for TPS

To register or re-register for TPS, an applicant must submit the following two applications:

1. Application for Temporary Protected Status (Form I–821).

- If you are filing an initial application, you must pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.2(f)(2) and 244.6 and information on initial filing on the USCIS TPS Web page at *http://www.uscis.gov/tps.*
- If you are filing an application for re-registration, you do not need to pay the fee for the Application for Temporary Protected Status (Form I–821). *See* 8 CFR 244.17.

2. Application for Employment Authorization (Form I–765).

- If you are applying for initial registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765) only if you are age 14 through 65. No fee for the Application for Employment Authorization (Form I–765) is required if you are under the age of 14 or are over 65 and applying for initial registration.
- If you are applying for re-registration and want an EAD, you must pay the fee for the Application for Employment Authorization (Form I–765), regardless of your age.
- If you are not requesting an EAD, regardless of whether you are applying for initial registration or re-registration, you do not pay the fee for the Application for Employment Authorization (Form I–765).

You must submit both completed application forms together. If you are unable to pay for the application and/or biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or submitting a personal letter requesting a fee waiver, and by providing satisfactory supporting documentation. For more information on the application forms and fees for TPS, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Fees for the Application for Temporary Protected Status (Form I–821), the Application for Employment Authorization (Form I–765), and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age or older. Those applicants must submit a biometric services fee. If you are unable to pay for the biometric services fee, you may apply for a fee waiver by completing a Request for Fee Waiver (Form I–912) or by submitting a personal letter requesting a fee waiver, and providing satisfactory supporting documentation. For more information on the biometric services fee, please visit the USCIS Web site at *http://www.uscis.gov.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured.

Refiling an *Initial* TPS Application After Receiving a Denial of a Fee Waiver Request

If you request a fee waiver when filing your initial TPS application package and your request is denied, you may re-file your application packet before the initial filing deadline of July 3, 2017. If you submit your application with a fee waiver request before that deadline, but you receive a fee waiver denial and there are fewer than 45 days before the filing deadline (or the deadline has passed), you may still re-file your application within the 45-day period after the date on the USCIS fee waiver denial notice. Your application will not be rejected even if the filing deadline has passed, provided it is mailed within those 45 days and all other required information for the application is included. Note: If you wish, you may also wait to request an EAD and pay the Application for Employment Authorization (Form I–765) fee after USCIS grants you TPS, if you are found eligible. If you choose to do this, you would file the Application for Temporary Protected Status (Form I–821) with the fee and the Application for Employment Authorization (Form I–765) without the fee and without requesting an EAD.

Re-Filing a TPS *Re-Registration* Application After Receiving a Denial of a Fee Waiver Request

USCIS urges all re-registering applicants to file as soon as possible within the 60-day re-registration period so that USCIS can process the applications and issue EADs promptly. Filing early will also allow those applicants who may receive denials of their fee waiver requests to have time to re-file their applications *before* the re-registration deadline. If, however, an applicant receives a denial of his or her fee waiver request and is unable to re-file by the re-registration deadline, the applicant may still re-file his or her application. This situation will be reviewed to determine whether the applicant has established good cause for late re-registration. However, applicants are urged to re-file within 45 days of the date on their USCIS fee waiver denial notice, if at all possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(c). For more information on good cause for late re-registration, visit the USCIS TPS Web page at *http://www.uscis.gov/tps.* Note: Although a re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the initial TPS application fee) when filing a TPS re-registration application, the applicant may decide to wait to request an EAD, and therefore not pay the Application for Employment Authorization (Form I–765) fee, until after USCIS has approved the individual's TPS re-registration, if he or she is eligible.

Mailing Information

Mail your application for TPS to the proper address in Table 2.

TABLE 2—MAILING ADDRESSES

If . . .	Mail to . . .
You are applying through the U.S. Postal Service.	USCIS, Attn: TPS Yemen, P.O. Box 7555, Chicago, IL 60680–6943.
You are using a non-U.S. Postal Service delivery service.	USCIS, Attn: TPS Yemen, 131 S. Dearborn, 3rd Floor, Chicago, IL 60603–5517.

If you were granted TPS by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), and you wish to request an EAD, or are re-registering for the first time following a grant of TPS by an IJ or the BIA, please mail your application to the appropriate address in Table 2. When submitting a re-registration application and/or requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will aid in the verification of your grant of TPS and processing of your application, as USCIS may not have received records of your grant of TPS by either the IJ or the BIA.

E-Filing

You cannot electronically file your application when re-registering or submitting an initial registration for Yemen TPS. Please mail your application to the mailing address listed in Table 2.

Supporting Documents

The filing instructions on the Application for Temporary Protected Status (Form I–821) list all the documents needed to establish basic eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying or registering for TPS on the USCIS Web site at *www.uscis.gov/tps* under ''Yemen.''

Do I need to submit additional supporting documentation?

If one or more of the questions listed in Part 4, Question 2 of the Application for Temporary Protected Status (Form I–821) applies to you, then you must submit an explanation on a separate sheet(s) of paper and/or additional documentation.

Employment Authorization Document (EAD)

How can I obtain information on the status of my EAD request?

To get case status information about your TPS application, including the status of a request for an EAD, you can check Case Status Online at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833). If your Application for Employment Authorization (Form I–765) has been pending for more than 90 days and you still need assistance, you may request an EAD inquiry appointment with USCIS by using the InfoPass system at *https://infopass.uscis.gov.* However, we strongly encourage you first to check Case Status Online or call the USCIS National Customer Service Center for assistance before making an InfoPass appointment.

Am I eligible to receive an automatic 6-month extension of my current EAD through September 3, 2017?

Provided that you currently have a Yemen TPS-based EAD, this Notice automatically extends your EAD by 6 months if you:

- Are a national of Yemen (or an alien having no nationality who last habitually resided in Yemen);
- Received an EAD under the designation of Yemen for TPS; and
- Have an EAD with a marked expiration date of March 3, 2017, bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

Although this Notice automatically extends your EAD through September 3, 2017, you must re-register timely for TPS in accordance with the procedures described in this Notice if you would like to maintain your TPS.

When hired, what documentation may I show to my employer as proof of employment authorization and identity when completing Employment Eligibility Verification (Form I–9)?

You can find a list of acceptable document choices on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9). You can find additional detailed information on the USCIS I–9 Central Web page at *http://www.uscis.gov/I-9Central.* Employers are required to verify the identity and employment authorization of all new employees by using Employment Eligibility Verification (Form I–9). Within 3 days of hire, an employee must present proof of identity and employment authorization to his or her employer.

You may present any document from List A (reflecting both your identity and employment authorization), or one document from List B (reflecting identity) together with one document from List C (reflecting employment authorization), or you may present an acceptable receipt for List A, List B, or List C documents as described in the Employment Eligibility Verification (Form I–9) Instructions. An EAD is an acceptable document under ''List A.'' Employers may not reject a document based on a future expiration date.

If your EAD has an expiration date of March 3, 2017, and states ''A–12'' or ''C–19'' under ''Category,'' it has been extended automatically for 6 months by virtue of this **Federal Register** Notice, and you may choose to present your EAD to your employer as proof of identity and employment authorization for Form I–9 through September 3, 2017 (see the subsection titled ''*How do my employer and I complete the Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?*'' for further information). To minimize

confusion over this extension at the time of hire, you should explain to your employer that USCIS has automatically extended your EAD through September 3, 2017. You may also show your employer a copy of this **Federal Register** Notice confirming the automatic extension of employment authorization through September 3, 2017. As an alternative to presenting your automatically extended EAD, you may choose to present any other acceptable document from List A, a combination of one selection from List B and one selection from List C, or a valid receipt.

What documentation may I show my employer if I am already employed but my current TPS-related EAD is set to expire?

Even though EADs with an expiration date of March 3, 2017, that state ''A–12'' or ''C–19'' under ''Category'' have been automatically extended for 6 months by this **Federal Register** Notice, your employer will need to ask you about your continued employment authorization once March 3, 2017 is reached to meet its responsibilities for Employment Eligibility Verification (Form I–9). Your employer may need to re-inspect your automatically extended EAD to check the expiration date and code to record the updated expiration date on your Employment Eligibility Verification (Form I–9) if he or she did not keep a copy of this EAD when you initially presented it. However, your employer does not need a new document to re-verify your employment authorization until September 3, 2017, the expiration date of the automatic extension. Instead, you and your employer must make corrections to the employment authorization expiration dates in Section 1 and Section 2 of Employment Eligibility Verification (Form I–9) (see the subsection titled ''*What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?*'' for further information). In addition, you may also show this **Federal Register** Notice to your employer to explain what to do for Employment Eligibility Verification (Form I–9).

By September 3, 2017, the expiration date of the automatic extension, your employer must re-verify your employment authorization. At that time, you must present any document from List A or any document from List C on Employment Eligibility Verification (Form I–9) to re-verify employment authorization, or an acceptable List A or List C receipt described in the Employment Eligibility Verification (Form I–9) Instructions. Your employer should complete either Section 3 of the Employment Eligibility Verification (Form I–9) originally completed for you or, if this Section has already been completed or if the version of Employment Eligibility Verification (Form I–9) has expired (check the date in the bottom left-hand corner of the form), complete Section 3 of a new Employment Eligibility Verification (Form I–9) using the most current version. Note that your employer may not specify which List A or List C document employees must present, and cannot reject an acceptable receipt.

Can my employer require that I provide any other documentation to prove my status, such as proof of my Yemeni citizenship?

No. When completing Employment Eligibility Verification (Form I–9), including re-verifying employment authorization, employers must accept any documentation that appears on the ''Lists of Acceptable Documents'' for Employment Eligibility Verification (Form I–9) that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers may not request documentation that does not appear on the ''Lists of Acceptable Documents.'' Therefore, employers may not request proof of Yemeni citizenship or proof of re-registration for TPS when completing Employment Eligibility Verification (Form I–9) for new hires or re-verifying the employment authorization of current employees. If presented with EADs that have been automatically extended, employers should accept such EADs as valid List A documents so long as the EADs reasonably appear to be genuine and to relate to the employee. Refer to the Note to Employees section of this Notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

What happens after September 3, 2017 for purposes of employment authorization?

After September 3, 2017, employers may no longer accept the EADs that this **Federal Register** Notice automatically extended. Before that time, however, USCIS will endeavor to issue new EADs to eligible TPS re-registrants who request them. These new EADs will have an expiration date of September 3, 2018, and can be presented to your employer for completion of Employment Eligibility Verification (Form I–9). Alternatively, you may choose to present any other legally acceptable document or combination of documents listed on the Employment Eligibility Verification (Form I–9).

How do my employer and I complete Employment Eligibility Verification (Form I–9) using an automatically extended EAD for a new job?

When using an automatically extended EAD to complete Employment Eligibility Verification (Form I–9) for a new job prior to September 3, 2017, you and your employer should do the following:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and write the automatically extended EAD expiration date (September 3, 2017) in the space provided; and

b. Write your alien number (USCIS number or A-number) in the next space (your EAD or other document from DHS will have your USCIS number or A-number printed on it; the USCIS number is the same as your A-number without the A prefix).

2. For Section 2, employers should record the:

a. Document title;

b. Issuing authority;

c. Document number; and

d. Automatically extended EAD expiration date (September 3, 2017).

By September 3, 2017, employers must re-verify the employee's employment authorization in Section 3 of the Employment Eligibility Verification (Form I–9).

What corrections should my current employer and I make to Employment Eligibility Verification (Form I–9) if my EAD has been automatically extended?

If you are an existing employee who presented a TPS-related EAD that was valid when you first started your job, but that EAD has now been automatically extended, your employer may need to re-inspect your automatically extended EAD if your employer does not have a copy of the EAD on file, and you and your employer should correct your previously completed Employment Eligibility Verification (Form I–9) as follows:

1. For Section 1, you should:

a. Draw a line through the expiration date in Section 1;

b. Write ''September 3, 2017'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 1; and

d. Initial and date the correction in the margin of Section 1.

2. For Section 2, employers should:

a. Draw a line through the expiration date written in Section 2;

b. Write ''September 3, 2017'' above the previous date;

c. Write ''TPS Ext.'' in the margin of Section 2; and

d. Initial and date the correction in the margin of Section 2.

By September 3, 2017, when the automatic extension of EADs expires, employers must re-verify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify automated the verification process for employees whose TPS was automatically extended in a **Federal Register** Notice. If you have an employee who is a TPS beneficiary who provided a TPS-related EAD when he or she first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. By September 3, 2017, employment authorization must be re-verified in Section 3. Employers should not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I–9Central@dhs.gov.* Calls and emails are accepted in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may also call the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) Employer Hotline at 800–255–8155 (TTY 800–237–2515), which offers language interpretation in numerous languages, or email OSC at *osccrt@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email at *I–9Central@dhs.gov.* Calls are accepted in English, and many other languages. Employees or applicants may also call the OSC Worker Information Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Employment Eligibility Verification (Form I–9) and E-Verify. The OSC Worker Information Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the List of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Employment Eligibility Verification (Form I–9) Instructions. Employers may not require extra or additional documentation beyond what is required for Employment Eligibility Verification (Form I–9) completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Employment Eligibility Verification (Form I–9) differs from Federal or state government records.

Employers may not terminate, suspend, delay training, withhold pay, lower pay, or take any adverse action against an employee based on the employee's decision to contest a TNC or because the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). To report an employer for discrimination in the E-Verify process based on citizenship or immigration status, or based on national origin, contact OSC's Worker Information Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Employment Eligibility Verification (Form I–9) and E-Verify procedures is available on the OSC Web site at *http://www.justice.gov/crt/about/osc/* and the USCIS Web site at *http://www.dhs.gov/E-verify.*

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary and/or show you are authorized to work based on TPS. Examples of such documents are:

(1) Your EAD that has been automatically extended, or your EAD that has not expired;

(2) A copy of this **Federal Register** Notice if your EAD is automatically extended under this Notice;

(3) A copy of your Application for Temporary Protected Status Notice of Action (Form I–797) for this re-registration;

(4) A copy of your past or current Application for Temporary Protected Status Notice of Action (Form I–797), if you received one from USCIS; or

(5) If there is an automatic extension of work authorization, a copy of information from the USCIS TPS Web site that provides information on the automatic extension.

Check with the Government agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the USCIS Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at the following link: *https://save.uscis.gov/casecheck/,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the

response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE Web site at *http://www.uscis.gov/save,* then by choosing ''For Benefits Applicants'' from the menu on the left and selecting ''Questions about your Records?''.

[FR Doc. 2016–31003 Filed 1–3–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/A0A501010.999900 253G]

Grand Traverse Band of Ottawa and Chippewa Indians; Amendments to Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes amendments to the Grand Traverse Band of Ottawa and Chippewa Indians Liquor Ordinance, Title 14, Chapter 4. In 2016, the Grand Traverse Tribal Council enacted the amendments to the Liquor Ordinance. The amended Liquor Ordinance supersedes the existing Grand Traverse Band of Ottawa and Chippewa Indians Liquor Ordinance that was last published in the **Federal Register** on June 13, 2005 (70 FR 34146).

DATES: This ordinance shall become effective February 3, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Sherrel LaPointe, Tribal Operations Officer, Midwest Region, Bureau of Indian Affairs, Norman Pointe II, 5600 American Boulevard West, Suite 500, Bloomington, Minnesota 55437, Telephone: (612) 713–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Grand Traverse Band duly adopted Tribal Council Resolution Number 16–34.2713 on February 17, 2016. This notice is published with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Grand Traverse Band of Ottawa and Chippewa Indians duly adopted this amendment to the Grand Traverse Liquor Control Code by Resolution Number 16–34.2713 on February 17, 2016.

Dated: December 12, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

The Grand Traverse Band of Ottawa and Chippewa Indians Liquor Control Code, as amended, shall read as follows:

Liquor Ordinance of the Grand Traverse Band of Ottawa and Chippewa Indians

Title 14—Chapter 4

14.401 Short Title

This ordinance may be cited as the ''Liquor Ordinance'' of the Grand Traverse Band of Ottawa and Chippewa Indians.

14.402 Authority

As required by 18 U.S.C. 1161, this ordinance is in conformity with relevant provisions of State law and is enacted pursuant to Article IV of the constitution of the Grand Traverse Band of Ottawa and Chippewa Indians.

14.403 Interpretation

(a) This ordinance shall be deemed an exercise of the police and regulatory powers of the Grand Traverse Band of Ottawa and Chippewa Indians in order to promote Tribal self-determination and to protect the public welfare, and all provisions of this ordinance shall be liberally construed for the accomplishment of these purposes.

(b) Nothing in this ordinance may be construed as a waiver of Tribal sovereign immunity.

14.404 Definitions

In this ordinance, unless the context otherwise requires:

(a) ''alcoholic beverage'' means any of the following:

(1) Any spirituous, vinous, malt or fermented liquor, liquid of compound, whether or not medicated, proprietary, patented, and by whatever name called, containing one-half of one percent (.5%) or more alcohol by volume, which is commonly used or reasonably adopted to use for beverage purposes;

(2) any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops or other cereal in potable water;

(3) any product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% of alcohol by volume, including fermented fruit juices other than grapes and mixed wine drinks;

(4) any beverage that contains alcohol obtained by distillation, mixed with potable water or other substances, or both, in solution, and includes wine containing an alcoholic content of more than 21% by volume, except sacramental wine and mixed spirit drink;

(5) any drink or similar product marketed as a wine cooler that contains less than 7% alcohol by volume, consists of wine or cider and plain, sparkling or carbonated water, and contains any 1 or more of the following: (a) Nonalcoholic beverages; (b) flavoring; (c) coloring materials; (d) fruit juices; (e) fruit adjuncts; (f) sugar; (g) carbon dioxide; (h) preservatives.

(b) ''liquor'' means any alcoholic beverage.

(c) ''person'' means a natural person, firm, association, corporation, or other legal entity.

(d) ''premises'' means specified locations within Tribal lands where alcoholic beverages may be sold as described in a license issued by the Tribal Council.

(e) ''Secretary'' means the Secretary of the United States Department of the Interior.

(f) ''State'' means the State of Michigan, which regulates matters pertaining to the consumption, possession, delivery and/or sale of alcoholic beverages within the State through its Liquor Control Commission.

(g) ''Tribal Council'' means the Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians.

(h) ''Tribal lands'' means:

(1) Land within the limits of the Grand Traverse Band of Ottawa and Chippewa Indians' Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and/or

(2) land over which the Grand Traverse Band of Ottawa and Chippewa Indians exercises governmental power and which is either held in trust by the United States for the benefit of the Grand Traverse Band, or held by the Tribe or by one of its members subject to restriction by the United States against alienation.

(i) ''Tribal license'' means an official action by the Tribal Council which authorizes the manufacture and/or sale of alcoholic beverages for consumption either on the premises and/or away from the premises. The manufacture, sale and/or delivery of alcoholic beverages intended for consumption away from

Tribal lands must also comply with relevant provisions of State law.

(j) ''Tribal representative'' means the Tribal Manager, a program director, or manager of a subsidiary enterprise of the Tribe.

(k) ''Tribe'' means the Grand Traverse Band of Ottawa and Chippewa Indians.

(l) ''vendor'' means a person licensed under this ordinance to sell alcoholic beverage, or a person employed by a vendor to do so.

14.405 Public Policy Declared

(a) It is the policy of the Tribe that no manufacture, sale, delivery, or importation of alcoholic beverages shall occur in Tribal lands unless such manufacture, sale, delivery or importation is by a person licensed under this ordinance to do so, or by prior written order of the Tribal Council.

(b) All alcoholic beverages for sale, use, storage, or distribution in Tribal lands shall originally be purchased by and imported into Tribal lands by a person licensed under this ordinance to do so, unless such alcoholic beverages are manufactured under appropriate Tribal license within the Tribal lands, or by prior written order of the Tribal Council.

(c) This section shall not apply in the case of alcoholic beverages brought into Tribal lands personally by a person aged twenty-one (21) years or older to purchase or manufacture alcoholic beverages for personal or household use.

14.406 General Provisions

(a) Except in compliance with this ordinance, no person shall sell, trade, transport, manufacture, use or possess any alcoholic beverage or any other substance whatsoever which is capable of producing alcohol or other intoxication, intended for consumption on the premises, nor may any person aid or abet another person in doing any of the foregoing.

(b) No vendor shall permit any person under the age of eighteen (18) on premises licensed under this ordinance, unless accompanied by an adult who is the legal guardian or parent of the minor.

(c) No vender shall sell, serve or allow to be consumed on premises licensed under this ordinance, alcoholic beverages other than during the hours permitted by its license.

(d) Except in compliance with this ordinance, no person shall sell, trade, transport, manufacture, use or possess any alcoholic beverage, or any other substance whatsoever which is capable of producing alcohol or other intoxication, intended for distribution away from premises, nor may any person aid or abet another person in any of the foregoing.

(e) It shall be a violation of this ordinance for any person, by himself or by his agent or employee, to manufacture, sell, offer for sale, or possess any alcoholic beverage which is adulterated or misbranded or any alcoholic beverage in bottles which have been refilled. For the purposes of this section:

(1) Alcoholic beverages shall be deemed adulterated if they contain any liquid or other ingredient not placed there by the original manufacturer or bottler, other than by order of a consumer for immediate consumption on the premises;

(2) alcoholic beverages shall be deemed misbranded when not plainly labeled, marked or otherwise designated;

(3) alcoholic beverages bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer.

(4) this subsection 406(e) does not apply to beer containers. [cf. MCL 436.2005(5)]

(f) It shall be a violation of this ordinance for any vendor to sell or furnish any alcoholic beverage to a person unless that person has attained twenty-one (21) years of age.

(1) No vendor may knowingly sell or furnish any alcoholic beverage to a person who is younger than twenty-one years of age, or fail to make diligent inquiry as to whether the person is twenty-one (21) years of age.

(2) A suitable sign which describes this section and the penalties for violating this section shall be posted in a conspicuous place in each room where alcoholic beverages are sold.

(g) It shall be a violation of this ordinance for any vendor to sell or furnish any alcoholic beverage to any person who is visibly intoxicated at the time, or who is known to the vendor to be a habitual drunkard.

(h) It shall be a violation of this ordinance for any person younger than twenty-one (21) years of age to purchase, attempt to purchase, possess or consume any alcoholic beverage, or for such a person to misrepresent his age for the purpose of purchasing or attempting to purchase such alcoholic beverage.

(i) Upon attempt to purchase any alcoholic beverage on premises licensed under this ordinance by any person who appears to the vendor to be younger than twenty-one (21) years of age, that vendor shall demand, and the prospective purchaser upon such demand shall display, satisfactory evidence that he is of legal age. It shall be a violation of this ordinance for any person to present to any vendor falsified evidence as to his age.

(j) No person under this ordinance shall make any delivery of any alcoholic beverage outside the premises described in the license, unless the license permits distribution of alcoholic liquor for consumption away from the premises.

(k) No person, directly or indirectly, himself or herself or by his or her clerk, agent or employee shall manufacture, manufacture for sale, sell, offer or keep for sale, barter, furnish, or import, import for sale, transport for hire, or transport, or possess any alcoholic beverage unless that person complies with this ordinance.

(l) In order to retain its alcoholic beverage license under this ordinance, any Tribal operation is required to comply with other applicable Tribal law, as well as with the provisions of this ordinance.

14.407 Tribal Alcoholic Beverage Licenses

(a) Upon written authorization by a Tribal representative, the Tribal Council may issue a license authorizing:

(1) The manufacture and/or sale or alcoholic beverages intended solely for consumption on the premises; and/or

(2) the manufacture and/or sale of alcoholic beverages intended solely for consumption away from the premises.

(b) All such license applications must set forth the purpose for which the license is sought, together with a description of the premises upon which the alcoholic beverage manufacture and/or sales are proposed to take place.

(c) In its sole discretion, the Tribal Council shall have the power and authority to determine the numbers and types of alcoholic beverage licenses to be issued pursuant to this ordinance.

14.408 Complaint of Violation

(a) Any complaint regarding violation of any provision of this ordinance shall be referred to the Tribal Prosecutor, who may cause such complaint to be placed in writing and served personally or by registered mail upon the licensee or other person against whom that complaint is made.

(b) A hearing on any such complaint shall be held by the Tribal Court not less than seven (7) days nor more than twenty-eight (28) days after service of the complaint upon the licensee or other person against whom that complaint is made.

(c) Any Indian person (defined in 9 GTBC § 102(a)) who violates any provision of this ordinance may be

charged with a misdemeanor criminal offense and may be prosecuted pursuant to 9 GTBC § 107(s). If convicted, the Tribal Court may impose a fine of not greater than one thousand dollars ($1,000.00), or imprisonment not exceeding sixty (60) days in the Tribal jail, or by both such fine and imprisonment.

(d) Any non-Indian person who violates any provision of this ordinance may be charged with and prosecuted for a civil offense, and if convicted, may be subject to civil sanctions which the Tribal Council may prescribe, and/or may be excluded from Tribal lands.

(e) Any person who violates any provision of this ordinance for which a specific penalty is not provided, shall be subject to a fine of not less than one hundred dollars ($100.00), nor more than five thousand dollars ($5,000.00), or by imprisonment in the Tribal jail for not more than sixty (60) days, or by both such fine and imprisonment, plus costs.

14.409 Severability

If any section or provision of this ordinance or the application thereof to any party or class, or to any circumstances, shall be held to be invalid for any cause whatsoever, the remainder of this ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared to be invalid.

14.410 Amendment or Repeal of This Ordinance

This ordinance may be amended or repealed only by majority vote of the Tribal Council in regular session.

14.411 Effective Date

The effective date of this ordinance shall be the date upon which it is certified by the Secretary or his delegate and published in the **Federal Register** in accordance with 18 U.S.C. 1161.

[FR Doc. 2016–31874 Filed 1–3–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD08000.17XL1109AF. L12200000.EA0000.LXSSB0280000]

Closure of Public Lands for the 2017 King of the Hammers Race Event in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) is giving notice that certain public lands located near Johnson Valley, California, within the Johnson Valley Off-Highway Vehicle Recreation Area, will be temporarily closed to all public use to provide for public safety during the 2017 King of the Hammers Race Event.

DATES: The closure will be in effect from February 3 through February 11, 2017.

FOR FURTHER INFORMATION CONTACT: Beth Ransel, District Manager, California Desert District, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553, telephone: 951–697–5200, email: *bransel@blm.gov* or Katrina Symons, Barstow Field Manager, 2601 Barstow Road, Barstow, CA 923111, telephone: 760–252–6004, email: *ksymons@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: This closure applies to all public use, including pedestrian use and vehicles. The public lands affected by this closure are described as follows:

Land Description

San Bernardino Meridian, California

T. 5 N., R. 2 E.,
Secs. 1 thru 4 and 10 thru 14.
T. 6 N., R. 2 E.,
Secs. 1, 12, 13, 14, 22 thru 27, 33, 34, and 35.
T. 4 N., R. 3 E.,
Sec. 1, lots 7, 12, 13, and 15, NW¼SW¼, and S½SE¼;
Sec. 2, lots 4 thru 11 and S½;
Sec. 12, N½ and SE¼.
T. 5 N., R. 3 E.,
Sec. 6, lots 1 thru 12, 14, 15, and 16, S½NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 7;
Sec. 8, lots 2, 3, 6, and 7, and SW¼SW¼;
Sec. 17, lots 3, 4, 7, and 8, W½NW¼, SE¼NW¼, and SW¼;
Secs. 18 and 19 both unsurveyed;
Sec. 20, lot 2, W½NE¼, SE¼NE¼, NW¼, and S½;
Sec. 21, lots 2, 4, 7, 9, 11, and 12, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 22, lot 2;
Sec. 27, lots 3, 4, 6, 9, and 10, SW¼NW¼, and SW¼;
Secs. 28 and 29;
Sec. 34, lots 2, 3, and 4, SW¼NE¼, W½, and SE¼;
Sec. 35, lots 1, 4, 6, 7, and 10, and SW¼SW¼.
T. 6 N., R. 3 E.,
Sec. 4, except that portion within MS 6716;
Secs. 5 thru 9, 17 thru 20, 29, and 30.
T. 7 N., R. 3 E.,
Secs. 30 and 31;
Sec. 32, except that portion within MS 6715;
Sec. 33, SW¼.
T. 4 N., R. 4 E.,
Sec. 1, lots 4, 6, 8, and 10 thru 14, and S½;
Sec. 2, lots 4, 6, 8, and 10 thru 14, and S½;
Sec. 3, lots 7 thru 10 and S½;
Sec. 4, lots 7 thru 10 and S½;
Sec. 5, lots 7 thru 10 and S½;
Sec. 6, lots 8 thru 15 and SE¼;
Secs. 7 thru 12, 14, and 15;
Sec. 16, lots 1 thru 4;
Sec. 17;
Sec. 18, lots 3 thru 6 and NE¼;
Sec. 20, lots 1 thru 8;
Secs. 21 thru 24;
Sec. 25, N½;
Secs. 26 and 27;
Sec. 28, lots 1 thru 8.
T. 4 N., R. 5 E.,
Sec. 2, lots 3, 4, 5, 8, and 9, SW¼NW¼, SW¼, and S½SE¼;
Secs. 3, 4, and 5;
Sec. 6, lots 1, 2, 5 thru 8, and 11, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 3 thru 7 and 9, E½SW¼, and E½;
Secs. 8 and 9;
Sec. 10 unsurveyed;
Sec. 11;
Sec. 12, lots 3, 4, 8, 9, and 10, SW¼NE¼, W½NW¼, SE¼NW¼, SW¼, and W½SE¼;
Secs. 13, 14, and 15 all unsurveyed;
Sec. 16;
Secs. 17 and 20 thru 29 all unsurveyed.
T. 5 N., R. 5 E.,
Sec. 31, lots 7 and 8;
Sec. 32, lots 3 thru 6, SE¼SW¼, and S½SE¼;
Sec. 34, lots 3, 4, and 5, and SW¼SW¼.

The area described contains 62,256 acres.

End of Land Description

The BLM will post the closure notice and map of the closure area at the main entry points into the Johnson Valley Off Highway Vehicle Recreation Area, at the California Desert District Office, at the Barstow Field Office, and on the BLM Web site: *www.blm.gov/california/king-of-the-hammers.*

Exceptions: Closure restrictions do not apply to medical and rescue personnel in the performance of their official duties; official United States military and Federal, State, and local law enforcement; Federal, State and local officers and employees in the performance of their official duties; King of the Hammers event officials, race participants and registered spectators; and vendors with a valid BLM Special Recreation Permit.

Enforcement: Any person who violates this closure may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571,

imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of California law.

Authority: 43 CFR 8360.0–7 and 8364.1.

Beth Ransel,

District Manager, California Desert District.

[FR Doc. 2016–31883 Filed 1–3–17; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X.LLNML00000.L11100000.DF0000. LXSSG0860000]

Notice of Public Meeting, Las Cruces District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM), Las Cruces District Resource Advisory Council (RAC) will meet as indicated below.

DATES: On January 24, 2017, the RAC will participate in a field trip to the Organ Mountains-Desert Peaks National Monument. The field trip will begin at 8:00 a.m. from the District Office, 1800 Marquess Street, Las Cruces, New Mexico, and conclude at 5:00 p.m. that afternoon. During the field trip, the RAC will be introduced to the public land resources in the Potrillo Mountains. On January 25, from 9:00 a.m. to 12:00 p.m., the RAC will meet at the Ramada Hotel and Conference Center, 201 East University, Las Cruces, New Mexico. Both the field trip and meeting are open to the public. However, the public is required to provide its own transportation for the field trip. In addition, the public may send written comments to the RAC at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88001.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, BLM Las Cruces District, 1800 Marquess Street, Las Cruces, NM 88001, 575–525–4421. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8229, to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Las Cruces District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico.

Planned agenda items include updates on current and proposed projects in the Las Cruces District including lands/realty, planning and energy projects.

A half-hour public comment period will begin at 11:00 a.m., during which the public may address the Council. Depending on the number of individuals wishing to comment and time available, oral comments may be limited.

Debby Lucero,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2016–31872 Filed 1–3–17; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section: Notice of Availability of a Draft Environmental Assessment for Rehabilitation of the Levee System in the Tijuana River Flood Control Project

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of the draft Environmental Assessment (EA).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the United States Section, Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the United States Section hereby gives notice that the Draft Environmental Assessment for Rehabilitation of the Levee System in the Tijuana River Flood Control Project is available. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30-days from the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Gilbert Anaya, United States Section, International Boundary and Water Commission, 4171 N. Mesa, C–100, El Paso, TX 79902. Telephone: (915) 832–4702, email: *gilbert.anaya@ibwc.gov.*

Background: This Draft Environmental Assessment analyzes the potential impacts of rehabilitating the levee system in the Tijuana River Flood Control Project in southern San Diego County, California to ensure it will perform during a 100-year flood event and protect the surrounding communities.

Availability: The electronic version of the Draft EA is available from the USIBWC Web page: *http://www.ibwc.gov/EMD/EIS_EA_Public_Comment.html.*

Dated: December 21, 2016.

Wayne Belzer,

Certifying Officer.

[FR Doc. 2016–31616 Filed 1–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Spectrum Consortium

Notice is hereby given that, on November 16, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Spectrum Consortium (''NSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Columbia University, New York, NY; Intuitive Research and Technology Corporation, Huntsville, AL; and Abside Networks, Inc., Acton, MA, have been added as parties to this venture.

Also, Expression Networks, LLC, McLean, VA; Hughes Network Systems, LLC, Germantown, MD; Disney-ABC TV Group, New York, NY; Constellation Data Systems, Inc., Cincinnati, OH; Shenandoah Research and Technology, LLC, Mount Jackson, VA; Ideal Innovations Incorporated, Arlington, VA; Arizona State University, Tempe, AZ; Haigh-Farr, Inc., Bedford, NH; RWC, LLC, Annapolis, MD; and Metric Systems Corporation, Vista, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned

activity of the group research project. Membership in this group research project remains open, and NSC intends to file additional written notifications disclosing all changes in membership.

On September 24, 2014, NSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 4, 2014 (79 FR 65424).

The last notification was filed with the Department on August 16, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 20, 2016 (81 FR 64507).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–31902 Filed 1–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Storage Performance Council

Notice is hereby given that, on November 29, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Storage Performance Council (''SPC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Storage Performance Council, Redwood City, CA. The nature and scope of SPC's standards development activities are: To serve as a catalyst for performance improvement in computer storage subsystems by developing benchmarks focusing on storage subsystems, facilitating third-party audits and peer review ofthe results of such benchmarks and publishing reports on the benchmark results.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–31909 Filed 1–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Energy Storage System Evaluation and Safety II

Notice is hereby given that, on November 30, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Energy Storage System Evaluation and Safety II, (''EssEs-II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cummins Inc., Columbus, IN, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and EssEs-II intends to file additional written notifications disclosing all changes in membership.

On September 21, 2016, EssEs-II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 15, 2016 (81 FR 80087).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–31904 Filed 1–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on November 29, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Foryou General Electronics Co., Ltd., Huizhou, Guangdong, People's Republic of China; NXP B.V., Eindhoven, the Netherlands; Sanshin Electronics (Hong Kong) Co. Ltd., Hong Kong, Hong Kong-China; Sanshin Electronics Co. Ltd., Tokyo, Japan; Ultra Source Technology Corporation, Taipei, Taiwan; and Ziotech Corp., Chino, CA, have been added as parties to this venture.

Also, Broadcom Corporation, Irvine, CA; Compact Disc Technologies (Pty) Ltd., Gauten, South Africa; Condor CD S.L., Calatayud, Spain; and Shenzhen Chuangwei Electronic Appliance Tech Co., Shenzhen, People's Republic of China, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on August 30, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2016 (81 FR 70706).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–31908 Filed 1–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on November 21, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BNED LoudCloud, LLC, Basking Ridge, NJ; Chalk & Wire Learning Assessment Inc., Ridgeway, Ontario, CANADA; Fidelis Inc., Redwood City, CA; Kimono, Salt Lake City, UT; Loudon County Public Schools, Ashburn, VA; OpenEd, San Jose, CA; Oregon State University, Corvallis, OR; Unicon, Gilbert, AZ; University of California San Diego, La Jolla, CA; University of Florida, Gainesville, FL; and VHS, Inc., Maynard, MA, have been added as parties to this venture.

Also, Qualcomm, San Diego, CA; EdX, Cambridge, MA; Seoul Cyber University, Seoul, KOREA; and Data Recognition Corp., Maple Grove, MN, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on August 30, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2016 (81 FR 70705).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–31910 Filed 1–3–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1732]

Special Technical Committee on Law Enforcement Firearms

AGENCY: National Institute of Justice, Justice.

ACTION: Notice.

SUMMARY: The National Institute of Justice (NIJ) is seeking qualified individuals to serve on a Special Technical Committee (STC) on Law Enforcement Firearms. The purpose of the STC will be to update and revise the minimum performance standards NIJ Standard 0112.03 (Revision A), *Autoloading Pistols for Police Officers,* and NIJ Standard 0113.00, *12-Gauge Shotguns for Police Use,* and to develop a new minimum performance standard for patrol rifles.

DATES: Individuals wishing to submit an application to the National Institute of Justice must do so by 5:00 p.m. Eastern Time April 4, 2017, as instructed below.

How to Respond and What To Include: To apply to serve on the Special Technical Committee on Law Enforcement Firearms, please email a resume or curriculum vitae to the point of contact listed below by the deadline listed above. Please put ''Special Technical Committee on Law Enforcement Firearms'' in the subject line. If submitting hardcopy application materials, please send to the attention of the point of contact listed below at the address provided. Hardcopy application materials must be postmarked by the date listed above. There is no page limit or limit to the amount of information that an interested applicant may submit to demonstrate his or her qualifications. More information on the individuals sought for the STC is provided below. No materials will be returned. All materials submitted will be treated confidentially and discreetly and may be shared with U.S. Government staff or U.S. Government contractors for evaluation purposes related to selection for the STC only.

FOR FURTHER INFORMATION CONTACT: Mark Greene, Office of Science and Technology, National Institute of Justice, 810 7th Street NW., Washington, DC 20531; telephone number: (202) 307–3384; email address: *mark.greene2@usdoj.gov.*

SUPPLEMENTARY INFORMATION: NIJ is seeking qualified individuals to serve on a Special Technical Committee (STC) for Law Enforcement Firearms. The purpose of the STC will be to update NIJ Standard 0112.03 (Revision A), *Autoloading Pistols for Police Officers* (*https://www.ncjrs.gov/pdffiles1/nij/249929.pdf*), and NIJ Standard 0113.00, *12-Gauge Shotguns for Police Use* (*https://www.ncjrs.gov/pdffiles1/photocopy/244968NCJRS.pdf*), and to develop a new minimum performance standard for patrol rifles.

NIJ develops and publishes voluntary equipment standards that specifically address the needs of law enforcement, corrections, and other criminal justice agencies to ensure that equipment is safe, reliable, and performs according to established minimum performance requirements. NIJ standards are consensus-based and designed to articulate the criminal justice end user community's operational requirements regarding equipment performance. They are designed to provide a level of confidence in a product's fitness for purpose and allow comparison of products based on standardized test methods. NIJ maintains active standards for a variety of equipment, including ballistic-resistant body armor, stab-resistant body armor, restraints, bomb suits, CBRN protective ensembles, and offender tracking systems. More information on NIJ standards is available at *http://www.nij.gov/standards.*

NIJ anticipates the STC for Law Enforcement Firearms will be comprised of approximately 25 individual firearms subject matter experts from federal, state, and local law enforcement agencies; ballistics test laboratories; firearms industry associations; and other relevant technical or governmental organizations. Individuals will be selected to achieve the best possible balance of knowledge and expertise. Due to the practitioner-driven nature of the standards and limited size of the STC, only firearms industry associations will be permitted to participate directly on the STC to represent the firearms manufacturing community.

Submitted materials must clearly demonstrate the applicant's qualifications to serve on the STC. Law enforcement practitioners must be active sworn personnel, should have experience with all three types of firearms—pistols, shotguns, and rifles—and should have specialized firearms responsibilities in his or her respective agency that would especially qualify him or her to serve on the STC, such as armorer, firearms instructor, range master, or special operations. Individuals operating at all levels of a law enforcement agency are encouraged to apply, however individuals at the level of sergeant and above are

preferred. Laboratory representatives should have a level of experience with firearms and ballistics testing to be considered an expert in testing methodology. If provisionally selected to serve on the STC, candidates should expect to disclose any financial conflicts of interest with firearms or ammunition manufacturers for assessment prior to final selection.

NIJ anticipates that the STC will meet for two to three days in the Washington, DC area approximately four to five times over the course of approximately 18–24 months starting sometime in 2017. The remainder of the work will be conducted by telephone and email. It is expected that travel and per diem expenses for travel originating outside the local Washington, DC area will be reimbursed; however, participation time will not be reimbursed. Any potential reimbursements are subject to, inter alia, the availability of appropriated funds, and to any modifications or additional requirements that may be imposed by law.

NIJ anticipates that its Compliance Testing Program (CTP), which currently certifies ballistic-resistant body armor, stab-resistant body armor, and autoloading pistols, will incorporate both shotguns and patrol rifles for certification once the new standards are complete. More information on the Autoloading Pistols CTP is available at *https://justnet.org/compliant/Autoloading-Pistols.html*. The STC should expect to discuss the CTP certification process and conformity assessment in general during the standards development process.

Nancy Rodriguez,

Director, National Institute of Justice.

[FR Doc. 2016–31876 Filed 1–3–17; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *September 19, 2016 through December 16, 2016.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(e) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in

subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
90,008	ATOS IT Solutions and Services, Inc., NSC Global	Purchase, NY	January 1, 2014.
90,163	Donaldson Company, Inc	Grinnell, IA	January 1, 2014.
91,130	Trinseo LLC	Gales Ferry, CT	November 10, 2014.
91,302	Pacific Recycling, Inc	Eugene, OR	January 7, 2015.
91,457	Allegheny Ludlum, LLC, ATI Flat Rolled Products, Houston Operation, etc.	Houston, PA	February 10, 2015.
91,509	Rodney Hunt-Fontaine, Inc., Rodney Hunt Company, GA Industries Holdings, Zurn Industries, etc.	Orange, MA	February 24, 2015.
91,559	Halliburton Energy Services, Inc., Manufacturing—100 East Halliburton Boulevard.	Duncan, OK	August 2, 2015.
91,559A	Halliburton Energy Services, Inc., Finance—1700 South Highway 81	Duncan, OK	March 7, 2015.
91,559B	Halliburton Energy Services, Inc., Plant 2/Test Center—109 South 13th Street.	Duncan, OK	March 7, 2015.
91,559C	Halliburton Energy Services, Inc., Administration—1015 West Bois D'Arc	Duncan, OK	March 7, 2015.
91,559D	Halliburton Energy Services, Inc., Field Services Office—2015 East Bois D'Arc.	Duncan, OK	March 7, 2015.
91,562	Halliburton Energy Services, Inc., Technology	Duncan, OK	March 7, 2015.
91,607	Learjet, Inc., Bombardier, Inc., ASPI, Aerotek, Choson Resources, DACA International, etc.	Wichita, KS	May 7, 2016.
91,616	Mary's River Lumber Company, Selectemp Employment Services, All Star, LLC, Express Services, Inc., etc.	Corvallis, OR	March 21, 2015.
91,616A	Mary's River Lumber Company, Selectemp Employment Services, All Star, LLC, Express Services, Inc., etc.	Montesano, WA	March 21, 2015.
91,751	CDR Manufacturing, Inc., KeyTronic Corporation	Harrodsburg, KY	April 27, 2015.
91,815	Verizon Business Network Services, Inc., Client Services Management Organization.	Rochester, NY	May 13, 2015.
91,815A	Verizon Business Network Services, Inc., Customer Service Management Organization.	Cary, NC	May 13, 2015.
91,912	Twin Rivers Paper Company LLC, Twin Rivers Paper Company Corp	Madawaska, ME	June 10, 2015.
91,931	Cascade Auto Recycling	Grants Pass, OR	June 16, 2015.
91,988	Paccar Winch, Paccar, Inc	Broken Arrow, OK	July 6, 2015.
91,988A	Paccar Winch, Paccar, Inc	Okmulgee, OK	July 6, 2015.
92,030	BlueScope Buildings North America Inc., BlueScope, Supply Chain Group.	Kansas City, MO	July 19, 2015.
92,032	Ralph Lauren Corporation, Pattern/Technical Design Division, 24Seven, Inc.	New York, NY	July 19, 2015.
92,048	SandRidge Operating Company, SandRidge Energy, Inc	Oklahoma City, OK	July 22, 2015.
92,057	Chemours, Chemours Company, FC, LLC, AECOM, KBR, Gaines Electrical, Danforth, etc.	Niagara Falls, NY	July 8, 2015.
92,059	Fused Solutions, LLC	Potsdam, NY	July 26, 2015.
92,061	United States Steel Corporation, Fairfield Works—Flatroll Operations	Fairfield, AL	July 3, 2016.
92,061A	Fairfield Tubular Operations, United States Steel Corporation	Fairfield, AL	July 3, 2016.
92,137	Weyerhaeuser NR Company, Wood Products Division, Weyerhaeuser Company, LC Staffing Services, etc.	Columbia Falls, MT	August 23, 2015.
92,150	Fibrant, LLC, Augusta Holdco Inc., DSM Chemicals North America, Austin Industrial, etc.	Augusta, GA	August 26, 2015.
92,160	Insight Optical Manufacturing Company of Florida Inc., Aranon Corporation Division, GrandVision USA Retail Holding Corporation.	Hialeah, FL	August 25, 2015.
92,191	East Moline Products Company	East Moline, IL	September 8, 2015.
92,216	Norton Industries, Inc., Labor Ready	Hayward, CA	September 15, 2015.
92,224	AAH Acquisition, LLC, All-American Hose, LLC, FEIN 27–2407790	Union City, PA	September 16, 2015.
92,224A	AAH Acquisition, LLC, All-American Hose, LLC, FEIN 27–2407790	Erie, PA	September 16, 2015.
92,242	Masco Cabinetry LLC, Aerotek, Kelly Services, Regal Staffing, Manpower.	Duncanville, TX	September 23, 2015.
92,255	Neenah Northeast, LLC, f/k/a FiberMark LLC, Global Employment Solution.	Reading, PA	September 16, 2015.
92,261	SMC Electrical Products, Inc., Becker Global-America, Inc., Manpower Services.	Huntington, WV	September 26, 2015.
92,267	Rainbow Play Systems, Inc	Brookings, SD	September 29, 2015.
92,270	JAC Operations, Inc. & Johnstown America, LLC, FreightCar America, Inc., Parts Business Unit.	Johnstown, PA	September 30, 2015.
92,311	KEMET Foil Manufacturing, LLC, KEMET Electronics Company	Knoxville, TN	October 6, 2015.
92,362	Gibbstown CO2/Dry Ice, Airgas, Inc	Gibbstown, NJ	October 25, 2015.

TA–W No.	Subject firm	Location	Impact date
92,388	Westinghouse Air Brake Technologies Incorporated, Wabtec, Volt Workforce Solutions, Staffmark, Adecco, Manpower.	Wilmerding, PA	November 2, 2015.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
90,275	Societe Generale/New Edge, A/K/A SG Americas Securities, LLC, Operations Division, R&P, etc.	Chicago, IL	January 1, 2014.
90,316	Keurig Green Mountain, Inc., Blacktree Technical Group, Manpower, Randstad Staffing, etc.	Waterbury, VT	January 1, 2014.
90,316A	Keurig Green Mountain, Inc., Information Technology Division	South Burlington, VT	January 1, 2014.
91,121	REC Silicon LLC, Renewable Energy Corporation SAS, Rec Solar Grade Silicon LLC, etc.	Moses Lake, WA	March 23, 2015.
91,121A	REC Silicon ASA, Rec Solar Grade Silicon LLC, Rec Advanced Silicon Materials.	Silver Bow, MT	March 23, 2015.
91,121B	Nemo IT Solutions, REC Silicon LLC, Renewable Energy, Corporation ASA.	Moses Lake, WA	November 4, 2014.
91,121C	Spherion Staffing LLC, REC Silicon ASA, REC Solar Grade Silicon LLC	Silver Bow, MT	November 4, 2014.
91,299	Mekra Lang North America, LLC, Resource MFG	Ridgeway, SC	January 6, 2015.
91,641	General Electric Company, GE Capacitor and Power Quality Products, Energy Connections Division.	Fort Edward, NY	May 30, 2016.
91,761	Agility Logistics Corporation, U.S. Irvine Corporate Office, Agility Holdings, Inc., AM Solutions Group.	Irvine, CA	April 29, 2015.
91,768	Accuri Cytometers, Inc., Becton, Dickinson and Company, Spectraforce Technologies Inc., etc.	Ann Arbor, MI	April 26, 2015.
91,820	Verizon Business Network Services, Inc., Verizon Global Conferencing Operations.	Cary, NC	May 17, 2015.
91,904	Nielsen, A.C. Nielsen Company, LLC, Adecco, Insight Global, Veredus, etc.	Oldsmar, FL	June 9, 2015.
91,907	John Deere Davenport Works, Construction and Forestry Division, Deere & Company.	Davenport, IA	June 10, 2015.
91,908	John Deere Dubuque Works, Construction and Forestry Division, Deere and Company.	Dubuque, IA	June 10, 2015.
91,930	IBM Cloud, Tivoli Network Management Quality Assurance & ID, IBM	Colorado Springs, CO	June 15, 2015.
91,936	REA Magnet Wire Company, Inc., Staffmark	Osceola, AR	June 17, 2015.
91,978	Caterpillar, Inc.	Thomasville, GA	July 1, 2015.
92,008	PAREXEL International, PAREXEL Informatics Business Unit	Billerica, MA	July 11, 2015.
92,011	GateHouse Media, Circulation Customer Service Department	Boston, MA	July 11, 2015.
92,023	Alcatel-Lucent USA, Inc., Nokia Solutions and Networks US LLC	Naperville, IL	July 18, 2015.
92,045	CH2M, Inc., CH2M HILL Companies Ltd., Division of Finance and Accounting.	Portland, OR	July 21, 2015.
92,052	McDonald's Corporation, Global Shared Services—Finance & Accounting Division, etc.	Columbus, OH	July 25, 2015.
92,052A	McDonald's Corporation, Global Shared Services—Finance & Accounting Division, etc.	Oak Brook, IL	July 25, 2015.
92,054	Boston Scientific Corporation, United States Information Technology, Talent Choice.	Arden Hills, MN	July 6, 2015.
92,054A	Boston Scientific Corporation, United States Information Technology	Marlborough, MA	July 6, 2015.
92,060	Micron Technology, Inc	Manassas, VA	December 4, 2015.
92,062	Word and Brown Insurance Administrators, Inc., Information Technology Support Services Division, 4th Source, etc.	Orange, CA	July 26, 2015.
92,065	Rane Corporation	Mukilteo, WA	July 14, 2015.
92,066	Kraft Heinz Company, Kelly Services	Pittsburgh, PA	July 27, 2015.
92,072	General Products Corporation, Quality Personnel, Aerotek, Inc., and Express Services, Inc.	Russellville, KY	July 28, 2015.
92,073	Citibank, N.A., CSS HR Shared Services Division, Citigroup Technology, Inc., etc.	Hartford, CT	July 28, 2015.
92,074	Abbott Laboratories, Abbott Vascular, TapFin	Temecula, CA	October 30, 2015.
92,089	Precor Incorporated, Amer Sports, Aerotek and Kelly Services	Woodinville, WA	August 3, 2015.
92,094	C3i, Healthcare Connections, Telerx Marketing, Inc., Teksystems, One Source, Judge Group, Synerfac, etc.	Pittston, PA	August 5, 2015.
92,100	Micron Technology, Inc., 8000 S. Federal Way	Boise, ID	December 4, 2015.
92,100A	Manpower US Inc., Bledsoe Construction Inc., NSTAR Global Services Inc., Flextechs, LLC, Experis US Inc., YMC Inc., Nanometrics Inc., etc.	Boise, ID	August 9, 2015.
92,104	Shade Structures, Inc., PlayPower, Inc., Fabric Sewing Division, Pridestaff Staffing, etc.	Dallas, TX	August 10, 2015.
92,108	Kennametal Inc	Chilhowie, VA	August 11, 2015.
92,110	ClubCorp Financial Management Company, IT Department, ClubCorp USA, Inc.	Dallas, TX	August 12, 2015.

TA–W No.	Subject firm	Location	Impact date
92,117	Washburn Graphics, Inc., WestRock, Remedy Intelligent Staffing	Jacksonville, FL	August 17, 2015.
92,119	Bergstrom Inc., Joliet Cabs Division, Medium Wheel Loader Group, First Staff Services, etc.	Joliet, IL	August 17, 2015.
92,122	Manitowoc FSG Operations, Manitowoc Foodservice, Inc	Sellersburg, IN	August 18, 2015.
92,123	Bayer Cropscience LP, Thiodicarb Unit, Belcan Corp., CDI Engineering Group, etc.	Institute, WV	August 18, 2015.
92,132	Carrier Corporation, United Technologies Corporation, Aerotek and Robert Half.	Indianapolis, IN	August 18, 2015.
92,133	Lego Systems, Inc., Human Resources Operations, Finance, Lego Brand Retail Inc., Lego A/S.	Enfield, CT	August 4, 2015.
92,135	International Business Machines Corporation (IBM), Strategic Outsourcing, Distribution, Technical Support Services (TSS), etc.	Boulder, CO	August 23, 2015.
92,140	Bryant Rubber Corp., Kimco	Harbor City, CA	August 24, 2015.
92,141	TE Connectivity, Kelly Services and Aerotek, Inc	Rock Hill, SC	August 25, 2015.
92,143	BNY Mellon Investment Servicing US Inc., Bank Of New York Mellon Corp., Aerotek, Inc., American Cybersystems, etc.	Westborough, MA	August 25, 2015.
92,144	Mitsui & Co. Precious Metals, Inc., Mitsui & Co., Ltd., The Madison-Davis Group, Inc.	New York, NY	July 26, 2015.
92,146	Commercial Vehicle Group, Inc., Global Construction, Agriculture and Military (GCAM) Division, etc.	Monona, IA	August 23, 2015.
92,148	Fox Factory, Inc., Fox Factory Holding Corporation, Staffmark	Watsonville, CA	August 11, 2015.
92,149	Hertz Corporation, Hertz Administrative Center, Accountemps, Addison Group, Office Team, etc.	Oklahoma City, OK	August 26, 2015.
92,151	TaylorMade Golf Company, Inc., Adidas Group, Adecco Staffing	Carlsbad, CA	August 26, 2015.
92,154	Benu Networks, Inc	Billerica, MA	August 29, 2015.
92,158	IMMUNIO USA, Inc., Immun. IO Inc., Product Engineering Division, Different FEIN.	Portland, OR	August 30, 2015.
92,161	Maxim Integrated Products, Inc	San Jose, CA	August 30, 2015.
92,167	Valmark Interface Solutions, NIDEC	Livermore, CA	March 14, 2016.
92,168	ALW—Architectural Lighting Works	Hayward, CA	August 31, 2015.
92,169	International Business Machines Corporation (IBM), 11400 Burnet Road, AIX Software Support Services Center, etc.	Austin, TX	August 31, 2015.
92,169A	International Business Machines Corporation (IBM), 11501 Burnet Road, AIX Software Support Services Center, etc.	Austin, TX	August 31, 2015.
92,169B	International Business Machines Corporation (IBM), AIX Software Support Services Center, Infrastructure Services Delivery, etc.	Coppell, TX	August 31, 2015.
92,170	QBE Americas, Inc., QBE Holdings, Inc	Overland Park, KS	August 31, 2015.
92,171	Health Care Service Corporation, Operations Support Services Division, Small Group Service Operation, etc.	Chicago, IL	August 31, 2015.
92,172	John Deere Harvester Works, Deere & Company	East Moline, IL	August 31, 2015.
92,174	Caterpillar Forest Products Prentice, Excavation Division, Caterpillar Inc., Bear Staffing, Manpower, and ATS.	Prentice, WI	August 23, 2015.
92,175	Dow Business Services, LLC, The Dow Chemical Company, Procure to Pay Organization, Kelly Services.	Midland, MI	September 1, 2015.
92,176	Delphi Automotive Systems, LLC, Delphi Holdings, LLC, Delphi Packard Electrical/Electronic, etc.	Warren, OH	September 2, 2015.
92,178	Micron Technology, Inc	Longmont, CO	December 4, 2015.
92,180	Zodiac Seat Shells US LLC, C&D Zodiac, Volt Workforce Solutions, PlaneTechs, and Johnson Service Group.	Santa Maria, CA	September 6, 2015.
92,185	Ashley Furniture Industries, Inc., Ashley Holdings, Inc., Protech Staffing Services, Inc., etc.	Colton, CA	September 7, 2015.
92,187	Alcoa Fastening Systems and Rings, Alcoa, Aerotek	Fontana, CA	September 7, 2015.
92,189	GE Energy Power Conversion US, Inc., General Electric Company, Kelly Services, Orion ICS, LLC, etc.	Pittsburgh, PA	September 7, 2015.
92,192	Magna Techform of America, Closures Group Division, Magna Closures Inc.	Portland, TN	September 8, 2015.
92,201	SMA America Production, LLC, SMA Solar Technology AG, The Employment Firm.	Denver, CO	September 12, 2015.
92,202	New York Life Insurance Company, Technology and Finance Division, AKT LLC; Case Interactive LLC, etc.	Lebanon, NJ	August 15, 2015.
92,203	Chanel, Inc., Division of Fragrance and Beaute, Staffmark	Piscataway Township, NJ	August 30, 2015.
92,204	Sanofi US Services Inc., ITS Research and Development Division, Sanofi S.A., NewAgeSys, Inc.	Bridgewater, NJ	August 30, 2015.
92,206	Massachusetts Mutual Life Insurance Company, Technology Team Applications and Infrastructure, ADPI, Agile1, etc.	Springfield, MA	September 13, 2015.
92,207	International Business Machines Corporation (IBM), Statistical Package for the Social Science (SPSS), Analytics, etc.	Rochester, MN	September 13, 2015.
92,208	HUSCO International, Off-Highway Division	Waukesha, WI	September 14, 2015.
92,213	Chubb & Sons, Division of Federal Insurance Co., Premium Accounting, etc.	Warren, NJ	September 15, 2015.
92,214	Quantum Spatial, Inc	Anchorage, AK	September 15, 2015.
92,214A	Quantum Spatial, Inc	Ann Arbor, MI	September 15, 2015.
92,214B	Quantum Spatial, Inc., Counsel on Call, Express Services, Adecco	Norcross, GA	September 15, 2015.
92,214C	Quantum Spatial, Inc	Colorado Springs, CO	September 15, 2015.

TA–W No.	Subject firm	Location	Impact date
92,214D	Quantum Spatial, Inc	Corvallis, OR	September 15, 2015.
92,214E	Quantum Spatial, Inc	Dulles, VA	September 15, 2015.
92,214F	Quantum Spatial, Inc., Accountemps, Click LLC	Lexington, KY	September 15, 2015.
92,214G	Quantum Spatial, Inc	Maple Grove, MN	September 15, 2015.
92,214H	Quantum Spatial, Inc	Mission, KS	September 15, 2015.
92,214I	Quantum Spatial, Inc., Adecco, Propeller, Liquid Capital Exchange (Geosearch).	Portland, OR	September 15, 2015.
92,214J	Quantum Spatial, Inc., Technology Parkway Facility, Seek Careers	Sheboygan, WI	September 15, 2015.
92,214K	Quantum Spatial, Inc., Resource Drive Facility, Seek Careers	Sheboygan Falls, WI	September 15, 2015.
92,214L	Quantum Spatial, Inc., Adecco	St. Petersburg, FL	September 15, 2015.
92,215	Epicor Software Corporation, Walter J. Dambkowski, Susan K. Ledbetter, Analytic View Consulting LLC, etc.	Dublin, CA	September 15, 2015.
92,217	Caterpillar Inc., Material Handling & Underground Division	Houston, PA	September 16, 2015.
92,218	Nikon Americas, Inc., Nikon Corporation, WNS North America, Inc	Melville, NY	September 16, 2015.
92,219	InFocus Corporation, Research and Development (R&D) and Manufacturing Divisions, Aerotek, etc.	Portland, OR	September 16, 2015.
92,222	Harman International Industries, Inc., Connected Car Division, Advantage Staffing, ACRO, Quality, Aerotek.	Franklin, KY	September 16, 2015.
92,223	Southern California Edison, Edison International, IT Department, @Business and Saker Systems.	Rosemead, CA	May 3, 2016.
92,227	Vertellus Specialties Inc	Indianapolis, IN	September 19, 2015.
92,228	Hibu Inc., Hibu Holdings (USA), Inc., People Share, FirstPro, etc	Cedar Rapids, IA	August 9, 2016.
92,230	Bruker Daltonics, Inc., Bruker Corporation, Advantage Technical Resourcing, AKLU, Bay Shore, etc.	Billerica, MA	September 20, 2015.
92,234	New York Life Insurance Company, Technology and Finance Divisions, Deemsys, Eclaro International, Momentum.	New York, NY	August 21, 2015.
92,236	MakerBot Industries LLC, Stratasys Ltd., Adecco USA	Brooklyn, NY	September 6, 2015.
92,237	The Dow Chemical Company, IT Operations Group, Kelly Services	Midland, MI	September 21, 2015.
92,243	Harman, Professional, Harman International, Inc., Humanix, Spherion	Cheney, WA	September 22, 2015.
92,243A	Harman, Professional, Harman International, Inc., Pro Resources Staffing Services.	Elkhart, IN	September 22, 2015.
92,244	Balance Systems, Inc., Amesbury Industries, Randstad, Mancan, Customer Driven, Staffmasters.	Statesville, NC	September 23, 2015.
92,245	Alstom Power Inc., Chattanooga Boilers, GE Power, Manpower, G4S	Chattanooga, TN	September 23, 2015.
92,247	Regal Power Transmission Solutions, Regal Beloit Corporation	Monticello, IN	September 26, 2015.
92,248	International Business Machines Corporation (IBM), Enterprise Automation Distributed Services (EADS), etc.	Armonk, NY	September 27, 2015.
92,251	Versum Materials US, LLC, Versum Materials, Inc., Air Products and Chemicals, (SP&C) Division.	Allentown, PA	September 9, 2015.
92,259	Xerox Business Services, Automation Analytics and Innovation Services/Innovation Automation, etc.	Webster, NY	September 27, 2015.
92,259A	Xerox Business Services, Automation Analytics and Innovation Services/Innovation Automation, etc.	Lexington, KY	September 27, 2015.
92,259B	Xerox Business Services, Automation Analytics and Innovation Services/Innovation Automation, etc.	Sandy, UT	September 27, 2015.
92,259C	Xerox Business Services, Automation Analytics and Innovation Services/Innovation Automation, etc.	Highlands Ranch, CO	September 27, 2015.
92,259D	Xerox Business Services, Automation Analytics and Innovation Services/Innovation Automation, etc.	Utica, NY	September 27, 2015.
92,259E	Xerox Business Services, Automation Analytics and Innovation Services/Innovation Automation, etc.	Long Beach, CA	September 27, 2015.
92,263	Global Payments Inc., Owings Mills Center Division, Kinetix	Owings Mills, MD	September 26, 2015.
92,264	Barnes & Noble, Inc., Monroe Distribution Center, Data Center Operations Department.	Monroe Township, NJ	September 28, 2015.
92,265	Fastek Products, Amesbury Industries, Aerotek and Express Employment Professionals.	Canton, SD	September 29, 2015.
92,269	ET Publishing International LLC, TVU Enterprise, Inc. and Alektis Consultores, S. DE. R.L.	Virginia Gardens, FL	September 29, 2015.
92,271	Thermo Fisher Scientific, Inc., Life Sciences Solutions Group, Finance Shared Services Group, Superior, etc.	Grand Island, NY	September 30, 2015.
92,275	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Manchester, NH	October 1, 2015.
92,275A	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Pittsburgh, PA	October 1, 2015.
92,275B	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Holmes, PA	October 1, 2015.
92,275C	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Plymouth Meeting, PA	October 1, 2015.
92,275D	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Lancaster, PA	October 1, 2015.
92,275E	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Norwood, MA	October 1, 2015.
92,275F	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Medford, MA	October 1, 2015.
92,275G	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Haddon Heights, NJ	October 1, 2015.
92,275H	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	Jersey City, NJ	October 1, 2015.
92,275I	Citizens Bank, NA, Citizens Financial Group, Infrastructure Services	New London, CT	October 1, 2015.
92,284	NetApp, Inc., Customer Service Division	Wichita, KS	September 30, 2015.
92,285	PacifiCorp, Pacific Power, IT Department, Berkshire Hathaway	Portland, OR	September 30, 2015.
92,287	Selligent, Inc., Selligent Holdings Ltd., Development and Quality Assurance Divisions.	Redwood City, CA	September 30, 2015.

TA–W No.	Subject firm	Location	Impact date
92,291	Inventiv Health, Accountemps (RHI), Aptara, Inc., C&G Consulting Services Inc., etc.	Blue Bell, PA	October 3, 2015.
92,293	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Palo Alto, CA	October 4, 2015.
92,293A	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	San Diego, CA	October 4, 2015.
92,293B	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Fort Collins, CO	October 4, 2015.
92,293C	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Alpharetta, GA	October 4, 2015.
92,293D	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Boise, ID	October 4, 2015.
92,293E	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Rio Rancho, NM	October 4, 2015.
92,293F	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	New York, NY	October 4, 2015.
92,293G	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Corvallis, OR	October 4, 2015.
92,293H	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Plano, TX	October 4, 2015.
92,293I	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Houston, TX	October 4, 2015.
92,293J	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Austin, TX	October 4, 2015.
92,293K	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Vancouver, WA	October 4, 2015.
92,293L	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	San Jose, CA	October 4, 2015.
92,293M	Hewlett Packard, Inc., Imaging, Printing & Solutions Business Group, etc	Aguadilla, PR	October 4, 2015.
92,301	International Business Machines Corporation (IBM), GPS Business Office Support, Operations, Cross Services Shared, etc.	Tulsa, OK	October 4, 2015.
92,302	Air Systems Components, Inc., Johnson Controls International PLC, Express Employment Professionals.	Ponca City, OK	October 31, 2016.
92,303	Madison Paper Industries, UPM-Kymmene Inc. and Northern SC Paper, WD Matthews Machinery, etc.	Madison, ME	October 4, 2015.
92,303A	Madison Paper Industries, UPM-Kymmene Inc. and Northern SC Paper, WD Matthews Machinery, etc.	Madison, ME	December 10, 2016.
92,305	Sulzer Chemtech USA, Inc., Sulzer US Holding Inc., Prime Industrial Recruiters, etc.	Tulsa, OK	October 4, 2015.
92,308	International Business Machines Corporation (IBM), GTS Storage Development, Service Planning Application Development, etc.	Armonk, NY	October 6, 2015.
92,309	Illinois Tool Works, Inc., ITW Ark-Les Business Unit, Randstad US, Resource Manufacturing, etc.	New Berlin, WI	October 6, 2015.
92,314	Cablevision of Litchfield, Altice USA	Shelton, CT	October 11, 2015.
92,317	INVISTA S.A.R.L., Koch Industries, Inc., Swift Technical Group LLC and Mundy Company.	Chattanooga, TN	October 10, 2015.
92,320	Xerox, Customer Business Operations (CBO) Division, Xerox Technology.	Rosemont, IL	October 12, 2015.
92,322	Siemens Industry, Inc., Process Industries and Drives Division, Randstad USA.	Spring House, PA	October 13, 2015.
92,325	ConvaTec, Bright Services, Hire Alternatives, Prologistix, TRS Craft Services, Inc.	Greensboro, NC	October 14, 2015.
92,330	Shoes.com Technologies Inc	Seattle, WA	October 17, 2015.
92,332	Topson Downs of California, Inc., Premier Personnel	Compton, CA	October 17, 2015.
92,333	W.V.T., Inc., WKT Holdings (USA) Inc	Santa Ana, CA	October 17, 2015.
92,336	Manhattan Beachwear, Inc., Select Staffing and Eastridge Staffing	Cypress, CA	October 18, 2015.
92,337	Numatics Actuator, ASCO Numatics, Randstad, Express, and Staffmark	Mount Pleasant, TN	October 18, 2015.
92,344	Logic PD	Montevideo, MN	October 19, 2015.
92,347	Prestolite Electric Incorporated, Broad Ocean Motor, LLC, Adecco	Arcade, NY	October 20, 2015.
92,348	Baxter Healthcare Corporation, Hospital Products, Aerotek, Delta-Pharma/Randstad, Hiregenics, etc.	Englewood, CO	October 20, 2015.
92,353	Backer EHP Inc., Fisher Manufacturing, AppleOne, and Volt Workforce Solutions.	Huntington Beach, CA	July 1, 2016.
92,354	Kionix, Inc., 36 Thornwood Drive, ROHM Co., Ltd., Stafkings	Ithaca, NY	August 22, 2015.
92,354A	Kionix, Inc., 22 Thornwood Drive, ROHM Co., Ltd., Stafkings	Ithaca, NY	August 22, 2015.
92,361	Union Electric Akers, Akers National Roll, Ampco-Pittsburgh Corporation/Union Electric Akers.	Avonmore, PA	October 24, 2015.
92,363	ElectroCraft Arkansas, Inc., ElectroCraft, Inc., Staffmark	Searcy, AR	October 25, 2015.
92,367	Bridgeville Glass Plant, GE Lighting, LLC, GE Lighting, Inc., CareHere	Bridgeville, PA	October 26, 2015.
92,373	Numatics, Inc., Emerson Electric Company, TechniPower National Staffing Solutions, etc.	Phoenix, AZ	October 27, 2015.
92,379	Legend Pictures, LLC, Dalian Wanda Group	Burbank, CA	October 28, 2015.
92,385	ICON Aircraft, Inc., Johnson Service Group, Talentscale	Vacaville, CA	October 4, 2015.
92,387	Xcerra Corporation	Milpitas, CA	September 30, 2015.
92,392	UBS Financial Services, Inc., WMA Investment Advisory, UBS Americas, Inc., Cognizant.	Weehawken, NJ	November 3, 2015.
92,395	Medtronic, Medtronic, Patient Monitoring and Recovery (PMR) Division, Covidien, etc.	Costa Mesa, CA	December 24, 2016.
92,403	Convergys Customer Management Group, Directv Customer Service Support, Covergys Corporation.	Tamarac, FL	November 3, 2015.
92,405	PTC Inc., Product Development Group	Blaine, MN	November 8, 2015.
92,411	Tronc, Inc., Technology Division, Apex Systems, Bitwise, Globant, Infosys, iSpace, etc.	Chicago, IL	November 9, 2015.
92,414	Baxalta US Inc., FNA Baxter International, Baxalta Inc., Hiregenics, Delta-Pharma, etc.	Thousand Oaks, CA	November 14, 2015.
92,417	Motorola Mobility LLC, Lenovo Group LTD	Bedminster, NJ	November 10, 2015.
92,442	Balboa Water Group, LLC, Staffmark and Exact Staff	Valencia, CA	November 21, 2015.

TA–W No.	Subject firm	Location	Impact date
92,447	Sypris Technologies, Sypris Solutions	Louisville, KY	November 24, 2015.
92,470	Seat King LLC	Hutchinson, KS	December 7, 2015.
92,476	Swisher International, Inc	Jacksonville, FL	December 3, 2016.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,956	Cameron International Corporation, Measurement Division	Duncan, OK	April 23, 2014.
91,629	Royal Oak Industries, Inc., Corporate Office	Bloomfield Hills, MI	March 21, 2015.
91,629A	Royal Oak Boring, Royal Oak Industries, Inc	Port Huron, MI	March 21, 2015.
91,629B	Bronson Precision Products, Royal Oak Industries, Inc	Bronson, MI	March 21, 2015.
91,699	Hexcel Corporation, Keltia Recruitment Inc./Keltia Design Inc., Kelly Services Inc., etc.	Kent, WA	April 12, 2015.
92,016	EBC Industries, Doncasters Group	Erie, PA	July 14, 2015.
92,111	Hodge Foundry, Inc	Greenville, PA.	August 15, 2015.
92,177	Berry Plastics Corporation, Berry Plastics Group, Inc., Infinity Resources	Dunkirk, NY	September 6, 2015.
92,188	TMS International	Granite City, IL	September 7, 2015.
92,235	Magnetation LLC, Pellet Plant, Manpower, Accountemps	Reynolds, IN	September 6, 2015.
92,238	Specialty Minerals, Inc., Mineral Technologies Inc	Wickliffe, KY	September 21, 2015.
92,258	ATI Titanium LLC, ATI Primary Titanium Operations, Allegheny Technologies Incorporated, etc.	Skull Valley, UT	September 27, 2015.
92,313	Ellwood National Crankshaft, Ellwood Group, Inc., Ellwood Crankshaft Group.	Irvine, PA	October 11, 2015.
92,378	RAM Industrial Services, LLC, Erie Division, Industrial Service Solutions, Miller Brother Staffing.	Erie, PA	October 28, 2015.
92,393	Acro Industries, Inc	Rochester, NY	November 7, 2015.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,903	Treeline, Inc	Chester, ME	June 9, 2015.
92,079	Fairfield Southern Company, Transtar, Inc	Fairfield, AL	August 1, 2015.
92,165	Lufkin Industries LLC, Gear Repair Division, GE Oil & Gas	Cullman, AL	August 31, 2015.

Negative Determinations For Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
91,301	XPO Logistics Freight, Inc., FKA Con-Way Freight, Division of Customer Service Representatives, Randstad.	Aliquippa, PA.	
91,760	Aviara Residence Club Owners Association, Finance, Aviara Residential Employment Inc., Maintenance Masters, etc.	Carlsbad, CA.	
92,024	TEKsystems, Inc., Jacobs Engineering Group, Inc., Enterprise Services Team.	Pasadena, CA.	
92,114	HERE North America, LLC, HERE Holding Corporation, Data Collection Unit.	Roseville, MN.	
92,114A	HERE North America, LLC, HERE Holding Corporation, Quality Unit	Roseville, MN.	
92,114B	HERE North America, LLC, HERE Holding Corporation, Information Technology (IT) Unit.	Roseville, MN.	
92,163	Acosta Sales & Marketing	Marlborough, MA.	
92,319	SST Truck Company, LLC, Navistar, Inc. Company, Truck Specialty Center, 3737 Grader Street.	Garland, TX.	
92,319A	SST Truck Company, LLC, Navistar, Inc. Company, Truck Assembly Plant, 4030 Forrest Lane.	Garland, TX.	
92,319B	Navistar, Inc., Environmental Affairs	Lisle, IL.	
92,383	International Business Machines Corporation (IBM), HNZA Division, Integrated Service Management, etc.	Tampa, FL.	
92,445	Knight Dental, Knight Dental Group	Selden, NY.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
90,300	Conduit Global, Inc., kgb, kgb USA, Inc	Cordova, TN.	
91,094	Apex Engineering International, LLC, HM Dunn AeroSystems, Inc., Engineering Solutions Services, etc.	Wichita, KS.	
92,056	Celestica, Inc., Adecco	Ontario, CA.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
90,228	Allergan Medical, Device Division, Allergan PLC, Adecco	Goleta, CA.	
90,266	Jacques Ebert Associates	Glen Cove, NY.	
90,271	BNSF Railway Company, Twin Cities Division, Burlington Northern Santa Fe, LLC.	Dilworth, MN.	
90,336	Citicorp Credit Services, Inc. (USA), Transaction Services, Citibank, N.A. Axelon Services Corporation, etc.	Urbandale, IA.	
91,087	Cameron, Schlumberger Technology Corporation, Drilling Systems Division.	Houston, TX.	
91,147	Mayhem Manufacturing LLC	Tulsa, OK.	
91,155	Apache Corporation	Tulsa, OK.	
91,222	Meggitt Aircraft Braking Systems Corporation, Meggitt PLC, Kelly Services and CEI Corp.	Akron, OH.	
91,238	Somerset Regional Water Resources LLC	Somerset, PA.	
91,329	Irathane Systems, Inc., Iracore Holdings Corp., Iracore International, LLC.	Hibbing, MN.	
91,329A	Industrial Rubber Applicators, Inc., Iracore Holdings Corp., Iracore International, LLC.	Hibbing, MN.	
91,329B	Iracore International-Minnesota, Inc., Iracore Holdings Corp., Iracore International, LLC.	Hibbing, MN.	
91,365	CNH Industrial America LLC, Grand Island Plant	Grand Island, NE.	
91,369	Noramco Engineering Corporation, Express Employment	Hibbing, MN.	
91,411	Parker Hannifin Corporation, Gas Separation Filtration (GSF) Division, Entech Staffing.	Oxford, MI.	
91,480	Wells Fargo Home Mortgage, Wells Fargo Consumer Lending Group, Aerotek and Robert Half International.	Portland, OR.	
91,537	Boone Hospital Center	Columbia, MO.	
91,552	Double Press Manufacturing, Inc	Madras, OR.	
91,569	Vigo Coal Operating Company, LLC, Friendsville Mine, Custom Staffing	Mount Carmel, IL.	
91,569A	Vigo Coal Operating Company, LLC, Liberty Mine, Custom Staffing	Boonville, IN.	
91,569B	Vigo Coal Operating Company, LLC, Vigo Corporate Office	Evansville, IN.	
91,621	Au'Some Company, LLC	Sumter, SC.	
91,627	Grand Rapids Plastics, Gill Staffing and Apply With Us, LLC	Grand Rapids, MI.	
91,640	NCS Pearson, Inc., AppleOne Employment Services, OfficeTeam, Aerotek, Express, etc.	Bloomington, MN.	
91,660	Firstsource Group USA, Inc	Eugene, OR.	
91,660A	Firstsource Group USA, Inc	Louisville, KY.	
91,673	Climax Manufacturing Inc	Lowville, NY.	
91,687	D&L Manufacturing Inc	Tulsa, OK.	
91,736	The Timken Company, Adecco	Altavista, VA.	
91,792	Vindex Energy Corporation, Hunter Ridge, Inc., Act Personnel Service Inc.	Mountain Lake Park, MD.	
91,797	Toshiba America Information Systems, Inc., Personal Computer, Toshiba America Inc.	Irvine, CA.	
91,835	Public Service Company of Colorado, Xcel Energy, Xcel Energy, Inc., Design and Drafting Engineers Division.	Denver, CO.	
91,843	Magellan Aerospace Bethel, Inc., d/b/a Ambel Precision Manufacturing, Magellan Aerospace Corporation.	Bethel, CT.	
91,861	Donald L Shirey Lumber Co., Inc	New Bethlehem, PA.	
91,862	Union Pacific Railroad Company, Division of Train, Engine, and Yard Employees.	North Platte, NE.	
91,862A	Union Pacific Railroad Company, Division of Train, Engine, and Yard Employees.	Cheyenne, WY.	
91,876	Cleaver-Brooks, Inc., Engineered Boiler Systems, Celebrity Staffing, LaborMAX Staffing.	Lincoln, NE.	
91,938	Sterling Heights Assembly Plant (SHAP), FCA North America Holdings LLC.	Sterling Heights, MI.	
91,947	Jennmar of Pennsylvania, LLC, Frank Calandra, Inc	Cresson, PA.	
91,957	Joy Global Inc., Joy Global Underground Mining, LLC	Eighty Four, PA.	
91,970	ATOS IT Solutions and Services, Inc., NSC Global	Mountain Lakes, NJ.	

TA–W No.	Subject firm	Location	Impact date
91,977	TE Connectivity, AeroSpace, Defense and Marine Division	Middletown, PA.	
91,995	The Boeing Company, Boeing Test and Evaluation (BT&E), Flight Test Group, etc.	St. Louis, MO.	
91,998	Kasper Group LLC, Production, Kasper U.S. Blocker LLC	New York, NY.	
91,998A	Kasper Group LLC, Design, Kasper U.S. Blocker LLC	New York, NY.	
92,025	Consolidated Metco, Inc., Aerotek	Clackamas, OR.	
92,029	Control Devices, LLC, Including Workers with Wages Reported Under a Different FEIN.	Fairview, PA.	
92,055	Bristol Compressors International, LLC	Bristol, VA.	
92,058	EVRAZ Oregon Steel, EVRAZ Oregon Steel Tubular Division, EVRAZ Inc. NA, etc.	Portland, OR.	
92,068	Electralloy, G.O. Carlson, Inc., G.O. Carlson, Inc	Oil City, PA.	
92,080	Xerox Commercial Solutions, LLC, Customer Care Division, Xerox Business Services, LLC.	Redmond, WA.	
92,096	A–1 Staffing, Inc., ADP Total Source	Livonia, MI.	
92,134	Pacific Crest Transformers, Inc., ADP TotalSource, Personnel Source, Express Employment Professionals.	White City, OR.	
92,152	Dura Automotive Systems, Furst Staffing, ManPower Group	Stockton, IL.	
92,164	Triad Mining, LLC, Blackhawk Mining, LLC	Oakland City, IN.	
92,166	John William Siegel, DBA American Medical Design	Atascadero, CA.	
92,181	Carpenter Company, Adecco USA, Inc	Lathrop, CA.	
92,186	BHP Billiton, Limited, BHP Billiton PLC	Houston, TX.	
92,190	VTI of Indiana Doors, Inc., VT Industries, Inc., Advantage Staffing	New Albany, IN.	
92,194	Marine Spill Response Corporation, Maine Responder	Portland, ME.	
92,197	Kohler Company, Shower Doors Division, SMX Staffing, Job World Staffing.	Union City, TN.	
92,262	American Made, LLC, U.S. Liner, Maintenance Department	Harmony, PA.	
92,321	Geneva Nitrogen LLC	Vineyard, UT.	
92,327	Welch Allyn Inc., Hill-Rom	Beaverton, OR.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
91,138	GrafTech International Holdings Inc., Engineered Solutions Division, Brookfield Asset Management Inc.	Anmoore, WV.	
91,275	TTM Technologies, INC., ViaSystems, Randstand	Milpitas, CA.	
91,275A	TTM Technologies, INC., ViaSystems, Randstand	Cuyahoga Falls, OH.	
91,841	Hancock Fabrics	Baldwyn, MS.	
91,926	MetalTek International, Southern Centrifugal Division	Chattanooga, TN.	
92,129	MAPE USA, Inc	Cambridge, MN.	
92,220	LexisNexis	Miamisburg, OH.	
92,268	Populus Group, Caterpillar, Inc	Troy, MI.	
92,289	Prestolite Electric Incorporated	Arcade, NY.	
92,312	ASCO, Emerson	Novi, MI.	
92,349	Sanjel USA	Fort Lupton, CO.	
92,349A	Sanjel USA	Denver, CO.	
92,355	Great Lakes Towers LLC, dba Ventower Industries, Manpower Staffing, Advance Staffing, etc.	Monroe, MI.	
92,371	ADP, Inc., Payroll Service Department	Rochester, NY.	
92,389	Hiperwall, Inc	Irvine, CA.	
92,396	Tek-Motive, Inc	East Haven, CT.	
92,462	Parker-Hannifin Corporation	Anaheim, CA.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
91,788	Cyrus Hosiery Inc	Vernon, CA.	

TA–W No.	Subject firm	Location	Impact date
92,028	Alcatel-Lucent Enterprise (ALE)	New Providence, NJ.	
92,209	Dental Invisions, Inc	Delray Beach, FL.	
92,288	VAM USA	Youngstown, OH.	
92,390	Prairie Mountain Publishing	Boulder, CO.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
91,347	Eurest Services, Inc	Lake Orion, MI.	
91,351	Team Industrial Services, Inc. dba Team Solutions, General Motors Lake Orion Assembly.	Lake Orion, MI.	
91,630	Royal Oak Boring, Royal Oak Industries, Inc	Port Huron, MI.	
91,631	Bronson Precision Products, Royal Oak Industries, Inc	Bronson, MI.	
91,770	US Synthetic Corporation	Orem, UT.	
92,053	McDonald's Corporation, Global Shared Services—Finance & Accounting Division.	Oak Brook, IL.	
92,092	Abbott Laboratories, Abbott Vascular, TapFin	Temecula, CA.	
92,105	Randstad Sourceright	Alpharetta, GA.	
92,159	Huntington Alloys Corporation, Special Metals Division, Special Metals Corporation.	Burnaugh, KY.	
92,205	CTS Corporation, Specialized Staffing, Manpower, Aerotek, Personnel Partners, etc.	Elkhart, IN.	
92,340	CompuCom Systems, Inc., Dallas Service Center	Plano, TX.	
92,360	Hubbell Lighting, Inc	Saint Louis, MO.	
92,372	Versum Materials US, LLC, Versum Materials, Inc., Air Products and Chemicals, Inc., etc.	Allentown, PA.	
92,376	Transcend Services, Inc., Nuance Communications, Inc	Burlington, MA.	
92,380	International Business Machines Corporation (IBM), GTS Storage Development, Service Planning Application Development, etc.	Armonk, NY.	
92,406	Spirit Aerosystems, Inc., Spirit AeroSystems Holdings, Inc., Zero Chaos	Tulsa, OK.	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
91,652	Mary's River Lumber Company	Corvallis, OR.	
91,786	Irathane Systems, Industrial Rubber Applicators	Hibbing, MN.	
92,138	Hewlett Packard, Inc	San Diego, CA.	
92,231	Daimler Trucks North America	Mt. Holly, NC.	
92,272	RBS Citizens Bank National Association, Citizens Bank	Cranston, RI.	
92,273	RBS Citizens Bank National Association, Citizens Bank	New London, CT.	
92,274	RBS Citizens Bank National Association, Citizens Bank	Lancaster, PA.	
92,276	RBS Citizens Bank National Association, Citizens Bank	Medford, MA.	
92,277	RBS Citizens Bank National Association, Citizens Bank	Jersey City, NJ.	
92,278	RBS Citizens Bank National Association, Citizens Bank	Haddon Heights, NJ.	
92,279	RBS Citizens Bank National Association, Citizens Bank	Norwood, MA.	
92,280	RBS Citizens Bank National Association, Citizens Bank	Plymouth Meeting, PA.	
92,281	RBS Citizens Bank National Association, Citizens Bank	Holmes, PA.	
92,282	RBS Citizens Bank National Association, Citizens Bank	Pittsburgh, PA.	
92,283	RBS Citizens Bank National Association, Citizens Bank	Pittsburgh, PA.	
92,294	Hewlett Packard, Inc	San Deigo, CA.	
92,295	Hewlett Packard, Inc., San Diego Product Development	San Diego, CA.	
92,315	Hewlett Packard, Inc., San Diego Product Development	San Diego, CA.	
92,366	G.E. Mining	Glen Lyn, VA.	
92,386	MGM Industrial Supply Company, Incorporated	Ironton, OH.	
92,399	ATI Primary Titanium Operations, Allegheny Technologies Incorporated	North Skull Valley, UT.	
92,407	Hewlett Packard, Inc	Boise, ID.	
92,412	Brillion Iron Works, Metaldyne Performance Group (MPG)	Brillion, WI.	
92,439	UTC Aerospace Systems, United Technologies Corporation	Cleveland, OH.	
92,472	General Motors Subsystems, LLC, Logistics Optimization Center	Lansing, MI.	

The following determinations terminating investigations were issued because the Department issued a negative determination on petitions related to the relevant investigation period applicable to the same worker group. The duplicative petitions did not present new information or a change in circumstances that would result in a reversal of the Department's previous negative determination, and therefore, further investigation would duplicate efforts and serve no purpose.

TA–W No.	Subject firm	Location	Impact date
92,456	EVRAZ Oregon Steel Mill	Portland, OR.	

I hereby certify that the aforementioned determinations were issued during the period of *September 19, 2016 through December 16, 2016.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 19th day of December 2016.

Del-Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–31899 Filed 1–3–17; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than January 17, 2017.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 17, 2017.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of December 2016.

Del-Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[314 TAA petitions instituted between 9/19/16 and 12/16/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92217	Caterpillar Inc. (Company)	Houston, PA	09/19/16	09/16/16
92218	Nikon Americas, Inc. (State/One-Stop)	Melville, NY	09/19/16	09/16/16
92219	InFocus Corporation (State/One-Stop)	Portland, OR	09/19/16	09/16/16
92220	LexisNexis (Company)	Miamisburg, OH	09/19/16	09/16/16
92221	Wilbur-Ellis (State/One-Stop)	Woodburn, OR	09/19/16	09/16/16
92222	Harman International Industries, Inc. (Company)	Franklin, KY	09/19/16	09/16/16
92223	Southern California Edison (State/One-Stop)	Rosemead, CA	09/19/16	09/16/16
92224	AAH Acquisition, LLC (Workers)	Union City, PA	09/19/16	09/16/16
92224A	AAH Acquisition, LLC (Workers)	Erie, PA	09/19/16	09/16/16
92225	Fabick Cat (Formerly Fabco) (State/One-Stop)	Negaunee, MI	09/20/16	09/20/16
92226	Hewlett Packard Enterprise Services, SRM Division (State/One-Stop).	Colorado Springs, CO	09/20/16	09/19/16
92227	Vertellus Specialties Inc. (Union)	Indianapolis, IN	09/20/16	09/19/16
92228	Hibu Inc. (State/One-Stop)	Cedar Rapids, IA	09/20/16	09/19/16
92229	BASF West Memphis (Workers)	West Memphis, AR	09/21/16	09/20/16
92230	Bruker Daltonics, Inc. (State/One-Stop)	Billerica, MA	09/21/16	09/20/16
92231	Daimler Trucks North America (Workers)	Mt. Holly, NC	09/21/16	09/01/16
92232	EAW/Loud Technologies (Company)	Whitinsville, MA	09/21/16	09/14/16
92233	Multimusic Inc. (State/One-Stop)	Inglewood, CA	09/21/16	09/20/16
92234	New York Life Insurance Company (State/One-Stop)	New York, NY	09/21/16	08/01/16
92235	Magnetation LLC (Company)	Reynolds, IN	09/22/16	09/06/16
92236	MakerBot Industries LLC (State/One-Stop)	Brooklyn, NY	09/22/16	09/06/16
92237	The Dow Chemical Company (State/One-Stop)	Midland, MI	09/22/16	09/21/16
92238	Specialty Minerals, Inc. (State/One-Stop)	Wickliffe, KY	09/22/16	09/21/16
92239	Acelor Mittal LLC (State/One-Stop)	Steelton, PA	09/22/16	09/22/16

APPENDIX—Continued

[314 TAA petitions instituted between 9/19/16 and 12/16/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92240	Chemetron (Union)	Steelton, PA	09/23/16	09/22/16
92241	Airgas USA, LLC (Workers)	Royal Oak, MI	09/23/16	09/22/16
92242	Masco Cabinetry LLC (State/One-Stop)	Duncanville, TX	09/26/16	09/23/16
92243	Harman (Company)	Cheney, WA	09/26/16	09/22/16
92243A	Harman (Company)	Elkhart, IN	09/26/16	09/22/16
92244	Balance Systems, Inc. (Company)	Statesville, NC	09/26/16	09/23/16
92245	Alstom Power Inc. (Company)	Chattanooga, TN	09/26/16	09/23/16
92246	Rowan Companies (State/One-Stop)	Houston, TX	09/27/16	09/26/16
92247	Regal Power Transmission Solutions (Workers)	Monticello, IN	09/27/16	09/26/16
92248	International Business Machines Corporation (IBM) (State/One-Stop).	Armonk, NY	09/27/16	09/27/16
92249	Arris Group, Inc. (State/One-Stop)	San Antonio, TX	09/28/16	09/27/16
92250	IBEX Global (Workers)	Indiana, PA	09/28/16	09/18/16
92251	Versum Materials US, LLC (Workers)	Allentown, PA	09/28/16	09/09/16
92252	LDLA Holdings LLC (State/One-Stop)	Los Angeles, CA	09/28/16	09/27/16
92253	Gulf Offshore Logistics (Workers)	Lafayette, LA	09/28/16	08/28/16
92254	Mondelez International (State/One-Stop)	San Antonio, TX	09/28/16	09/27/16
92255	Neenah Northeast, LLC (Union)	Reading, PA	09/28/16	09/16/16
92256	Ball Corporation (Union)	Weirton, WV	09/28/16	08/30/16
92257	Hewlett Packard Enterprise (Workers)	Conway, AR	09/28/16	09/27/16
92258	ATI Titanium LLC (Union)	Skull Valley, UT	09/28/16	09/27/16
92259A	Xerox Business Services (State/One-Stop)	Lexington, KY	09/28/16	09/27/16
92259B	Xerox Business Services (State/One-Stop)	Sandy, UT	09/28/16	09/27/16
92259E	Xerox Business Services (State/One-Stop)	Long Beach, CA	09/28/16	09/27/16
92259C	Xerox Business Services (State/One-Stop)	Highlands Ranch, CO	09/28/16	09/27/16
92259D	Xerox Business Services (State/One-Stop)	Utica, NY	09/28/16	09/27/16
92259	Xerox Business Services (State/One-Stop)	Webster, NY	09/28/16	09/27/16
92260	Yelding, Inc. (State/One-Stop)	Naugatuck, CT	09/28/16	09/27/16
92261	SMC Electrical Products, Inc. (Union)	Huntington, WV	09/29/16	09/26/16
92262	American Made, LLC (Workers)	Harmony, PA	09/29/16	09/28/16
92263	Global Payments Inc. (Workers)	Owings Mills, MD	09/29/16	09/26/16
92264	Barnes & Noble, Inc. (State/One-Stop)	Monroe Township, NJ	09/29/16	09/28/16
92265	Fastek Products (Company)	Canton, SD	09/30/16	09/29/16
92266	Rollins Narrow Fabric, Inc. (State/One-Stop)	Pomona, CA	09/30/16	09/29/16
92267	Rainbow Play Systems, Inc. (Company)	Brookings, SD	09/30/16	09/29/16
92268	Populus Group (Company)	Troy, MI	09/30/16	09/29/16
92269	ET Publishing International LLC (Workers)	Virginia Gardens, FL	09/30/16	09/29/16
92270	JAC Operations, Inc. & Johnstown America, LLC (Workers)	Johnstown, PA	10/03/16	09/30/16
92271	Thermo Fisher Scientific, Inc. (Workers)	Grand Island, NY	10/03/16	09/30/16
92272	RBS Citizens Bank National Association (State/One-Stop)	Cranston, RI	10/03/16	10/01/16
92273	RBS Citizens Bank National Association (State/One-Stop)	New London, CT	10/03/16	10/01/16
92274	RBS Citizens Bank National Association (State/One-Stop)	Lancaster, PA	10/03/16	10/01/16
92275E	Citizens Bank, NA (State/One-Stop)	Norwood, MA	10/03/16	10/01/16
92275F	Citizens Bank, NA (State/One-Stop)	Medford, MA	10/03/16	10/01/16
92275G	Citizens Bank, NA (State/One-Stop)	Haddon Heights, NJ	10/03/16	10/01/16
92275H	Citizens Bank, NA (State/One-Stop)	Jersey City, NJ	10/03/16	10/01/16
92275I	Citizens Bank, NA (State/One-Stop)	New London, CT	10/03/16	10/01/16
92275	Citizens Bank, NA (State/One-Stop)	Manchester, NH	10/03/16	10/01/16
92275A	Citizens Bank, NA (State/One-Stop)	Pittsburgh, PA	10/03/16	10/01/16
92275B	Citizens Bank, NA (State/One-Stop)	Holmes, PA	10/03/16	10/01/16
92275C	Citizens Bank, NA (State/One-Stop)	Plymouth Meeting, PA	10/03/16	10/01/16
92275D	Citizens Bank, NA (State/One-Stop)	Lancaster, PA	10/03/16	10/01/16
92276	RBS Citizens Bank National Association (State/One-Stop)	Medford, MA	10/03/16	10/01/16
92277	RBS Citizens Bank National Association (State/One-Stop)	Jersey City, NJ	10/03/16	10/01/16
92278	RBS Citizens Bank National Association (State/One-Stop)	Haddon Heights, NJ	10/03/16	10/01/16
92279	RBS Citizens Bank National Association (State/One-Stop)	Norwood, MA	10/03/16	10/01/16
92280	RBS Citizens Bank National Association (State/One-Stop)	Plymouth Meeting, PA	10/03/16	10/01/16
92281	RBS Citizens Bank National Association (State/One-Stop)	Holmes, PA	10/03/16	10/01/16
92282	RBS Citizens Bank National Association (State/One-Stop)	Pittsburgh, PA	10/03/16	10/01/16
92283	RBS Citizens Bank National Association (State/One-Stop)	Pittsburgh, PA	10/03/16	10/01/16
92284	NetApp, Inc. (State/One-Stop)	Wichita, KS	10/03/16	09/30/16
92285	PacifiCorp (State/One-Stop)	Portland, OR	10/03/16	09/30/16
92286	Salem Hospital (State/One-Stop)	Salem, OR	10/03/16	09/30/16
92287	Selligent, Inc. (State/One-Stop)	Redwood City, CA	10/03/16	09/30/16
92288	VAM USA (State/One-Stop)	Youngstown, OH	10/03/16	09/30/16
92289	Prestolite Electric Incorporated (Company)	Arcade, NY	10/03/16	10/03/16
92290	EVRAZ (Rolling Facility) (State/One-Stop)	Portland, OR	10/04/16	10/03/16
92291	Inventiv Health (State/One-Stop)	Blue Bell, PA	10/04/16	10/03/16
92292	Hewlett-Packard Enterprises (State/One-Stop)	Colorado Springs, CO	10/04/16	10/03/16
92293	Hewlett Packard, Inc. (Workers)	Palo Alto, CA	10/05/16	10/04/16

APPENDIX—Continued

[314 TAA petitions instituted between 9/19/16 and 12/16/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92293L	Hewlett Packard, Inc. (Workers)	San Jose, CA	10/05/16	10/04/16
92293M	Hewlett Packard, Inc. (Workers)	Aguadilla, PR	10/05/16	10/04/16
92293K	Hewlett Packard, Inc. (Workers)	Vancouver, WA	10/05/16	10/04/16
92293J	Hewlett Packard, Inc. (Workers)	Austin, TX	10/05/16	10/04/16
92293I	Hewlett Packard, Inc. (Workers)	Houston, TX	10/05/16	10/04/16
92293H	Hewlett Packard, Inc. (Workers)	Plano, TX	10/05/16	10/04/16
92293A	Hewlett Packard, Inc. (Workers)	San Diego, CA	10/05/16	10/04/16
92293B	Hewlett Packard, Inc. (Workers)	Fort Collins, CO	10/05/16	10/04/16
92293C	Hewlett Packard, Inc. (Workers)	Alpharetta, GA	10/05/16	10/04/16
92293D	Hewlett Packard, Inc. (Workers)	Boise, ID	10/05/16	10/04/16
92293E	Hewlett Packard, Inc. (Workers)	Rio Rancho, NM	10/05/16	10/04/16
92293F	Hewlett Packard, Inc. (Workers)	New York, NY	10/05/16	10/04/16
92293G	Hewlett Packard, Inc. (Workers)	Corvallis, OR	10/05/16	10/04/16
92294	Hewlett Packard, Inc. (Workers)	San Deigo, CA	10/05/16	10/04/16
92295	Hewlett Packard, Inc. (Workers)	San Diego, CA	10/05/16	10/04/16
92296	Dianevon Furstenberg (Workers)	New York, NY	10/05/16	10/03/16
92297	Austin Westran LLC (Company)	Byron, IL	10/05/16	10/04/16
92298	Brillion Iron Works (Company)	Brillion, WI	10/05/16	10/05/16
92299	American Express (Workers)	Salt Lake City, UT	10/05/16	10/04/16
92300	GEX, Incorporated (Workers)	Atkinson, NH	10/05/16	10/04/16
92301	International Business Machines Corporation (IBM) (State/One-Stop).	Tulsa, OK	10/05/16	10/04/16
92302	Air Systems Components, Inc. (Company)	Ponca City, OK	10/05/16	10/04/16
92303	Madison Paper Industries (Company)	Madison, ME	10/05/16	10/04/16
92303A	Madison Paper Industries (Company)	Madison, ME	10/05/16	10/04/16
92304	NYDJ Production, LLC (State/One-Stop)	Vernon, CA	10/05/16	10/04/16
92305	Sulzer Chemtech USA, Inc. (State/One-Stop)	Tulsa, OK	10/05/16	10/04/16
92306	Pearson Education (State/One-Stop)	Centennial, CO	10/05/16	10/04/16
92307	AG Equipment (Workers)	Broken Arrow, OK	10/06/16	10/05/16
92308	International Business Machines Corporation (IBM) (State/One-Stop).	Armonk, NY	10/06/16	10/06/16
92309	Illinois Tool Works, Inc. (Company)	New Berlin, WI	10/07/16	10/06/16
92310	Martinrea Hot Stampings Inc. (Union)	Detroit, MI	10/07/16	10/03/16
92311	KEMET Foil Manufacturing, LLC (Company)	Knoxville, TN	10/07/16	10/06/16
92312	ASCO (Company)	Novi, MI	10/11/16	10/07/16
92313	Ellwood National Crankshaft (Workers)	Irvine, PA	10/11/16	10/11/16
92314	Cablevision of Litchfield (State/One-Stop)	Shelton, CT	10/12/16	10/11/16
92315	Hewlett Packard, Inc. (Workers)	San Diego, CA	10/12/16	10/11/16
92316	Artco Group International, Inc. (AGI Steel) (State/One-Stop)	Hannibal, OH	10/12/16	10/12/16
92317	INVISTA S.A.R.L. (Company)	Chattanooga, TN	10/12/16	10/10/16
92318	Vancouver Iron and Steel, Inc. (Company)	Vancouver, WA	10/12/16	10/06/16
92319	SST Truck Company, LLC (State/One-Stop)	Garland, TX	10/13/16	10/12/16
92319A	SST Truck Company, LLC (State/One-Stop)	Garland, TX	10/13/16	10/12/16
92319B	Navistar, Inc. (State/One-Stop)	Lisle, IL	10/13/16	10/12/16
92320	Xerox (State/One-Stop)	Rosemont, IL	10/13/16	10/12/16
92321	Geneva Nitrogen LLC (Workers)	Vineyard, UT	10/14/16	10/13/16
92322	Siemens Industry, Inc. (Company)	Spring House, PA	10/14/16	10/13/16
92323	Cleveland Brothers Equipment (Company)	Pittston, PA	10/14/16	10/13/16
92324	ArcelorMittal-Coatesville (Union)	Coatesville, PA	10/17/16	10/11/16
92325	ConvaTec (Company)	Greensboro, NC	10/17/16	10/14/16
92326	Oxford Collections, LF USA, LF Americas (Workers)	Gaffney, SC	10/17/16	10/14/16
92327	Welch Allyn Inc. (State/One-Stop)	Beaverton, OR	10/17/16	10/14/16
92328	Market Source, Inc. (State/One-Stop)	Vancouver, WA	10/18/16	10/17/16
92329	Northern State Metals (State/One-Stop)	Youngstown, OH	10/18/16	10/17/16
92330	Shoes.com Technologies Inc. (State/One-Stop)	Seattle, WA	10/18/16	10/17/16
92331	State Street Corporation (State/One-Stop)	Kansas City, MO	10/18/16	10/17/16
92332	Topson Downs of California, Inc. (State/One-Stop)	Compton, CA	10/18/16	10/17/16
92333	W.V.T., Inc. (State/One-Stop)	Santa Ana, CA	10/18/16	10/17/16
92334	State Street (State/One-Stop)	Kansas City, MO	10/18/16	10/17/16
92335	Titanium Wire Corporation (Workers)	Frackville, PA	10/19/16	10/18/16
92336	Manhattan Beachwear, Inc. (State/One-Stop)	Cypress, CA	10/19/16	10/18/16
92337	Numatics Actuator (Company)	Mount Pleasant, TN	10/19/16	10/18/16
92338	The Boeing Company Mobility (Union)	Ridley Park, PA	10/19/16	10/19/16
92339	MGM Industrial Supply Company, Incorporated (State/One-Stop).	Ironton, OH	10/19/16	10/18/16
92340	CompuCom Systems, Inc. (State/One-Stop)	Plano, TX	10/19/16	10/18/16
92341	Spectrum Glass (Company)	Woodinville, WA	10/19/16	09/23/16
92342	Volt Information Sciences—Division of Staffing Time and Expense Accounting (State/One-Stop).	Orange, CA	10/19/16	10/18/16
92343	Elie Tahari (Workers)	New York, NY	10/20/16	10/18/16

APPENDIX—Continued

[314 TAA petitions instituted between 9/19/16 and 12/16/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92344	Logic PD (State/One-Stop)	Montevideo, MN	10/20/16	10/19/16
92345	Mirantis, Inc. (State/One-Stop)	Sunnyvale, CA	10/20/16	10/19/16
92346	Textron (State/One-Stop)	Wichita, KS	10/20/16	10/19/16
92347	Prestolite Electric Incorporated (Company)	Arcade, NY	10/21/16	10/20/16
92348	Baxter Healthcare Corporation (State/One-Stop)	Englewood, CO	10/21/16	10/20/16
92349	Sanjel USA (State/One-Stop)	Fort Lupton, CO	10/21/16	10/20/16
92349A	Sanjel USA (State/One-Stop)	Denver, CO	10/21/16	10/20/16
92350	Bosch Rexroth Corporation (Company)	Bethlehem, PA	10/21/16	10/20/16
92351	Transocean (State/One-Stop)	Houston, TX	10/21/16	10/20/16
92352	G.E. Mining (Workers)	GlenLyn, VA	10/21/16	10/20/16
92353	Backer EHP Inc. (State/One-Stop)	Huntington Beach, CA	10/24/16	10/21/16
92354A	Kionix, Inc. (Company)	Ithaca, NY	10/24/16	08/22/16
92354	Kionix, Inc. (Company)	Ithaca, NY	10/24/16	08/22/16
92355	Great Lakes Towers LLC (State/One-Stop)	Monroe, MI	10/25/16	10/25/16
92356	Gunderson/Greenbrier Industries (State/One-Stop)	Portland, OR	10/25/16	10/18/16
92357	Samson Technologies Corporation (State/One-Stop)	Hauppauge, NY	10/25/16	10/24/16
92358	Sykes (State/One-Stop)	Eugene, OR	10/25/16	10/17/16
92359	Mac Fasteners (State/One-Stop)	Paris, AR	10/25/16	10/24/16
92360	Hubbell Lighting, Inc. (Workers)	Saint Louis, MO	10/25/16	10/24/16
92361	Union Electric Akers (Union)	Avonmore, PA	10/25/16	10/24/16
92362	Gibbstown CO2/Dry Ice (State/One-Stop)	Gibbstown, NJ	10/26/16	10/25/16
92363	ElectroCraft Arkansas, Inc. (State/One-Stop)	Searcy, AR	10/26/16	10/25/16
92364	GE Dover Products Plant (Union)	Dover, OH	10/26/16	10/25/16
92365	Belron/Safelite (Workers)	Columbus, OH	10/27/16	10/26/16
92366	G.E. Mining (Union)	Glen Lyn, VA	10/27/16	10/20/16
92367	Bridgeville Glass Plant (Union)	Bridgeville, PA	10/27/16	10/26/16
92368	J. Kinderman and Sons (Workers)	Philadelphia, PA	10/27/16	10/10/16
92369	Maxim Integrated Products, Inc. (State/One-Stop)	Beaverton, OR	10/27/16	10/26/16
92370	Wentworth-Douglass Hospital (Workers)	Dover, NH	10/27/16	10/25/16
92371	ADP, Inc. (State/One-Stop)	Rochester, NY	10/28/16	10/27/16
92372	Versum Materials US, LLC (State/One-Stop)	Allentown, PA	10/28/16	10/27/16
92373	Numatics, Inc. (State/One-Stop)	Phoenix, AZ	10/28/16	10/27/16
92374	Freeman Marine Equipment/Advantec Global (State/One-Stop).	Gold Beach, OR	10/28/16	10/27/16
92375	Hewlett Packard Enterprise Services (State/One-Stop)	Charlotte, NC	10/28/16	10/27/16
92376	Transcend Services, Inc. (Workers)	Burlington, MA	10/28/16	10/27/16
92377	Atlantic Packaging Group, LLC (State/One-Stop)	Norwich, CT	10/31/16	10/28/16
92378	RAM Industrial Services, LLC (State/One-Stop)	Erie, PA	10/31/16	10/28/16
92379	Legend Pictures, LLC (State/One-Stop)	Burbank, CA	10/31/16	10/28/16
92380	International Business Machines Corporation (IBM) (State/One-Stop).	Armonk, NY	11/02/16	11/01/16
92381	Seagate Technologies, LLC (State/One-Stop)	Cupertino, CA	11/02/16	11/01/16
92382	Flowserve, Lawrence Pump (Company)	Lawrence, MA	11/02/16	10/28/16
92383	International Business Machines Corporation (IBM) (State/One-Stop).	Tampa, FL	11/03/16	11/02/16
92384	Mack/Volvo (Union)	Hagerstown, MD	11/03/16	09/26/16
92385	ICON Aircraft, Inc. (State/One-Stop)	Vacaville, CA	11/03/16	10/04/16
92386	MGM Industrial Supply Company, Incorporated (Company)	Ironton, OH	11/03/16	10/06/16
92387	Xcerra Corporation (Workers)	Milpitas, CA	11/03/16	09/30/16
92388	Westinghouse Air Brake Technologies Incorporated (Workers).	Wilmerding, PA	11/03/16	11/02/16
92389	Hiperwall, Inc. (State/One-Stop)	Irvine, CA	11/03/16	11/01/16
92390	Prairie Mountain Publishing (State/One-Stop)	Boulder, CO	11/04/16	11/03/16
92391	Cambia Health Solutions, Inc. (State/One-Stop)	Portland, OR	11/04/16	11/03/16
92392	UBS Financial Services, Inc. (State/One-Stop)	Weehawken, NJ	11/04/16	11/03/16
92393	Acro Industries, Inc. (State/One-Stop)	Rochester, NY	11/07/16	11/07/16
92394	XALT Energy (Workers)	Midland, MI	11/07/16	11/04/16
92395	Medtronic (Company)	Costa Mesa, CA	11/07/16	11/04/16
92396	Tek-Motive, Inc. (State/One-Stop)	East Haven, CT	11/07/16	11/04/16
92397	Philips Lumileds (State/One-Stop)	San Jose, CA	11/07/16	11/04/16
92398	Kahului Trucking and Storage, Inc. (Union)	Kahului, HI	11/07/16	11/03/16
92399	ATI Primary Titanium Operations (Union)	North Skull Valley, UT	11/07/16	09/27/16
92400	International Automotive Components (State/One-Stop)	Iowa City, IA	11/07/16	11/05/16
92401	EMC Corporation (State/One-Stop)	Hopkinton, MA	11/08/16	11/08/16
92402	International Business Machines Corporation (IBM) (State/One-Stop).	New York, NY	11/08/16	11/07/16
92403	Convergys Customer Management Group (Workers)	Tamarac, FL	11/09/16	11/03/16
92404	Yodle Web.com, Inc. (Workers)	Austin, TX	11/09/16	11/08/16
92405	PTC Inc. (State/One-Stop)	Blaine, MN	11/09/16	11/08/16
92406	Spirit Aerosystems, Inc. (State/One-Stop)	Tulsa, OK	11/09/16	11/08/16

APPENDIX—Continued

[314 TAA petitions instituted between 9/19/16 and 12/16/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92407	Hewlett Packard, Inc. (Workers)	Boise, ID	11/09/16	10/25/16
92408	Centrex Revenue Solutions (State/One-Stop)	Ellicott City, MD	11/10/16	11/09/16
92409	GE Packaged Power, Inc. (Company)	Houston, TX	11/10/16	11/09/16
92410	General Motors, LLC (State/One-Stop)	Warren, OH	11/10/16	11/09/16
92411	Tronc, Inc. (Company)	Chicago, IL	11/10/16	11/09/16
92412	Brillion Iron Works (Union)	Brillion, WI	11/10/16	11/04/16
92413	Hewlett Packard Enterprise (State/One-Stop)	Tulsa, OK	11/14/16	11/10/16
92414	Baxalta US Inc. (State/One-Stop)	Thousand Oaks, CA	11/15/16	11/14/16
92415	IBM (State/One-Stop)	Somers, NY	11/15/16	11/14/16
92416	Harbison Walker International (State/One-Stop)	Fulton, MO	11/15/16	11/14/16
92417	Motorola Mobility LLC (Workers)	Bedminster, NJ	11/15/16	11/10/16
92418	U.S. Steel IT Security Administration Group (State/One-Stop)	Pittsburgh, PA	11/15/16	11/14/16
92419	Instron, Industrial Products Group (Company)	Grove City, PA	11/16/16	11/15/16
92420	J Brand Inc. (State/One-Stop)	Los Angeles, CA	11/16/16	11/15/16
92421	Xerox Corporation (Workers)	Rosemont, IL	11/16/16	11/15/16
92422	Rexnord Industries, LLC (Union)	Indianapolis, IN	11/16/16	11/15/16
92423	GE Lighting Somerset Glass Plant (Union)	Somerset, KY	11/17/16	11/16/16
92424	WorleyParsons Group, Inc. (Workers)	Reading, PA	11/17/16	11/16/16
92425	Regal-Beloit America, Inc (State/One-Stop)	Erwin, TN	11/17/16	11/16/16
92426	Enervest Employee Services/Enervest LLC (State/One-Stop)	Sonora, TX	11/17/16	11/16/16
92427	John Crane (State/One-Stop)	Cerritos, CA	11/17/16	11/16/16
92428	Smith Bits a Schlumberger Company (Company)	Ponca City, OK	11/18/16	11/17/16
92429	Conwed (Owens Corning) (Union)	Ladysmith, WI	11/18/16	11/16/16
92430	Entergy Vermont Yankee (State/One-Stop)	Vernon, VT	11/21/16	11/18/16
92431	CSC (Computer Sciences Corporation) (Workers)	Austin, TX	11/21/16	11/18/16
92432	Blue Sea Systems Inc. (State/One-Stop)	Bellingham, WA	11/21/16	11/17/16
92433	Intel (State/One-Stop)	Chandler, AZ	11/21/16	11/18/16
92434	Federal Republic of Germany (State/One-Stop)	Holloman, NM	11/21/16	11/18/16
92435	Gardner Denver (State/One-Stop)	Manteca, CA	11/21/16	11/18/16
92436	Cameron International Corporation (State/One-Stop)	Electra, TX	11/22/16	11/21/16
92437	Cisco Systems Inc. (State/One-Stop)	San Jose, CA	11/22/16	11/21/16
92438	Conmet/Consolidated Metco Inc. (State/One-Stop)	Clackamas, OR	11/22/16	11/21/16
92439	UTC Aerospace Systems (State/One-Stop)	Cleveland, OH	11/22/16	11/21/16
92440	LexisNexis (State/One-Stop)	Colorado Springs, CO	11/22/16	11/21/16
92441	Collins Lakeview Sawmill (State/One-Stop)	Lakeview, OR	11/22/16	11/21/16
92442	Balboa Water Group, LLC (State/One-Stop)	Valencia, CA	11/22/16	11/21/16
92443	Holloway Sportswear, Inc. (Workers)	Sidney, OH	11/23/16	11/22/16
92444	Anthelio Health (State/One-Stop)	Dallas, TX	11/23/16	11/14/16
92445	Knight Dental (State/One-Stop)	Selden, NY	11/23/16	11/23/16
92446	Sanofi-Aventis LLC (State/One-Stop)	St. Louis, MO	11/25/16	11/23/16
92447	Sypris Technologies (Company)	Louisville, KY	11/25/16	11/24/16
92448	Warn Industries (State/One-Stop)	Clackamas, OR	11/29/16	11/28/16
92449	Apria Health (State/One-Stop)	Overland Park, KS	11/29/16	11/28/16
92450	Impresa Aerospace, LLC (State/One-Stop)	Wichita, KS	11/30/16	11/29/16
92451	Atlas Copco Secoroc LLC (Company)	Grand Prairie, TX	11/30/16	11/29/16
92452	Intel Corporation (State/One-Stop)	DuPont, WA	11/30/16	11/29/16
92453	NCI Group Inc. DBA Garco (Union)	Airway Heights, WA	12/01/16	11/29/16
92454	RC Fabricators (State/One-Stop)	Hibbing, MN	12/02/16	12/01/16
92455	MCG Plastics (State/One-Stop)	Bay City, MI	12/02/16	12/01/16
92456	EVRAZ Oregon Steel Mill (State/One-Stop)	Portland, OR	12/02/16	12/01/16
92457	Celestica (State/One-Stop)	Ontario, CA	12/02/16	12/01/16
92458	Manac Trailers USA, Inc. (State/One-Stop)	Kennett, MO	12/02/16	12/01/16
92459	Unilever U.S. Inc. (State/One-Stop)	Englewood Cliffs, NJ	12/05/16	12/02/16
92460	Stillwater Dispatch, Inc. (State/One-Stop)	Kalispell, MT	12/05/16	12/02/16
92461	Remy USA Industries, LLC (Company)	Bay Shore, NY	12/05/16	12/02/16
92462	Parker-Hannifin Corporation (State/One-Stop)	Anaheim, CA	12/05/16	12/02/16
92463	Brayton Point Power Station, LLC (Company)	Somerset, MA	12/05/16	12/05/16
92464	Ledvance, LLC fka Osram Sylvania Inc. (Company)	Winchester, KY	12/06/16	12/01/16
92465	GE Inspection Technologies, LP (Company)	Lewistown, PA	12/06/16	12/05/16
92466	Cypress Semiconductor Corporation (State/One-Stop)	Tigard, OR	12/07/16	12/06/16
92467	Lufkin-RMT (Company)	Wellsville, NY	12/07/16	12/06/16
92468	GM Subsystems Manufacturing, LLC (State/One-Stop)	Lansing, MI	12/07/16	12/07/16
92469	General Motors Corporation (State/One-Stop)	Lansing, MI	12/07/16	12/07/16
92470	Seat King LLC (State/One-Stop)	Hutchinson, KS	12/08/16	12/07/16
92471	FCR\First Call Resolution (State/One-Stop)	Independence, OR	12/08/16	12/07/16
92472	General Motors Subsystems, LLC (State/One-Stop)	Lansing, MI	12/08/16	12/07/16
92473	International Business Machine (IBM) (Workers)	Armonk, NY	12/08/16	12/07/16
92474	IBM (State/One-Stop)	Armonk, NY	12/08/16	12/08/16
92475	Patriot Metal Products, Inc. (Workers)	Berwick, PA	12/08/16	12/08/16
92476	Swisher International, Inc. (Company)	Jacksonville, FL	12/09/16	12/08/16

APPENDIX—Continued

[314 TAA petitions instituted between 9/19/16 and 12/16/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
92477	Continental Data Graphics (State/One-Stop)	San Diego, CA	12/09/16	12/08/16
92478	Pacific Bioscience Laboratories (State/One-Stop)	Redmond, WA	12/09/16	12/08/16
92479	The Doe Run Company (Company)	Herculaneum, MO	12/09/16	12/08/16
92480	Thermo Fisher Scientific (State/One-Stop)	West Palm Beach, FL	12/12/16	12/09/16
92481	Teva Pharmaceuticals USA, Inc. (State/One-Stop)	Pomona, NY	12/12/16	12/09/16
92482	Optimum Employer Solution (State/One-Stop)	Santa Ana, CA	12/12/16	12/09/16
92483	Avant Technology (Company)	Pflugerville, TX	12/12/16	12/09/16
92484	JPMorgan Chase Bank (Workers)	Dallas, TX	12/13/16	12/12/16
92485	Symantec Corporation (State/One-Stop)	Springfield, OR	12/13/16	12/12/16
92486	Hewlett Packard Enterprise (State/One-Stop)	Portland, OR	12/13/16	12/12/16
92487	Carl Zeiss Meditec Inc. (State/One-Stop)	Dublin, CA	12/13/16	11/30/16
92488	U.S. Textiles (Company)	Heath Springs, SC	12/14/16	12/13/16
92489	Supergenius Industries, LLC (State/One-Stop)	Oregon City, OR	12/14/16	12/13/16
92490	Liberty Brass Turning CO (State/One-Stop)	Westbury, NY	12/14/16	12/13/16
92491	Sappi North America (Company)	Allentown, PA	12/15/16	12/14/16
92492	Getinge La Calhene USA (State/One-Stop)	Rush City, MN	12/16/16	12/15/16
92493	Pentair Technical Solutions (Panel Shop) (Company)	Houston, TX	12/16/16	12/15/16
92494	Health Care Service Corporation (State/One-Stop)	Tulsa, OK	12/16/16	12/16/16
92495	Clearwater Paper Corp. (State/One-Stop)	Neenah, WI	12/16/16	12/15/16
92496	Express Employment Professionals (Workers)	Schererville, IN	12/16/16	12/15/16

[FR Doc. 2016–31898 Filed 1–3–17; 8:45 am]

BILLING CODE 4510–FN–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Digital Inclusion Corps Pilot Project Evaluation

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Service (''IMLS'') as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The purpose of this Notice is to solicit comments concerning the evaluation instrument for the Digital Inclusion Corps Pilot Project, a project under a cooperative agreement between IMLS and The PAST Foundation.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 3, 2017.

ADDRESSES: For a copy of the documents contact: Robin Dale, Associate Deputy Director, Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024. Ms. Dale can be reached by telephone: 202–653–4650; fax: 202–653–4603 email: *rdale@imls.gov* or by or by *teletype* (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Stephanie Burwell, Chief Information Officer, Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Mrs. Burwell can be reached by Telephone: 202–653–4684, Fax: 202–653–4625, or by email at *sburwell@imls.gov* or by teletype (TTY/TDD) at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning and civic engagement. We provide leadership through research, policy development, and grant making. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. (20 U.S.C. 9101 *et seq.*).

II. Current Actions

The Institute of Museum and Library Services and The PAST Foundation have entered into a cooperative agreement to create and pilot the Digital Inclusion Corps. The project is to explore the feasibility of having local digital literacy volunteers connected nationally to a supportive peer network working towards increased digital inclusion in the United States. The project will provide digital literacy training staff in five rural or tribal regions and also address the national need for a repository of digital literacy training materials. The project will be evaluated; the evaluation is the subject of this proposed collection of information.

The IMLS is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

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

Agency: Institute of Museum and Library Services.

Title: Digital Inclusion Corps Pilot Project Evaluation.

OMB Number: TBD.

Agency Number: 3137.

Frequency: One time.

Affected Public: State library agencies, libraries, museums, museum organizations, community support organizations.

Number of Respondents: 30.

Estimated Time per Respondent: less than 1 hour.

Total Burden Hours: 45.

Total Annualized cost to respondents: $ 532.20.

Total Annualized capital/startup costs: 0.

Total Annualized Cost to Federal Government: $0.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: December 28, 2016.

Kim A. Miller,

Grants Management Specialist, Office of the Chief Financial Officer.

[FR Doc. 2016–31858 Filed 1–3–17; 8:45 am]

BILLING CODE 7036–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2014–1; CP2016–6; CP2016–278; MC2017–72 and CP2017–99; MC2017–73 and CP2017–100]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 6, 2017 (Comment due date applies to CP2014–1; CP2016–6; CP2016–278; MC2017–73 and CP2017–100); January 9, 2017 (Comment due date applies to MC2017–72 and CP2017–99).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2014–1; *Filing Title:* Notice of United States Postal Service of Amendment to Parcel Select and Parcel Return Service Contract 5; *Filing Acceptance Date:* December 27, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Max E. Schnidman; *Comments Due:* January 6, 2017.

2. *Docket No(s).:* CP2016–6; *Filing Title:* Notice of the United States Postal Service of Amendment to Priority Mail Contract 148, with Portions Filed Under Seal; *Filing Acceptance Date:* December 27, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Erin Mahagan; *Comments Due:* January 6, 2017.

3. *Docket No(s).:* CP2016–278; *Filing Title:* Notice of United States Postal Service of Amendment to First-Class Package Service Contract 61, with Portions Filed Under Seal; *Filing Acceptance Date:* December 27, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Jennaca D. Upperman; *Comments Due:* January 6, 2017.

4. *Docket No(s).:* MC2017–73 and CP2017–100; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 42 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 27, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* January 6, 2017.

5. *Docket No(s).:* MC2017–72 and CP2017–99; *Filing Title:* Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 11 (GEPS—NPR 11) to the Competitive Product List and Notice of Filing GEPS—NPR 11 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* December 27, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr; *Comments Due:* January 9, 2017.

This notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–31846 Filed 1–3–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2016–11; CP2016–87; MC2017–74 and CP2017–101; MC2017–75 and CP2017–102; MC2017–76 and CP2017–103]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 9, 2017 (Comment due date applies to CP2016–11; CP2016–87; MC2017–74 and CP2017–101; MC2017–75 and CP2017–102); January 10, 2017 (Comment due date applies to MC2017–76 and CP2017–103).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–11; *Filing Title:* Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 5, with Portions Filed Under Seal; *Filing Acceptance Date:* December 28, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Erin Mahagan; *Comments Due:* January 9, 2017.

2. *Docket No(s).:* CP2016–87; *Filing Title:* Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 8, with Portions Filed Under Seal; *Filing Acceptance Date:* December 28, 2016; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Erin Mahagan; *Comments Due:* January 9, 2017.

3. *Docket No(s).:* MC2017–74 and CP2017–101; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 284 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 28, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Jennaca D. Upperman; *Comments Due:* January 9, 2017.

4. *Docket No(s).:* MC2017–75 and CP2017–102; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 285 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 28, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* January 9, 2017.

5. *Docket No(s).:* MC2017–76 and CP2017–103; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 286 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 28, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Kenneth R. Moeller; *Comments Due:* January 10, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–31892 Filed 1–3–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 286 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–76, CP2017–103.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–31850 Filed 1–3–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Global Expedited Package Services—Non-Published Rates

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add Global Expedited Package Services—Non-Published Rates 11 (GEPS–NPR 11) to the Competitive Products List.

DATES: *Effective date:* January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, 202–268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642, on December 27, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to add Global Expedited Package Services—Non-Published Rates 11 (GEPS–NPR 11) to the Competitive Products List,* and *Notice of Filing GEPS–NPR 11 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–72 and CP2017–99.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–31854 Filed 1–3–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 284 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–74, CP2017–101.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–31852 Filed 1–3–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 42 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–73, CP2017–100.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–31853 Filed 1–3–17; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 285 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–75, CP2017–102.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–31851 Filed 1–3–17; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32405; File No. 812–14655]

Morgan Stanley ETF Trust, et al.; Notice of Application

December 28, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creations Units in-kind in a master-feeder structure; and (g) the Funds to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

APPLICANTS: Morgan Stanley ETF Trust (the ''Trust''), a Delaware statutory trust that will register under the Act as an open-end management investment

company with multiple series, Morgan Stanley Investment Management Inc. (the ''Initial Adviser''), a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940, and Morgan Stanley Distribution, Inc. (the ''Distributor''), a Pennsylvania corporation and broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'').

FILING DATES: The application was filed on June 3, 2016 and amended on November 7, 2016 and December 20, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 23, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: c/o Joseph C. Benedetti, Esq., Morgan Stanley Investment Management Inc., 522 Fifth Avenue, New York New York 10036.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–3038, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only (other than pursuant to a distribution reinvestment program described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second-Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by

[1] Applicants request that the order apply to the initial Fund, as well as to future series of the Trust and any future open-end management investment companies or series thereof (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–31860 Filed 1–3–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79699; File No. SR–BatsEDGA–2016–32]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Market Data Section of Its Fee Schedule To Adopt Fees for EDGA Summary Depth and Amend Fees for EDGA Depth

December 28, 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 December 15, 2016, Bats EDGA Exchange, Inc. (''EDGA'' or the ''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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called EDGA Summary Depth; and (ii) amend the fees for EDGA Depth.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its fee schedule to: (i) Adopt fees for a new market data product called EDGA Summary Depth; and (ii) amend the fees for EDGA Depth.

EDGA Summary Depth

EDGA Summary Depth is a data feed that will provide aggregated two-sided quotations for all displayed orders entered into the System[5] for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[6] EDGA Summary Depth will also contain the individual last sale information, Market Status, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange intends to begin to offer EDGA Summary Depth on January 3, 2017.[7]

The Exchange now proposes to amend its fee schedule to incorporate fees for distribution of EDGA Summary Depth to subscribers.[8] The proposed fees include

[5] ''System'' is defined as the ''the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[6] *See* Exchange Rule 13.8(f).

[7] *See Reminder: Bats Global Markets to Introduce Bats Summary Depth Feeds on January 3, 2017, http://cdn.batstrading.com/resources/release_notes/2017/Reminder-Bats-Global-Markets-to-Introduce-Bats-Summary-Depth-Feeds-on-Jan-3-2017.pdf.*

[8] The Exchange notes that its affiliated exchanges, Bats EDGX Exchange, Inc. (''EDGX''), Bats BZX Exchange, Inc. (''BZX'') and Bats BYX Exchange,

the following, each of which are described in detail below: (i) Distribution Fees for both Internal and External Distributors; [9] (ii) Usage Fees for both Professional [10] and Non-Professional [11] Users; (iii) an Enterprise Fee; and (iv) a Digital Media Enterprise Fee.

Distribution Fees. As proposed, each Internal Distributor that receives EDGA Summary Depth shall pay a fee of $2,500 per month. The Exchange does not propose to charge any User fees for EDGA Summary Depth where the data is received and subsequently internally distributed to Professional or Non-Professional Users. In addition, the Exchange proposes to charge also External Distributors that receive EDGA Summary Depth a fee of $2,500 per month.

User Fees. The Exchange proposes to charge External Distributors that redistribute EDGA Summary Depth different fees for their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $2.50 per User. Non-Professional Users will be assessed a monthly fee of $0.10 per User. The Exchange does not propose to charge per User fees to Internal Distributors.

External Distributors that receive EDGA Summary Depth will be required to count every Professional User and Non-Professional User to which they provide EDGA Summary Depth, the requirements for which are identical to that currently in place for other market data products offered by the Exchange.[12] Thus, the External Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. External Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of EDGA Summary Depth, the Distributor should count as one User each unique User that the Distributor has entitled to have access to EDGA Summary Depth. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to EDGA Summary Depth, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to EDGA Summary Depth (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.
- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distribution Fee for EDGA Summary Depth equal to the amount of its monthly Usage Fees up to a maximum of the Distribution Fee for EDGA Summary Depth. For example, an External Distributor will be subject to a $2,500 monthly Distribution Fee where they receive EDGA Summary Depth. If that External Distributor reports User quantities totaling $2,500 or more of monthly usage of EDGA Summary Depth, it will pay no net Distribution Fee, whereas if that same External Distributor were to report User quantities totaling $1,500 of monthly usage, it will pay a net of $1,000 for the Distribution Fee. External Distributors will remain subject to the per User fees discussed above.

Enterprise Fee. The Exchange also proposes to establish a $20,000 per month Enterprise Fee that will permit a recipient firm who receives EDGA Summary Depth from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive EDGA Summary Depth at $2.50 per month, then that recipient firm will pay $37,500 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $20,000 for an unlimited number of Professional and Non-Professional Users for EDGA Summary Depth. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of EDGA Summary Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Lastly, the proposed Enterprise Fee would be counted towards the Distribution Fee credit described above, under which an External Distributor receives a credit towards its Distribution Fee equal to the amount of its monthly EDGA Summary Depth User fees.

Digital Media Enterprise Fee. The Exchange proposes to adopt a Digital Media Enterprise Fee of $5,000 per month for EDGA Summary Depth. As an alternative to proposed User fees discussed above, a recipient firm may purchase a monthly Digital Media Enterprise license to receive EDGA Summary Depth from an External Distributor to distribute to an unlimited number of Professional and Non-Professional Users for viewing via television, Web sites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. Lastly, the proposed Digital Media Enterprise Fee would be counted towards the Distribution Fee credit described above, under which an External Distributor receives a credit

Inc. (''BYX'', together with the Exchange, EDGX and BZX, the ''Bats Exchanges''), also intent to file proposed rule changes with Commission to adopt similar fees for their respective Summary Depth market data product.

[9] A ''Distributor'' is defined as ''any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/edga/.* An ''Internal Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.'' *Id.* An ''External Distributor'' is defined as ''a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.'' *Id.*''

[10] A ''Professional User'' is defined as ''any User other than a Non-Professional User.'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/edga/.*

[11] A ''Non-Professional User'' is defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.'' *Id.*

[12] *See* Securities Exchange Act Release Nos. 74283 (February 18, 2015); 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09) (proposing fees for the Bats One Feed); 75395 (July 8, 2015), 80 FR 41126 (July 14, 2015) (SR–EDGA–2015–25) (proposing user fees for the EDGA Top and Last Sale data feeds); *and* 75787 (August 28, 2015), 80 FR 53370 (September 3, 2015) (SR–EDGA–2015–34) (proposing fees for EDGA Book Viewer).

towards its Distribution Fee equal to the amount of its monthly EDGA Summary Depth User fees.

EDGA Depth

EDGA Depth is an uncompressed market data feed that provides depth-of-book quotations and execution information based on equity orders entered into the System.[13] Currently, the Exchange charges fees for both internal and external distribution of EDGA Depth. The cost of EDGA Depth for an Internal Distributor is currently $1,000 per month. The Exchange also separately charges an External Distributor of EDGA Depth a flat fee of $2,500 per month. The Exchange does not currently charge Internal and External Distributors separate display User fees. The Exchange also charges a fee for Non-Display Usage[14] by Trading Platforms[15] by which subscribers to EDGA Depth are charged a fee of $2,000 per month. This fee is assessed in addition to existing Distribution fees. The Exchange now proposes to amend its fee schedule to incorporate Usage Fees for both Professional and Non-Professional Users and an Enterprise Fee for EDGA Depth. Each of these changes are described in detail below.

User Fees. The Exchange proposes to charge Internal and External Distributors that redistribute EDGA Depth different fees for their Professional Users and Non-Professional Users.[16] The Exchange will assess a monthly fee for Professional Users of $10.00 per User. Non-Professional Users will be assessed a monthly fee of $1.00 per User. Distributors that receive EDGA Depth will be required to count every Professional User and Non-Professional User to which they provide EDGA Depth, the requirements for which are identical to that set forth above for EDGA Summary Depth and as currently in place for other market data products offered by the Exchange.[17]

Enterprise Fee. The Exchange also proposes to establish a $25,000 per month Enterprise Fee that will permit an Internal Distributor, External Distributor, or a recipient firm who receives EDGA Depth from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive EDGA Depth at $10.00 per month, then that recipient firm will pay $150,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $25,000 for an unlimited number of Professional and Non-Professional Users for EDGA Depth. Like proposed above for EDGA Summary Depth, a recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of EDGA Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange intends to implement the proposed fee change on January 3, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. The Exchange also believes it is reasonable to charge different rates for EDGA Depth and EDGA Summary Depth as both products different levels of content (*e.g.,* EDGA Depth contains quotations for all individual orders while EDGA Summary Depth contains the aggregation quotation information for all orders up to five (5) price levels). Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[20] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[21] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. EDGA Summary Depth and EDGA Depth are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in

[13] *See* Exchange Rule 13.8(a).

[14] The term ''Non-Display Usage'' is defined as ''any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/edga/.*

[15] The term ''Trading Platform'' is defined as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/edga/.*

[16] The Exchange notes that, unlike as proposed for EDGA Summary Depth described above, both Internal and External Distributors of EDGA Depth would be charged the same User fee for their Professional and Non-Professional Users.

[17] *See supra* note 12 and accompanying text.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78k–1.

[21] 17 CFR 242.603.

the Exchange's Statement on Burden on Competition, the existence of alternatives to EDGA Summary Depth and EDGA Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to consolidate and distribute EDGA Summary Depth and EDGA Depth, prospective Users likely would not subscribe to, or would cease subscribing to, EDGA Summary Depth and EDGA Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[22]

EDGA Summary Depth

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution. The Exchange believes that the Distribution Fees for EDGA Summary Depth are reasonable and fair in light of alternatives offered by other market centers. For example, EDGA Summary Depth provides investors with alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[23] Specifically, the NYSE charges an access fee of $5,000 per month for NYSE OpenBook, Aggregated[24] which is more than the External Distribution fee proposed herein for EDGA Summary Depth.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for EDGA Summary Depth are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for EDGA Summary Depth is reasonable because it provides an additional method for retail investors to access EDGA Summary Depth data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Bats One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[25] Offering EDGA Summary Depth to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE and Nasdaq. Specifically, NYSE offers NYSE OpenBook for a monthly fee of $60.00 per professional subscriber and $15 per non-professional subscriber.[26] Nasdaq offers Nasdaq TotalView-Aggregated for a monthly fee of $70.00 per professional subscriber and $14 per non-professional subscriber.[27] The Exchange's proposed per User Fees for EDGA Summary Depth are less than the NYSE and Nasdaq fees.

Enterprise Fee. The proposed Enterprise Fee for EDGA Summary Depth is equitable and reasonable as the fees proposed are less than the enterprise fees currently charged for Nasdaq TotalView-Aggregated. Nasdaq charges an enterprise fee of $100,000 per month for Nasdaq TotalView-Aggregated,[28] which is far greater than the proposed Enterprise Fee of $20,000 per month for EDGA Summary Depth. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of EDGA Summary Depth, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute EDGA Summary Depth, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the

[22] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. *See* Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at *http://www.sec.gov/rules/concept/s72899/buck1.htm. See also* Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR–NYSE–2014–64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

[23] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See also* Nasdaq Book Viewer, a description of which is *available at https://data.nasdaq.com/Book* Viewer.aspx. *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (providing real-time view of the NYSE limit order book).

[24] *See* NYSE Market Data Pricing dated November 2016 *available at http://www.nyxdata.com/*. Nasdaq charges distribution fees ranging from $375 for 1–39 subscribers to $75,000 for more than 250 subscribers. *See* Nasdaq Rule 7023(b)(4).

[25] *See* Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR–EDGX–2015–09); *and* 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR–EDGA–2015–09) (''Initial BATS One Feed Fee Filings''). *See also, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); *and* Nasdaq Rules 7023(b), 7047.

[26] *See* NYSE Market Data Pricing dated November 2016 *available at http://www.nyxdata.com/*.

[27] *See* Nasdaq Rule 7023(b)(2).

[28] *See* Nasdaq Rule 7023(c)(2) (stating that a distributor that is also a broker-dealer pays a monthly fee of $100,000 for the right to provide Nasdaq TotalView and for display usage for internal distribution, or for external distribution to both professional and non-professional subscribers with whom the firm has a brokerage relationship.) Nasdaq also charges an enterprise fee of $25,000 to provide Nasdaq TotalView to an unlimited number of non-professional subscribers only. *See* Nasdaq Rule 7023(c)(1).

proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

Digital Media Enterprise Fee. The Exchange believes that the proposed Digital Media Enterprise Fee for EDGA Summary Depth provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display EDGA Summary Depth data during market-related programming and on its Web site or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from EDGA Summary Depth to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of $20,000 per month for to receive EDGA Summary Depth from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the proposed Digital Media Enterprise Fee. The Exchange also believes the amount of the Digital Media Enterprise Fee is reasonable as compared to the existing enterprise fees discussed above because the distribution of EDGA Summary Depth data is limited to television, Web sites, and mobile devices for informational purposes only, while distribution of EDGA Summary Depth data pursuant to an Enterprise license contains no such limitation. The Exchange also believes that the proposed Digital Media Enterprise Fee is equitable and reasonable because it is less than similar fees charged by other exchanges.[29]

EDGA Depth

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for EDGA Depth are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for EDGA Depth is reasonable because it provides an additional method for retail investors to access EDGA Depth data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[30] Offering EDGA Depth to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. The Exchange also believes it is equitable, reasonable, and not unfairly discriminatory to charge User fees to Internal Distributors, as such fees are currently charged by NYSE and Nasdaq.[31]

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE and Nasdaq. Specifically, NYSE offers NYSE OpenBook Ultra for a monthly fee of $60.00 per professional subscriber and $15 per non-professional subscriber.[32] Nasdaq offers Nasdaq TotalView-ITCH for a monthly fee of $70.00 per professional subscriber and $14 per non-professional subscriber.[33] The Exchange's proposed per User Fees for EDGA Depth are less than the NYSE and Nasdaq fees.

Enterprise Fee. The proposed Enterprise Fee for EDGA Depth is equitable and reasonable as compared to the enterprise fees currently charged for Nasdaq TotalView-ITCH. Nasdaq charges an enterprise fee of $100,000 per month for Nasdaq TotalView-ITCH,[34] which is greater than the proposed Enterprise Fee of $25,000 per month for EDGA Depth. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of EDGA Depth, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute EDGA Depth, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price EDGA Depth and EDGA Summary Depth is

[29] Nasdaq offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of $50,000 [sic] per month. *See* Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of $40,000 per month for the NYSE Trade Digital Media product. *See* Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR–NYSE–2013–23).

[30] *See supra* note 24.

[31] *See supra* notes 24 and 25 (not limiting the application of user fees to external distribution only).

[32] *See supra* note 25.

[33] *See supra* note 26.

[34] *See supra* note 27.

constrained by: (i) Competition among exchanges, other trading platforms, and Trade Reporting Facilities (''TRF'') that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, EDGA Summary Depth and EDGA Depth compete with a number of alternative products. For instance, EDGA Summary Depth and EDGA Depth do provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks (''ECN'') that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to EDGA last sale and depth-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to EDGA Depth and EDGA Summary Depth, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

Lastly, the Exchange represents that the increase in pricing of EDGA Depth and the proposed pricing of the EDGA Summary Feed would continue to enable a competing vendor to create a competing product to the Exchange's Bats One Feed on the same price and latency basis as the Exchange. The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the ''Bats One Summary Feed''). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels (''Bats One Premium Feed'').[35] The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX Depth, and the BZX Depth.

When adopting the Bats One Feed, the Exchange represented that a vendor could create a competing product based in the data feed used to construct the Bats One Feed on the same cost and latency basis as the Exchange.[36] Therefore, the Exchange designed the pricing of these products so that their aggregate cost is not greater than the Bats One Feed, thereby enabling a vendor to create a competing product to the Bats One Feed on the same cost basis as the Exchange. However, the Exchange now proposes to increase the cost of EDGA Depth, which when combined with the proposed increases by its affiliates for their depth products, would cause their aggregate cost to be higher than the Bats One Premium Feed.[37] However, to ensure that a vendor could continue to create a competing product to the Bats One Premium Feed at no greater cost, that vendor could now utilize EDGA Summary Depth, as well as the Summary Depth feeds of BZX, BYX, and EDGX to create a competing product to the Bats One Premium Feed for less cost and on the same latency basis as the Exchange.[38] The Exchange has designed the content and pricing of EDGA Summary Depth, and related products by its affiliates, so that a vendor could utilize those feeds, in lieu of the Bats Exchange's existing depth-of-book products, to construct a competing product on the same cost and latency basis as the Exchange. The pricing the Exchange and its affiliates propose to charge for Summary Depth feeds would be lower than the cost to obtain the Bats One Premium Feed.[39] Such pricing would continue to enable a vendor to receive each of the Bats Exchange's Summary Depth feeds and offer a similar product to the Bats One Premium Feed on a competitive basis and at no greater cost than the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[35] *See* Exchange Rule 13.8(b). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) (''Bats One Approval Order'').

[36] *Id.*

[37] The Exchange notes that a vendor seeking to create a product to compete with the Bats One Summary Feed may continue to utilize each of the Bats Exchange's Top and Last Sale data feeds, the aggregate cost of which is less than the Bats One Summary Feed.

[38] While the proposed EDGA Summary Depth feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

[39] While the aggregate cost of each of the Bats Exchange's Summary Depth Products equals the cost of the Bats One Premium Feed, the cost of the Bats One Feed continues to be greater because subscribers are required to pay an additional $1,000 aggregation fee. *See* the Exchange's fee schedule *available at http://www.bats.com/us/equities/membership/fee_schedule/edga/.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [40] and paragraph (f) of Rule 19b–4 thereunder.[41] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsEDGA–2016–32 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–BatsEDGA–2016–32. 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–BatsEDGA–2016–32 and should be submitted on or before January 25, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Eduardo A. Aleman,

Assistant Secretary.

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[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f).

[42] 17 CFR 200.30–3(a)(12).

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing on February 2, 2017, in Harrisburg, Pennsylvania. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. Such projects are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for March 9, 2017, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects. The deadline for the submission of written comments is February 13, 2017.

DATES: The public hearing will convene on February 2, 2017, at 2:30 p.m. The public hearing will end at 5:00 p.m. or at the conclusion of public testimony, whichever is sooner. The deadline for the submission of written comments is February 13, 2017.

ADDRESSES: The public hearing will be conducted at the Pennsylvania State Capitol, Room 8E–B, East Wing, Commonwealth Avenue, Harrisburg, Pa.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436.

Information concerning the applications for these projects is available at the SRBC Water Resource Portal at *www.srbc.net/wrp.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/pubinfo/docs/2009-02_Access_to_Records_Policy_20140115.pdf.*

SUPPLEMENTARY INFORMATION: The public hearing will cover the following projects:

Projects Scheduled for Action

1. Project Sponsor and Facility: Anadarko E&P Onshore LLC (West Branch Susquehanna River), Nippenose Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20130301).
2. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek), Lemon Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.500 mgd (peak day) (Docket No. 20121202).
3. Project Sponsor and Facility: Crossgates Golf Course, Manor Township and Millersville Borough, Lancaster County, Pa. Application for renewal of consumptive water use of up to 0.300 mgd (peak day) (Docket No. 19910515).
4. Project Sponsor and Facility: Crossgates Golf Course (Conestoga River), Manor Township and Millersville Borough, Lancaster County, Pa. Application for renewal of surface water withdrawal of up to 0.300 mgd (peak day) (Docket No. 19910515).
5. Project Sponsor and Facility: DS Services of America, Inc., Clay Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.028 mgd (30-day average) from existing Well 4.
6. Project Sponsor and Facility: DS Services of America, Inc., Clay Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.042 mgd (30-day average) from existing Well 5.
7. Project Sponsor: King Valley Golf Club, Inc. Project Facility: King Valley Golf Course (Boiling Springs Run), Kimmel Township, Bedford County, Pa. Application for surface water withdrawal of up to 0.090 mgd (peak day).
8. Project Sponsor: King Valley Golf Club, Inc. Project Facility: King Valley Golf Course, Kimmel Township, Bedford County, Pa. Application for consumptive water use of up to 0.090 mgd (peak day).
9. Project Sponsor and Facility: Mount Joy Borough Authority, Mount Joy Borough, Lancaster County, Pa. Application for modification to request a reduction of the maximum

instantaneous rate for Well 3 from the previously approved rate of 1,403 gpm to 778 gpm and to revise the passby to be consistent with current Commission policy (Docket No. 20070607). The previously approved withdrawal rate of 1.020 mgd (30-day average) will remain unchanged.

10. Project Sponsor: Pennsylvania Department of Environmental Protection—South-central Regional Office, City of Harrisburg, Dauphin County, Pa. Facility Location: Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.173 mgd (30-day average) from Hollander Well.

11. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (First Fork Sinnemahoning Creek), Wharton Township, Potter County, Pa. Application for renewal of surface water withdrawal of up to 0.231 mgd (peak day) (Docket No. 20121222).

12. Project Sponsor and Facility: Silver Springs Ranch, LLC, Monroe Township, Wyoming County, Pa. Application for consumptive water use of up to 0.087 mgd (peak day).

13. Project Sponsor and Facility: Silver Springs Ranch, LLC, Monroe Township, Wyoming County, Pa. Application for groundwater withdrawal of up to 0.087 mgd (30-day average) from Borehole 1 (BH–1).

14. Project Sponsor: SUEZ Water Pennsylvania Inc. Project Facility: Dallas Operation, Dallas Township, Luzerne County, Pa. Modification to remove pumping restriction for March and April for previously approved groundwater withdrawal (Docket No. 20050301).

15. Project Sponsor and Facility: SWEPI LP (Pine Creek), Pike Township, Potter County, Pa. Application for renewal of surface water withdrawal of up to 0.936 mgd (peak day) (Docket No. 20130313).

16. Project Sponsor: Talen Energy Corporation. Project Facility: Royal Manchester Golf Links, East Manchester Township, York County, Pa. Minor modification to add new sources (Wells PW–1 and PW–6) to existing consumptive use approval (Docket No. 20060604). The previously approved consumptive use quantity of 0.360 mgd (peak day) will remain unchanged.

17. Project Sponsor: Talen Energy Corporation. Project Facility: Royal Manchester Golf Links, East Manchester Township, York County, Pa. Application for groundwater withdrawal of up to 0.145 mgd (30-day average) from Well PW–1.

18. Project Sponsor: Talen Energy Corporation. Project Facility: Royal Manchester Golf Links, East Manchester Township, York County, Pa. Application for groundwater withdrawal of up to 0.298 mgd (30-day average) from Well PW–6.

19. Project Sponsor and Facility: Talisman Energy USA Inc. (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20130310).

20. Project Sponsor and Facility: West Manchester Township Authority, West Manchester Township, York County, Pa. Application for reactivation of a previously approved groundwater withdrawal at a reduced rate of up to 0.216 mgd (30-day average) from Well 7.

21. Project Sponsor and Facility: York County Solid Waste and Refuse Authority, Manchester Township, York County, Pa. Application for renewal of consumptive water use of up to 0.999 mgd (peak day) and addition of collected stormwater as an approved source for consumptive use (Docket No. 19860902).

Opportunity To Appear and Comment

Interested parties may appear at the hearing to offer comments to the Commission on any project listed above. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Guidelines for the public hearing will be posted on the Commission's Web site, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any project listed above may also be mailed to Mr. Jason Oyler, General Counsel, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *www.srbc.net/pubinfo/publicparticipation.htm.* Comments mailed or electronically submitted must be received by the Commission on or before February 13, 2017, to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 29, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–31912 Filed 1–3–17; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; W.K. Kellogg Airport, Battle Creek, Michigan.

SUMMARY: The FAA is considering a proposal to change 0.92 acres of airport land from aeronautical use to non-aeronautical use and to authorize the lease or sale of airport property located at W.K. Kellogg Airport, Battle Creek, Michigan. The aforementioned land is not needed for aeronautical use.

The proposed property is located across Helmer Road from the W.K. Kellogg airport. The property is currently a vacant, mowed area maintained for compatible land use around the airfield. The proposed non-aeronautical land use would be for lease or sale to enhance commercial opportunities in an area no longer needed for aeronautical purposes.

DATES: Comments must be received on or before February 3, 2017.

ADDRESSES: Documents are available for review by appointment at the FAA Detroit Airports District Office, Irene R. Porter, Program Manager, 11677 South Wayne Road, Suite 107, Romulus, Michigan, 48174. Telephone: (734) 229–2915/Fax: (734) 229–2950 and Mr. Lawrence Bowron, Transportation Director, City of Battle Creek—Aviation, Rail & Transit, 15551 South Airport Road, Battle Creek, Michigan. Telephone: (269) 966–3570.

Written comments on the Sponsor's request must be delivered or mailed to: Irene R. Porter, Program Manager, Federal Aviation Administration, Airports Detroit District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone Number: (734) 229–2915/FAX Number: (734) 229–2950.

FOR FURTHER INFORMATION CONTACT: Irene R. Porter, Program Manager, Federal Aviation Administration, Airports Detroit District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, Telephone Number: (734) 229–2915/FAX Number: (734) 229–2950.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that

requires the property to be used for an aeronautical purpose.

The property is currently a vacant, mowed lot maintained for compatible land use around the airfield. The proposed non-aeronautical land use would be for lease or sale to enhance commercial opportunities in an area no longer needed for aeronautical purposes. The property was originally owned by the U.S. Government that quit claimed the property to the City of Battle Creek, Michigan in 1947. In 1961, the National Emergency Use Provision was released from this property. In 1986 the FAA released a portion of the total parcel, but retained the 200′ x 200′ parcel to protect a navigational aid. The navigational aid has since been relocated and there is no longer an aeronautical use for the property. The airport will receive Fair Market Value for the land to be leased/sold.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the W.K. Kellogg Airport, Battle Creek, Michigan, from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Property Description

Commencing at the center Post of Section 10, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, and running thence N. 00 degrees 20′ E., 1,051.43 feet along the North and South ¼ line of said Section 10; thence N. 89 degrees 36′ W., 1,661.21 feet along the North line of Sixth Avenue (66 feet wide) to the center line of an access road 10 feet in width; thence N. 00 degrees 24′ E., 147.00 feet along said center line of access road, to the true point of beginning; thence N. 89 degrees 36′ W., 80 feet; thence N. 00 degrees 24′ E., 200 feet; thence S. 89 degrees 36′ E., 200 feet; thence S. 00 degrees 24′ W., 200 feet, thence N. 89 degrees 36′ W., 120 feet; to the point of beginning. TOGETHER with easement for ingress and egress and for placing communication lines and appurtenances over the access road herein described.

Issued in Romulus, Michigan, on December 6, 2016.

Stephanie R. Swann,

Acting Manager, Detroit Airports District Office FAA, Great Lakes Region.

[FR Doc. 2016–31916 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–00104; Notice 2]

Extension of Comment Period on Whether Nonconforming Model Year 2013 and 2014 Ferrari F12 Berlinetta Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of comment period.

SUMMARY: This document announces the extension of the comment period on a petition for NHTSA to decide that model year 2013 and 2014 Ferrari F12 Berlinetta passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States.

DATES: The new closing date for comments on the petition is February 6, 2017.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202 366 5308).

SUPPLEMENTARY INFORMATION: On December 7, 2016, NHTSA published a notice (at 81 FR 88318) that it had received a petition to decide that nonconforming model year (MY) 2013 and 2014 Ferrari F12 Berlinetta passenger cars (PCs) are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is January 6, 2017.

This is to notify the public that NHTSA is extending the comment period on this petition, and allowing it to run until February 6, 2017. This extension is based on a request dated December 21, 2016, from Ferrari North America, Inc., and Ferrari SpA,

(collectively ''Ferrari'') the vehicle's manufacturer. Ferrari stated that in its view an extension was needed because a portion of the comment period will be lost due to the holidays (during which time Ferrari SpA's facilities will be closed), and because of the complexity of the technical analysis necessary to evaluate the petition and prepare any comments. Ferrari requests this extension especially with regard to FMVSS No. 208 conformance—in particular, the passenger-side airbag weight sensing system.

Ferrari also stated its view that an extension of the comment period will not prejudice the parties or cause undue delay, but will afford Ferrari the opportunity to fully evaluate the petition in order to determine the appropriate content of any Ferrari comments.

NHTSA has granted Ferrari's request. All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–31889 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0132]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: 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 the proposed collection of information.

This document describes a proposed collection of information under regulations in 49 CFR parts 591, 592, and 593 that pertain to the importation of motor vehicles and items of motor vehicle equipment that are subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

DATES: Comments must be received on or before March 6, 2017.

ADDRESSES: You may submit comments identified by DOT Docket No. NHTSA–2016–0132 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. 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.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for assessing the dockets. Alternately, you may visit in person the Docket Management Facility at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance (NEF–230), National Highway Traffic Safety Administration, West Building—4th Floor—Room W45–205, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Sachs' telephone number is (202) 366–3151. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Prior Approval

On December 19, 2013, NHTSA submitted to OMB a request for the extension of the agency's approval (assigned OMB Control No. 2127–0002) of the information collection that is incident to NHTSA's administration of the vehicle importation regulations at 49 CFR parts 591, 592, and 593. On April 13, 2014, OMB notified NHTSA that it had approved this extension request through April 30, 2017. That approval was based on NHTSA submissions identifying information being collected on an annual basis from 63,818 respondents, expending 61,882 hours of effort, at a cost of $1,454,120. NHTSA wishes to file with OMB a request for that agency to extend its approval for an additional three years.

Changes in Program

Since the information collection associated with NHTSA's importation program was last approved by OMB, significant changes have taken place that impact the information collection and the assessment of its burden on affected members of the public. These have resulted, in part, from the increasing strength of the U.S. Dollar against foreign currencies, particularly the Canadian dollar, which has led to a significant increase in the volume of vehicles imported from Canada. Another factor that has impacted the information collection is the transitioning in the filing of NHTSA-required import data from U.S. Customs and Border Protection's (CBP's) legacy Automated Commercial System (ACS) to the new Automated Commercial Environment/International Trade Data System (ACE/ITDS). With its integration into ACE, which began on August 1, 2015 and was completed by July 28, 2016, NHTSA is receiving more accurate and complete information on the importation of the commodities it regulates. As a consequence, the volume of entries, in some instances, has greatly increased from the volume received in prior years. For example, the volume of entries for vehicles at least 25 years old that can be imported without regard to their compliance with the Federal motor vehicle safety standards (FMVSS) and equipment items manufactured prior to the date that any applicable standard has taken effect, both of which are declared under Box 1 on the HS–7 Declaration form, has increased by a factor of nearly two hundred, from roughly 13,000 entries in 2012 to nearly 2.5 million entries in 2015. There has been a 25 percent increase in the volume of vehicles conforming to the

FMVSS that are imported under Box 2A, from 5.6 million in 2012 to nearly 7 million in 2015. The volume of vehicles not originally manufactured to the FMVSS that are imported by registered importers under Box 3 has increased more than sevenfold, from roughly 30,000 vehicles in 2012, to over 216,000 vehicles in 2015. More than 99 percent of these vehicles are imported from Canada, whose dollar, as previously indicated, has significantly weakened against the U.S. dollar. Perhaps influenced by the same factors, there has been nearly a doubling in the volume of Canadian-certified vehicles imported by individuals for personal use under box 2B, from 1,275 in 2012 to nearly 2,400 in 2015. There has been a fourfold increase in the volume of vehicles imported for export only under Box 4, from roughly 20,000 vehicles in 2012 to slightly more than 83,000 in 2015. The volume of nonconforming vehicles temporarily imported for research or demonstration purposes under Box 7 has increased by nearly 25 percent, from 6,000 vehicles in 2012 to 7,319 in 2015. Finally, the volume of vehicles not originally manufactured for use on public roads that are declared as off-road vehicles not subject to the FMVSS under Box 8 has increased by nearly one third, from 326,000 in 2012 to 421,526.

The focus of NHTSA's importation program has traditionally been on vehicles that were not originally manufactured to comply with all applicable FMVSS. These vehicles must be imported by a registered importer (RI) under bond to ensure that the vehicles are brought into compliance with applicable standards following importation. Nonconforming vehicles are entered under Box 3 on the HS–7 Declaration form. In calendar year 2002, 212,210 nonconforming vehicles were imported under Box 3. Over 97 percent of those vehicles were imported from Canada. In 2003, after the U.S. dollar began to weaken against the Canadian dollar, the volume of nonconforming vehicle imports under Box 3 was reduced by more than half, to 97,337 vehicles. The trend accelerated over the next five years, with 43,648 vehicles imported under Box 3 in 2004, 12,642 imported in 2005, 10,953 imported in 2006, 7,470 imported in 2007, and 6,311 imported in 2008. After the U.S. dollar had gained some strength against the Canadian dollar, the volume of imports under Box 3 increased to 10,752 vehicles in 2009, and continued to increase to 18,010 vehicles in 2010, 22,733 vehicles in 2011, and 30,138 in 2012. In 2013, 36,292 vehicles were imported under Box 3. With the increasing strength of the U.S. dollar against the Canadian dollar, this figure more than doubled in 2014, when 73,814 vehicles were imported, and then tripled in 2015, when a record 216,814 were imported.

When NHTSA last requested OMB approval for the information collection associated with the vehicle importation program, the agency estimated that 23,600 nonconforming vehicles would be imported on an annual basis under Box 3, for which HS–7 Declaration forms and HS–474 DOT Conformance bonds would have to be furnished. The agency estimated that it would take five minutes to complete each HS–7 Declaration form, and six minutes to complete each HS–474 DOT Conformance bond, for a total expenditure of 4,327 hours to complete these forms. Given the significant rise in nonconforming vehicle imports under Box 3 in recent years, future projections should assume an average of 109,000 vehicle imports per year. Relying on this figure, the hour burden associated with the completion of paperwork for these vehicles would be close to 19,873 hours (0.08333 hours to complete each HS–7 × 109,000 vehicles = 9,083 hours; 0.1 hours to complete each HS–474 × 109,000 vehicles = 10,900 hours; 9,083 + 10,900 = 19,983 hours). This represents nearly a 462 percent increase in burden hours associated with these entries when compared to the figures used when OMB approval was last obtained.

Cumulatively, the changes in the vehicle importation program detailed above have produced more than a four-fold increase in the hour burden associated with all aspects of the program, from an estimated 61,882 hours when OMB approval was last sought in 2013, to an estimated 252,263 hours in this document, as specified more fully below.

Scope of Accounting for Burdens

In this document, the agency has not focused exclusively on vehicles imported under the RI program, but has instead made a concerted effort to quantify the hour burden associated with the completion of paperwork for vehicles and equipment items imported in any legitimate way under NHTSA's regulations (49 CFR parts 591, 592, and 593). As a consequence, we are providing particular information on the paperwork burden associated with the importation of conforming motor vehicles; the temporary importation of nonconforming vehicles for personal use by nonresidents and by foreign diplomatic and military personnel; the temporary importation of nonconforming vehicles for purposes of research, investigations, demonstrations or training, and other similar purposes; the importation of vehicles that are not primarily manufactured for on-road use; and other entry categories permitted under the agency's regulations. In addition, we have attempted to account for all forms, whether required or optional, and other types of information solicitations associated with vehicle and equipment importation that appear on the agency's Web site and in newsletters and other informational media that we employ to inform RIs and others of our requirements. Accounting for all paperwork burdens in this manner, we project that a total of 252,263 hours will be expended each year to complete paperwork associated with all aspects of NHTSA's program that regulates the importation of motor vehicles and equipment items subject to the FMVSS. As described above, this represents more than a four-fold increase over the 61,882 burden hours that were estimated when OMB approval was last sought in 2013.

Issues for Comments To Address

Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must 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. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(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.

Solicitation of Comments

In compliance with these requirements, NHTSA is requesting public comment on the following proposed collection of information:

Title: Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards.

Type of Request: Extension of a Currently Approved Collection.

OMB Control Number: 2127–0002.

Affected Public: Importers of vehicles and regulated items of motor vehicle equipment.

Requested Expiration Date of Approval: April 30, 2020.

Summary of Collection of Information

1. *Declaration requirement for the importation of motor vehicles and regulated items of motor vehicle equipment:* NHTSA's regulations at 49 CFR part 591 provide that no person shall import a motor vehicle or regulated item of motor vehicle equipment (*e.g.,* tires, rims, brake hoses, brake fluid, seat belt assemblies, lighting equipment, glazing (*i.e.,* windshield and window glass), motorcycle helmets, child restraints, compressed natural gas containers (used as part of a vehicle fuel system and not for the purpose of transporting natural gas), reflective triangular warning devices, rear impact guards for trailers, and platform lift systems for the mobility impaired) unless the importer files a declaration. See 49 CFR 591.5. This declaration is filed with U.S. Customs and Border Protection (Customs) on a paper copy of the HS–7 Declaration form, or, if the entry is made by a Customs House Broker, it can be made electronically using Customs' Automated Broker Interface (ABI) system. The HS–7 Declaration form has 14 boxes, each of which identifies a lawful basis for the importation of a motor vehicle or equipment item into the United States.

a. *Importation of vehicles at least 25 years old or equipment not subject to the safety standards under Box 1:* A motor vehicle at least 25 years old can be lawfully imported without regard to its compliance with the FMVSS. So too can an equipment item manufactured on a date when no applicable FMVSS was in effect. These vehicles and equipment items are declared under Box 1 on the HS–7 Declaration form. In calendar year 2013, 15,419 entries were made for vehicles and equipment items imported under Box 1. In 2014, 633,115 entries were made, and in 2009, the volume of entries increased to 2,487,196. Based on an average of these figures, the agency projects that roughly 1,045,243 entries will be made under Box 1 over the next three years (15,419 + 633,115 + 2,487,196 = 3,135,730; 3,135,730 ÷ 3 = 1,045,243). Assuming that an HS–7 Declaration form is filed for each of these entries, and that it will take five minutes to complete each of these forms, the agency estimates the hour burden associated with completing the paperwork for these entries to be approximately 87,100 hours per year (0.08333 hours × 1,045,243 = 87,100 hours).

b. *Importation of conforming vehicles and equipment under Box 2A:* Vehicles and equipment that are originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and that bear a label or tag certifying such compliance that is permanently affixed by the original manufacturer, are declared under Box 2A on the HS–7 Declaration form. In 2013, 5,823,028 vehicles were imported under Box 2A. In 2014, the figure increased to 6,508,918 vehicles, and increased again in 2015, to 6,909,140. Based on an average of these figures, the agency projects that roughly 6,413,695 vehicles will be imported each year under Box 2A for the next three years. The overwhelming majority of vehicles entered under Box 2A are imported by original manufacturers. As a rule, manufacturers do not file a separate HS–7 Declaration form for each conforming vehicle they import under Box 2A. Instead, the manufacturers furnish NHTSA with a single declaration form, on a monthly basis, to which they attach a list of all vehicles, identified by make, model, model year, and vehicle identification number (VIN), that were imported under Box 2A during that month. In this manner, it is not unusual for a single HS–7 Declaration form to be filed with the agency to cover the entry of many thousands of vehicles. Assuming that manufacturers account for 90 percent of the vehicles imported under Box 2A, and that a manufacturer will, on average, report the entry of 5,000 vehicles on a single Declaration form, and that all other vehicles imported under Box 2A are declared individually, the agency projects the hour burden associated with completing the paperwork for the entry of these vehicles to be 53,541 hours per year (6,413,695 vehicles × .9 = 5,772,325 vehicles imported by original manufacturers; 5,772,325 vehicles ÷ 5,000 vehicles per declaration forms filed = 1,154 declaration forms being filed per year by manufacturers; assuming that a separate declaration is filed for each other vehicle imported under Box 2A yields 641,370 declarations being filed per year for these vehicles; 641,370 + 1,154 = 642,524 declarations per year; 0.08333 hours to complete each declaration × 642,524 declarations = 53,541 hours).

c. *Importation of conforming Canadian-market vehicles for personal use under Box 2B:* A motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards can be imported by an individual for personal use under Box 2B. To accomplish the entry, the importer must furnish Customs with a letter from the vehicle's original manufacturer confirming that the vehicle conforms to all applicable U.S. Federal motor vehicle safety, bumper, and theft prevention standards, or that it conforms to all such standards except for the labeling requirements of Standard Nos. 101 *Controls and Displays* and 110 or 120 *Tire Selection and Rims,* and/or the requirements of Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* relating to daytime running lamps. A total of 1,246 vehicles were declared under Box 2B in 2013. In 2014, a total of 1,245 vehicles were declared under Box 2B and in 2015, 2,396 vehicles were declared under that box. Assuming these figures represent a fair approximation of the volume of vehicles imported under Box 2B in those three calendar years, the agency projects that roughly 1,629 vehicles will be imported under Box 2B in each of the next three calendar years. Assuming that a separate HS–7 Declaration form is filed for each of these vehicles, the hour burden associated with the completing the paperwork for the entry of these vehicles will be 136 hours per year (1,629 vehicles × 0.08333 hours per entry = 136 hours).

d. *Importation of nonconforming vehicles by registered importers under Box 3:*

Statutory and Regulatory Background

Section 30112(a) of Title 49, U.S. Code prohibits, with certain exceptions, the importation into the United States of a motor vehicle manufactured on or after the date an applicable Federal motor vehicle safety standard (FMVSS) takes effect, unless the motor vehicle was manufactured in compliance with the standard and was so certified by its original manufacturer. Under one of the exceptions to this prohibition, found at 49 U.S.C. 30141, a nonconforming vehicle can be imported into the United States provided (1) NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified

to conform to all applicable FMVSS, and (2) it is imported by a registered importer (RI), or by a person who has a contract with an RI to bring the vehicle into conformity with all applicable standards following importation. Regulations implementing this statute are found at 49 CFR parts 591 and 592.

HS–7 Declaration Form

The regulations require a declaration to be filed (on the HS–7 Declaration Form) at the time a vehicle is imported that identifies, among other things, whether the vehicle was originally manufactured to conform to all applicable FMVSS, and if it was not, to state the basis for the importation of the vehicle.

A nonconforming vehicle that NHTSA has decided to be eligible for importation can be imported by an RI, or by a person who has a contract with an RI to modify the vehicle so that it conforms to all applicable FMVSS, under Box 3 on the HS–7 Declaration form. As previously noted, the volume of imports under Box 3 has greatly increased in recent years. In 2013, 36,266 vehicles were imported under Box 3; in 2014, 73,809 vehicles were imported; and in 2015, 216,812 vehicles were imported. Based on these figures, the agency projects that 109,000 vehicles will be imported each year under Box 3. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be 9,083 (0.08333 hours to complete each HS–7 × 109,000 vehicles = 9,083 hours).

HS–474 Conformance Bond

NHTSA's regulations also require an RI, among other things, to furnish a bond (on the HS–474 Conformance Bond form) at the time of entry for each nonconforming vehicle it imports, to ensure that the vehicle will be brought into conformity with all applicable safety and bumper standards within 120 days of entry or will be exported from, or abandoned to, the United States. A HS–474 Conformance Bond has to be furnished for each nonconforming vehicle imported under Box 3. Assuming an importation volume of 109,000 vehicles per year, the hour burden associated with the completion of the HS–474 will be 10,900 hours (0.1 hours to complete each HS–474 × 109,000 vehicles = 10,900 hours).

Conformity Statement

After modifying the vehicle to conform to all applicable standards, the RI submits a statement of conformity (on a suggested form) to NHTSA, which will then issue a letter permitting the bond to be released if the agency is satisfied that the vehicle has been modified in the manner stated by the RI. The statement of conformity contains a check-off list on which the RI identifies the FMVSS and other agency requirements to which the vehicle conforms as originally manufactured and the FMVSS and other requirements to which the vehicle was modified to conform. The RI also attaches to the statement of conformity documentary and photographic evidence of the modifications that it made to the vehicle to achieve conformity with applicable standards. Collectively, these documents are referred to as a ''conformity package.''

A conformity package must be submitted for each nonconforming vehicle imported under Box 3. Because the Canadian motor vehicle safety standards are identical in most respects to the FMVSS, there are relatively few modifications that need to be performed on a Canadian-certified vehicle to conform it to the FMVSS and the conformity packages that are submitted on these vehicles are considerably less comprehensive than those submitted for vehicles from Europe, Japan, and other foreign markets. The agency estimates that it would take the average RI no more than 30 minutes to collect information for, and assemble, a conformity package for a Canadian-certified vehicle.

Generally, more modifications are needed to conform a non-Canadian vehicle to the FMVSS. To properly document these modifications, more information must be included in the conformity package for a non-Canadian vehicle than is required for a Canadian-certified vehicle. The agency estimates that it would take an RI approximately twice as long, or roughly one hour, to compile information for, and assemble, a conformity package for a typical non-Canadian vehicle.

Of the 36,266 nonconforming vehicles imported under Box 3 in 2013, 35,973, or roughly 99.1 percent, were Canadian market and 293, or roughly 0.9 percent, were from markets other than Canada. Of the 73,809 nonconforming vehicles imported under Box 3 in 2014, 73,467, or roughly 99.5 percent, were Canadian market and 342, or roughly 0.5 percent, were from markets other than Canada. Of the 216,812 nonconforming vehicles imported under Box 3 in 2016, 216,445 or roughly 99.8 percent, were Canadian market and 357, or roughly 0.2 percent, were from markets other than Canada. Assuming this trend continues in future years, the agency estimates the hour burden associated with the submission of conformity packages on Canadian-certified vehicles to be 54,200 hours per year (109,000 vehicles × 99.45 percent or 0.9945 = 108,400 vehicles; 108,400 vehicles × 0.5 hours per vehicle = 54,200 hours). The agency estimates the hour burden associated with the submission of conformity packages for non-Canadian vehicles to be 600 hours per year (109,000 vehicles × .55 percent or 0.0055 = 600 vehicles; 600 vehicles × 1.0 hours per vehicle = 600 hours. Adding these figures yields an estimated burden of 54,800 hours per year for the entire RI industry to compile and submit conformity packages to NHTSA on nonconforming vehicles imported under Box 3 (54,200 hours + 600 hours = 54,800 hours).

Import Eligibility Petition

As previously noted, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS cannot be lawfully imported into the United States on a permanent basis unless NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to those standards. Under 49 U.S.C. 30141, the eligibility decision can be based on the nonconforming vehicle's substantial similarity to a vehicle of the same make, model, and model year that was manufactured for importation into, and sale in the United States, and certified as complying with all applicable FMVSS by its original manufacturer. Where there is no substantially similar U.S.-certified vehicle, the eligibility decision must be predicated on the vehicle having safety features that are capable of being modified to conform to the FMVSS, based on destructive crash test data or such other evidence that the agency may deem adequate. The agency makes import eligibility decisions either on its own initiative, or in response to petitions filed by RIs. Only a small number of RIs (currently about 16 out of the 87 RIs registered with the agency) ever submit import eligibility petitions. Many of these businesses have, over the years, submitted multiple petitions to the agency. The agency estimates that it would take the typical RI that petitions the agency roughly two hours to complete the paperwork associated with the submission of a petition for a vehicle that has a substantially similar U.S.-certified counterpart, and roughly twice as long, or four hours, to complete the paperwork associated with the submission of a petition for a vehicle that lacks a substantially similar U.S.-certified counterpart. In 2013, 28 import eligibility petitions were submitted to the agency. Of these, 20, or 71 percent, were for vehicles with substantially

similar U.S.-certified counterparts and 8, or 29 percent, were for vehicles for which there were no substantially similar U.S. certified counterparts. In 2014, 10 import eligibility petitions were submitted to the agency. Of these, 9, or 90 percent, were for vehicles with substantially similar U.S.-certified counterparts, and 1, or 10 percent, were for vehicles for which there were no substantially similar U.S.-certified counterparts. In 2015, 15 import eligibility petitions were submitted to the agency. Of these, 14, or 93 percent, were for vehicles with substantially similar U.S.-certified counterparts, and 1, or 7 percent, were for vehicles for which there were no substantially similar U.S.-certified counterparts. Assuming this trend continues in future years, the agency estimates that roughly 18 import eligibility petitions will be submitted each year, 85 percent of which, or 15 petitions, will be for vehicles with substantially similar U.S.-certified counterparts, and 15 percent of which, or 3 petitions, will be for vehicles lacking substantially similar U.S.-certified counterparts. Based on these figures, the agency estimates that the hour burden for the paperwork associated with the submission of import eligibility petitions to be 42 hours per year (15 petitions × 2 hours per petition = 30 hours; 3 petitions × 4 hours per petition = 12 hours; 30 hours + 12 hours = 42 hours).

e. *Importation of vehicles or equipment intended solely for export under Box 4:* A nonconforming vehicle or equipment item that is intended solely for export, and bears a tag or label to that effect, can be entered under Box 4 on the HS–7 Declaration form. In 2013, 45,509 vehicles were imported under Box 4. In 2014, 52,485 were imported and in 2015, the volume of Box 4 entries increased to 83,349. Based on these figures, the agency projects that an average of 63,447 vehicles will be imported under Box 4 in each of the next three years. Based on that figure, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 5,287 hours (0.08333 hours to complete each HS–7 × 63,447 vehicles = 5,287 hours).

f. *Temporary importation of nonconforming vehicles by nonresidents of the United States under Box 5:* Under an international convention to which the United States is a signatory, a nonresident of the United States can import a nonconforming vehicle for personal use, for a period of up to one year, provided the vehicle is not sold while in the United States and is exported no later than one year from its date of entry. These vehicles are entered under Box 5 on the HS–7 Declaration form. To enter a vehicle under Box 5, the importer must also furnish Customs with the importer's passport number and the name of the country that issued the passport. In 2013, a total of 322 vehicles were imported under Box 5. In 2014, 382 vehicles were imported under that box. In 2015, 193 were imported. Based on these figures, the agency estimates that roughly 300 vehicles will be imported under Box 5 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 25 hours (0.08333 hours to complete each HS–7 × 300 vehicles = 24.99 hours).

g. *Temporary importation of nonconforming vehicles by foreign diplomat under Box 6:* A member of a foreign government on assignment in the United States, or a member of the secretariat of a public international organization so designated under the International Organizations Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State, can temporarily import a nonconforming vehicle for personal use while in the United States. These vehicles are entered under Box 6 on the HS–7 Declaration form. The importer must attach to the declaration a copy of the importer's official orders and supply Customs with the name of the embassy to which the importer is attached. In 2013, a total of 16 vehicles were imported under Box 6. In 2014, 11 vehicles were imported under that box. In 2015, 16 were again imported. Based on these figures, the agency estimates that roughly 14 vehicles will be imported under Box 6 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be roughly 1 hour (0.08333 hours to complete each HS–7 × 14 vehicles = 1.16 hours).

h. *Temporary importation of nonconforming vehicles and equipment under Box 7:* Under 49 U.S.C. 30114, NHTSA is authorized to exempt a motor vehicle or item of motor vehicle equipment from the importation restriction in 49 U.S.C. 30112(a), on such terms the agency decides are necessary, for purposes of research, investigations, demonstrations, training, competitive racing events, show, or display. Regulations implementing this provision are found at 49 CFR part 591. Under those regulations, written permission from NHTSA is needed to temporarily import a nonconforming motor vehicle or equipment item for one of the specified purposes unless the importer is a manufacturer of motor vehicles that are certified to the FMVSS. An application form that can be used to obtain the letter of permission is posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* If NHTSA grants it permission, the nonconforming motor vehicle or equipment item can be temporarily imported under Box 7 on the HS–7 Declaration form. In 2013, 8,309 entries were made under Box 7. In 2014, 6,558 entries were made. In 2015, 7,319 were made. Permission letters were requested from NHTSA for 236 of the entries made in 2013, 312 of the entries made in 2014, and 336 of the entries made in 2015, representing roughly 4 percent of the total number of entries made under Box 7 in those years. The remaining entries were for vehicles and equipment imported by original manufacturers of vehicles that are certified to the FMVSS, who can temporarily import nonconforming vehicles and equipment for any of the specified purposes under Box 7 without the need for a NHTSA permission letter. Averaging the volume of imports over the past three years, the agency projects that roughly 7,395 entries will be made under Box 7 in each of the next three years. Assuming that applications for NHTSA permission letters will be submitted for 4 percent of those entries, and that a single application will be filed for each entry, the agency estimates that 295 applications will be filed in each of the next three years. Based on the estimate that it will take roughly five minutes to complete each of those applications, the agency projects that under 25 hours will be expended on an annual basis to submit applications for permission from NHTSA to import vehicles and motor vehicle equipment under Box 7 (0.0833 hours per application × 295 applications = 24.58 hours). Assuming that a single HS–7 Declaration form is filed for each vehicle imported under Box 7, the agency projects that under 617 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 7 (0.0833 hours per declaration × 7,395 vehicles = 616.23 hours).

i. *Importation of off-road vehicles under Box 8:* NHTSA regulates the importation of ''motor vehicles,'' which are defined (at 49 U.S.C. 30102) as vehicles that are driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways. Vehicles that are not primarily manufactured for on-road use do not qualify as ''motor vehicles'' under this definition, and may therefore

be imported without regard to their compliance with the FMVSS. These vehicles are entered under Box 8 on the HS–7 Declaration form. Vehicles that can be entered in this fashion include those that are originally manufactured for closed circuit racing. Although approval from NHTSA is not needed to import a vehicle that was originally manufactured for racing purposes, the agency will issue a letter recognizing a particular vehicle as having been so manufactured if the importer requests the agency to do so. An application form that can be used to obtain such a letter is also posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* In 2013, applications were submitted to NHTSA for 1 vehicle imported under Box 8. In 2014, 13 applications were filed. In 2015, 25 were filed. Based on these figures, the agency projects that 13 applications to import vehicles for racing purposes under Box 8 will be submitted in each of the next three years. Assuming that it will take five minutes to complete each of these applications, the agency estimates that slightly more than 1 hour will be expended in completing these applications (0.08333 hours × 13 applications = 1.08 hours).

In 2013, a total of 207,112 off-road vehicles and equipment items were imported under Box 8. In 2014, 335,281 off-road vehicles and equipment items were imported under that box. In 2015, 421,546 were imported. Averaging those figures, the agency projects that roughly 321,323 off-road vehicles and equipment items will be imported under Box 8 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles and equipment items will be 26,776 hours (0.08333 hours to complete each HS–7 × 321,323 entries = 26,776).

j. *Importation of vehicles or equipment requiring further manufacturing operations under Box 9:* A motor vehicle or equipment item that requires further manufacturing operations to perform its intended function, other than the addition of readily attachable components such as mirrors or wipers, or minor finishing operations such as painting, can be entered under Box 9 on the HS–7 Declaration form. Documents from the manufacturer must be furnished for these entries. In 2013, 27,604 vehicles were imported under Box 9. In 2014, 45,905 vehicles were imported under that box. In 2015, 38,737 were imported. Averaging those figures, the agency projects that roughly 37,415 vehicles will be imported under Box 9 in each of the next three years. Assuming that a separate HS–7 Declaration form is filed for each of those vehicles, the agency projects that approximately 3,118 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 9 (0.0833 hours per declaration × 37,415 vehicles = 3,118).

k. *Importation of vehicles for show or display under Box 10:* Vehicles that are deemed by NHTSA to have sufficient technological or historical significance that they would be worthy of being exhibited in car shows if they were brought to the United States are eligible for importation for purposes of show or display under Box 10 on the HS–7 Declaration form. Written permission from NHTSA is also needed to import a vehicle for that purpose. An application form that can be used to request the agency to decide that a particular make, model, and model year vehicle is eligible for importation for purposes of show or display is posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* In 2013, the agency received zero applications to determine vehicles eligible for importation for purposes of show or display. In 2014, the agency received 2 such applications. In 2015, the agency again received zero applications. Averaging these figures, the agency projects that it will receive one application to determine vehicles eligible for importation for purposes of show or display in each of the next three years. Assuming that it will take the typical applicant up to ten hours to compile and assemble the materials needed to support each application, the agency estimates that up to 10 hours will be expended in this activity in each of those years.

Also on the agency's Web site is an application form that can be used to request NHTSA to permit a particular vehicle to be imported for purposes of show or display once the agency has decided that the vehicle is of a make, model, and model year that is eligible for importation for those purposes. Certain restrictions apply to vehicles that are imported for purposes of show or display. Among those is a requirement that the vehicle not be driven in excess of 2,500 miles per year. The application specifies the terms of the importation and makes provision for the applicant to agree to those terms. In 2013, the agency received 23 applications to import specific vehicles for purposes of show or display. In 2014, the agency received 56 such applications. In 2015, the agency received 25. Averaging those figures, the agency estimates that it will receive roughly 35 applications in each of the next three years. Assuming that it will take the typical applicant up to one hour to compile and assemble the materials needed to support each application, the agency estimates that up to 35 hours will be expended in this activity in each of those years.

l. *Importation of equipment subject to the Theft Prevention Standard under Box 11:* Items of motor vehicle equipment that are marked in accordance with the Theft Prevention Standard in 49 CFR part 541 are entered under Box 11 on the HS–7 Declaration form. In 2013, there were 7,513 entries under Box 11. In 2014, there were 8,675 such entries. In 2015 there were 4,509. Averaging these figures, the agency estimates that 6,899 entries will be made under Box 11 in each of the next three years. Assuming that it will take five minutes to complete each of these entries, the agency projects that under 575 hours will be expended on an annual basis in making these entries for equipment imported under Box 11 (0.0833 hours per declaration × 6,899 declarations = 574.89 hours).

m. *Temporary importation of nonconforming vehicles by foreign military personnel under Box 12:* A member of the armed forces of a foreign country on assignment in the United States can temporarily import a nonconforming vehicle for personal use during the member's tour of duty under Box 12 on the HS–7 Declaration form. In 2013, a total of 33 vehicles were imported under Box 12. In 2014, 21 such vehicles were imported. In 2015, 51 were imported. Averaging these figures, the agency projects that roughly 35 vehicles will be imported under Box 12 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 3 hours (0.08333 hours to complete each HS–7 × 35 vehicles = 2.92 hours).

n. *Importation of vehicles to prepare import eligibility petitions under Box 13:* A nonconforming vehicle imported by an RI for the purpose of preparing a petition for NHTSA to decide that a particular make, model, and model year vehicle is eligible for importation is entered under Box 13 on the HS–7 Declaration form. A letter from NHTSA granting the importer permission to import the vehicle for that purpose must be filed with the declaration. NHTSA has issued guidance to inform RIs that it will permit no more than two vehicles to be imported for the purpose of preparing an import eligibility petition. Box 13 was incorporated into the HS–7 Declaration form when that form was last revised in May, 2006. The agency received requests to permit the

importation of 26 vehicles under Box 13 in 2013, 9 in 2014, and 14 in 2015. Averaging these figures, the agency projects that roughly 16 vehicles will be imported under Box 13 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 2 hours (0.08333 hours to complete each HS–7 × 16 vehicles = 1.33 hours).

2. *Information collected from applicants for RI status and existing RIs seeking to renew their registrations:* Under 49 U.S.C. 30141, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS cannot be lawfully imported into the United States on a permanent basis unless 1) NHTSA decides it is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS and 2) it is imported by an RI or by a person who has a contract with an RI to modify the vehicle so that it complies with all applicable FMVSS following importation. NHTSA is authorized by 49 U.S.C. 30141(c) to establish, by regulation, procedures for registering RIs. Those regulations are found in 49 CFR part 592.

a. *Information collected from applicants:* Under the terms of the regulations in part 592, an applicant for RI status must submit to the agency information that identifies the applicant, specifies the manner in which the applicant's business is organized (*i.e.,* sole proprietorship, partnership, or corporation), and, depending on the form of organization, identifies the principals of the business. The application must also state that the applicant has never had a registration revoked and identify any principal previously affiliated with another RI. The application must also provide the street address and telephone number in the United States of each facility for the conformance, storage, and repair of vehicles that the applicant will use to fulfill its duties as an RI, including records maintenance, and the street address in the United States that it designates as its mailing address. The applicant must also furnish a business license or other similar document issued by a State or local authority authorizing it to do business as an importer, seller, or modifier of motor vehicles, or a statement that it has made a bona fide inquiry and is not required by any State or local authority to maintain such a license. The application must also set forth sufficient information to allow the Administrator to conclude that the applicant (1) is technically able to modify nonconforming vehicles to conform to applicable Federal motor vehicle safety and bumper standards, (2) owns or leases one or more facilities sufficient in nature and size to repair, conform, and store the vehicles for which it furnishes statements of conformity to NHTSA, (3) is financially and technically able to provide notification of and a remedy for a noncompliance with an FMVSS or a defect related to motor vehicle safety determined to exist in the vehicles it imports, and (4) is able to acquire and maintain information on the vehicles that it imports and the owners of those vehicles so that it can notify the owners if a safety-related defect or noncompliance is determined to exist in such vehicles. The application must also contain a statement that the applicant will abide by the duties of an RI and attest to the truthfulness and correctness of the information provided in the application. A brochure containing sample documents that an applicant may use in applying to become an RI is posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* In 2013, NHTSA received 4 applications for RI status. In 2014, the agency received 5 applications of this kind. In 2015, the agency received 10. Based on these figures, the agency anticipates that it will receive 6 applications for RI status in each of the next three years. Assuming that it will take up to ten hours to compile and assemble the material needed to support a single application, the agency estimates that 60 hours will be expended in this activity for each of the next three years (6 applications × 10 hours = 60 hours).

b. *Information collected from existing RIs:* To maintain its registration, an RI must file an annual statement affirming that all information it has on file with the agency remains correct and that it continues to comply with the requirements for being an RI. Formats that existing RIs may use to renew their registrations are included in a newsletter sent electronically to each RI before the renewal is due and posted to the agency's Web site at *www.nhtsa.gov/cars/rules/import.* The number of RI renewals increased in recent years on account of the strengthening of the U.S. dollar against the Canadian dollar, and the concomitant increase in the volume of vehicles imported from Canada. In 2013, NHTSA received renewal packages from 62 RIs. In 2014, the agency received 66 renewal packages. In 2012, the agency received 65. Based on these figures, the agency anticipates that it will receive an average of 64 renewal packages in each of the next three years. Assuming that it will take up to two hours to compile and assemble the material needed to support a single application for renewal, the agency estimates that 128 hours will be expended in this activity for each of the next three years (64 renewal applications × 2 hours = 128 hours).

3. *Information to be retained by RIs:* The agency's regulations at 49 CFR 592.6(b) require an RI to maintain and retain certain specified records for each motor vehicle for which it furnishes a certificate of conformity to NHTSA, for a period of 10 years from the vehicle's date of entry. As described in the regulations, those records must consist of ''correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.'' The regulations further specify that the records to be retained must include (1) a copy of the HS–7 Declaration Form furnished for the vehicle at the time of importation, (2) all vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than RIs, and correspondence between the RI and the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity to NHTSA, (3) the last known name and address of the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity, and the vehicle identification number (VIN) of the vehicle, and (4) records, both photographic and documentary, reflecting the modifications made by the RI, which were submitted to NHTSA to obtain release of the conformance bond furnished for the vehicle at the time of importation. See 49 CFR 592.6(b)(1) through (b)(4).

The latter records are referred to as a ''conformity package.'' Most conformity packages submitted to the agency covering vehicles imported from Canada are comprised of approximately six sheets of paper (including a check-off sheet identifying the vehicle and the standards that it was originally manufactured to conform to and those that it was modified to conform to, a statement identifying the recall history of the vehicle, a copy of the HS–474 conformance bond covering the vehicle, and a copy of the mandatory service insurance policy obtained by the RI to cover its recall obligations for the vehicle). In addition, most conformity packages include photographs of the vehicle, components that were modified or replaced to conform the vehicle to applicable standards, and the certification labels affixed to the vehicle.

Approximately 120 conformity packages can be stored in a cubic foot of space. Based on projected imports of 109,000 nonconforming vehicles per year, 908.33 cubic feet of space will be needed on an industry-wide basis to store one year's worth of conformity packages. Assuming an annual cost of $20 per cubic foot to store the information, NHTSA estimates the aggregate cost to industry for storing a year's worth of conformity packages to be $18,167 per year.

RIs are also required under 49 CFR 592.6(b) to retain a copy of the HS–7 Declaration Form furnished to Customs at the time of entry for each nonconforming vehicle for which they submit a conformity package to NHTSA. Paper HS–7 Declaration Forms are only filed for a small fraction of the nonconforming vehicles imported into the United States. Customs brokers file entries for most nonconforming vehicles electronically by using the Automated Broker Interface (ABI) system. For example, in Calendar year 2010, 17,645 ABI entries were made for nonconforming vehicles imported into the United States under Box 3, and only 365 paper HS–7 Declaration Forms (representing just two percent of the total) were filed for such vehicles. Because HS–7 Declaration Forms are filed for only a small fraction of the nonconforming vehicles that are imported by RIs, the storage requirement for those records can have no more than a negligible cost impact on the industry. Because the remaining records that RIs are required to retain under 49 CFR 592.6(b) may be stored electronically, the costs incident to the storage of those records should also be negligible.

RIs who conduct recall campaigns to remedy a safety-related defect or a noncompliance with an FMVSS determined to exist in a vehicle they import must report the progress of those campaigns to NHTSA. The agency estimates that it should take each RI that is required to conduct a safety recall campaign approximately one hour to compile information for, and prepare each of the two reports it would be required to submit to the agency detailing the progress of the recall campaign. Since vehicle manufacturers in most cases include vehicles imported by RIs in their own recall campaigns, it is likely that very few of these reports would have to be prepared or submitted by RIs.

Description of the Need for the Information and Proposed Use of the Information— The information collection detailed above is necessary to ensure that motor vehicles and items of motor vehicle equipment subject to the Federal motor vehicle safety, bumper and theft prevention standards are lawfully imported into the United States. To be lawfully imported, the vehicle or equipment item must be covered by one of the boxes on the HS–7 Declaration form and the importer must declare, subject to penalty for making false statements, that the vehicle or equipment item is entitled to entry under the conditions specified on the form, including the provision of any supporting information or materials that may be required.

NHTSA relies on the information provided by RIs and applicants for RI status to obtain and renew their registrations so that it can better ensure that RIs are meeting their obligations under the statutes and regulations governing the importation of nonconforming vehicles and can make more informed decisions in conferring RI status on applicants and in permitting RI status to be retained by those currently holding registrations. In this manner, those lacking the capability to responsibly provide RI services, or who have committed or are associated with those who have committed past violations of the vehicle importation laws, can be more readily denied registration as an RI, or if they already hold such a registration, have that registration suspended or revoked when circumstances warrant such action.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)— With regard to the HS–7 Declaration form, likely respondents include any private individual or commercial entity importing into the United States a vehicle or item of motor vehicle equipment subject to the Federal motor vehicle safety standards. It is difficult to estimate, with reliability, the absolute number of such respondents; however, that number would include:

- The 87 RIs who are currently registered with NHTSA and import nonconforming vehicles under Boxes 3 and 13;
- the roughly 1,629 individuals who import each year Canadian-certified vehicles for personal use under Box 2B;
- the several hundred original manufacturers who import conforming motor vehicles and equipment items under Box 2A; nonconforming vehicles or equipment intended for export under Box 4; nonconforming vehicles and equipment on a temporary basis for purposes of research, investigations, or other reasons specified under Box 7; vehicles and equipment requiring further manufacturing operations under Box 9; and equipment subject to the Theft Prevention Standard under Box 11.
- the several hundred dealers, distributors, and individuals who import off-road vehicles such as dirt bikes and all-terrain vehicles or ATVs, as well as other vehicles that are not primarily manufactured for on-road use under Box 8.
- the several hundred nonresidents of the United States and foreign diplomatic and military personnel who temporarily import nonconforming vehicles for personal use under Boxes 5, 6, and 12.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information— Adding together the burden hours detailed above yields a total of 252,263 hours expended on an annual basis for all paperwork associated with the filing of the HS–7 Declaration form and other aspects of the vehicle importation program.

Estimate of the Total Annual Costs of the Collection of Information— Other than the cost of the burden hours, the only additional costs associated with this information collection are the $18,167 cost to the industry, per year for the storage of records pertaining to the nonconforming vehicles that each RI imports into the United States.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50 and 501.8(f).

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–31887 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2016–0134]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on a proposed collection of information.

SUMMARY: 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.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 6, 2017.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2016–0134] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. 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.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the dockets. Alternately, you may visit in person the Docket Management Facility at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance (NEF–230), National Highway Traffic Safety Administration, West Building—4th Floor—Room W45–205, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Sachs' telephone number is (202) 366–3151. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, 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. The 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:

Title: 49 CFR part 566 *Manufacturer Identification.*

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0043.

Affected Public: New manufacturers of motor vehicles and motor vehicle equipment subject to the Federal motor vehicle safety standards.

Requested Expiration Date of Approval: July 31, 2020.

Form Number: None.

Abstract: If a motor vehicle or item of replacement motor vehicle equipment contains a defect related to motor vehicle safety or fails to comply with an applicable Federal motor vehicle safety standard (FMVSS), the manufacturer is required under 49 U.S.C. 30118 to furnish notification of the defect or noncompliance to the Secretary of Transportation, as well as to owners, purchasers, and dealers of the motor vehicle or replacement equipment, and to remedy the defect or noncompliance without charge to the owner. To ensure that manufacturers are meeting these and other responsibilities under the statutes and regulations administered by NHTSA, the agency issued 49 CFR part 566, *Manufacturer Identification.* The regulations in part 566 require manufacturers of motor vehicles or motor vehicle equipment to which a FMVSS applies, to submit to NHTSA, on a one-time basis, identifying information on themselves and a description of the products that they manufacture to those standards. With changes implemented in 2015, manufacturers have been able to make these submissions using an online portal on the agency's Web site at *https://vpic.nhtsa.dot.gov/.*

The information that must be submitted includes: (a) The full individual, partnership, or corporate name of the manufacturer; (b) the business name of the manufacturer commonly known to the public; (c) the residence address of the manufacturer and State of incorporation if applicable; (d) full contact information for the manufacturer and the submitting official; and (e) a description of each type of motor vehicle or of covered equipment manufactured by the manufacturer, including, for motor vehicles, the approximate ranges of gross vehicle weight ratings (GVWR) for each vehicle type. The regulations specify that the description may be of a general type, such as ''passenger cars'' or ''brake fluid,'' but that in the case of multipurpose passenger vehicles, trucks, and trailers, the description shall be specific enough to indicate the types of use for which the vehicles are intended, such as ''tank trailer,'' ''motor home,'' or ''cargo van.'' See 49 CFR 566.5(c)(1) and (2).

The regulations further specify that in the case of motor vehicles produced in two or more stages, if the manufacturer is an incomplete vehicle manufacturer, the description shall so state and include a description indicating the stage of completion of the vehicle and, where known, the types of use for which the vehicles are intended, such as ''Incomplete vehicle manufacturer—Chassis-cab intended for completion as a van-type truck.'' See 49 CFR 566.5(c)(3). The regulations also specify that if the manufacturer is an intermediate manufacturer, or a final stage manufacturer of a vehicle manufactured in two or more stages, the description shall so state and include a brief description of the work performed, such as ''Multipurpose passenger vehicles: Motor homes with GVWR from 8,000 to 12,000 pounds. Final-stage manufacturer—add body to bare chassis.'' Ibid.

The information must be submitted no later than 30 days after the manufacturer begins to manufacture motor vehicles or motor vehicle equipment subject to the FMVSS. No specific form need be used for the submission of this information. NHTSA provides an online portal with a fillable web-based format for use in submitting the required information. This is described in a handbook entitled *Requirements for Manufacturers of Motor Vehicles and Motor Vehicle Equipment* that can be accessed on the agency's Web site at *https://vpic.nhtsa.dot.gov/.* A description of the reporting requirement is included on pages 8 and 9 of the handbook.

Manufacturers who have previously submitted identifying information must ensure that the information on file is accurate and complete by submitting revised information no later than 30 days after a change in the business that affects the validity of that information has occurred.

In 2013, NHTSA received submissions of manufacturer identifying information under 49 CFR part 566 from 523 manufacturers. In 2014, the agency received 507 such submissions. In 2015, the agency received 540. Based on this volume of submissions, the agency projects that it will receive approximately 523 part 566 submissions from manufacturers in each of the next three years. Assuming that it will take a manufacturer on average 15 minutes to prepare an online submittal, the agency estimates that 131 hours will be expended on an annual basis by all manufacturers required to submit part 566 identifying information.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information): The agency estimates that it will receive new submissions of manufacturer identifying information under part 566 from approximately 523 manufacturers of motor vehicles and regulated items of motor vehicle equipment per year. The manufacturers need only submit the required information on a one-time basis, with the proviso that they refile their information through the online portal in the event of any changes in the information on file within 30 days from the date that any change in that information occurs.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information: 131 hours.

Estimate of the Total Annual Costs of the Collection of Information: Assuming that the part 566 information that needs to be submitted through the online portal is entered by company officers or employees compensated at an average rate of $30.00 per hour, the agency estimates that $3,930 will be expended on an annual basis by all manufacturers required to submit that information.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–31888 Filed 1–3–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2017 and ending on June 30, 2017, the prompt payment interest rate is 2½ per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW., Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to *PromptPayment@fiscal.treasury.gov.*

DATES: Effective January 1, 2017, to June 30, 2017.

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Attorney-Advisor, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning January 1, 2017, and ending on June 30, 2017, is 2½ per centum per annum.

David A. Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2016–31903 Filed 1–3–17; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 52
Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0611; FRL–9955–77-Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to promulgate a Federal Implementation Plan (FIP) in Texas to address the remaining outstanding requirements that are not satisfied by the Texas Regional Haze State Implementation Plan (SIP) submission. Specifically, the EPA proposes SO_2 limits on 29 Electric Generating Units (EGUs) located at 14 Texas facilities to fulfill requirements for the installation and operation of the Best Available Retrofit Technology (BART) for SO_2. To address the requirement for NO_X BART for Texas EGU sources, we are proposing a FIP that relies upon two other EPA rulemakings, one already final and one proposed, which together will establish that participation in the Cross-State Air Pollution Rule (CSAPR) continues to qualify as an alternative to NO_X BART for EGUs in Texas. We also are proposing to disapprove the portion of the Texas Regional Haze SIP that addresses the BART requirement for EGUs for Particulate Matter (PM) and proposing a FIP with PM BART limits for EGUs at 29 EGUs located at 14 Texas facilities, based on existing practices and control capabilities. In addition, we propose to reconsider and re-propose disapproval of portions of several SIP revisions submitted to satisfy the requirement to address interstate visibility transport for six NAAQS and that the FIP emission limits we are proposing meet the interstate visibility transport requirements for these NAAQS.

DATES: *Comments:* Comments must be received on or before March 6, 2017. A public hearing will be held January 10, 2017. For additional logistical information regarding the public hearing please see the **SUPPLEMENTARY INFORMATION** section of this action.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0611, at *http://www.regulations.gov* or via email to *R6_TX–BART@epa.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, please contact Joe Kordzi, 214–665–7186, *Kordzi.joe@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 *http://www.regulations.gov* and in hard copy at the 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).

The Texas regional haze SIP is available online at: *https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html*. It is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7186; fax number 214–665–7263; email address *Kordzi.joe@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Public Hearing: We are holding an information session, for the purpose of providing additional information and informal discussion for our proposal. We are also holding a public hearing to accept oral comments into the record:

Date: Tuesday, January 10, 2017
Time: Open House: 1:30 p.m.–3:30 p.m.
Public hearing: 4:00 p.m.–8:00 p.m. (including short break)
Location: Joe C. Thompson Conference Center (on the University of Texas (UT) Campus), Room 3.102, 2405 Robert Dedman Drive, Austin, Texas 78712

Joe C. Thompson Conference Center parking is adjacent to the building in Lot 40, located at the intersection of East Dean Keeton Street and Red River Street. Additional parking is available at the Manor Garage, located at the intersection of Clyde Littlefield Drive and Robert Dedman Drive. If arranged in advance, the UT Parking Office will allow buses to park along Dedman Drive near the Manor Garage for a fee.

The public hearing will provide interested parties the opportunity to present information and opinions to us concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. We will not respond to comments during the public hearing. When we publish our final action, we will provide written responses to all significant oral and written comments received on our proposal. To provide opportunities for questions and discussion, we will hold an information session prior to the public hearing. During the information session, EPA staff will be available to informally answer questions on our proposed action. Any comments made to EPA staff during an information session must still be provided orally during the public hearing, or formally in writing within 30 days after completion of the hearings, in order to be considered in the record.

At the public hearings, the hearing officer may limit the time available for each commenter to address the proposal to three minutes or less if the hearing officer determines it to be appropriate. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearings. Verbatim English language transcripts of the hearing and written statements will be included in the rulemaking docket.

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I. Background

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit fine particulates ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, Organic Carbon (OC), Elemental Carbon (EC), and soil dust), and their precursors (*e.g.,* Sulfur Dioxide (SO_2), Nitrogen Oxides (NO_X), and in some cases, ammonia (NH_3) and Volatile Organic Compounds (VOCs)). 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 can be seen. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks and wilderness areas. In 1999, the average visual range [1] in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States was 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range was less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions.[2] CAA programs have reduced some haze-causing pollution, lessening some visibility impairment and resulting in partially improved average visual ranges.[3]

CAA requirements to address the problem of visibility impairment are continuing to be addressed and implemented. 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 man-made impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I Federal areas.[4] On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment.'' [5] 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, and we promulgated regulations addressing regional haze in 1999.[6] The Regional Haze Rule revised the existing visibility regulations to integrate into the regulations provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. States were required to submit the first implementation plan addressing regional haze visibility

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] 64 FR 35715 (July 1, 1999).

[3] An interactive ''story map'' depicting efforts and recent progress by EPA and states to improve visibility at national parks and wilderness areas may be visited at: *http://arcg.is/29tAbS3.*

[4] 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 (November 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 action, we mean a ''mandatory Class I Federal area.''

[5] 45 FR 80084 (December 2, 1980).

[6] 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P (Regional Haze Rule).

impairment no later than December 17, 2007.[7]

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often under-controlled, 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 toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources [8] built between 1962 and 1977 procure, install and operate the ''Best Available Retrofit Technology'' (BART). Larger ''fossil-fuel fired steam electric plants'' are included among the BART source categories. Under the Regional Haze Rule, states are directed to conduct BART determinations for ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. The evaluation of BART for Electric Generating Units (EGUs) that are located at fossil-fuel fired power plants having a generating capacity in excess of 750 megawatts must follow 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''). Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. To the extent a Regional Haze SIP does not meet CAA requirements to address BART, the CAA requires EPA to promulgate a FIP that makes the requisite determinations to ensure the BART requirement is satisfied, as applicable, for sources in the state.[9]

II. Overview of Proposed Actions

A. Regional Haze

On January 5, 2016, we took final action on nearly all portions of a Regional Haze SIP submittal submitted by the State of Texas on March 31, 2009.[10] In that final rule, we did not take action on the portion of the submittal that was intended to satisfy BART requirements for EGUs as mandated by 40 CFR 51.308(e). In an earlier, separate action, we issued a limited disapproval of the Texas Regional Haze SIP concerning EGU BART due to Texas' reliance on the Clean Air Interstate Rule (CAIR).[11] The EGU BART requirements for NO_X and SO_2 remain unmet following the limited disapproval, and Texas has not submitted a revised SIP to address the deficiencies. While we previously proposed to approve the portion of the Regional Haze SIP that was intended to address whether EGUs in Texas must install and operate BART for PM,[12] that part of the proposed action was not finalized.[13] In connection with changed circumstances on how Texas EGUs are able to satisfy NO_X and SO_2 BART, we are now proposing to disapprove the portion of the Texas Regional Haze SIP that evaluated the PM BART requirement for EGUs. The FIP we are proposing today addresses the EGU BART requirement and addresses these deficiencies in the Texas Regional Haze SIP.

Texas' regional haze SIP relied on participation in CAIR as an alternative to meeting the source-specific BART requirements for SO_2 and NO_X. *See* 40 CFR 51.308(e)(4) (2006). At the time that Texas submitted its SIP to EPA, however, the D.C. Circuit had remanded CAIR (without vacatur). *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir.), *modified,* 550 F.3d 1176 (D.C. Cir. 2008). The court thereby left CAIR and CAIR FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until we could, by rulemaking, replace CAIR consistent with the court's opinion.[14]

On August 8, 2011, we promulgated the Cross-State Air Pollution Rule (CSAPR), to replace CAIR.[15] In 2012, we issued a limited disapproval of the Texas regional haze SIP because of Texas' reliance on CAIR as an alternative to EGU BART for SO_2 and NO_X.[16] We also determined that CSAPR would provide for greater reasonable progress than BART and amended the Regional Haze Rule to allow CSAPR participation as an alternative to source-specific SO_2 and NO_X BART for EGUs.[17] CSAPR has been subject to extensive litigation, and on July 28, 2015, the D.C. Circuit issued a decision generally upholding CSAPR but remanding without vacating the CSAPR emissions budgets for a number of states in *EME Homer City Generation* v. *EPA,* 795 F.3d 118 (D.C. Cir.). Specifically, the court invalidated a number of the Phase 2 ozone-season NO_X budgets and found that the SO_2 budgets for four states resulted in over-control for purposes of CAA section 110(a)(2)(D)(i)(I). The remand included Texas' ozone-season NO_X budget and annual SO_2 budget.

We had earlier proposed to rely on CSAPR participation to address these BART-related deficiencies in Texas' SIP submittals.[18] Because of the uncertainty caused by the D.C. Circuit Court's partial remand, however, we determined that it was not appropriate to finalize our action. We are in the process of responding to the remand of these CSAPR budgets. On October 26, 2016, we finalized an update to the CSAPR rule that addresses the 1997 ozone NAAQS portion of the remand and the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.[19] This rule promulgated a new

[7] See 40 CFR 51.308(b). EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

[8] See 42 U.S.C. 7491(g)(7) (listing the set of ''major stationary sources'' potentially subject-to-BART).

[9] See, 42 U.S.C. 7491(b)(2)(A)(citing the potential need for BART as determined by ''the Administrator in the case of a plan promulgated under section 7410(c) of this title'').

[10] 81 FR 296 (January 5, 2016). A preliminary order of the Fifth Circuit Court of Appeals in Case No. 16–60118 was issued on July 15, 2016, and stayed the rule ''in its entirety.'' On December 2, 2016, the U.S. Department of Justice filed a motion for voluntary remand of the parts of the rule under challenge and consenting to continuation of the judicial stay for remanded parts of the rule. The motion also requested affirmance of the partial approvals of the Texas and Oklahoma SIPs and lifting of the stay as to those approvals. This motion is currently pending disposition.

[11] The limited disapproval triggered the EPA's obligation to issue a FIP for Texas unless the State submitted an approvable SIP revision to correct the relevant deficiencies within 2 years of the final limited disapproval action. CAA section 110(c)(1); 77 FR 33641, 33654 (August 6, 2012).

[12] 79 FR 74817, 74851 (proposing to concur with screening analyses conducted by TCEQ including findings that no Texas EGUs are subject to BART for PM).

[13] 81 FR at 302 (January 5, 2016): ''[W]e proposed to approve Texas' determination that for its EGUs no PM BART controls were appropriate, based on a screening analysis of the visibility impacts of from just PM emissions. . . ..we have. . . .decided not to finalize our proposed approval of Texas' PM BART determination [for EGUs].''

[14] 550 F.3d at 1178.

[15] 76 FR 48208.

[16] 77 FR 33641.

[17] While that rulemaking also promulgated FIPs for several states to replace reliance on CAIR with reliance on CSAPR as an alternative to BART, it did not include a FIP for Texas. 77 FR 33641, 33654.

[18] 79 FR 74817, 74823 (December 16, 2014).

[19] ''Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS.'' 81 FR74504. The relevant portion of the remand pertained to the Phase 2 ozone season NO_X emission budget designed to address the 1997 ozone NAAQS. In response to the remand, in this final rule the EPA removed the regulatory requirement for sources in Texas to comply with the phase 2 ozone season NO_X budget calculated to address the 1997 ozone standard because we determined that no additional emission reductions from sources in Texas are necessary to address the State's obligation under 110(a)(2)(D)(i)(I) for the 1997 ozone NAAQS. However, because Texas is linked to downwind air quality problems with respect to the 2008 ozone NAAQS, we promulgated a new ozone season NO_X emission budget to address that standard. 81 FR 74504, 74600–74601.

FIP for Texas that replaced the CSAPR ozone season NO_X emission budget designed to address the 1997 ozone NAAQS for the State with a revised budget designed to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. Then, on November 10, 2016, we proposed to withdraw the FIP provisions that require affected EGUs in Texas to participate in CSAPR for annual emissions of SO_2 and NO_X with regard to emissions after 2016.[20] Withdrawal of these FIP requirements will address the D.C. Circuit's remand of the CSAPR Phase 2 SO_2 budget for Texas. This recently published proposed rule includes an assessment of the impacts of the set of actions that the EPA has taken or expects to take in response to the D.C. Circuit's remand on our 2012 demonstration that participation in CSAPR would provide for greater reasonable progress than BART.

In 2012, we determined that CSAPR is ''better-than-BART'' based on a comparison of projected visibility in scenarios representing CSAPR implementation and BART implementation, as well as a base case without CSAPR or BART, in relevant locations throughout the country. In the case of the remanded Phase 2 ozone-season NO_X budgets, eight of the states with remanded budgets (including Texas) will continue to be subject to CSAPR to address ozone transport obligations with regard to the more stringent 2008 ozone NAAQS, and North Carolina and South Carolina, although no longer covered by CSAPR to address ozone transport obligations, will continue to be subject to CSAPR annual NO_X requirements in order to address their $PM_{2.5}$ transport obligations. In considering the potential impact of the remand of Phase 2 budgets on the 2012 CSAPR-Better-than-BART analytic demonstration, we therefore believe that only two changes have potential relevance: The withdrawal of the FIP provisions subjecting Florida EGUs to CSAPR ozone-season NO_X requirements that has already been finalized, and the withdrawal of FIP provisions subjecting Texas EGUs to CSAPR SO_2 and annual NO_X requirements that is proposed separately. That proposed analysis supports the continued conclusion that CSAPR participation would achieve greater reasonable progress than BART for NO_X despite the change in the treatment of Texas and Florida EGUs. Consequently, we have proposed that the Regional Haze Rule continues to authorize the use of CSAPR participation as a BART alternative for EGUs.[21] Finalization of that proposal would allow for Texas' regional haze program to rely on CSAPR ozone season control program participation as an alternative to source-specific EGU BART for NO_X.[22] Based on that national proposal, we are now proposing a FIP to replace Texas' reliance on CAIR with reliance on CSAPR to address the NO_X BART requirements for EGUs. Finalization of this portion of the FIP is contingent on our taking final action to find that CSAPR continues to be an appropriate alternative to source specific BART. However, finalization of the portion of our national proposal that would withdraw the FIP provisions for Texas for annual emissions of SO_2 and NO_X described above would mean that Texas will no longer be eligible to rely on CSAPR participation as an alternative to source-specific EGU BART for SO_2. As a result, we are proposing to promulgate a FIP that includes BART screening of sources and a source-by-source analysis for SO_2 BART and controls for this pollutant as appropriate. We are also unable to propose approval of the Texas Regional Haze SIP's PM BART evaluation, as previously proposed, as that demonstration made underlying assumptions that are no longer valid.[23] We instead propose to disapprove that portion of the SIP and, in place of it, promulgate source-specific PM BART requirements for EGUs that we have evaluated to be subject to BART in this proposed FIP.

We believe, however, it is preferable for states to assume primary responsibility for implementing the Regional Haze requirements as envisioned by the CAA. We will work with the State of Texas if it chooses to develop a SIP to meet these overdue Regional Haze requirements and replace or avoid a finalized FIP.

The FIP we are proposing includes BART control determinations for EGUs in Texas without previously approved BART determinations and associated compliance schedules and requirements for equipment maintenance, monitoring, testing, recordkeeping, and reporting for all affected sources and units. The EGU BART sources addressed in this FIP cause or contribute to visibility impairment at one or more Class I areas in Texas, Oklahoma, Arkansas, and New Mexico. The two Class I areas in Texas are Big Bend National Park and the Guadalupe Mountains National Park. The Class I area in Oklahoma is the Wichita Mountains National Wildlife Refuge. The two Class I areas in Arkansas are the Caney Creek Wilderness Area and the Upper Buffalo Wilderness Area. The closest impacted Class I areas in New Mexico are the Carlsbad Caverns National Park, Salt Creek Wilderness Area, and White Mountains Wilderness Area.

In order to remedy these deficiencies in the Texas SIP, we are proposing this FIP to establish the means by which the regional haze program for Texas will meet the BART requirements for SO_2, NO_X, and PM. We are proposing source-specific BART determinations for EGUs subject to BART for SO_2 and PM. We are proposing that NO_X BART requirements for EGUs in Texas will be satisfied by a determination, proposed for separate finalization, that Texas' participation in CSAPR's ozone season control program is a permissible alternative to source-specific NO_X BART.

Addressing the BART requirement for Texas EGUs, as proposed today, with cost-effective and readily available controls, will help ensure that progress

[20] ''Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas,'' 81 FR 78954 (November 10, 2016). Although the court's decision specifically remanded only Texas' SO_2 budget, the court's rationale for remanding that budget also implicates Texas' annual NO_X budget because the SO_2 and annual NO_X budgets were developed through an integrated analysis and were promulgated to meet a common $PM_{2.5}$ transport obligation under CAA section 110(a)(2)(D)(i)(I).

[21] 81 FR at 78962–78964.

[22] While we have proposed to remove Texas from CSAPR's annual NO_X program, CSAPR is still an appropriate alternative to BART for NO_X purposes because EGUs in Texas continue to be required to participate in CSAPR's ozone season NO_X program.

[23] We previously proposed approval of Texas' SIP for EGU PM BART on the premise that EGU BART for both SO_2 and NO_X were covered by participation in CSAPR, which allowed Texas to conduct a screening analysis of the visibility impacts from PM emissions in isolation. However, modeling on a pollutant-specific basis for PM is appropriate only in the narrow circumstance where a state relies on a BART alternative to satisfy NO_X and SO_2 BART. Due to the complexity and nonlinear nature of atmospheric chemistry and chemical transformation among pollutants, EPA has not recommended performing modeling on a pollutant-specific basis to determine whether a source is subject to BART, except in the unique situation described above. See discussion in Memorandum from Joseph Paisie to Kay Prince, ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations,'' July 19, 2006. More recently, the Ninth Circuit upheld EPA's disapproval of the Arizona regional haze SIP for including a pollutant-specific screening analysis for NO_X. *Phoenix Cement Co.* v. *EPA,* 647 F. App'x 702, 705–06 (9th Cir. Mar. 31, 2016) (upholding EPA's interpretation that the ''Regional Haze Rule [] require[s] a BART determination for any pollutant at a source that exceeds the de minimis threshold, once that source has been determined subject to BART.''). We did not finalize our proposed approval of Texas' EGU PM BART determination because of the uncertainty at that time concerning the CSAPR remand and whether Texas would continue to have CSAPR coverage for both NO_X and SO_2, 81 FR 296, 302, but that uncertainty has now been resolved.

is made toward natural visibility conditions at Class I areas affected by Texas' sources. Please refer to our previous rulemaking on the Texas regional haze SIP for additional background regarding the CAA, regional haze, and our Regional Haze Rule.[24]

B. Interstate Transport of Pollutants That Affect Visibility

Section 110(a) of the CAA directs states to submit a SIP that provides for the implementation, maintenance, and enforcement of each NAAQS, which is commonly referred to as an infrastructure SIP. Among other things, CAA 110(a)(2)(D)(i)(II) requires that SIPs contain adequate provisions to prohibit interference with measures required to protect visibility in other states. This requirement is referred to as ''interstate visibility transport.'' SIPs addressing interstate visibility transport are due to EPA within three years after the promulgation of a new or revised NAAQS (or within such shorter period as we may prescribe). A state's failure to submit a complete, approvable SIP for interstate visibility transport creates an obligation for EPA to promulgate a FIP to address this requirement.[25]

Previously, we issued a finding that Texas failed to submit a SIP revision to satisfy all four requirements of interstate transport under section 110(a)(2)(D)(i) of the CAA for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS.[26] Texas later submitted a SIP revision to address interstate transport for these NAAQS. However, in our January 5, 2016 final action we disapproved the portion of Texas' SIP revisions intended to address interstate visibility transport for six NAAQS, including the 1997 8-hour ozone and 1997 $PM_{2.5}$.[27] We concluded that to meet the requirements of interstate visibility transport: (1) Texas could not rely on its Regional Haze SIP, which relied heavily upon the remanded CAIR, to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states; and (2) additional control of SO_2 emissions in Texas were needed to prevent interference with measures required to be included in the Oklahoma SIP to protect visibility. However, in that action we did not finalize the portion of our proposed FIP addressing Texas' interstate visibility transport obligations because that portion of the proposed FIP would have partially relied on CSAPR to ensure the emissions from Texas' sources do not interfere with other states' visibility programs. Given the uncertainty that existed at the time arising from the D.C. Circuit's remand of Texas' CSAPR budgets (*EME Homer City Generation* v. *EPA,* 79 F.3d 118 (D.C. Cir.)), we concluded that it was not appropriate to finalize our proposed determination to rely on CSAPR as an alternative to SO_2 and NO_X BART for EGUs in Texas in that action.[28]

Our prior disapproval of interstate visibility transport for the six NAAQS is currently stayed by the Fifth Circuit.[29] We recognize that because our prior disapproval of the Texas SIP submittals addressing interstate visibility transport relied in part on our determinations of the measures needed in Texas to ensure reasonable progress in Oklahoma, the Fifth Circuit's stay of our previous action complicates next steps to ensure that the visibility requirements of CAA 110(a)(2)(D)(i)(II) are met. The Court's stay accordingly calls into question whether our past disapprovals for interstate visibility transport would stand. At the same time, we also note that we continue to have an obligation to issue a FIP for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS as a result of our 2005 finding that Texas failed to timely submit SIPs to address the interstate transport visibility requirements. Given the uncertainties arising from the Fifth Circuit's stay of our prior disapproval, we are now proposing to reconsider the basis of our prior disapproval of Texas' SIP submittals addressing the interstate visibility transport requirement for all six NAAQS. We are now proposing to determine that Texas' SIP submittals addressing interstate visibility transport for the six NAAQS are not approvable because these submittals relied solely on Texas' Regional Haze SIP to ensure that emissions from Texas did not interfere with required measures in other states. Texas' Regional Haze SIP, in turn, relied on the implementation of CAIR as an alternative to EGU BART for SO_2 and NO_X. Specifically, we are proposing disapproval of the following Texas SIP submittals insofar as they address the interstate visibility transport requirement: April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); November 23, 2009: 2006 24-hour $PM_{2.5}$; December 7, 2012: 2010 NO_2; December 13, 2012: 2008 8-hour Ozone; May 6, 2013: 2010 1-hour SO_2 (Primary NAAQS). Texas has not submitted a SIP revision to remove reliance on CAIR for Regional Haze or interstate visibility transport. As CAIR is no longer in effect and has been replaced by CSAPR, we are proposing to find that Texas' Regional Haze SIP does meet its interstate visibility transport obligations. As a result, the Texas SIPs to address interstate visibility transport for these six NAAQS continue to be unapprovable.

We are proposing a FIP to cure the deficiencies in Texas' Regional Haze Program concerning EGU BART. This FIP will replace reliance on CAIR with reliance on CSAPR to meet the requirements for EGU BART for NO_X in Texas. The FIP will also address Texas EGU BART for SO_2 and PM on a source-specific basis. With the absence of CSAPR coverage for SO_2, we must reevaluate what is needed in Texas to address interstate visibility transport. Our proposed FIP to address Texas EGU BART achieves significant reductions of SO_2, which exceed the reductions initially assumed for Texas under either CAIR or CSAPR. In addition, our proposed FIP achieves reductions at large sources of SO_2 emissions (*e.g.,* Monticello, Martin Lake and Big Brown), that have significant impacts on

[24] 81 FR 296. The public docket for this past rulemaking remains accessible under EPA Docket ID: EPA–R06–OAR–2014–0754 at *https://www.regulations.gov.* This proposed rulemaking has a separately established docket (EPA–R06–OAR–2016–0611). Our TSD contains a list of materials from EPA Docket ID: EPA–R06–OAR–2014–0754 that we incorporate by reference and consider to be part of this rulemaking record even as they are not necessarily re-uploaded to the newer docket.

[25] CAA § 110(c)(1). Mandatory sanctions under CAA section 179 do not apply because the deficiencies are not with respect to a submission that is required under CAA title I part D. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' at pages 34–35 (September 13, 2013) [hereinafter 2013 i-SIP Guidance].

[26] 70 FR 21147 (April 25, 2005). The four components of interstate transport in Section 110(a)(2)(D)(i) are contained in two subsections. Section 110(a)(2)(D)(i)(I) addresses any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality or from interfering with measures required of any other state to protect visibility (referring to visibility in Class I areas). This proposal only addresses the fourth requirement concerning visibility.

[27] Specifically, we previously disapproved the relevant portion of these Texas' SIP submittals: April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); November 23, 2009: 2006 24-hour $PM_{2.5}$; December 7, 2012: 2010 NO_2; December 13, 2012: 2008 8-hour Ozone; May 6, 2013: 2010 1-hour SO_2 (Primary NAAQS). 79 FR 74818, 74821; 81 FR 296, at 302.

[28] 81 FR 296, 301–2.

[29] July 15, 2016 Order in *Texas* v. *EPA* (Fifth Cir. Case No. 16–160118). The EPA's filed motion requesting voluntary partial remand and continuation of the judicial stay for remanded parts of the rule includes our prior disapproval of Texas' SIPs concerning interstate visibility transport. This motion is currently pending disposition.

Class I areas in nearby states. The BART FIP requires controls on many but not all of the sources that were controlled in our previous partial FIP for Texas Regional Haze. The EGU BART FIP also includes control requirements at some additional sources not controlled in our previous action on Texas Regional Haze.

We are proposing to find that our proposed EGU BART FIP is adequate to prevent interference with measures required to protect visibility in other states for the first planning period.[30] We, therefore, propose that the measures in our proposed FIP to address Texas EGU BART will fully address Texas' interstate visibility transport obligations for the six NAAQS (1997 8-hour ozone, 1997 $PM_{2.5,}$ 2006 $PM_{2.5}$, 2008 8-hour ozone, 2010 1-hour NO_2, and 2010 1-hour SO_2). We also propose that reliance on CSAPR for EGU NO_X BART is appropriate to ensure NO_X emissions from Texas EGUs do not interfere with other states' measures to protect visibility. We are proposing this action based on the reasoning that our BART FIP will achieve more emission reductions than projected under CAIR or CSAPR and the reductions are occurring at sources that have particularly large impacts on Class I areas outside of Texas. To the extent our previous final action concerning Texas Regional Haze is remanded by a Court or otherwise reconsidered in the future, we may revisit whether controls in the EGU BART FIP are adequate to address interstate visibility transport requirements. Nonetheless, we are here proposing that the proposed EGU BART FIP measures will be adequate to address interstate visibility transport based on current information. This proposal concerning the adequacy of the proposed FIP remedy does not depend on our earlier action on the Texas Regional Haze SIP or hinge on its disposition, nor does it foreclose that we may reexamine visibility transport concerns under potential scenarios where we have a responsibility to take new action.[31]

We encourage Texas to consider adopting additional SIP provisions that would allow the EPA to fully approve the Regional Haze SIP and thus to withdraw the FIP and approve Texas' SIP with respect to interstate visibility transport. Texas may also elect to satisfy interstate visibility transport by providing, as an alternative to relying on its Regional Haze SIP alone, a demonstration that emissions within its jurisdiction do not interfere with other states' plans to protect visibility.[32]

C. Our Obligation To Promulgate a FIP

Under section 110(c) of the CAA, whenever we disapprove a mandatory SIP submission in whole or in part, we are required to promulgate a FIP within 2 years unless we approve a SIP revision correcting the deficiencies before promulgating a FIP. Specifically, CAA section 110(c) provides that the Administrator shall promulgate a FIP within 2 years after the Administrator disapproves a state implementation plan submission ''unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.'' [33] The term ''Federal implementation plan'' is defined in Section 302(y) of the CAA in pertinent part as a plan promulgated by the Administrator to correct an inadequacy in a SIP.

Beginning in 2012, following the limited disapproval of the Texas Regional Haze SIP, EPA had the authority and obligation to promulgate a FIP to address BART for Texas EGUs for NO_X and SO_2. In proposing to disapprove the Regional Haze SIP component that sought to address the PM BART requirement for Texas EGUs, we also have the obligation to promulgate a PM BART FIP to address the deficiency. Texas has not addressed the EGU BART disapproval, and that requirement is now significantly overdue.[34] We are accordingly empowered and required by the CAA to make determinations and promulgate a FIP to ensure the BART requirement for Texas EGUs is satisfied.

Adding to this background, beginning with our January 5, 2016 disapproval of Texas SIP provisions regarding interstate visibility transport, we obtained the authority and obligation to promulgate a FIP to correct the deficiencies relating to that CAA requirement.[35] As with the BART requirement, we lack a SIP revision that would have any potential to correct the deficiency, necessitating that we now take action under FIP authority.

III. Our Proposed BART Analyses for SO_2 and PM

In our previous action,[36] we determined that due to the CSAPR remand, it was not appropriate at that time to rely on CSAPR as an alternative to SO_2 and NO_X BART for EGUs in Texas. As a consequence, action to satisfy the overdue requirement to address BART for EGUs in the state of Texas was further delayed.[37] In this proposal, we are proposing that CSAPR, once fully revised to address the D.C. Circuit's remand, provides a basis for satisfying EGU BART obligations for NO_X alone. It remains the case that we cannot rely on CSAPR as an alternative to SO_2 BART for Texas EGUs as further confirmed by our proposed action to remove Texas from the annual NO_X and SO_2 control programs. Thus, we have the obligation to consider source-specific requirements for Texas EGUs consistent with the BART Guidelines for SO_2 BART.

Because the component of the Texas Regional Haze SIP regarding the PM BART requirement for EGUs has not been acted on, we have the responsibility under CAA section 110(k) to evaluate the submission and take action to approve or disapprove it. The SIP determinations for PM were based on modeling that was conducted by examining visibility impairment due to PM emissions alone, based on the assumption that the state would be participating in CAIR for SO_2 and NO_X and thereby having BART coverage for those pollutants. The Texas Regional Haze SIP had concluded that no PM BART controls for EGUs were appropriate, because modeling assessment of PM impacts alone showed their impacts to be too small to warrant control consideration. But Texas' screening analysis is no longer reliable or accurate because of the invalid assumption that source-by-source BART for either SO_2 or NO_X would not be

[30] This proposed FIP for interstate visibility transport is premised on the interpretation that this requirement can be addressed even when a Regional Haze SIP is not fully approved and the FIP does not purport to correct all Regional Haze SIP deficiencies. *See e.g.* 76 FR 52388 (August 22, 2011); 76 FR 22036 (April 20, 2011); and 78 FR 14681 (March 7, 2013); *see also,* 2013 i-SIP Guidance, at page 34 (stating that EPA may find it appropriate to supplement the i-SIP Guidance regarding the relationship between Regional Haze SIPs and interstate visibility transport for future planning periods).

[31] *See e.g.* 78 FR 14681, 14685.

[32] 2013 i-SIP Guidance, at pages 34–35.

[33] EPA additionally has the authority to promulgate a FIP any time after finding that ''a State has failed to make a required submission'' of a SIP. CAA section 110(c)(1)(A); 42 U.S.C. 7410(c)(1)(a).

[34] The Texas Regional Haze SIP stated, ''The TCEQ will take appropriate action if CAIR is not replaced with a system that the US EPA considers to be equivalent to BART.'' BART determinations were due in SIP submissions on December 17, 2007, 40 CFR 51.308(b), putting them on a timeline for controls by 2014 (considering the deadline for SIP action at CAA section 110(k)(2) and allowing five years for installation of BART controls). Additional delay of any amount is not appropriate and not consistent with the law.

[35] Additionally, we continue to have authority to issue a FIP to address interstate visibility transport for 1997 8-hour ozone and 1997 $PM_{2.5}$ due to our 2005 finding that Texas failed to submit SIPs to address interstate transport for these NAAQS under CAA section 110(a)(2)(D)(i). 70 FR 21147.

[36] See the discussion beginning on 81 FR 301 (January 5, 2016).

[37] Id. at 346.

required. In order to appropriately evaluate the BART requirements for EGUs, the visibility impacts from all pollutants must be studied, including PM emissions. Texas' PM BART analysis for EGUs does not do this.[38]

Accordingly, we are proposing to disapprove the portion of the Texas Regional Haze SIP that determined that all Texas EGUs screen out of the BART requirement for PM. The basis for the proposed disapproval is the SIP determination's assumption that EGUs would have coverage for SO_2 and NO_X BART under an alternative measure.[39] Since that assumption is not valid, the technical determinations regarding PM BART cannot be approved. Following the directions of the BART Guidelines on how to identify sources ''subject to BART,'' we have looked at all visibility impairing pollutants from EGUs that are BART-eligible. Our proposed FIP therefore seeks to fill that regulatory gap by assessing BART for Texas EGUs for visibility impairing pollutants other than NO_X, *i.e.,* SO_2 and PM.

A. Identification of BART-Eligible Sources

The BART Guidelines set forth the steps for identifying whether the source is a BART-eligible source: [40]

Step 1: Identify the emission units in the BART categories,

Step 2: Identify the start-up dates of those emission units, and

Step 3: Compare the potential emissions to the 250 ton/yr cutoff.

Following our 2016 final action on the March 31, 2009 Texas RH SIP, we began the process of generating additional technical information and analysis in order to address the above three steps in our BART-eligibility proposal. We started with Texas' facility-specific listing of BART-eligible EGU sources and removed sources we verified had retired. We then gathered additional information from (1) our authority under Section 114(a) of the CAA to request information from potential BART-eligible sources, and (2) the U.S. Energy Information Administration (EIA). We then converted Texas' facility-specific BART-eligible list to a unit-specific BART-eligible list and verified the BART-eligibility of each unit. The following is a list of units we propose have satisfied the above three steps and are BART-eligible: [41]

TABLE 1—SUMMARY OF BART-ELIGIBILITY ANALYSIS

Facility	Unit
Barney M. Davis (Talen/Topaz)	1.
Big Brown (Luminant)	1.
Big Brown (Luminant)	2.
Cedar Bayou (NRG)	CBY1.
Cedar Bayou (NRG)	CBY2.
Coleto Creek (Engie)	1.
Dansby (City of Bryan)	1.
Decker Creek (Austin Energy)	1.
Decker Creek (Austin Energy)	2.
Fayette (LCRA)	1.
Fayette (LCRA)	2.
Graham (Luminant)	2.
Greens Bayou (NRG)	5.
Handley (Exelon)	3.
Handley (Exelon)	4.
Handley (Exelon)	5.
Harrington Station (Xcel)	061B.
Harrington Station (Xcel)	062B.
J T Deely (CPS Energy)	1.
J T Deely (CPS Energy)	2.
Jones Station (Xcel)	151B.
Jones Station (Xcel)	152B.
Knox Lee Power Plant (AEP)	5.
Lake Hubbard (Luminant)	1.
Lake Hubbard (Luminant)	2.
Lewis Creek (Entergy)	1.
Lewis Creek (Entergy)	2.
Martin Lake (Luminant)	1.
Martin Lake (Luminant)	2.
Martin Lake (Luminant)	3.
Monticello (Luminant)	1.
Monticello (Luminant)	2.
Monticello (Luminant)	3.
Newman (El Paso Electric)	2.
Newman (El Paso Electric)	3.
Newman (El Paso Electric)	4.
Nichols Station (Xcel)	143B.
O W Sommers (CPS Energy)	1.
O W Sommers (CPS Energy)	2.
Plant X (Xcel)	4.
Powerlane (City of Greenville)	ST1.
Powerlane (City of Greenville)	ST2.
Powerlane (City of Greenville)	ST3.
R W Miller (Brazos Elec. Coop)	1.
R W Miller (Brazos Elec. Coop)	2.
R W Miller (Brazos Elec. Coop)	3.
Sabine (Entergy)	2.
Sabine (Entergy)	3.
Sabine (Entergy)	4.
Sabine (Entergy)	5.
Sim Gideon (LCRA)	1.
Sim Gideon (LCRA)	2.
Sim Gideon (LCRA)	3.
Spencer (City of Garland)	4.
Spencer (City of Garland)	5.
Stryker Creek (Luminant)	ST2.
Trinidad (Luminant)	6.
Ty Cooke (City of Lubbock)	1.
Ty Cooke (City of Lubbock)	2.
V H Braunig (CPS Energy)	1.
V H Braunig (CPS Energy)	2.
V H Braunig (CPS Energy)	3.
W A Parish (NRG)	WAP4.
W A Parish (NRG)	WAP5.
W A Parish (NRG)	WAP6.
Welsh Power Plant (AEP)	1.
Welsh Power Plant (AEP)	2.
Wilkes Power Plant (AEP)	1.
Wilkes Power Plant (AEP)	2.
Wilkes Power Plant (AEP)	3.

The final step in identifying a ''BART-eligible source'' is to use the information from the previous three steps to identify the collection of emissions units that comprise the BART-eligible source.

B. Identification of Sources That Are Subject to BART

Following our compilation of the BART-eligible sources in Texas, we examined whether these sources cause or contribute to visibility impairment in nearby Class I areas.[42] For those sources that are not reasonably anticipated to cause or contribute to any visibility impairment in a Class I area, a BART determination is not required. Those sources are determined to be not subject-to-BART. Sources that are reasonably anticipated to cause or contribute to any visibility impairment in a Class I area are determined to be subject-to-BART. For each source subject to BART, 40 CFR 51.308(e)(1)(ii)(A) requires that states (or EPA, in the case of a FIP) identify the level of control representing BART after considering the factors set out in CAA section 169A(g). The BART guidelines discuss several approaches available to exempt sources from the BART determination process, including modeling individual sources and the use of model plants. To determine which sources are anticipated to contribute to visibility impairment the BART guidelines state that CALPUFF or another appropriate model can be used to predict the visibility impacts from a single source at a Class I area. We employed a four-fold strategy in determining which units should or should not be subject to BART. A flowchart of the analysis along with a detailed discussion of the subject-to-BART screening analysis is provided in

[38] Texas' Regional Haze SIP determined whether its sources should be subject to review for PM controls by only looking at the impact of PM emissions on visibility. This approach is only appropriate when a state satisfies the requirements for BART for SO_2 and NO_X with an alternative measure. Additionally, as reflected in our TSD on the identification of BART-Eligible Sources, the Texas SIP neglected to identify several BART-eligible sources; this also shows error in the state's PM BART demonstration and conclusions, and it constitutes grounds for the proposed partial SIP disapproval for PM BART.

[39] The requirements for ''emissions trading programs or other alternative measures'' that may be implemented rather than requiring BART are provided at 40 CFR 51.308(e)(2).

[40] 70 FR 39158 (July 6, 2005).

[41] See our BART FIP TSD for more information concerning how we selected the units we are proposing are BART-eligible and other details concerning our proposed BART determinations.

[42] See 40 CFR part 51, Appendix Y, III, How to Identify Sources ''Subject to BART''.

the BART Screening TSD.[43] We summarize the methodology and results of this analysis here.

First, we examined whether any of the BART-eligible units should be eliminated from consideration based on the standard model plant exemptions described in the BART Guidelines.[44] Second, we created specific model plants between sources and nearby Class I areas and conducted CALPUFF modeling to evaluate a number of sources for exemption. Third, we performed stand-alone, source specific CALPUFF modeling on a number of units to determine if their visibility impacts were large enough to identify them as being subject to BART. Fourth, for those remaining units outside of the CALPUFF model's range, we contracted to have CAMx modeling performed to determine if their visibility impacts were large enough to merit their being subject to BART. These steps are further described below.

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines preamble advises that, ''for purposes of determining which sources are subject to BART, States should consider a 1.0 deciview change or more from an individual source to ''cause'' visibility impairment, and a change of 0.5 deciviews to ''contribute'' to impairment.'' [45] It further advises that ''States should have discretion to set an appropriate threshold depending on the facts of the situation,'' but ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 dv,'' and describes situations in which states may wish to exercise their discretion to set lower thresholds, mainly in situations in which a large number of BART-eligible sources within the State and in proximity to a Class I area justify this approach. We do not believe that the sources under consideration in this rule, most of which are not in close proximity to a Class I area, merit the consideration of a lesser contribution threshold. Therefore, our analysis employs a contribution threshold of 0.5 deciviews.

1. Our Use of the Standard BART Model Plant Exemption

As the BART Guidelines note:

> [W]e believe that a State that has established 0.5 deciviews as a contribution threshold could reasonably exempt from the BART review process sources that emit less than 500 tons per year of NO_X or SO_2 (or combined NO_X and SO_2), as long as these sources are located more than 50 kilometers from any Class I area; and sources that emit less than 1000 tons per year of NO_X or SO_2 (or combined NO_X and SO_2) that are located more than 100 kilometers from any Class I area. You do, however, have the option of showing other thresholds might also be appropriate given your specific circumstances.[46]

We applied the standard BART model plant exemption described above to the following facilities, exempting them from further analysis:

TABLE 2—STANDARD BART MODEL PLANT EXEMPT SOURCES

Facility	Units
Dansby (City of Bryan)	1.
Greens Bayou (NRG)	5.
Nichols Station (Xcel)	143B.
Plant X (Xcel)	4.
Powerlane (City of Greenville).	ST1, ST2 & ST3.
Spencer (City of Garland)	4 & 5.
Trinidad (Luminant)	6.
Ty Cooke (City of Lubbock)	1 & 2.

2. Our Extension of the BART Model Plant Exemption

As the BART Guidelines note, the standard BART model plant exemption can be extended to values other than the 500 tons/50 km and 1,000 tons/100 km scenarios discussed in the previous section. The BART Guidelines explain that: ''you may find based on representative plant analyses that certain types of sources are not reasonably anticipated to cause or contribute to visibility impairment. To do this, you may conduct your own modeling to establish emission levels and distances from Class I areas on which you can rely to exempt sources with those characteristics.'' [47]

Modeling analyses of representative plants are used to reflect groupings of specific sources with important common characteristics. We conducted CALPUFF modeling to establish emission levels and distances from Class I areas on which we could rely to exempt sources with those characteristics. In this approach, a hypothetical facility (''model plant'') is located between a group of BART-eligible sources and a Class I area. Predominant wind patterns and elevation are considered in locating the model plant such that conditions that would be anticipated to transport pollution from the group of BART-eligible sources to the Class I area are consistent with conditions anticipated to transport pollution from the model plant to the Class I area. The visibility impacts from this model plant are modeled utilizing CALPUFF following the protocol described in the BART Screening TSD. Model plant emissions are adjusted such that the modeled visibility impact (maximum of 98th percentile values for 2001, 2002, and 2003) is below the screening threshold of 0.5 dv. For each model plant, the Q/d value is calculated as the annual emissions (combined NO_X and SO_2 emissions) divided by distance to the Class I area (km) resulting in a critical Q/d value. The Q/d value for each BART-eligible source is calculated based on annual emissions based on the maximum actual 24-hr emission rate and distance to the Class I area and is then compared to the critical Q/d value. For a BART-eligible source with a lower Q/d value than the critical Q/d, it is reasonably anticipated that the visibility impact from the BART-eligible source is lower than the model plant and therefore below the screening threshold and not subject to BART. See the BART Screening TSD for additional discussion and source-specific information used in this model plant screening analysis. By this extension of the BART model plant exemption, we identified the following additional facilities that can be exempted from further analysis:

TABLE 3—EXTENDED BART MODEL PLANT EXEMPT SOURCES

Facility	Units
Barney M. Davis (Talen/Topaz).	1.
Cedar Bayou (NRG)	CBY1 & CBY2.
Decker Creek (Austin Energy)	1 & 2.
Lewis Creek (Entergy)	1 & 2.
Sabine (Entergy)	2, 3, 4 & 5.
Sim Gideon (LCRA)	1, 2 & 3.
V H Braunig (CPS Energy)	1, 2 & 3.

3. Our Use of CALPUFF Modeling To Exempt Sources From Being Subject to BART

Those sources that did not screen out using the model plant approach were modeled directly with CALPUFF if they were in a range of when CALPUFF has

[43] See our TSD, ''Our Strategy for Assessing which Units are Subject to BART for the Texas Regional Haze BART Federal Implementation Plan (BART Screening TSD)'' in our docket.

[44] See the discussion beginning on 70 FR 39104, 39162 (July 6, 2005) [40 CFR part 51, App. Y].

[45] 70 FR at 39118.

[46] 70 FR at 39163 [40 CFR part 51, App. Y].

[47] 70 FR at 39163 [40 CFR part 51, App. Y].

been previously used. Historically CALPUFF has been used at distances up to approximately 400 km. The maximum 98th percentile impact from the modeled years (calculated based on annual average natural background conditions) was compared with the 0.5 dv screening threshold following the modeling protocol described in the BART screening TSD. The BART Guidelines recommend that states use the 24-hour average actual emission rate from the highest emitting day of the meteorological period modeled, unless this rate reflects periods of start-up, shutdown, or malfunction. The maximum 24-hour emission rate (lb/hr) for NO_X and SO_2 from the 2000–2004 baseline period for each source was identified through a review of the daily emission data for each BART-eligible unit from EPA's Air Markets Program Data.[48] For some BART-eligible sources, evaluation of baseline emissions revealed evidence of the installation of NO_X control technology during the baseline period. For those sources, the maximum emission rate was updated to reflect the identified maximum emission rate from the post-control portion of the baseline period. Because daily emissions are not available for PM, the annual average emission rate was doubled to approximate the 24-hr maximum emission rate for PM. See the BART Screening TSD for additional discussion and source-specific information used in the CALPUFF modeling for this portion of the screening analysis. With the use of CALPUFF modeling results, we identified the following additional facilities that can be exempted from further analysis:

TABLE 4—CALPUFF BART EXEMPT SOURCES

Facility	Units
Handley (Exelon)	3, 4 & 5.
Jones (Xcel)	151B & 152B.
Lake Hubbard (Luminant)	1 & 2.
Knox Lee (AEP)	5.
R W Miller (Brazos Elec. Coop).	1, 2 & 3.

Based on these CALPUFF screening analyses using model plant approaches and direct modeling, the following gas[49]/fuel oil fired facilities did not screen out from being subject to BART: Newman, Stryker, Graham, and Wilkes. None of the coal fired facilities screened out in our CALPUFF modeling for the facilities within CALPUFF range.

4. Our Use of CAMx Modeling To Exempt Sources From Being Subject to BART

Some of the BART-eligible sources in Texas are geographically distant from a Class I area, yet have high enough emissions that they may significantly impact visibility at Class I areas in Texas and surrounding states. However, the use of CALPUFF is not recommended for distances much greater than 300 km, and has typically not been used at distances more than approximately 400 km. To determine which sources are anticipated to contribute to visibility impairment the BART guidelines state that CALPUFF or another appropriate model can be used to predict the visibility impacts from a single source at a Class I area. CAMx provides a scientifically defensible platform for assessment of visibility impacts over a wide range of source-to-receptor distances. CAMx is also more suited than some other modeling approaches for evaluating the impacts of SO_2, NO_X, VOC and PM emissions as it has a more robust chemistry mechanism. The CAMx PM Source Apportionment Technology (PSAT) modeling was conducted for those BART-eligible sources that have large SO_2 emissions.[50] In 2006/2007, the TCEQ developed a modeling protocol and analysis using CAMx with the same Plume in Grid and PSAT techniques to evaluate visibility impacts from non-EGU BART sources, as well as to evaluate VOC and PM impacts from all BART-eligible sources to inform the 2009 Texas Regional Haze SIP.[51] [52] This modeling protocol was reviewed by the TCEQ, EPA and FLM representatives specialized in air quality analyses and BART prior to performing the analysis and submission of their regional haze SIP. Our subject-to-BART screening modeling for EGU-sources using CAMx is consistent with the protocol developed and utilized by Texas in their regional haze SIP. We are using more recent model versions with updated science in our analysis.

Consistent with the BART guidelines and our CALPUFF modeling, for the selected BART-eligible sources we used the maximum actual 24-hr emission rates for NO_X and SO_2 from the 2000–2004 baseline period from EPA's Air Markets Program Data[53] and modeled these emission rates as constant emission rates for the entire modeled year. For some of the modeled BART-eligible sources, evaluation of baseline emissions revealed evidence of installation of NO_X control technology during the baseline period. For those sources the maximum emission rate was identified from the post-control portion of the baseline period. Because daily emissions are not available for PM, the annual average emission rate was doubled to approximate the 24-hr maximum emission rate for PM. A BART-eligible source that is shown not to contribute significantly to visibility impairment at any of the Class I areas using CAMx modeling may be excluded from further steps in the BART process. The maximum modeled impact for each source (calculated based on annual average natural background conditions) was compared to the 0.5 dv contribution threshold. See the BART Screening TSD for additional details on the CAMx modeling performed and the model inputs used. The table below summarizes the results of the CAMx screening analysis. As shown in the table below, all sources analyzed with CAMx modeling had impacts greater than 0.5 dv at one or more Class I areas. The most impacted Class I areas based on these results are Wichita Mountains National Wildlife Refuge in Oklahoma (WIMO), Caney Creek Wilderness Area in Arkansas (CACR), and Salt Creek Wilderness Area in New Mexico (SACR). CAMx modeled impacts at single locations for these sources (maximum impact day) ranged from 0.845 dv to 10.498 dv.

[48] *http://ampd.epa.gov/ampd/.*

[49] When we use the term ''gas,'' we mean ''pipeline quality natural gas.''

[50] CAMx results were also obtained and add to our basis of information for coal-fired facilities that have CALPUFF results.

[51] See TX RH SIP Appendix 9–5, ''Screening Analysis of Potential BART-Eligible Sources in Texas''; Revised Draft Final Modeling Protocol Screening Analysis of Potentially BART-Eligible Sources in Texas, Environ Sept. 27, 2006; and Guidance for the Application of the CAMx Hybrid Photochemical Grid Model to Assess Visibility Impacts of Texas BART Sources at Class I Areas, Environ December 13, 2007 all available in the docket for this action.

[52] We approved Texas' subject-to-BART analysis for non-EGU sources which relied on this CAMx modeling in our January 5, 2016 rulemaking (81 FR 296).

[53] *http://ampd.epa.gov/ampd/.*

TABLE 5—CAMx BART SCREENING SOURCE ANALYSIS RESULTS

BART-eligible source	Units	Most impacted Class I area	Maximum delta-dv	Less than 0.5 dv?	Number of modeled days over 0.5 dv [2]	Number of modeled days over 1.0 dv [2]
Big Brown	1 & 2	WIMO	4.017	No	65	33
Coleto Creek	1	WIMO	0.845	No	9	0
Fayette Power	1 & 2	CACR	1.894	No	26	9
Harrington	061B & 062B	SACR	5.288	No	13	5
Martin Lake	1, 2, & 3	CACR	6.651	No	141	99
Monticello	1, 2, & 3	CACR	10.498	No	152	111
Calaveras	J T Deely 1 & 2, OW Sommers 1 & 2.	WIMO	1.513	No	47	6
W A Parish	WAP4, WAP5 & WAP6	CACR	3.177	No	54	22
Welsh [1]	1 & 2	CACR	4.576	No	92	39

[1] Welsh unit 2 has recently shutdown. We note that baseline impacts from unit 1 alone are 2.343 dv at Caney Creek.
[2] Number of days over 0.5 or 1.0 dv at the most impacted Class I area.

5. Summary of Sources that are Subject to BART

Based on the four methodologies described above, the BART-eligible sources in the table below have been determined to cause or contribute to visibility impairment at a nearby Class I area, and we therefore propose to find the sources are subject-to-BART. They are subject to review for visibility impairing pollutants other than NO_X.[54] Foremost, they are subject to SO_2 BART, the visibility impairing pollutant that is the main contributor to the regional haze problem at Class I areas in Texas and neighboring states. The sources are also subject to review for source-specific BART requirements for PM.

TABLE 6—SUMMARY: SOURCES THAT ARE SUBJECT-TO-BART

Facility	Units
Big Brown	1 & 2.
Coleto Creek	1.
Fayette Power	1 & 2.
Harrington	061B & 062B.
Martin Lake	1, 2 & 3.
Monticello	1, 2 & 3.
Calaveras	J T Deely 1 & 2, O W Sommers 1 & 2.
W A Parish	WAP4, WAP5 & WAP6.
Welsh	1 & 2*.
Stryker	ST2.
Graham	2.
Wilkes	1, 2 & 3.
Newman	2, 3 & 4.

* Welsh Unit 2 retired in April, 2016.

C. Our BART Five Factor Analyses

The purpose of the BART analysis is to identify and evaluate the best system of continuous emission reduction based on the BART Guidelines.[55] In determining BART, a state, or EPA when promulgating a FIP, must consider the five statutory factors in section 169A of the CAA: (1) The costs of compliance; (2) the energy and nonair 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). This is commonly referred to as the ''BART five factor analysis.'' The BART Guidelines break the analyses of these requirements down into five steps: [56]

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 following sections treat these steps individually for SO_2. We are combining these steps into one section in our assessment of PM BART that follows the SO_2 sections.

1. Steps 1 and 2: Technically Feasible SO_2 Retrofit Controls

The BART Guidelines state that in identifying all available retrofit control options,

> [Y]ou must identify the most stringent option and a reasonable set of options for analysis that reflects a comprehensive list of available technologies. It is not necessary to list all permutations of available control levels that exist for a given technology—the list is complete if it includes the maximum level of control each technology is capable of achieving.[57]

Adhering to this, we will identify a reasonable set of SO_2 control options, including those that cover the maximum level of control each technology is capable of achieving. In the course of that task, we will note whether any of these technologies are technically infeasible.

The subject-to-BART units identified in Table 6 can be organized into four broad categories, based on their fuel type and the potential types of SO_2 controls that could be retrofitted: (1) Coal-fired EGUs with no SO_2 scrubber, (2) coal-fired EGUs with underperforming SO_2 scrubbers, (3) gas-fired EGUs that do not burn oil, and (4) gas-fired EGUs that occasionally burn fuel oil. This classification is represented below:

[54] The NO_X BART requirement for these EGU sources is not addressed by source-specific limits in this proposal. According to our proposal, participation in CSAPR, in its updated form, would serve as a BART alternative, dispensing with the need for source-specific BART determinations and requirements for NO_X.

[55] See July 6, 2005 BART Guidelines, 40 CFR part 51, Regional Haze Regulations and Guidelines for Best Available Retrofit Technology Determinations.

[56] 70 FR 39104, 39164 (July 6, 2005) [40 CFR part 51, App. Y].

[57] 70 FR at 39164, fn 12 [40 CFR part 51, App. Y]

TABLE 7—SUBJECT TO BART FUEL TYPES AND POTENTIAL SO_2 BART CONTROLS

Facility	Unit	Coal no scrubber	Coal underperforming scrubber	Gas no oil	Gas burns oil
Big Brown (Luminant)	1	X			
Big Brown (Luminant)	2	X			
Coleto Creek (Engie)	1	X			
Fayette (LCRA)*	1				
Fayette (LCRA)*	2				
Graham (Luminant)	2				X
Harrington Station (Xcel)	061B	X			
Harrington Station (Xcel)	062B	X			
J T Deely (CPS Energy)	1	X			
J T Deely (CPS Energy)	2	X			
Martin Lake (Luminant)	1		X		
Martin Lake (Luminant)	2		X		
Martin Lake (Luminant)	3		X		
Monticello (Luminant)	1	X			
Monticello (Luminant)	2	X			
Monticello (Luminant)	3		X		
Newman (El Paso Electric)	2				X
Newman (El Paso Electric)	3				X
Newman (El Paso Electric)	4			X	
O W Sommers (CPS Energy)	1				X
O W Sommers (CPS Energy)	2				X
Stryker Creek (Luminant)	ST2				X
W A Parish (NRG)	WAP4			X	
W A Parish (NRG)	WAP5	X			
W A Parish (NRG)	WAP6	X			
Welsh Power Plant (AEP)	1	X			
Wilkes Power Plant (AEP)	1				X
Wilkes Power Plant (AEP)	2			X	
Wilkes Power Plant (AEP)	3			X	

*The Fayette units have high performing wet Flue Gas Desulfurization scrubbers in place.

For the coal-fired EGUs without an existing scrubber, we have identified four potential control technologies: (1) Coal pretreatment, (2) Dry Sorbent Injection (DSI), (3) Spray Dryer Absorber (SDA), and (4) wet Flue Gas Desulfurization (FGD.) For the coal-fired EGUs with an existing underperforming scrubber we will examine whether that scrubber can be upgraded.

Gas-fired EGUs that do not burn oil have inherently very low SO_2 emissions and there are no known SO_2 controls that can be evaluated.

For gas-fired units that occasionally burn fuel oil, we will follow the BART Guidelines recommendations for oil-fired units: ''For oil-fired units, regardless of size, you should evaluate limiting the sulfur content of the fuel oil burned to 1 percent or less by weight.'' [58] In addition, we will also evaluate the potential for post combustion SO_2 controls for these units.

a. Identification of Technically Feasible SO_2 Retrofit Control Technologies for Coal-Fired Units

Available SO_2 control technologies for coal-fired EGUs consist of either pretreating the coal in order to improve its qualities, or treating the flue gas through the installation of either DSI or some type of scrubbing technology.

Coal Pretreatment

Coal pretreatment, or coal upgrading, has the potential to reduce emissions by reducing the amount of coal that must be burned in order to result in the same heat input to the boiler. Coal pretreatment broadly falls into two categories: coal washing and coal drying.

Coal washing is often described as preparation (for particular markets) or cleaning (by reducing the amount of mineral matter and/or sulphur in the product coal).[59] Washing operations are carried out mainly on bituminous and anthracitic coals, as the characteristics of subbituminous coals and lignite (brown coals) do not lend themselves to separation of mineral matter by this means, except in a few cases.[60] Coal is mechanically sized, then various washing techniques are employed, depending on the particle size, type of coal, and the desired level of preparation.[61] Following the coal washing, the coal is dewatered, and the waste streams are disposed.

Coal washing takes place offsite at large dedicated coal washing facilities, typically located near where the coal is mined. In addition, coal washing carries with it a number of problems:

- Coal washing is not typically performed on the types of coals used in the power plants under consideration, Powder River Basin (PRB) subbituminous and Texas lignites.

[58] 70 FR 39171 (July 6, 2005) [40 CFR 51, App. Y].

[59] Couch, G.R., ''Coal Upgrading to Reduce CO_2 emissions,'' CCC/67, October 2002, IEA Clean Coal Centre.

[60] Ibid.

[61] Various coal washing techniques are treated in detail in Chapter 4 of *Meeting Projected Coal Production Demands In The USA, Upstream Issues, Challenges, and Strategies,* The Virginia Center for Coal and Energy Research, Virginia Polytechnic Institute and State University, contracted for by the National Commission on Energy Policy, 2008.

• Because coal washing is not typically conducted onsite of the power plant, it is viewed as a consideration in the selection of the coal, and not as an air pollution control.

• Coal washing poses significant energy and non-air quality considerations under section 51.308(e)(1)(ii)(A). For instance, it results in the use of large quantities of water,[62] and coal washing slurries are typically stored in impoundments, which can, and have, leaked.[63]

Because of these issues, we do not consider coal washing as a part of our reasonable set of options for analysis as BART SO_2 control technology.

In general, coal drying consists of reducing the moisture content of lower rank coals, thereby improving the heating value of the coal and so reducing the amount of coal that has to be combusted to achieve the same power, thus improving the efficiency of the boiler. In the process, certain pollutants are reduced as a result of (1) mechanical separation of mineralized sulfur (*e.g.,* and iron pyrite) and rocks, and (2) the unit burning less coal to make the same amount of power.

Coal drying can be performed onsite and so can be considered a potential BART control. Great River Energy has developed a patented process which is being successfully utilized at the Coal Creek facility and is potentially available for installation at other facilities.[64] This process utilizes excess waste heat to run trains of moving fluidized bed dryers. The process offers a number of co-benefits, such as general savings due to lower coal usage (*e.g.,* coal cost, ash disposal), less power required to run mills and ID fans, and lower maintenance on coal handling equipment air preheaters, etc.

Although we view this new patented technology for coal drying onsite as a promising path in the near future for generally improving boiler efficiency and obtaining some reduction in SO_2, its analysis presents a number of difficulties. For instance, the degree of reduction in SO_2 is dependent on a number of factors. These include (1) the quality and quantity of the waste heat available at the unit, (2) the type of coal being dried (amount of bound sulfur, *i.e.,* pyrites, moisture content), and (3) the design of the boiler (*e.g.,* limits to steam temperatures, which can decrease due to the reduced flue gas flow through the convective pass of the boiler). We cannot assess many of these site-specific issues and we believe that requesting that the facilities in question do so would require detailed engineering analysis and extend our review time greatly. As a result of these issues, we do not further assess coal drying as part of our reasonable set of options for BART analysis. We expect that this technology may have matured enough such that it can be better assessed for the second planning period.

DSI

DSI is performed by injecting a dry reagent into the hot flue gas, which chemically reacts with SO_2 and other gases to form a solid product that is subsequently captured by the particulate control device. A blower delivers the sorbent from its storage silos through piping directly to the flue gas ducting via injection lances. The most commonly used sorbent is trona, a naturally occurring mineral primarily mined from the Green River Formation in Wyoming. Trona can also be processed into sodium bicarbonate, which is more reactive with SO_2 than trona, but more expensive. Hydrated lime is another potential sorbent but it is less frequently used and little data are available regarding its potential performance and cost. In general, trona is considered the most cost-effective of the sorbents for SO_2 removal. There are many examples of DSI being used on coal-fired EGUs to control SO_2. However, DSI may not be technically feasible at every coal-fired EGU. For instance, Luminant states in its response to one of our Section 114(a) letters regarding its Big Brown and Monticello units:[65]

Luminant commissioned the study of dry sorbent injection (''DSI'') at these units in 2011. These studies determined that a very high feed rate (in the range of 20–30%) was required to achieve modest SO_2 removal. Further, it was determined that other economic and operational factors make the use of DSI infeasible. For example, sorbent build-up was determined to cause degraded performance of the control equipment over time, as well as significant, repeat down time on a regular basis (*i.e.,* every few days) to remove the buildup. In addition to the high cost of the sorbent required, the disposal and transport of the used sorbent (a Texas Class 1 waste) would result in significant additional cost. Thus, the use of DSI was determined infeasible from both an operational and economic point of view, and further evaluation has been discontinued.

As a consequence of this statement, which is discussed more fully in the CBI material Luminant has submitted and in our TSD, we have concluded that DSI is not a feasible alternative for the Big Brown and Monticello facilities. For all unscrubbed, coal-fired BART-subject units other than the Big Brown and Monticello facilities, although individual installations may present technical difficulties or poor performance due to the suboptimization of one or more of the above factors, we believe that DSI is technically feasible and should be considered as a potential BART control.

SO_2 Scrubbing Systems

In contrast to DSI, SO_2 scrubbing techniques utilize a large dedicated vessel in which the chemical reaction between the sorbent and SO_2 takes place either completely or in large part. Also in contrast to DSI systems, SO_2 scrubbers add water to the sorbent when introduced to the flue gas. The two predominant types of SO_2 scrubbing employed at coal-fired EGUs are wet FGD, and Spray Dry Absorber (SDA). More recently, Circulating Dry Scrubbers (CDS) have been introduced. The EIA reports the following types of flue gas desulfurization systems as being operational in the U.S. for 2015:

TABLE 8—EIA REPORTED DESULFURIZATION SYSTEMS IN 2015

Type	Number of installations
Wet spray tower scrubber	296
Spray dryer absorber	269
Circulating dry scrubber	50
Packed tower wet scrubber	6
Venturi wet scrubber	48
Jet bubbling reactor	31
Tray tower wet scrubber	42
Mechanically aided wet scrubber.	4
DSI	106
Other	1
Unspecified	1
Total	854

Excluding the DSI installations, EIA lists 748 SO_2 scrubber installations in operation in 2015. Of these, 296 are listed as being spray type wet scrubbers, with an additional 42 listed as being

[62] ''Water requirements for coal washing are quite variable, with estimates of roughly 20 to 40 gallons per ton of coal washed (1 to 2 gal per MMBtu) (Gleick, 1994; Lancet, 1993).'' Energy Demands on Water Resources, Report to Congress on the Interdependency of Energy and Water, U.S. Department Of Energy, December 2006.

[63] Committee on Coal Waste Impoundments, Committee on Earth Resources, Board on Earth Sciences and Resources, Division on Earth and Life Studies; *Coal Waste Impoundments, Risks, Responses, and Alternatives;* National Research Council; National Academy Press, 2002.

[64] DryFining™ is the company's name for the process. It is described here: *http://www.powermag.com/improve-plant-efficiency-and-reduce-co2-emissions-when-firing-high-moisture-coals/.*

[65] Luminant's 6/17/14 response to EPA's 5/20/14 Section 114(a) request for information relating to the Big Brown, Martin Lake, Monticello, and Sandow generating stations.

tray type wet scrubbers.[66] An additional 269 are listed as being spray dry absorber types. Consequently, spray type or tray type wet scrubbers (wet FGD) account for approximately 45% of all scrubber systems, and spray dry scrubbers (SDA) account for approximately 36% of all scrubber systems that were operational in the U.S. in 2015.

We consider some of the other scrubber system types (*e.g.,* venturi and packed wet scrubber types) to be older, outdated technologies (that are not existing controls or factor into considerations regarding existing controls) and therefore will not be considered in our BART analysis. Jet bubbling reactors and circulating dry scrubbers are relatively new technologies, with limited installations, and little information is available with which to characterize them or their suitability as a retrofit control option. Therefore, they too will not be further considered as part of our reasonable set of options for analysis for BART controls.

In summary, wet FGD and SDA installations account for approximately 81% of all scrubber installations in the U.S. and as such constitute a reasonable set of SO_2 scrubber control options. The vast majority of the wet FGD and SDA installations utilize limestone and lime, respectively as reagents. In addition, these technologies cover the maximum level of SO_2 control available. As described above, these controls are in wide use and have been retrofitted to a variety of boiler types and plant configurations. We therefore see no technical infeasibility issues and believe that limestone wet FGD and lime SDA should be considered as potential BART controls for all of the unscrubbed coal-fired BART-eligible units.

b. Identification of Technically Feasible SO_2 Retrofit Control Technologies for Gas-Fired Units that Burn Oil

Reduction in Fuel Oil Sulfur

A number of the units we proposed in Table 6 as being subject to BART primarily fire gas, but have occasionally fired fuel oil in the past as reported by the EIA databases: EIA–767, EIA–906/920, and EIA–923,[67] which indicate the historic quantities of fuel oil burned and the type and sulfur content of that fuel oil. These units are identified below in Table 9:

TABLE 9—GAS UNITS THAT OCCASIONALLY BURN OIL AND ARE SUBJECT TO BART

Facility	Unit(s)	Gas turbine	Steam turbine
Graham (Luminant)	2		X
Newman (El Paso Electric)	2, 3		X
O W Sommers (CPS Energy)	1, 2		X
Stryker Creek (Luminant)	ST2		X
Wilkes Power Plant (AEP)	1		X

The BART Guidelines advise that for oil-fired units, regardless of size, limits on fuel oil sulfur content should be considered in the BART evaluation.[68] All of the subject units are limited by permit to burning oil with a sulfur content of no more than 0.7% sulfur by weight.[69] In analyzing the technical feasibility under BART of these facilities burning fuel oils of sulfur contents lower than historically burned, we investigated two issues: (1) Is lower sulfur fuel oil available and what is its cost, and (2) are there any technical issues in burning a lower sulfur fuel oil that could add to the cost of that oil? All of the units have either burned Distillate Fuel Oil (DFO) or have switched between DFO and Residual Fuel Oil (RFO), thus demonstrating the ability to burn DFOs of the type under consideration for SO_2 BART. We therefore conclude that lower sulfur DFOs are a technically feasible retrofit control option under BART. Lower sulfur DFOs carry no capital costs. Any cost increases relate to purchase price differences.

SO_2 Scrubber Feasibility for Gas/Oil-Fired Boilers

We are aware of instances in which FGDs of various types have been installed or otherwise deemed feasible on a boiler that burns oil.[70] Consequently, we will consider the installation of various types of scrubbers to be technically feasible.

c. Identification of Technically Feasible SO_2 Control Technologies for Scrubber Upgrades

In our recent Texas-Oklahoma FIP,[71] we presented a great deal of information that concluded that the existing scrubbers for a number of facilities could be very cost-effectively upgraded.[72] That information is included in this proposal.[73] It contains a comprehensive survey of available literature concerning the kinds of upgrades that have been performed by industry on scrubber systems similar to the ones installed on the units included in this proposal. We then reviewed all of the information we had at our disposal regarding the status of the existing scrubbers for each unit, including any upgrades the facility may have already installed. We finished by calculating the cost-effectiveness of scrubber upgrades, using the facility's own information, obtained as a result of our Section 114 collection efforts. The companies that supplied this information have asserted a Confidential Business Information (CBI) claim for much of it, as provided in 40 CFR 2.203(b). We therefore redacted any CBI information we utilize in our analyses, or otherwise disguised it so that it cannot be traced back to its specific source. Of the facilities we evaluated for scrubber upgrades in that action, Martin Lake Units 1, 2, and 3; and Monticello Unit 3 are subject to BART and are thus a part of this proposal.

[66] Trays are often employed in spray type wet scrubbers and EIA lists some of the wet spray tower systems as secondarily including trays.

[67] EIA-767: *http://www.eia.gov/electricity/data/eia767/.* EIA–906/920 and EIA–923: *http://www.eia.gov/electricity/data/eia923/.*

[68] 70 FR at 39171.

[69] In addition, the Newman units 2 and 3 are restricted to burning fuel oil for no more than 10% of their annual operating time.

[70] Crespi, M. ''Design of the FLOWPAC WFGD System for the Amager Power Plant.'' Power-Gen FGD Operating Experience, November 29, 2006, Orlando, FL.

Babcock and Wilcox. ''Wet Flue Gas Desulfurization (FGD) Systems Advanced Multi-Pollutant Control Technology.'' See Page 4: ''We have also provided systems for heavy oil and Orimulsion fuels.''

DePriest, W; Gaikwad, R. ''Economics of Lime and Limestone for Control of Sulfur Dioxide.'' See page 7: ''A CFB unit, in Austria, is on a 275 MW size oil-fired boiler burning 1.0–2.0% sulfur oil.''

[71] 81 FR 321.

[72] See information presented in Sections 6 and 7 of the Cost TSD.

[73] That information is included in our BART FIP TSD, Appendix B.

2. Step 3: Evaluation of SO_2 Control Effectiveness

In the following subsections, we evaluate the control levels each technically feasible technology is capable of achieving for the coal and gas units. In so doing, we consider the maximum level of control each technology is capable of delivering based on a 30 Boiler Operating Day (BOD) period. As the BART Guidelines direct, ''[y]ou should consider a boiler operating day to be any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.'' [74] To calculate a 30-day rolling average based on BOD, the average of the last 30 ''boiler operating days'' is used. In other words, days are skipped when the unit is down, as for maintenance. In effect, this provides a margin of safety by eliminating spikes that occur at the beginning and end of outages.

a. Evaluation of SO_2 Control Effectiveness for Coal Fired Units

Control Effectiveness of DSI

We lack the site-specific information, which we believe requires an individual performance test, in order to be able to accurately determine the maximum DSI SO_2 removal efficiency for the individual units listed in Table 7. We are aware that a number of the subject-to-BART coal-fired units have conducted such testing. However, although we have examined that testing, most of the facilities have claimed it as CBI and requested protection from public disclosure as provided by 40 CFR part 2.

However, we nevertheless must evaluate DSI as a viable, proven method of SO_2 control. We must do the same for SO_2 scrubbing, and in so doing, compare the visibility benefits and costs of each technology in order to inform our proposed BART determinations. We therefore propose the following methodology:

- We will evaluate each unit at its maximum recommended DSI performance level, according to the IPM DSI documentation,[75] assuming milled trona: 80% SO_2 removal for an ESP installation and 90% SO_2 removal for a baghouse installation. This level of control is within the range that can be achieved by SO_2 scrubbers, and thus allows a better comparison of the costs of DSI and scrubbers.
- However, (1) we do not know whether a given unit is actually capable of achieving these control levels and (2) we believe it is useful to evaluate lesser levels of DSI control (and correspondingly lower costs). We therefore also evaluate all the units at a DSI SO_2 control level of 50%, which we believe is likely achievable for most units.
- We invite comments on whether particular units have performed DSI testing and have concluded they cannot achieve a SO_2 reduction between 50% and 80/90%. Any data to support such a conclusion should be submitted along with those comments.

Control Effectiveness of Wet FGD and SDA

We have assumed a wet FGD level of control to be a maximum of 98% not to go below 0.04 lbs/MMBtu, in which case, we assume the percentage of control equal to 0.04 lbs/MMBtu. As we discuss later in this proposal, we will conduct our wet FGD control cost analysis using the wet FGD cost algorithms, as employed in version 5.13 of our IPM model.[76] The IPM wet FGD Documentation states: ''The least squares curve fit of the data was defined as a ''typical'' wet FGD retrofit for removal of 98% of the inlet sulfur. It should be noted that the lowest available SO_2 emission guarantees, from the original equipment manufacturers of wet FGD systems, are 0.04 lb/MMBtu.'' As we established in our Oklahoma FIP,[77] this level of control is achievable with wet FGD. This level of control was also employed in our recent Texas-Oklahoma FIP.[78] We received a comment challenging this level of control and we responded to that comment in our final action on our Texas-Oklahoma FIP and incorporate that response in this proposed action.[79] We continue to conclude that our proposed level of control for wet FGD is reasonable.

As with our Oklahoma FIP, we have assumed a SDA level of control equal to 95%, unless that level of control would fall below an outlet SO_2 level of 0.06 lb/MMBtu, in which case, we assume the percentage of control equal to 0.06 lbs/MMBtu. See our response to comments in our previous Oklahoma FIP.[80] In that FIP, we finalized the same emission limit of 0.06 lbs/MMBtu on a 30 BOD average for 6 coal-fired EGUs. We justified those limits based on the same SDA technology, using a combination of industry publications and real world monitoring data. Much of that information is summarized in our response to a comment to that action [81] and in our TSD. We continue to conclude that our proposed level of control for SDA is reasonable.

b. Evaluation of SO_2 Control Effectiveness for Gas Fired Units

The control effectiveness of switching from a higher sulfur fuel oil to a lower sulfur fuel oil lies in the reduction in sulfur emissions. The emissions reduction depends on the percentage reduction from the sulfur contents of the fuel oil that forms the SO_2 baseline to the replacement fuel oil. Ultimately, the highest level of control would result from a switch from the highest percentage sulfur the units are permitted to burn, 0.7% to the lowest DFO available, ultra-low sulfur diesel, which has a sulfur content of 0.0015%. This would equate to a control effectiveness of 99.8%. Lesser levels of controls are also possible. We will evaluate a range of control effectiveness in switching to lower sulfur fuel oils in the next section.

[74] 70 FR 39103, 39172 (July 6, 2005), [40 CFR part 51, App. Y].

[75] IPM Model—Updates to Cost and Performance for APC Technologies, Dry Sorbent Injection for SO_2 Control Cost Development Methodology, Final March 2013, Project 12847–002, Systems Research and Applications Corporation, Prepared by Sargent & Lundy, p. 7.

[76] IPM Model—Updates to Cost and Performance for APC Technologies, Dry Sorbent Injection for SO_2 Control Cost Development Methodology, Final March 2013, Project 12847–002, Systems Research and Applications Corporation, Prepared by Sargent & Lundy. Documentation for v.5.13: Chapter 5: Emission Control Technologies, Attachment 5–5: DSI Cost Methodology, downloaded *https://www.epa.gov/sites/production/files/2015-08/documents/attachment_5-5_dsi_cost_methodology.pdf.*

IPM Model—Updates to Cost and Performance for APC Technologies, SDA FGD Cost Development Methodology, Final March 2013, Project 12847–002, Systems Research and Applications Corporation, Prepared by Sargent & Lundy. Documentation for v. 5.13: Chapter 5: Emission Control Technologies, Attachment 5–2: SDA FGD Cost Methodology, downloaded from *https://www.epa.gov/sites/production/files/2015-08/documents/attachment_5-2_sda_fgd_cost_methodology_3.pdf.*

IPM Model—Updates to Cost and Performance for APC Technologies, wet FGD Cost Development Methodology, Final March 2013, Project 12847–002, Systems Research and Applications Corporation, Prepared by Sargent & Lundy. Documentation for v.5.13: Chapter 5: Emission Control Technologies, Attachment 5–1: Wet FGD Cost Methodology, downloaded from *https://www.epa.gov/sites/production/files/2015-08/documents/attachment_5-1_wet_fgd_cost_methodology.pdf.*

[77] As discussed previously in our TSD for that action, control efficiencies reasonably achievable by dry scrubbing and wet scrubbing were determined to be 95% and 98% respectively. 76 FR 81742); *Oklahoma* v. *EPA*, 723 F.3d 1201 (July 19, 2013), cert. denied (U.S. May 27, 2014).

[78] 81 FR 321.

[79] That information is included in our BART FIP TSD, Appendix A.

[80] 76 FR 81728.

[81] Response to Technical Comments for Sections E through H of the **Federal Register** Notice for the Oklahoma Regional Haze and Visibility Transport Federal Implementation Plan, Docket No. EPA–R06–OAR–2010–0190, 12/13/2011. See comment and response beginning on page 91.

Because we are unaware of any scrubber installations on oil fired units in the U.S., we have no information on their control effectiveness. However, we see no technical reason why the control effectiveness of FGDs installed on gas-fired units that occasionally burn fuel oil should not be equal to that of FGDs installed on coal-fired units.

3. Step 4: Evaluate Impacts and Document the Results for SO_2

The BART Guidelines offers the following with regard to how Step 4 should be conducted: [82]

After you identify the available and technically feasible control technology options, you are expected to conduct the following analyses when you make a BART determination:

Impact analysis part 1: Costs of compliance,

Impact analysis part 2: Energy impacts, and

Impact analysis part 3: Non-air quality environmental impacts.

Impact analysis part 4: Remaining useful life.

We evaluate the cost of compliance on a unit-by unit basis, because control cost analysis depends on specific factors that can vary from unit to unit. However, we generally evaluate the energy impacts, non-air quality impacts, and the remaining useful life for all the units in question together because in this instance there are no appreciable differences in these factors from unit to unit.[83]

In developing our cost estimates for the units in Table 7, we rely on the methods and principles contained within the EPA Air Pollution Control Cost Manual (the Control Cost Manual, or Manual).[84] We proceed in our SO_2 costing analyses by examining the current SO_2 emissions and the level of SO_2 control, if any, for each of the units listed in Table 7. For the coal units without any SO_2 control, we calculate the cost of installing DSI, a SDA scrubber, and a wet FGD scrubber. For the gas units that burn oil, we evaluate the cost of switching to lower sulfur fuel oils and installing scrubbers.

In order to estimate the costs for DSI, SDA scrubbers, and wet FGD scrubbers, we programmed the DSI, SDA and wet FGD cost algorithms, as employed in version 5.13 of our IPM model, referenced above, into three spreadsheets. These cost algorithms calculate the Total Project Cost (TPC), Fixed Operating and Maintenance (Fixed O&M) costs, and Variable Operating and Maintenance (Variable O&M) costs. We then performed DSI, SDA and wet FGD cost calculations for each unit listed in Table 7 that did not already have SO_2 control.[85] These cost models were based on costs escalated to 2012 dollars.[86] Because the IPM 5–13 cost algorithms were calculated in 2012 dollars, we have escalated them to 2016, using the annual Chemical Engineering Plant Cost Indices (CEPCI).

a. Impact Analysis Part 1: Cost of Compliance for DSI, SDA, and Wet FGD

As we discuss above and in our Cost TSD, we evaluated each unit at its maximum recommended level of control, considering the type of SO_2 control device. Below, we present a summary of our DSI, SDA, and wet FGD cost analysis: [87]

TABLE 10—SUMMARY OF DSI, SDA, AND WET FGD COST ANALYSIS

Facility	Unit	Control	Control level (%)	SO_2 reduction (tpy)	2016 Annualized cost	2016 Cost effectiveness ($/ton)	2016 Incremental cost-effectiveness ($/ton)
Big Brown	1	DSI	50	14,448	$29,468,587	$2,040	
		DSI	90	26,006	72,131,749	2,774	$3,691
		SDA	95	27,453	35,297,532	1,286	−25,456
		Wet FGD	98	28,320	33,673,102	1,189	−1,874
	2	DSI	50	15,320	29,342,350	1,915	
		DSI	90	27,576	71,322,593	2,586	3,425
		SDA	95	29,108	35,359,239	1,215	−23,475
		Wet FGD	97.9	29,998	33,817,952	1,127	−1,732
Monticello	1	DSI	50	4,787	11,408,872	2,383	
		DSI	90	8,617	25,409,128	2,949	3,655
		SDA	95	9,095	24,294,319	2,671	−2,332
		Wet FGD	97	9,286	25,236,699	2,718	4,934
	2	DSI	50	4,129	9,742,648	2,360	
		DSI	90	7,431	21,418,734	2,882	3,536
		SDA	95	7,844	23,126,113	2,948	4,134
		Wet FGD	96.8	7,995	24,233,133	3,031	7,331
Coleto Creek	1	DSI	50	7,376	16,246,169	2,203	
		DSI	90	13,277	34,841,379	2,624	3,151
		SDA	92.4	13,632	29,445,018	2,160	−15,201
		Wet FGD	94.9	14,005	29,786,106	2,127	914
Harrington	061B	DSI	50	2,477	9,187,608	3,710	
		DSI	80	3,962	16,073,779	4,057	4,637
		SDA	90.2	4,466	17,455,679	3,909	2,742
	062B	DSI	50	2,455	6,524,937	2,658	
		DSI	*88.9	4,364	11,981,111	2,746	2,858
		SDA	88.9	4,364	18,240,127	4,180	N/A
J T Deely	1	DSI	50	3,072	8,854,319	2,883	

[82] 70 FR 39166.

[83] To the extent these factors inform the cost of controls, consistent with the BART Guidelines, they do inform our considerations on a unit-by-unit basis.

[84] EPA Air Pollution Control Cost Manual, Sixth Edition, EPA/452/B–02–001, January 2002 available at *http://www.epa.gov/ttncatc1/dir1/c_allchs.pdf.*

[85] These spreadsheets are entitled, ''DSI Cost IPM 5–13 TX BART.xlsx,'' ''SDA Cost IPM 5–13 TX BART.xlsx,'' and ''Wet FGD Cost IPM 5–13 TX BART.xlsx,'' and are located in our Docket.

[86] Ibid., p.1: ''The data was converted to 2012 dollars based on the Chemical Engineering Plant Index (CEPI) data.''

[87] In this table, the capital cost is the total cost of constructing the facility. The annualized cost is the sum of the annualized capital cost and the annualized operational cost. See our Cost TSD for more information on how these costs were calculated.

TABLE 10—SUMMARY OF DSI, SDA, AND WET FGD COST ANALYSIS—Continued

Facility	Unit	Control	Control level (%)	SO_2 reduction (tpy)	2016 Annualized cost	2016 Cost effectiveness ($/ton)	2016 Incremental cost-effectiveness ($/ton)
		DSI	90	5,529	18,071,878	3,269	3,752
		SDA	91.3	5,609	21,689,526	3,867	45,221
		Wet FGD	94.2	5,787	22,555,395	3,898	4,864
	2	DSI	50	3,222	9,865,798	3,062	
		DSI	90	5,800	20,229,233	3,488	4,020
		SDA	91.3	5,884	21,812,518	3,707	18,849
		Wet FGD	94.2	6,070	22,530,901	3,712	3,862
Welsh	1	DSI	50	3,343	8,963,761	3,469	
		DSI	*87.2	5,832	23,090,408	3,960	5,676
		SDA	87.2	5,832	22,697,048	3,892	N/A
		Wet FGD	91.5	6,116	23,998,161	3,924	4,581
W.A. Parish	5	DSI	50	6,712	15,002,337	2,235	
		DSI	90	12,081	30,865,711	2,555	2,955
		SDA	92.1	12,364	31,195,787	2,523	1,166
		Wet FGD	94.7	12,717	30,735,030	2,417	−1,305
	6	DSI	50	7,525	16,014,988	2,128	
		DSI	90	13,545	33,302,528	2,459	2,872
		SDA	92.1	13,862	32,758,784	2,363	−1,715
		Wet FGD	94.7	14,258	32,215,226	2,259	−1,373

*DSI control level limited to that of SDA.

b. Impact Analysis Part 1: Cost of Compliance for Scrubber Upgrades

In our BART FIP TSD, we analyze those units listed in Table 7 with an existing SO_2 scrubber in order to determine if cost-effective scrubber upgrades are available. Of our subject-to-BART units, Martin Lake Units 1, 2, 3; Monticello Unit 3, and Fayette Units 1 and 2 are currently equipped with wet FGDs. Of these, all but the Fayette units were analyzed for scrubber upgrades in our Texas-Oklahoma FIP. For all but the Fayette units, we propose to adopt the total annualized cost calculations used to make the cost-effectiveness calculations in our Texas-Oklahoma FIP in this action. We acknowledge that these costs could change slightly, due to changes in the costs of various materials and services. However, these costs were calculated in 2013 dollars. Escalating them to 2015 dollars would result in a reduction in cost, which we conservatively do not take into consideration.[88]

In our Texas-Oklahoma FIP action, after responding to comments we revised our proposed cost-effectiveness basis from where all scrubber upgrades were less than $600/ton, to where all scrubber upgrades ranged from between $368/ton to $910/ton.[89] As with our Texas-Oklahoma FIP, we are limited in what information we can include in this section, because we used information that was claimed as CBI. This information was submitted in response to our Section 114(a) requests. The following summary is based on information not claimed as CBI.

- The absorber system had either already been upgraded to perform at an SO_2 removal efficiency of at least 95%, or it could be upgraded to perform at that level using proven equipment and techniques.
- The SO_2 scrubber bypass could be eliminated, and the additional flue gas could be treated by the absorber system with at least a 95% removal efficiency.
- Additional modifications necessary to eliminate the bypass, such as adding fan capacity, upgrading the electrical distribution system, and conversion to a wet stack could be performed using proven equipment and techniques.
- The additional SO_2 emission reductions resulting from the scrubber upgrade are substantial, ranging from 68% to 89% reduction from the current emission levels, and are cost-effective.

We now update these calculations for 2011–2015 data.[90] The revised scrubber upgrade results for Martin Lake Units 1, 2, and 3; and Monticello Unit 3 are presented below in Table 11:

TABLE 11—SUMMARY OF UPDATED SCRUBBER UPGRADE RESULTS

Unit	2011–2015 3-yr avg. SO_2 emissions (eliminate max and min) (tons)	SO_2 emissions at 95% control (tons)	SO_2 emissions reduction due to scrubber upgrade (tons)	SO_2 emission rate at 95% control (lbs/MMBtu)
Monticello 3	8,136	1,180	6,956	0.05
Martin Lake 1	19,040	3,208	15,832	0.12
Martin Lake 2	17,973	3,393	14,580	0.12
Martin Lake 3	16,113	2,591	13,522	0.11
Total SO_2 Removed			50,890	

[88] The CEPCI for 2013 is 567.3 and that for 2015 is 556.3. Therefore, the costs would be multiplied by a factor of 556.8/567.3, which is approximately 0.98.

[89] 81 FR 318.

[90] See Coal vs CEM data 2011–2015.xlsx.

As we note above, we updated the cost-effectiveness for each of these units. Because those calculations depended on information claimed by the companies as CBI we cannot present it here, except to note that in all cases, the cost-effectiveness was $1,156/ton or less. We invite the facilities listed above to make arrangements with us to view our complete updated cost analysis for their units.

The Fayette Units 1 and 2 are currently equipped with high performing wet FGDs. Both units have demonstrated the ability to maintain a SO_2 30 BOD average below 0.04 lbs/MMBtu for years at a time.[91] As we discuss above, we evaluate BART demonstrating that retrofit wet FGDs should be evaluated at 98% control not to go below 0.04 lbs/MMBtu. Because the Fayette units are performing below this level, we propose that no scrubber upgrades are necessary. We propose to find that the Fayette Units 1 and 2 maintain a 30 Boiler Operating Day rolling average SO_2 emission rate of 0.04 lbs/MMBtu based on the actual emissions data we present above. We believe that based on its demonstrated ability to maintain an emission rate below this value on a 30 BOD basis, it can consistently achieve this emission level.

c. Impact Analysis Part 1: Cost of Compliance for Gas Units That Burn Oil

As we noted in Section III.C.1.b, a number of the units we proposed in Table 9 as being subject to BART primarily fire gas, but have occasionally fired fuel oil in the past as reported by the EIA. These units are limited by their permits to burning oil with a sulfur content of no more than 0.7% sulfur by weight. We proposed to consider both a reduction in fuel oil sulfur and SO_2 scrubbers as potential BART controls. Below we consider the cost of these potential controls.

Reduction in Fuel Oil Sulfur

In order to determine the cost of these facilities switching to lower sulfur content fuel oils, we sent the Graham, Newman, Stryker Creek, and the Wilkes facilities Section 114 letters requesting certain information.[92] We received very limited information in response to one of our questions concerning the present cost of the historic fuel oil burned, and the cost of various lower sulfur replacement fuel oils. Because of this, we were unable to compile facility-specific information on the cost of switching to lower sulfur fuel oils. Consequently, we considered the best available information by consulting more general information from the EIA, which reports the prices for various refinery petroleum products on a monthly and annual basis. Below is a summary of various distillate and residual fuel oil products for 2001 to 2015, averaged across the U.S.[93]

TABLE 12—SELECTED EIA REPORTED ANNUAL REFINER PETROLEUM PRICES

Date	West Texas intermediate crude oil—Cushing Oklahoma ($/bbl)	U.S. no. 2 diesel wholesale/resale price by refiners ($/gallon)	U.S. no. 2 fuel oil wholesale/resale price by refiners ($/gallon)	U.S. no. 4 distillate wholesale/resale price by refiners ($/gallon)
2015	48.66	1.667	1.565	1.215
2014	93.17	2.812	2.741	2.333
2013	97.98	3.028	2.966	2.767
2012	94.05	3.109	3.031	
2011	94.88	3.034	2.907	2.801
2010	79.48	2.214	2.147	
2009	61.95	1.713	1.657	1.561
2008	99.67	2.994	2.745	2.157
2007	72.34	2.203	2.072	1.551
2006	66.05	2.012	1.834	1.395
2005	56.64	1.737	1.623	1.377
2004	41.51	1.187	1.125	1.033
2003	31.08	0.883	0.881	0.793
2002	26.18	0.724	0.694	0.663
2001	25.98	0.784	0.756	0.697
2000	30.38	0.898	0.886	0.778

Lacking facility-specific pricing information, for the purposes of calculating the cost of compliance, we make the following assumptions:

- No. 4 distillate is the type of fuel oil currently available that most closely approximates the types of fuel oil that were historically burned by the facilities. It is available in a range of sulfur up to the facilities' permitted maximum of 0.7% sulfur by weight or 7,000 ppm. We will use the cost of this fuel oil in constructing ''business as usual'' scenarios of the annual cost of fuel oil.
- No. 2 fuel oil is available at approximately 3,000 ppm, which roughly corresponds to the sulfur level present in No. 2 fuel oil prior to our implementation of the Ultra-Low-Sulfur Diesel (ULSD) regulations.[94] We will use the cost of this fuel oil in constructing a ''medium control'' annual cost of fuel oil.
- No. 2 diesel fuel corresponds to ULSD, with a sulfur content of 15 ppm. We will use the cost of this fuel oil in constructing a ''high control'' annual cost of fuel oil.

Having identified a reasonable set of historical and lower sulfur fuel oils, we turned to the matter of establishing SO_2 baselines. We would expect that regardless of the baseline selected, a cost-effectiveness calculation that simply depended on differing fuel oil costs and the resulting reductions in SO_2, would result in the same value. In other words, the cost-effectiveness in $/ton is independent of the SO_2 baseline, since *in this case,* it is calculated on a unit basis—the increased cost in burning a unit of fuel divided by the increased reduction in the resulting

[91] See our BART FIP TSD for graphs of this data.

[92] Copies of these letters and the facilities' responses are in our docket. We inadvertently did not send the O W Sommers a letter.

[93] EIA Refiner Petroleum Product Prices by Sales Type, available here: *http://www.eia.gov/dnav/pet/pet_pri_refoth_dcu_nus_a.htm; http://www.eia.gov/dnav/pet/pet_pri_spt_s1_a.htm.*

[94] 69 FR 39073: ''Both high sulfur No. 2–D and No. 2 fuel oil must contain no more than 5000 ppm sulfur,131 and currently [as of the date of our final rule, 6/29/04] averages 3000 ppm nationwide.''

SO_2. While the above is true, reported data for these units does not match this expectation. This can be illustrated by examining selected EIA and emissions data for the Graham Unit 2:

TABLE 13—GRAHAM UNIT 2 EXAMPLE DISCORDANCE IN FUEL OIL BURNED AND REPORTED SO_2

Date (month/year)	Quantity fuel oil burned (bbls)	Reported SO_2 for month (tons)	Reported EIA sulfur content (wt %)
Mar-02	9,800	21.614	0.65
Feb-03	8,400	90.389	0.66
Jun-12	18,177	0.064	0.50
Jul-12	5,657	0.07	0.50

As can be seen from the above table, even though the reported sulfur content of the fuel oil in March 2002 and February 2003 was approximately the same, and the quantity burned was fairly close, the reported SO_2 emissions were significantly different. Similarly, although the amount of fuel oil burned in June 2012 was more than three times that burned in July 2012 (at the same sulfur content), the reported SO_2 emissions in June 2012 were less than that in July 2012. Also, although the fuel oil sulfur content in the 2012 examples was only slightly less than that in the 2002/2003 examples, and the amount of fuel oil burned was the same order of magnitude, the resulting reported SO_2 emissions in 2012 were three orders of magnitude less than that in 2002/2003. We conclude that either the values for the EIA fuel quantities, the EIA fuel oil sulfur contents, and/or the reported SO_2 emissions are in error. Further examination of the CAMD emissions data for Graham and Stryker revealed that the data contained a large amount of substitute data for SO_2 emissions and heat input during periods when the units burned fuel oil.

As a consequence of this discordance between the type and amount of fuel oil burned and the reported SO_2 emissions, we cannot rely on historical SO_2 emissions to construct a baseline, because a barrel of fuel oil with a given sulfur content does not result in a consistent reported SO_2 value over time. Instead, we will conduct our cost-effectiveness analysis on the basis of unit values of 1,000 barrels, using the following assumptions:

- Fuel oil costs will be based on the 2015 U.S. average prices as reported in Table 12 for No. 4 distillate at 0.7 wt. % (the permitted maximum for all units) as the current business as usual fuel, No. 2 fuel oil at 0.3 wt. % as the moderate control option, and No. 2 diesel at 0.0015% as the high control option.
- The emission factor for calculating the tons of sulfur emitted by the three fuel oils are taken from AP 42, *Compilation of Air Pollutant Emissions Factors.*[95]

Below is the result of that calculation:

TABLE 14—COST EFFECTIVENESS OF SWITCHING TO LOWER SULFUR FUEL OILS

Level of control	Cost for 1,000 barrels baseline ($/yr)	Tons reduced for 1,000 barrels	Cost effectiveness for 1,000 barrels ($/ton)	Incremental cost-effectiveness ($/ton)
Business as usual (No. 4 distillate $1.215/gal)	$51,030	N/A	N/A	.....
Moderate control (No. 2 fuel oil $1.565/gal)	65,730	1.26	11,218	.....
High control (ULSD $1.667/gal)	70,014	2.20	8,627	−2,756

We suspect our price information for ULSD may be high, as the Wilkes facility indicated in its reply to our Section 114 request that its 8/12/16 contract for oil was for ULSD, which had an index price of $1.423/gallon. Assuming this price and retaining the same price for our business as usual No. 4 distillate fuel oil of $1.215/gallon, results in a cost-effectiveness of $3,970/ton—a significant improvement in cost-effectiveness. We invite the affected facilities to provide site-specific information for delivery of ULSD.

Scrubber Retrofits

Elsewhere in our proposal, we conclude that certain types of wet scrubbers were technically feasible as potential control options for gas boilers that occasionally burn oil, similar to the ones under BART review here. Were we to calculate the cost-effectiveness of a wet FGD, similar to those under consideration for the coal units undergoing BART review, we could expect that the capital and operating costs would be on the same order, as displayed in Table 10. It is a straightforward exercise to demonstrate that the installation of such a scrubber on any of the gas-fired units that occasionally burn oil would result in a very high cost-effectiveness value.

For instance, taking the smallest total annualized wet FGD cost in Table 10, corresponding to the Harrington Unit 0161B (approximately the same size as the Graham Unit 2), results in a value of $19,145,500. Assuming a 98% reduction from a baseline equal to the largest annual SO_2 emissions from any of the gas units, 1,287 tons/year (Graham Unit 2, 2001), results in a SO_2 reduction of 1,261 tons/year. The cost-effectiveness is then $15,183/ton, which is very high for a SO_2 scrubber. In addition, the annual SO_2 values for Graham Unit 2 from 2002 to 2015, and the annual SO_2 values for the remaining units, have always been an order of magnitude less than the 2001 Graham Unit 2 value. Although we have not modeled the visibility benefit of

[95] The emission factor (lb/10^3 gal) used is 150 × S, where S = weight % sulfur, taken from AP 42, Fifth Edition, Volume 1, Chapter 1: External Sources, Section 1.3, Fuel Oil Combustion, available here: *https://www3.epa.gov/ttn/chief/ap42/ch01/index.html.* Boilers >100 Million Btu/hr, No. 4 oil fired.

installing SO_2 scrubbers on these units, the visibility benefit from scrubbers is estimated to be slightly less than the amount of benefit estimated from switching to ULSD.[96]

4. Impact Analysis Parts 2, 3, and 4: Energy and Non-air Quality Environmental Impacts, and Remaining Useful Life

Regarding the analysis of energy impacts, the BART Guidelines advise, ''You should examine the energy requirements of the control technology and determine whether the use of that technology results in energy penalties or benefits.'' [97] As discussed above in our cost analyses for DSI, SDA, and wet FGD, our cost model allows for the inclusion or exclusion of the cost of the additional auxiliary power required for the pollution controls we considered to be included in the variable operating costs. We chose to include this additional auxiliary power in all cases. Consequently, we believe that any energy impacts of compliance have been adequately considered in our analyses.

Regarding the analysis of non-air quality environmental impacts, the BART Guidelines advise: [98]

Such environmental impacts include solid or hazardous waste generation and discharges of polluted water from a control device. You should identify any significant or unusual environmental impacts associated with a control alternative that have the potential to affect the selection or elimination of a control alternative. Some control technologies may have potentially significant secondary environmental impacts. Scrubber effluent, for example, may affect water quality and land use. Alternatively, water availability may affect the feasibility and costs of wet scrubbers. Other examples of secondary environmental impacts could include hazardous waste discharges, such as spent catalysts or contaminated carbon. Generally, these types of environmental concerns become important when sensitive site-specific receptors exist or when the incremental emissions reductions potential of the more stringent control is only marginally greater than the next most-effective option. However, the fact that a control device creates liquid and solid waste that must be disposed of does not necessarily argue against selection of that technology as BART, particularly if the control device has been applied to similar facilities elsewhere and the solid or liquid waste is similar to those other applications. On the other hand, where you or the source owner can show that unusual circumstances at the proposed facility create greater problems than experienced elsewhere, this may provide a basis for the elimination of that control alternative as BART.

The SO_2 control technologies we considered in our analysis—DSI and scrubbers—are in wide use in the coal-fired electricity generation industry. Both technologies add spent reagent to the waste stream already generated by the facilities we analyzed, but do not present any unusual environmental impacts. As discussed below in our cost analyses for DSI and SDA SO_2 scrubbers, our cost model includes waste disposal costs in the variable operating costs. Consequently, we believe that with one possible exception, any non-air quality environmental impacts have been adequately considered in our analyses. We are aware that the Harrington facility has instituted a water recycling program and obtains some of its water from the City of Amarillo.[99] Due to potential non-air quality concerns, we limit our SO_2 control analysis for Harrington to DSI and dry scrubbers.

Regarding the remaining useful life, the BART Guidelines advise: [100]

You may decide to treat the requirement to consider the source's ''remaining useful life'' of the source for BART determinations as one element of the overall cost analysis. The ''remaining useful life'' of a source, if it represents a relatively short time period, may affect the annualized costs of retrofit controls. For example, the methods for calculating annualized costs in EPA's OAQPS Control Cost Manual require the use of a specified time period for amortization that varies based upon the type of control. If the remaining useful life will clearly exceed this time period, the remaining useful life has essentially no effect on control costs and on the BART determination process. Where the remaining useful life is less than the time period for amortizing costs, you should use this shorter time period in your cost calculations.

We are unaware that any of the facilities we have analyzed for BART have entered into an enforceable document to shut down the applicable units earlier than what would occur under our assumed 30-year operational life.[101] As we stated in our Oklahoma FIP,[102] we noted that scrubber vendors indicate that the lifetime of a scrubber is equal to the lifetime of the boiler, which might easily be well over 60 years. We identified specific scrubbers installed between 1975 and 1985 that were still in operation. Because a DSI system is relatively simple and reliable, we have no reason to conclude that its service life would be any less than what we typically use for scrubber cost analyses. Because none of the facilities involved have entered into enforceable documents to shut down the applicable units earlier, we will continue to use a 30-year equipment life for DSI, scrubber retrofits, and scrubber upgrades, as we believe that is proper.

5. Step 5: Evaluate Visibility Impacts

Please see the BART Modeling TSD, where we describe in detail the various modeling runs we conducted, our methodology and selection of emission rates, modeling results, and final modeling analysis that we used to evaluate the benefits of the proposed controls and their associated emission decreases on visibility impairment values. Below we present a summary of our analysis and our proposed findings regarding the estimated visibility benefits of emission reductions based on the CALPUFF and/or CAMx modeling results.

a. Visibility Benefits of DSI, SDA, and Wet FGD for Coal-Fired Units

We evaluated the visibility benefits of DSI, for the twelve units depicted in Tables 15 and 16 below that currently have no SO_2 control. We evaluated all the units using the control levels we employed in our control cost analyses. In summary, we evaluated these units at a DSI SO_2 control level of 50%, which we believe is likely achievable for any unit. At the lower performance level we assumed, we conclude that the corresponding visibility benefits from DSI in most cases would be close to half of the benefits from scrubbers resulting in the visibility benefits from scrubber retrofits being much more beneficial. We also evaluated the visibility benefits for scrubber retrofits (wet FGD and SDA) for these same units, assuming the same control levels corresponding to SDA and wet FGD that we used in our control cost analyses. For those sources that are within 300 to 400 km of a Class

[96] For example, switching from 0.7% sulfur fuel oil to ULSD at 0.0015% sulfur results in a reduction in sulfur emissions of 99.8% compared to an estimated 98% reduction due to the use of a scrubber.

[97] 70 FR 39103, 39168 (July 6, 2005), [40 CFR part 51, App. Y.].

[98] 70 FR at 39169 (July 6, 2005), [40 CFR part 51, App. Y.].

[99] *http://www.powermag.com/xcel-energys-harrington-generating-station-earns-powder-river-basin-coal-users-group-award/.*

[100] 70 FR 39103, 39169, [40 CFR part 51, App. Y.].

[101] We received a November 21, 2016 letter from the source owner regarding Parish Units 5 & 6. The letter, now added to the docket, explains the units have natural gas firing capabilities and expresses interest in obtaining flexibility to avoid BART or obtaining multiple options for complying with BART. While we acknowledge this interest, the letter does not provide or commit to any specifics in furtherance of the BART analysis that EPA is now required to conduct under the BART Guidelines.

[102] Response to Technical Comments for Sections E. through H. of the **Federal Register** Notice for the Oklahoma Regional Haze and Visibility Transport Federal Implementation Plan, Docket No. EPA–R06–OAR–2010–0190, 12/13/2011. See discussion beginning on page 36.

I area, we utilized CALPUFF and CAMx modeling to assess the visibility benefit of potential controls. For the remaining coal-fired sources (J T Deely, Coleto Creek, Fayette and W A Parish), only CAMx modeling was utilized as these sources are located at much greater distances to the nearest Class I areas. In evaluating the impacts and benefits of potential controls, we utilized a number of metrics, including change in deciviews and number of days impacted over 0.5 dv and 1.0 dv. Consistent with the BART Guidelines, the visibility impacts and benefits modeled in CALPUFF and CAMx are calculated as the change in deciviews compared against natural visibility conditions.[103] We note that the high control scenario modeling for Fayette units 1 and 2 demonstrate the benefit from existing high performing controls. As discussed elsewhere, we found that for these units no additional controls or upgrades were necessary. For a full discussion of our review of all the modeling results, and factors that we considered in evaluating and weighing all the results, see our BART Modeling TSD. Below, we present a summary of some of those visibility benefits at the Class I areas most impacted by each source:

TABLE 15—VISIBILITY BENEFIT OF RETROFIT CONTROLS: COAL-FIRED UNITS (CAMX MODELING)

Facility name	Emission unit	Class I area	Metric	Visibility impact			Visibility benefit	
				Baseline	DSI (50%)	WFGD (98%)	DSI benefit	WFGD benefit
Big Brown	Source (Unit 1 and 2)	WIMO	Max dv	4.017	2.249	0.474	1.768	3.542
			Days >0.5 dv	65	33	0	32	65
			Days >1.0 dv	33	13	0	20	33
		CACR	Max dv	3.775	2.539	0.787	1.236	2.988
			Days >0.5 dv	91	62	4	29	87
			Days >1.0 dv	57	21	0	36	57
	Unit 1	WIMO	Max dv	2.154	1.168	0.245	0.986	1.909
			Days >0.5 dv	33	13	0	20	33
			Days >1.0 dv	12	1	0	11	12
		CACR	Max dv	2.016	1.327	0.409	0.688	1.606
			Days >0.5 dv	58	22	0	36	58
			Days >1.0 dv	17	4	0	13	17
	Unit 2	WIMO	Max dv	2.175	1.181	0.235	0.994	1.940
			Days >0.5 dv	34	13	0	21	34
			Days >1.0 dv	12	1	0	11	12
		CACR	Max dv	2.033	1.338	0.391	0.695	1.642
			Days >0.5 dv	58	23	0	35	58
			Days >1.0 dv	17	4	0	13	17
Monticello	Source (Unit 1, 2 and 3)	CACR	Max dv	10.498	6.121	2.079	4.377	8.419
			Days >0.5 dv	152	107	28	45	124
			Days >1.0 dv	111	54	8	57	103
		WIMO	Max dv	5.736	2.769	0.774	2.968	4.962
			Days >0.5 dv	67	35	4	32	63
			Days >1.0 dv	40	14	0	26	40
	Unit 1	CACR	Max dv	4.516	3.123	0.733	1.393	3.783
			Days >0.5 dv	79	43	3	36	76
			Days >1.0 dv	32	16	0	16	32
		WIMO	Max dv	2.241	1.290	0.252	0.951	1.989
			Days >0.5 dv	30	10	0	20	30
			Days >1.0 dv	8	2	0	6	8
	Unit 2	CACR	Max dv	4.487	3.065	0.563	1.422	3.924
			Days >0.5 dv	78	42	1	36	77
			Days >1.0 dv	30	13	0	17	30
		WIMO	Max dv	2.189	1.252	0.186	0.937	2.003
			Days >0.5 dv	30	10	0	20	30
			Days >1.0 dv	6	2	0	4	6
Coleto Creek	Source (Unit 1)	WIMO	Max dv	0.845	0.526	0.176	0.318	0.668
			Days >0.5 dv	9	1	0	8	9
			Days >1.0 dv	0	0	0	0	0
		CACR	Max dv	0.791	0.458	0.186	0.333	0.606
			Days >0.5 dv	5	0	0	5	5
			Days >1.0 dv	0	0	0	0	0
Harrington[1]	Source (Unit 061B & 062B)	SACR	Max dv	5.288	4.287	3.235	1.001	2.053
			Days >0.5 dv	13	7	3	6	10
			Days >1.0 dv	5	1	1	4	4
		WIMO	Max dv	4.928	4.362	3.798	0.565	1.130
			Days >0.5 dv	15	11	6	4	9
			Days >1.0 dv	6	5	4	1	2
	Unit 061B	SACR	Max dv	2.908	2.322	1.738	0.586	1.170
			Days >0.5 dv	5	1	1	4	4
			Days >1.0 dv	1	1	1	0	0
		WIMO	Max dv	2.708	2.382	2.065	0.326	0.643
			Days >0.5 dv	6	5	4	1	2
			Days >1.0 dv	4	2	1	2	3
	Unit 062B	SACR	Max dv	2.998	2.373	1.719	0.625	1.279
			Days >0.5 dv	5	1	1	4	4
			Days >1.0 dv	1	1	1	0	0
		WIMO	Max dv	2.770	2.407	2.046	0.363	0.723
			Days >0.5 dv	6	5	4	1	2
			Days >1.0 dv	4	1	1	3	3

[103] 40 CFR 51 Appendix Y, IV.D.5: ''Calculate the model results for each receptor as the change in deciviews compared against natural visibility conditions.''

TABLE 15—VISIBILITY BENEFIT OF RETROFIT CONTROLS: COAL-FIRED UNITS (CAMx MODELING)—Continued

Facility name	Emission unit	Class I area	Metric	Visibility impact			Visibility benefit	
				Baseline	DSI (50%)	WFGD (98%)	DSI benefit	WFGD benefit
J T Deely	Source (Sommers 1&2, J T Deely 1&2).	WIMO	Max dv	1.513	0.939	0.814	0.574	0.699
			Days >0.5 dv	47	8	1	39	46
			Days >1.0 dv	6	0	0	6	6
		CACR	Max dv	1.423	1.155	0.905	0.268	0.518
			Days >0.5 dv	7	3	2	4	5
			Days >1.0 dv	2	1	0	1	2
	J T Deely 1	WIMO	Max dv	0.757	0.449	0.270	0.307	0.487
			Days >0.5 dv	4	0	0	4	4
			Days >1.0 dv	0	0	0	0	0
		BIBE	Max dv	0.652	0.373	0.069	0.279	0.583
			Days >0.5 dv	2	0	0	2	2
			Days >1.0 dv	0	0	0	0	0
	J T Deely 2	WIMO	Max dv	0.632	0.387	0.334	0.245	0.298
			Days >0.5 dv	3	0	0	3	3
			Days >1.0 dv	0	0	0	0	0
		CACR	Max dv	0.604	0.490	0.387	0.114	0.217
			Days >0.5 dv	2	0	0	2	2
			Days >1.0 dv	0	0	0	0	0
W.A. Parish	Source (WAP 4, 5, & 6)	CACR	Max dv	3.177	2.032	0.511	1.145	2.665
			Days >0.5 dv	54	26	1	28	53
			Days >1.0 dv	22	9	0	13	22
		UPBU	Max dv	1.994	1.215	0.234	0.779	1.760
			Days >0.5 dv	34	14	0	20	34
			Days >1.0 dv	9	1	0	8	9
	WAP 5	CACR	Max dv	1.698	1.052	0.180	0.646	1.518
			Days >0.5 dv	22	9	0	13	22
			Days >1.0 dv	8	1	0	7	8
		UPBU	Max dv	1.038	0.613	0.094	0.424	0.943
			Days >0.5 dv	11	1	0	10	11
			Days >1.0 dv	1	0	0	1	1
	WAP 6	CACR	Max dv	1.648	1.018	0.156	0.630	1.492
			Days >0.5 dv	22	8	0	14	22
			Days >1.0 dv	6	1	0	5	6
		UPBU	Max dv	1.003	0.591	0.081	0.412	0.922
			Days >0.5 dv	9	1	0	8	9
			Days >1.0 dv	1	0	0	1	1
Welsh[2]	Source (Unit 1 & 2)	CACR	Max dv	4.576	.....	0.822	.....	3.754
			Days >0.5 dv	92	.....	3	.....	89
			Days >1.0 dv	39	.....	0	.....	39
		MING	Max dv	2.544	.....	0.570	.....	1.973
			Days >0.5 dv	9	.....	1	.....	8
			Days >1.0 dv	3	.....	0	.....	3
	Unit 1	CACR	Max dv	2.343	1.659	0.822	0.684	1.521
			Days >0.5 dv	37	18	3	19	34
			Days >1.0 dv	8	3	0	5	8
		MING	Max dv	1.150	0.886	0.570	0.264	0.579
			Days >0.5 dv	2	1	1	1	1
			Days >1.0 dv	1	0	0	1	1
Fayette[2]	Source (Unit 1 & 2)	CACR	Max dv	1.894	.....	0.903	.....	0.991
			Days >0.5 dv	26	.....	2	.....	24
			Days >1.0 dv	9	.....	0	.....	9
		WIMO	Max dv	1.175	.....	0.580	.....	0.595
			Days >0.5 dv	19	.....	1	.....	18
			Days >1.0 dv	2	.....	0	.....	2
	Unit 1	CACR	Max dv	1.002	.....	0.480	.....	0.522
			Days >0.5 dv	9	.....	0	.....	9
			Days >1.0 dv	1	.....	0	.....	1
		WIMO	Max dv	0.609	.....	0.306	.....	0.302
			Days >0.5 dv	2	.....	0	.....	2
			Days >1.0 dv	0	.....	0	.....	0
	Unit 2	CACR	Max dv	0.974	.....	0.441	.....	0.534
			Days >0.5 dv	9	.....	0	.....	9
			Days >1.0 dv	0	.....	0	.....	0
		WIMO	Max dv	0.598	.....	0.282	.....	0.316
			Days >0.5 dv	2	.....	0	.....	2
			Days >1.0 dv	0	.....	0	.....	0

[1] Harrington high control scenario for both units is SDA at 95% reduction.

[2] Welsh Unit 2 and Fayette Units 1 & 2 were not modeled at DSI level control. Welsh Unit 2 has shut down and Fayette units have WFGD (wet FGD) installed. Welsh source-wide modeling for high control includes a unit 2 shutdown.

TABLE 16—VISIBILITY BENEFIT OF RETROFIT CONTROLS: COAL-FIRED UNITS (CALPUFF MODELING)

Facility name	Emission unit	Class I area	Metric	Visibility impact			Visibility benefit	
				Baseline	DSI (50%)	WFGD (98%)	DSI benefit	WFGD benefit
Big Brown	Source (Units 1 and 2).	WIMO	Max dv	4.27	2.54	0.43	1.73	3.83
			Days >0.5 dv Avg.	67.33	43.33	2.67	24.00	64.67
			Days >1.0 dv Avg.	42.00	21.00	1.00	21	41.00
		CACR	Max dv	4.03	2.41	0.47	1.62	3.55
			Days >0.5 dv Avg.	91.67	64.33	4.67	27.33	87.00
			Days >1.0 dv Avg.	60.33	30.00	0.00	30.33	60.33
Monticello [1]	Source (Unit 1, 2 and 3).	CACR	Max dv	6.57	3.68	1.70	2.89	4.87
			Days >0.5 dv Avg.	143.67	115.00	62.33	28.67	81.33
			Days >1.0 dv Avg.	113.00	66.33	23.67	46.67	89.33
		UPBU [4]	Max dv	3.45	1.77	0.77	1.68	2.68
			Days >0.5 dv Avg.	103.00	61.00	13.67	42.00	89.33
			Days >1.0 dv Avg.	39.33	16.67	2.67	22.67	36.67
		WIMO	Max dv	3.23	1.60	0.54	1.63	2.70
			Days >0.5 dv Avg.	60.00	34.67	6.00	25.33	54.00
			Days >1.0 dv Avg.	39.33	16.67	0.67	22.67	38.67
Harrington [2]	Source (Units 061B & 062B).	SACR	Max dv	1.06	0.86	0.61	0.20	0.45
			Days >0.5 dv Avg.	21.00	15.33	6.33	5.67	14.67
			Days >1.0 dv Avg.	6.67	3.00	0.67	3.67	6.00
		WIMO	Max dv	1.29	0.97	0.55	0.32	0.74
			Days >0.5 dv Avg.	26.00	15.33	8.67	10.67	17.33
			Days >1.0 dv Avg.	9.00	4.67	1.33	4.33	7.67
Welsh [3]	Source (Unit 1)	CACR	Max dv	1.44	1.12	0.72	0.32	0.72
			Days >0.5 dv Avg.	50.33	32.67	12.33	17.67	38
			Days >1.0 dv Avg.	15.33	8.00	2.33	7.33	13.00
		UPBU	Max dv	0.76	0.49	0.22	0.27	0.54
			Days >0.5 dv Avg.	12.00	4.67	0.33	7.33	11.67
			Days >1.0 dv Avg.	0.67	0.00	0.00	0.67	0.67
		WIMO	Max dv	0.56	0.33	0.15	0.23	0.41
			Days >0.5 dv Avg.	7.33	2.67	0.33	4.67	7.00
			Days >1.0 dv Avg.	1.33	0.33	0.00	1.00	1.33

[1] Monticello's controlled level is a combination of scrubber upgrades and scrubber install in the facility impact modeling with CALPUFF.
[2] Harrington high control scenario for both units is SDA at 95% reduction.
[3] Welsh Unit 2 and Fayette Units 1 & 2 were not modeled at DSI level control. Welsh Unit 2 has shut down and Fayette units have WFGD installed. Welsh source-wide modeling for high control includes a unit 2 shutdown.
[4] UPBU = Upper Buffalo Wilderness Area.

b. Visibility Benefits of Scrubber Upgrades for Coal-Fired Units

We also modeled the visibility benefits of those same units for which we conducted control cost analysis for upgrading their existing scrubbers. We assumed the same 95% control level we used in our control cost analyses. We also modeled a lower level control at 90%. The visibility benefits from these scrubber upgrades are quantified specifically in our BART Modeling TSD. Below, we present a summary of the del-dv visibility benefits and reduction in number of days impacted.

TABLE 17—VISIBILITY BENEFIT OF SCRUBBER UPGRADES: COAL-FIRED UNITS (CAMx MODELING)

Facility name	Emission unit	Class I area	Metric	Visibility impact			Visibility benefit	
				Baseline	(90%) control	(95%) control	(90%) benefit	(95%) benefit
Martin Lake	Source (Unit 1, 2 & 3).	CACR	Max dv	6.651	4.491	4.321	2.159	2.329
			Days >0.5 dv	141	75	56	66	85
			Days >1.0 dv	99	31	16	68	83
		UPBU	Max dv	5.803	2.669	2.528	3.134	3.275
			Days >0.5 dv	99	39	22	60	77
			Days >1.0 dv	67	11	7	56	60
	Unit 1	CACR	Max dv	2.633	1.550	1.468	1.083	1.165
			Days >0.5 dv	71	17	6	54	65
			Days >1.0 dv	26	3	1	23	25
		UPBU	Max dv	2.254	0.867	0.805	1.387	1.449
			Days >0.5 dv	44	6	3	38	41
			Days >1.0 dv	10	0	0	10	10
	Unit 2	CACR	Max dv	2.466	1.882	1.811	0.585	0.655
			Days >0.5 dv	68	18	9	50	59
			Days >1.0 dv	26	3	1	23	25
		UPBU	Max dv	2.189	1.077	1.025	1.112	1.164
			Days >0.5 dv	40	6	5	34	35
			Days >1.0 dv	10	1	1	9	9
	Unit 3	CACR	Max dv	2.755	1.682	1.609	1.074	1.146
			Days >0.5 dv	76	15	6	61	70
			Days >1.0 dv	29	2	1	27	28
		UPBU	Max dv	2.368	0.942	0.890	1.425	1.478
			Days >0.5 dv	46	6	4	40	42

TABLE 17—VISIBILITY BENEFIT OF SCRUBBER UPGRADES: COAL-FIRED UNITS (CAMx MODELING)—Continued

Facility name	Emission unit	Class I area	Metric	Visibility impact			Visibility benefit	
				Baseline	(90%) control	(95%) control	(90%) benefit	(95%) benefit
			Days >1.0 dv	13	0	0	13	13
Monticello	Source (Unit 1, 2 and 3).	CACR	Max dv	10.498	6.121	2.079	4.377	8.419
			Days >0.5 dv	152	107	28	45	124
			Days >1.0 dv	111	54	8	57	103
		WIMO	Max dv	5.736	2.769	0.774	2.968	4.962
			Days >0.5 dv	67	35	4	32	63
			Days >1.0 dv	40	14	0	26	40
	Unit 3	CACR	Max dv	4.632	0.905	0.914	3.728	3.719
			Days >0.5 dv	79	5	5	74	74
			Days >1.0 dv	32	0	0	32	32
		WIMO	Max dv	2.282	0.462	0.364	1.820	1.918
			Days >0.5 dv	31	0	0	31	31
			Days >1.0 dv	7	0	0	7	7

TABLE 18—VISIBILITY BENEFIT OF SCRUBBER UPGRADES: COAL-FIRED UNITS (CALPUFF MODELING)

Facility name	Emission unit	Class I area	Metric	Visibility impact			Visibility benefit	
				Baseline	DSI (50%)	WFGD (98%)	DSI benefit	WFGD benefit
Martin Lake	Source (Units 1, 2 & 3).	CACR	Max dv	4.46	2.27	1.86	2.18	2.60
			Days >0.5 dv Avg.	129.67	77.33	63.00	52.33	66.67
			Days >1.0 dv Avg.	91.33	32.67	22.33	58.67	69.00
		UPBU	Max dv	2.73	1.10	0.85	1.63	1.88
			Days >0.5 dv Avg.	81.67	30.33	18.67	51.33	63.00
			Days >1.0 dv Avg.	46.67	7.33	3.67	39.33	43.00
Monticello [1]	Source (Unit 1, 2 and 3).	CACR	Max dv	6.57	3.68	1.70	2.89	4.87
			Days >0.5 dv Avg.	143.67	115	62.33	28.67	81.33
			Days >1.0 dv Avg.	113	66.33	23.67	46.67	89.33
		UPBU	Max dv	3.45	1.77	0.765	1.68	2.68
			Days >0.5 dv Avg.	103	61	13.67	42	89.33
			Days >1.0 dv Avg.	39.33	16.67	2.67	22.67	36.67
		WIMO	Max dv	3.23	1.60	0.54	1.63	2.70
			Days >0.5 dv Avg.	60	34.67	6	25.33	54
			Days >1.0 dv Avg.	39.33	16.67	0.67	22.67	38.67

[1] Monticello's controlled level is a combination of scrubber upgrade on Unit 3 and scrubber retrofits on Units 1 and 2 in the facility impact modeling with CALPUFF.

c. Visibility Benefits of Fuel Oil Switching for Gas/Fuel Oil-Fired Units

We also modeled the visibility benefits of those gas/fuel oil-fired units for which we conducted control cost analysis for switching to lower sulfur fuels. We evaluated the visibility benefits of switching to fuel oils corresponding to ultra-low sulfur diesel at 0.0015% sulfur by weight and 0.3% sulfur by weight as we evaluated in our control cost analyses. The visibility benefits from these fuel switches are quantified specifically in our BART Modeling TSD. Below, we present a summary of the del-dv visibility benefits.

TABLE 19—VISIBILITY BENEFITS FROM LOWER SULFUR FUEL

Facility name	Emission unit	Baseline visibility impact from source (most impacted Class I area)	Visibility benefit of 0.3% S fuel oil	Visibility benefit of 0.0015% S fuel oil
Stryker	ST2	CALPUFF 0.65% S: 0.786 dv @ CACR (Facility).	CALPUFF (0.3% S): 0.263 dv @ CACR (Facility).	CALPUFF: 0.522 dv @ CACR (Facility)
Graham	Unit 2	CALPUFF 0.69% S: 1.228 dv @ WIMO (Facility).	CALPUFF (0.3% S): 0.465 dv @ WIMO (Facility.	CALPUFF: 0.851 dv @ WIMO (Facility)
Wilkes	Units 1, 2, 3	CALPUFF 0.43% S: 0.698 dv @ CACR (Facility).	CALPUFF (0.1% S): 0.029 dv @ CACR (Facility).	CALPUFF: 0.037 dv @ CACR (Facility)
Newman [1]	Unit 2	N/A	N/A	N/A
	Unit 3	N/A	N/A	N/A
	Unit 4	N/A	N/A	N/A
Calaveras	Sommers Unit 1	CAMx: 1.513 dv @ WIMO (Source); 0.106 dv @ CACR (Unit).	0.004 dv @ CACR	0.008 dv @ CACR

TABLE 19—VISIBILITY BENEFITS FROM LOWER SULFUR FUEL—Continued

Facility name	Emission unit	Baseline visibility impact from source (most impacted Class I area)	Visibility benefit of 0.3% S fuel oil	Visibility benefit of 0.0015% S fuel oil
	Sommers ..... Unit 2	CAMx: 1.513 dv @ WIMO (Source); 0.180 dv @ CACR (Unit).	0.023 @ CACR	0.047 @ CACR

[1] Newman is on the edge of the CALMET and CALPUFF modeling grids for the database that were used in this action. Since the facility was near the edge, emissions of the facility's impacts could not be adequately modeled since some of the plumes could have gone out of the grid and not be adequately assessed if they come back into the grid and transport to impact a Class I area.

6. BART Analysis for PM

In our recent Texas-Oklahoma FIP, we initially proposed to approve Texas' determination that no PM BART controls were appropriate for its EGUs, based on a screening analysis of the visibility impacts from just PM emissions and the premise that EGU SO_2 and NO_X were covered separately by participation in CSAPR (allowing consideration of PM emissions in isolation). Because of the CSAPR remand and resulting uncertainty regarding SO_2 and NO_X BART for EGUs, we decided not to finalize our proposed approval of Texas' PM BART determination.[104] For reasons earlier stated we are proposing to disapprove the SIP determination regarding PM BART for EGUs. Following from that proposed disapproval, we are proposing a PM BART FIP for those Texas EGUs that are subject to BART.

The BART Guidelines permit us to conduct a streamlined analysis of PM BART in two key ways. First, the Guidelines allow a streamlined analysis for PM sources subject to MACT standards. Unless there are new technologies subsequent to the MACT standards which would lead to cost-effective increases in the level of control, the Guidelines state it is permissible to rely on MACT standards for purposes of BART.[105]

Second, with respect to gas-fired units, which have inherently low emissions of PM (as well as SO_2), the Regional Haze Rule did not specifically envision new or additional controls or emissions reductions from the PM BART requirement. The BART guidelines preclude us from stating that PM emissions are *de minimis* when plant-wide emissions exceed 15 tons per years. While we must assign PM BART determinations to the gas-firing units, there are no practical add-on controls to consider for setting a more stringent PM BART emissions limit. The Guidelines state that if the most stringent controls are made federally enforceable for BART, then the otherwise required analyses leading up to the BART determination can be skipped.[106]

With this background, we are providing our evaluation along with some supplementary information on the BART sources as divided into two categories: coal-fired EGUs, and gas-fired EGUs.

BART Analysis for PM for Coal-Fired Units

All of the coal-fired EGUs that are subject to BART are currently equipped with either Electrostatic Precipitators (ESPs) or baghouses, or both, as can be seen from Table 20:

TABLE 20—CURRENT PM CONTROLS FOR COAL-FIRED UNITS SUBJECT TO BART

Facility name	Unit ID	Fuel type (primary)	SO_2 control(s)	PM control(s)
Big Brown	1	Coal		Baghouse + Electrostatic Precipitator.
Big Brown	2	Coal		Baghouse + Electrostatic Precipitator.
Coleto Creek	1	Coal		Baghouse.
Harrington Station	061B	Coal		Electrostatic Precipitator.
Harrington Station	062B	Coal		Baghouse.
J T Deely	1	Coal		Baghouse.
J T Deely	2	Coal		Baghouse.
Martin Lake	1	Coal	Wet Limestone	Electrostatic Precipitator.
Martin Lake	2	Coal	Wet Limestone	Electrostatic Precipitator.
Martin Lake	3	Coal	Wet Limestone	Electrostatic Precipitator.
Monticello	1	Coal		Baghouse + Electrostatic Precipitator.
Monticello	2	Coal		Baghouse + Electrostatic Precipitator.
Monticello	3	Coal	Wet Limestone	Electrostatic Precipitator.
Fayette	1	Coal	Wet Limestone	Electrostatic Precipitator.
Fayette	2	Coal	Wet Limestone	Electrostatic Precipitator.
W A Parish	WAP5	Coal		Baghouse.
W A Parish	WAP6	Coal		Baghouse.
Welsh Power Plant	1	Coal		Baghouse (Began Nov 15, 2015) + Electrostatic Precipitator.

As an initial matter, we examine the control efficiencies of both baghouses and ESPs. We consider a baghouse, widely reported to be capable of 99.9% control of PM, to be the maximum level control for PM and so the units equipped with a baghouse will not be further analyzed for PM BART. The remaining units are fitted with ESPs.

The particulate matter control efficiency of ESPs varies somewhat with

[104] 81 FR 302 (January 5, 2016).

[105] 70 FR 39163–39164.

[106] 70 FR 39165 (". . . you may skip the remaining analyses in this section, including the visibility analysis . . .")

the design, the resistivity of the particulate matter, and the maintenance of the ESP. We do not have any information on the control level efficiency of any of the ESPs for the units in question. However, reported control efficiencies for well-maintained ESPs typically range from greater than 99% to 99.9%.[107] We consider this pertinent in concluding that the potential additional particulate control that a baghouse can offer over an ESP is relatively minimal.[108] In other words, if we did obtain control information specific to the ESP units in question, we do not believe that additional information would lead us to a different conclusion.

Nevertheless, w'e will examine the potential cost of retrofitting a typical 500 MW coal fired unit with a baghouse. Using our baghouse cost algorithms, as employed in version 5.13 of our IPM model,[109] and assuming a conservative air to cloth ratio of 6.0, results in a capital engineering and construction cost of $77,428,000.[110] Applied to the subject units, this cost assumes a retrofit factor of 1.0, and does not consider the demolition of the existing ESP, should it be required in order to make space for the baghouse.

We do not calculate the cost-effectiveness resulting from replacing an ESP with a baghouse. However, we expect that the tons of additional PM removed by a baghouse over an ESP to be very small, which would result in a very high cost-effectiveness figure. Also, we do not model the visibility benefit of replacing an ESP with a baghouse. However, our visibility impact modeling indicates that the baseline PM emissions of these units are very small, so we expect that the visibility improvement from replacing an ESP with a baghouse to be a small fraction of that. For instance, our CAMx baseline modeling shows that on a source-wide level, impacts from PM emissions on the maximum impacted days from each source at each Class I area was 3% of the total visibility impairment or less (calculated as percent of total extinction due to the source). Therefore additional PM controls are anticipated to result in very little visibility benefit on the maximum impacted days. Similarly, our CALPUFF modeling indicates that visibility impairment from PM is also a small fraction (typically only a few percent) of the total visibility impairment due to each source.

Adding to the above discussion, we are tasked to assign the enforceable emission limitations that constitute PM BART. We believe a stringent control level that would be met with existing or otherwise-required controls is a filterable PM limit of 0.03 lb/MMBtu for each of the coal-fired units subject to BART. We note that the Mercury and Air Toxics (MATS) Rule establishes an emission standard of 0.03 lb/MMBtu filterable PM (as a surrogate for toxic non-mercury metals) as representing Maximum Achievable Control Technology (MACT) for coal-fired EGUs.[111] This standard derives from the average emission limitation achieved by the best performing 12 percent of existing coal-fired EGUs, as based upon test data used in developing the MATS Rule. We are not familiar with any new technologies subsequent to this standard that could lead to any cost effective increases in the level of control; thus, consistent with the BART Guidelines, we are proposing to rely on this limit for purposes of PM BART for all of the coal-fired units as part of our FIP. We understand the coal-fired units covered by this proposal to be subject to MATS, but to the extent the units may be following alternate limits that differ from the surrogate PM limits found in MATS, we welcome comments on different, appropriately stringent limits reflective of current control capabilities.[112] Because we anticipate that any limit we assign should be achieved by current control capabilities, we propose that compliance can be met at the effective date of the rule. To address periods of startups and shutdowns, we are further proposing that PM BART for these units will additionally be met by following the work practice standards specified in 40 CFR part 63, subpart UUUUU, Table 3, and using the relevant definitions in 63.10042. We are proposing that the demonstration of compliance can be satisfied by the methods for demonstrating compliance with filterable PM limits that are specified in 40 CFR part 63, subpart UUUUU, Table 7. However, we would give consideration to commenter-submitted requests for alternate or additional methods of demonstrating compliance.

BART Analysis for PM for Gas-Fired Units

We note that PM emissions for the gas-only fired units that are subject to BART are inherently low.[113] We therefore conclude that PM emissions from natural gas firing is so minimal that the installation of any additional PM controls on the unit would likely achieve very low emissions reductions and have minimal visibility benefits. As there are no appropriate add-on controls and the status quo reflects the most stringent controls, we are proposing to make the requirement to burn pipeline natural gas federally enforceable. We note that in addition to satisfying PM BART, this limitation will also serve to satisfy SO_2 BART for these gas-fired units, as well as the fuel-oil units when they fire natural gas. We are proposing that PM and SO_2 BART for gas fired-units will limit fuel to pipeline natural gas, as defined at 40 CFR 72.2.

The available PM controls for gas units that also burn fuel oil are the same for the coal-fired units. We would expect similar costs for installing a baghouse on a typical gas-fired boiler that occasionally burns fuel oil. Again, our visibility impact modeling indicates that the baseline PM emissions of these units are very small, so we expect that the visibility improvement from the installation of a baghouse to be a small fraction on the order of 1–3% of the visibility impacts from the facility. We are confident that the cost of retrofitting the subject units with a baghouse would be extremely high compared to the visibility benefit for any of the units currently fitted with an ESP. We conclude that the cost of a baghouse does not justify the minimal expected improvement in visibility for these units. Accordingly, we are proposing that the fuel content limits for oil burning that we propose to meet SO_2 BART will also satisfy PM BART.

[107] EPA, ''Air Pollution Control Technology Fact Sheet: Dry Electrostatic Precipitator (ESP)—Wire Plate Type,'' EPA–452/F–03–028. Grieco, G., ''Particulate Matter Control for Coal-fired Generating Units: Separating Perception from Fact,'' *apcmag.net,* February, 2012. Moretti, A. L.; Jones, C. S., ''Advanced Emissions Control Technologies for Coal-Fired Power Plants, Babcox and Wilcox Technical Paper BR–1886, Presented at Power-Gen Asia, Bangkok, Thailand, October 3–5, 2012.

[108] We do not discount the potential health benefits this additional control can have for ambient PM. However, the regional haze program is only concerned with improving the visibility at Class I areas.

[109] IPM Model—Updates to Cost and Performance for APC Technologies, Particulate Control Cost Development Methodology, Final March 2013, Project 12847–002, Systems Research and Applications Corporation, Prepared by Sargent & Lundy. Documentation for v.5.13: Chapter 5: Emission Control Technologies, Attachment 5–7: PM Cost Methodology, downloaded from: *https://www.epa.gov/sites/production/files/2015-08/documents/attachment_5-7_pm_cost_methodology.pdf.*

[110] *Id.* See page 9.

[111] 77 FR 9304, 9450, 9458 (February 16, 2012) (codified at 40 CFR 60.42 Da(a), 60.50 Da(b)(1)); 40 CFR part 63 Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units.

[112] The various limits are provided at 40 CFR part 63, subpart UUUUU, Table 2 (''Emission Limits for Existing EGUs'').

[113] AP 42, Fifth Edition, Volume 1, Chapter 1: External Sources, Section 1.4, Natural Gas Combustion, available here: *https://www3.epa.gov/ttn/chief/ap42/ch01/final/c01s04.pdf.*

Lastly, should our assumptions regarding the frequency and type of fuel oil burned in these units significantly change, we expect that Texas will address such a change appropriately in its SIP, which we will review in the next planning period.

D. How, if at all, do issues of ''Grid Reliability'' relate to the proposed BART determinations?

On July 15, 2016, a preliminary order of the Fifth Circuit Court of Appeals took the view that EPA's Texas-Oklahoma FIP (81 FR 295, January 5, 2016) gave a ''truncated discussion of grid reliability'' and additionally stated that ''the agency may not have fulfilled its statutory obligation to consider the energy impacts of the FIP.'' The Court's preliminary ruling made particular reference to ''the explicit directive in the [CAA] that implementation plans 'take[ ] into consideration . . . the energy . . . impacts of compliance,' 42 U.S.C. 7491(g)(1).'' [114] Because the BART requirement at issue in this proposal has similar language on *energy impacts of compliance* appearing at 42 U.S.C. 7491(g)(2), we wish to provide a clear explanation on how grid-related considerations for EGUs could bear on this proposal.

First, the BART factor for *energy impacts of compliance* does not call for the examination of grid reliability considerations from alleged plans to shut down or retire a unit rather than comply with a more stringent emission limit or limits. The language instead calls for consideration of energy impacts from *complying* by installing retrofit controls on a source that continues in operation. In this regard, our proposal follows the required BART Guidelines for EGUs.[115] The Guidelines explain that the energy impacts factor relates to the penalties and benefits that may be associated with the assessment of a control option, *e.g.,* whether (for power penalties) the operation of add-on control technology subtracts from the productive yield of electricity from an EGU (what is sometimes termed an auxiliary or parasitic load).[116] It is also useful to note that the statutory text, while using the word ''energy,'' can apply to sources that do not produce energy or electricity. Thus, the statutory text regarding ''energy impacts'' of compliance with BART is not confined to the power generating industry and does not dictate that we study grid reliability issues.

We have considered whether this topic has any separate relevance to our proposal. Various court filings, news accounts, and industry market reports suggest that some source operators for some Texas BART units may be contemplating unit retirements. The BART Guidelines directly address such scenarios under the ''remaining useful life'' factor: ''there may be situations where a source operator intends to shut down a source . . . . but wishes to retain the flexibility to continue operating beyond that date in the event, for example, the market conditions change.'' [117] The Guidelines advise that a source that is willing to assure a permanent stop in operations with a federally- or State-enforceable restriction preventing further operation may obtain a short remaining useful life for BART analysis purposes that could then factor in the overall cost analysis.[118] As the Guidelines state, ''Where the remaining useful life is less the than the time period for amortizing costs, you should use this shorter period in your cost calculations.'' [119] We have no information on enforceable restrictions of this type for any of the units that we propose to be subject to BART. Absent that, we must assume that controls installed on the BART units will experience their full useful life. Affected sources are free to submit information as part of their comments containing appropriate enforceable documentation of shorter remaining useful lives.

We note, however, that the Guidelines recognize there may be cases where the installation of controls, even when cost-effective, would ''affect the viability of continued plant operations.'' [120] Under the Guidelines, where there are ''unusual circumstances,'' we are permitted to take into consideration ''the conditions of the plant and the economic effects of requiring the use of a control technology.'' [121] If the effects are judged to have a ''severe impact,'' those effects can be considered in the selection process. In such cases, the Guidelines counsel that any determinations be made with an economic analysis with sufficient detail for public review on the ''specific economic effects, parameters, and reasoning.'' [122] It is recognized, by the language of the Guidelines, that any such review process may entail the use of sensitive business information that may be confidential. The **ADDRESSES** section of this proposal explains how to submit confidential information with comments, and when claims of confidential business information, or CBI, are asserted with respect to any information that is submitted, the EPA regulations at 40 CFR part 2, subpart B-Confidentiality Business Information apply to protect it. All of that said, the Guidelines also advise that we may ''consider whether other competing plants in the same industry have been required to install BART controls if this information is available.'' [123] Because Texas EGUs are among the last to have SO_2 BART determinations, this information is available. It is indeed the case that other similar EGUs have been required to install the same types of SO_2 BART controls that we are proposing as very cost effective.[124]

We have considered the state of available information on whether the proposed controls could affect the viability of continued plant operations. On this point, we note that we are proposing BART determinations for several units where SO_2 control requirements were separately promulgated as part of the Texas-Oklahoma FIP. These under-controlled EGU sources are: Big Brown 1 and 2; Monticello 1, 2 and 3; Martin Lake 1, 2 and 3; and Coleto Creek 1. In litigation over the reasonable progress FIP, various declarations were filed on the issues of alleged forced closures and alleged reliability impacts. These declarations have been compiled and added to the docket for this rulemaking.

[114] EPA Guidance on this statutory language specifically explains that energy impacts are a matter of whether ''energy requirements associated with a control technology result in energy penalties.'' U.S. EPA, Office of Air Quality Planning and Standards, ''Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,'' (June 1, 2007 rev), at Page 5–2.

[115] The promulgation of the Guidelines was required by 42 U.S.C. 7491(b)(1). Adherence to the Guidelines is mandatory for fossil-fuel fired generating power plants having total generating capacities ''in excess of 750 megawatts.''

[116] Other CAA provisions requiring consideration of ''energy impacts'' or ''energy requirements of the control technology'' are understood similarly. *See, e.g.,* CAA section 169 (the 1977 ''best available control technology'' requirement with consideration of ''energy . . . impacts''); *see also* CAA section 108 (''energy requirements . . . of the emission control technology; ''energy . . . impact of such processes, procedures, and methods [to reduce or control air pollution'']); section 111 (''taking into account . . . energy requirements'' of an emission limitation), etc.

[117] *Id.* at 39169–39170.

[118] Similar to calculating a mortgage, remaining useful life is used in our cost-effectiveness analysis to calculate the annual cost of a particular control. The longer the remaining useful life, the smaller the total annualized cost, and the more cost-effective the control.

[119] *Id.* at 39169.

[120] 70 FR 39103, 39171 (July 6, 2005), [40 CFR part 51, App. Y].

[121] *Id.*

[122] 70 FR at 39171.

[123] *Id.*

[124] See for instance, the EIA information we present elsewhere in this notice in which we summarize the hundreds of scrubber installations that have been performed on similar EGUs.

By our review, these declarations do not appropriately inform or substantiate source-specific allegations of ''unusual circumstances'' that may have a severe impact on plant operations, because they do not offer any site-specific information.[125] Thus, we are unable to conclude that the proposed cost-effective BART controls would severely impact plant operations. Generalized claims of possible retirements and discussions on attributes of the market design of the Electric Reliability Council of Texas (ERCOT) cannot inform the statutorily required, source-specific BART determinations.

As a predicate to studying effects on transmission or reliability as ''unusual circumstances,'' we would require site-specific information from any source that would wish for us to potentially consider ''affordability of controls,'' under the terms specified in the Guidelines. Source owners may submit information, including information claimed to be CBI, for our assessment and consideration to potentially support an economic analysis that might be used in the BART selection process. As suggested by the Guidelines, the information necessary to inform our judgment would likely entail source-specific information on ''product prices, the market share, and the profitability of the source.'' Consideration of such information does not dictate what will be selected as a ''best'' alternative under the Guidelines, but it will substantiate the likelihood of a retirement scenario that would then give the parameters for: A non-conjectural examination of grid reliability issues; judging the significance or insignificance of such issues; and assessing whether such issues could be avoided through appropriate transmission planning. In sum, unless we are able to substantiate an ''affordability of controls'' problem for any particular unit and substantiate that a particular unit retirement would not be happening anyway at about the same time, alleged grid reliability impacts are speculative and are not able to inform these required BART determinations. As a final note, we acknowledge Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use''). In cases where it does apply, agencies are ordered to prepare a Statement of Energy Effects for submission to the Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. This EGU BART proposal is not considered a significant regulatory action under Executive Order 12866, so the proposed action cannot be a ''significant energy action'' for purposes of Executive Order 13211 on that basis. This proposed action has also not been designated a significant energy action by the Administrator of OIRA, so Executive Order 13211 could not apply under that separate basis. With this proposal, there are no anticipated adverse effects on energy supply, distribution, or use that are meaningful or distinguishable from any other scenario where an EGU is expected to install cost-effective pollution controls required by the CAA.

IV. Our Weighing of the Five BART Factors

Below we present our reasoning for proposing our BART determinations for 29 EGUs in Texas, based on our analysis and weighing of the Five BART Factors: (1) Proposed SO_2 and PM BART determinations for 12 coal-fired units with no SO_2 controls, (2) proposed BART SO_2 and PM BART determinations for 6 coal-fired units with existing scrubbers, (3) proposed SO_2 and PM BART determinations 7 gas-fired units that occasionally burn fuel oil, and (4) proposed PM BART determinations for 4 gas-fired units.

In previous sections of this proposal, we have described how we assessed the five BART factors. In no case do we see any instance in which our assessment of energy impacts is a determining factor in assessing BART.[126] Also, in no case do we see any instance in which our assessment of the remaining useful life is a determining factor in assessing BART. Should a facility indicate in comments to us that the remaining useful life is less than the 30 years we have assumed in our control cost analyses, and is willing to enter into an enforceable document to that effect, we will adjust our cost-effectiveness calculation accordingly in making our final decision. In two cases, Harrington units 061B and 062B, we have limited our SO_2 control analysis for Harrington to DSI and dry scrubbers due to potential non-air quality concerns. In all other instances, we conclude that the cost of compliance, and the visibility benefits of controls are the controlling BART factors in our weighing of the five BART factors.

In considering cost-effectiveness and visibility benefit, we do not eliminate any controls based solely on the magnitude of the cost-effectiveness value, nor do we use cost-effectiveness as the primary determining factor. Rather, we compare the cost-effectiveness to the anticipated visibility benefit, and we take note of any additional considerations.[127] Also, in judging the visibility benefit we do not simply examine the highest value for a given Class I area, or a group of Class I areas, but we also consider the cumulative visibility benefit for all affected Class I areas, the number of days in a calendar year in which we see significant improvements, and other factors.[128]

First, we note that all of the sources addressed in our proposed BART determinations have already been shown to cause or contribute to visibility impairment at a Class I area as a condition of being subject-to-BART as part of the BART screening analysis. This analysis eliminated any BART-eligible source that emits lower amounts of visibility impacting pollutants, or otherwise impacts any Class I area at less than 0.5 deciviews. In fact, all of the individual units that we are proposing for BART controls exceed 0.5 deciviews on a unit basis, with most exceeding 1.0 deciview impact on a unit basis. As a consequence, all of the units we are proposing for BART controls are among the largest emitters of visibility impacting pollutants in Texas. A number of these units (*i.e.,* Big Brown, Martin Lake, Monticello, and Coleto Creek) were previously determined by us to require the same type and level of controls under the reasonable progress and long-term strategy provisions of the Regional Haze Rule that we are proposing here.[129]

Second, not discounting our approach of considering both cost-effectiveness and visibility benefit in unison, the cost-effectiveness of all of the controls that form the basis of our proposed BART determinations are within a range found to be acceptable in other cases.[130] As we

[125] Certain statements in declarations from representatives of both Luminant and Coleto Creek, who are the source owners of these facilities, cited compliance planning efforts that would be consistent with continued plant operations.

[126] In addition to our assessment of energy impacts, also see our discussion in Section III.D concerning our conclusion that energy impact considerations do not relate to potential electrical grid reliability issues.

[127] For instance, as we discuss later in Section IV.C why we believe that there are certain mitigating factors that should be considered when assessing BART for the gas-fired units that occasionally burn fuel oil.

[128] See for example 70 39130: ''comparison thresholds can be used in a number of ways in evaluating visibility improvement (*e.g.* the number of days or hours that the threshold was exceeded, a single threshold for determining whether a change in impacts is significant, a threshold representing an x percent change in improvement, etc.).''

[129] See our recent Texas-Oklahoma FIP, 81 FR 321.

[130] See for instance 79 FR 5048 (January 30, 2014): Jim Bridger BART determination of LNB/SOFA + SCR on Units 1–4; 77 FR 18070 (March 26, 2012): EPA proposed approval of Colorado's BART

stated in the BART Rule, ''[a] reasonable range would be a range that is consistent with the range of cost effectiveness values used in other similar permit decisions over a period of time.'' [131]

A. SO_2 BART for Coal-fired Units With No SO_2 Controls

As we have discussed in this proposal and in our TSD, we have assumed two DSI control levels corresponding to 50% control and either a maximum of 80% or 90% control, depending on the particulate matter control device in use.[132] We did this to address the BART Guidelines directive that in evaluating technically feasible alternatives we ''(1) [ensure we] express the degree of control using a metric that ensures an ''apples to apples'' comparison of emissions performance levels among options, and (2) [give] appropriate treatment and consideration of control techniques that can operate over a wide range of emission performance levels.'' [133] In most cases, the cost-effectiveness of the higher control level of DSI was higher than either SDA or wet FGD. This was not the case for Monticello Unit 2; Harrington Unit 062B; and J T Deely Units 1 and 2.

However, these maximum DSI control levels are theoretical and we believe that any DSI control level above 50% must be confirmed by onsite testing before we could propose a BART control based on it. As is evident in comparing the 50% control level to the higher control level, the cost-effectiveness of DSI worsens (higher $/ton) as the control level increases, and the certainty of any unit attaining that control level decreases. We therefore regard the cost-effectiveness values of the maximum DSI control levels as being useful in a basic comparison of cost-effectiveness between DSI and scrubbers, but we place much less weight on these values. We therefore conclude that given the uncertainty concerning the maximum control level of DSI, the greater control efficiency and resulting visibility benefit offered by scrubbers overrides any possible advantage DSI may hold in cost-effectiveness. Should the affected facilities provide site-specific information to us in their comments that conflicts with this assumption, we will incorporate it into our final decision on SO_2 BART and potentially re-evaluate DSI.

As we indicate elsewhere in our proposal, both SDA and wet FGD are mature technologies that are in wide use throughout the United States. We are not aware of any unusual circumstances that exist for any of the sources that would serve to indicate they should not be viewed similarly to these hundreds of previous scrubber retrofits. In comparing wet FGD versus SDA we note that in a number of cases the cost-effectiveness of wet FGD is lower than the cost-effectiveness of SDA. In the remaining cases, we conclude that the incremental cost-effectiveness of wet FGD over SDA, which we review in Section III.C.3.a is reasonable, and the improved control and visibility benefit offered by wet FGD overrides the small penalty in cost-effectiveness FGD has in comparison to SDA. We propose that with the exception of the Harrington units, SO_2 BART for all other coal-fired units should be based on the wet FGD control levels we have used in our BART analyses. We propose that SO_2 BART for the Harrington units should be based on the SDA control levels we have used in our BART analyses. Below we discuss our consideration of the cost-effectiveness and anticipated visibility benefits of controls. See section III.C.5 for additional information on the anticipated visibility benefits from each level of control modeled. See the BART Modeling TSD for a complete summary of our visibility benefit analysis of controls, including modeled benefits and impacts at all Class I areas included in the modeling analyses and additional metrics considered in the assessment of visibility benefits.

CAMx model results shown in the tables below summarize the benefits from the recommended controls at the two Class I areas most impacted by the source or unit in the baseline modeling. The benefit is calculated as the difference between the maximum impact modeled for the baseline and the maximum impact level modeled under the control scenario. Also summarized are the cumulative benefit and the number of days impacted over 0.5 and 1.0 dv. Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario summed across the 15 Class I areas included in the CAMx modeling. The baseline total cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold in the baseline modeling. The reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario. The CALPUFF cumulative model results only consider those Class I areas within the typical range of CALPUFF and not all 15 Class I areas included in the CAMx modeling.

1. Big Brown 1 & 2

In reviewing the Big Brown units, we conclude that the installation of wet FGD will result in very significant visibility benefits. We summarize some of these visibility benefits in the tables below:

TABLE 21—WET FGD VISIBILITY BENEFITS AT BIG BROWN (CALPUFF)

Source	Improvement at Wichita Mountains (dv)	Improvement at Caney Creek (dv)	Total cumulative visibility benefit (dv) [1]	Cumulative reduction in number of days above 0.5 dv [2]	Cumulative reduction in number of days above 1.0 dv [2]
Big Brown Units 1 & 2	3.83	3.55	7.38	151.67	101.33

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across the following Class I areas: Caney Creek and Wichita Mountains.

[2] Using the three years (2001–2003) of CALPUFF modeling results an annual average of the number of days reduced was calculated. The Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the following Class I areas for the baseline scenario subtracted by the number of days over the threshold for the control scenario: Caney Creek and Wichita Mountains.

determination of SCR for Hayden Unit 2, later finalized at 77 FR 76871 (December 31, 2012).

[131] 70 FR 39168 (July 6, 2005).

[132] Note for Harrington Unit 062B and Welsh 1, we further limited the maximum DSI control level to that of our calculated SDA control level.

[133] 70 FR 39166 (July 6, 2005).

In evaluating Big Brown, we note there are two Class I areas within the typical range that CALPUFF has been used for assessing visibility impacts. Using the three years of 2001–2003 CALPUFF modeling results, we assessed the annual average number of days when the facility impacts were greater than 0.5 del-dv at each of the Class I areas and then summed this value for each of the Class I areas to yield an annual average cumulative value for total number of days impacts were above 0.5 del-dv at all Class I areas within typical CALPUFF range. The reduction in the number of days (annual average) was calculated as the cumulative value of the number of days over the 0.5 del-dv threshold across the Class I areas for the baseline scenario subtracted by the cumulative number of days over the threshold for the control scenario. For the two Class I areas that are within the range that CALPUFF is typically used, the 2001–2003 CALPUFF modeling results indicate that wet FGD on both units will eliminate 151.6 days annually (3 year average) when the facility has impacts greater than 0.5 delta deciview. The same analysis was also calculated using a 1.0 del-dv threshold and is reported in the table above. DSI operated at 50% control results in approximately half of the visibility benefits in terms of dv benefits at the most impacted Class I areas and about 1/3rd to half the cumulative benefits over the class I areas included in the modeling analysis.

TABLE 22—WET FGD VISIBILITY BENEFITS AT BIG BROWN (CAMx)

Unit	Improvement at Wichita Mountains (dv)	Improvement at Caney Creek (dv)	Total cumulative visibility benefit (dv)[1]	Baseline total cumulative number of days over 0.5/1.0 dv[2]	Reduction in number of days above 0.5/1.0 dv[3]
Big Brown 1	1.909	1.606	12.728	174/44	174/44
Big Brown 2	1.940	1.642	12.924	175/45	175/45
Source	3.542	2.988	24.274	372/170	362/170

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across 15 Class I areas included in the CAMx modeling.

[2] Baseline Total Cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold.

[3] Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario.

CAMx modeling results indicate that wet FGD will eliminate all days impacted over 1dv at all Class I areas on a unit and source-wide basis, and eliminate all but 10 days across the impacted Class I areas where the source-wide impacts exceeds 0.5 dv. At the most impacted Class I area, wet FGD will on each unit result in visibility improvements of 1.9 dv on the most impacted day. DSI operated at 50% control results in approximately half of the wet FGD visibility benefits at the most impacted Class I areas and half of the cumulative benefits over the 15 class I areas included in the CAMx modeling.

We also conclude that wet FGD is very cost-effective for both units at less than $1,200/ton and more cost-effective than DSI. Based on this consideration of the BART factors, we propose that SO_2 BART for Big Brown Units 1 and 2 should be based on the installation of wet FGD at an emission limit of 0.04 lbs/MMBtu based on a 30 BOD.

2. Monticello 1 & 2

Similar to the Big Brown units, the installation of wet FGD at Monticello Units 1 and 2 will result in very significant visibility benefits. We summarize some of these visibility benefits in the tables below:

TABLE 23—WET FGD VISIBILITY BENEFITS AT MONTICELLO (CALPUFF)

Source	Improvement at Caney Creek (dv)	Improvement at Wichita Mountains (dv)	Total cumulative visibility benefit (dv)[1]	Baseline total cumulative number of days over 0.5/1.0 dv[2]	Cumulative reduction in number of days above 1.0 dv[2]
Monticello Units 1, 2 & 3	4.87	2.70	10.25	224.67	164.67

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across the following Class I areas: Caney Creek, Wichita Mountains, and Upper Buffalo.

[2] Using the three years (2001–2003) of CALPUFF modeling results an annual average of the number of days reduced was calculated. The Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the following Class I areas for the baseline scenario subtracted by the number of days over the threshold for the control scenario: Caney Creek, Wichita Mountains, and Upper Buffalo.

In evaluating Monticello, we note there are three Class I areas within the typical range that CALPUFF has been used for assessing visibility impacts. Using the three years of 2001–2003 CALPUFF modeling results we assessed the annual average number of days when the facility impacts were greater than 0.5 del-dv at each of the Class I areas and then summed this value for each of the Class I areas to yield an annual average cumulative value for total number of days impacts were above 0.5 del-dv at all Class I areas within typical CALPUFF range. The reduction in the number of days (annual average) was calculated as the cumulative value of the number of days over the 0.5 del-dv threshold across the Class I areas for the baseline scenario subtracted by the cumulative number of days over the threshold for the control scenario. For the three Class I areas that are within the range that CALPUFF is typically used, the 2001–2003 CALPUFF modeling results indicate wet FGD on both units will eliminate 224.6

days annually (3 year average) when the facility has impacts greater than 0.5 delta deciview. The same analysis was also calculated using a 1.0 del-dv threshold and is reported in the table above. DSI operated at 50% control results in approximately half of the wet FGD visibility benefits at the most impacted Class I area and half of the cumulative benefits.

TABLE 24—WET FGD VISIBILITY BENEFITS AT MONTICELLO (CAMX)

Unit	Improvement at Caney Creek (dv)	Improvement at Wichita Mountains (dv)	Total cumulative visibility benefit (dv) [1]	Baseline total cumulative number of days over 0.5/1.0 dv [2]	Reduction in number of days above 0.5/1.0 dv [3]
Monticello 1	3.783	1.989	12.708	197/67	191/67
Monticello 2	3.924	2.003	13.025	192/57	191/57
Source (including unit 3)	8.419	4.962	31.553	520/293	460/278

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across 15 Class I areas included in the CAMx modeling.

[2] Baseline Total Cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold.

[3] Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario.

CAMx modeling results indicate that wet FGD will eliminate all days impacted over 1 dv at all Class I areas on a unit basis, and eliminate all but 15 days across the impacted Class I areas where the source-wide impacts exceeds 1 dv. We note that source-wide modeled benefits include benefits of 95% control scrubber upgrade on Unit 3. At the most impacted Class I area, wet FGD on each unit will each result in visibility improvements of 3.8–3.9 dv on the most impacted day at Caney Creek and 2 dv visibility benefits at Wichita Mountains. DSI operated at 50% control results in less than half of the wet FGD visibility benefits at the most impacted Class I areas and half of the cumulative benefits over the 15 class I areas included in the modeling.

The wet FGD cost-effectiveness of $2,718/ton and $3,031/ton are higher than those for Big Brown, but these figures remain well within a range that we have previously found to be acceptable for BART, and we consider the very significant visibility benefits that will result justify the cost of wet FGD at the Monticello Units 1 and 2. The 50% control DSI cost-effectiveness is slightly less than that for wet-FGD, but results in much less visibility benefits. Based on our consideration of the BART factors, we therefore propose that SO_2 BART for Monticello Units 1 and 2 should be based on the installation of wet FGD at an emission limit of 0.04 lbs/MMBtu based on a 30 BOD.

3. Coleto Creek 1

In reviewing Coleto Creek Unit 1, we conclude that in comparison with the Monticello units, the installation of a wet FGD is more cost-effective and results in lesser, but still significant visibility benefits. We summarize some of these visibility benefits in the table below:

TABLE 25—WET FGD VISIBILITY BENEFITS AT COLETO CREEK UNIT 1 (CAMX)

Unit	Improvement at Wichita Mountains (dv)	Improvement at Caney Creek (dv)	Total cumulative visibility benefit (dv) [1]	Baseline total cumulative number of days over 0.5/1.0 dv [2]	Reduction in number of days above 0.5/1.0 dv [3]
Coleto Creek 1	0.668	0.606	5.233	17/0	17/0

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across 15 Class I areas included in the CAMx modeling.

[2] Baseline Total Cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold.

[3] Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario.

CAMx modeling results indicate that wet FGD will eliminate all days impacted over 0.5 dv at all Class I areas. At the most impacted Class I area, wet FGD will result in visibility improvements of 0.6 or more on the most impacted days at both Caney Creek and the Wichita Mountains. In addition, seven other Class I areas are improved by amounts ranging from 0.356 to 0.531 dv on the maximum impacted days with wet FGD. DSI operated at 50% control results in approximately half of the wet FGD visibility benefits at the most impacted Class I areas and half of the cumulative benefits over the 15 Class I areas included in the modeling.

We also conclude that wet FGD is very cost-effective at $2,127/ton and well within a range that we have previously found to be acceptable and more cost-effective than DSI. We consider the significant visibility benefits that will result justify the cost of wet FGD at the Coleto Creek Unit 1. We therefore propose that SO_2 BART for Coleto Creek Unit 1 should be based on the installation of wet FGD at an emission limit of 0.04 lbs/MMBtu based on a 30 BOD.

4. Welsh 1

In reviewing Welsh Unit 1, we conclude that the installation of a wet FGD will result in significant visibility

benefits. We summarize some of these visibility benefits in the tables below:

TABLE 26—WET FGD VISIBILITY BENEFITS AT WELSH UNIT 1 (CALPUFF)

Source	Improvement at Caney Creek (dv)	Improvement at Wichita Mtns. (dv)	Total cumulative visibility benefit (dv) [1]	Cumulative reduction in number of days above 0.5 dv [2]	Cumulative reduction in number of days above 1.0 dv [2]
Welsh 1	0.72	0.41	1.66	56.67	15

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across the following Class I areas: Caney Creek, Wichita Mountains, and Upper Buffalo.

[2] Using the three years (2001–2003) of CALPUFF modeling results an annual average of the number of days reduced was calculated. The reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the following Class I areas for the baseline scenario subtracted by the number of days over the threshold for the control scenario: Caney Creek, Wichita Mountains, and Upper Buffalo.

In evaluating Welsh we note there are three Class I areas within the typical range that CALPUFF has been used for assessing visibility impacts. Using the three years of 2001–2003 CALPUFF modeling results we assessed the annual average number of days when the facility impacts were greater than 0.5 del-dv at each of the Class I areas and then summed this value for each of the Class I areas to yield an annual average cumulative value for total number of days impacts were above 0.5 del-dv at all Class I areas within typical CALPUFF range. The reduction in the number of days (annual average) was calculated as the cumulative value of the number of days over the 0.5 del-dv threshold across the Class I areas for the baseline scenario subtracted by the cumulative number of days over the threshold for the control scenario. For the three Class I areas that are within the range that CALPUFF is typically used, the 2001–2003 CALPUFF modeling results indicate wet FGD on both units will eliminate 56.67 days annually (3 year average) when the facility has impacts greater than 0.5 delta deciview. The same analysis was also calculated using a 1.0 del-dv threshold and is reported in the table above. CALPUFF modeling indicates that DSI operated at 50% results in approximately half the benefits of WGFD.

TABLE 27—WET FGD VISIBILITY BENEFITS AT WELSH UNIT 1 (CAMX)

Unit	Improvement at Caney Creek (dv)	Improvement at Mingo Wilderness (dv)	Total cumulative visibility benefit (dv) [1]	Baseline total cumulative number of days over 0.5/1.0 dv [2]	Reduction in number of days above 0.5/1.0 dv [3]
Welsh 1	1.521	0.579	4.683	65/9	60/9
Source (Welsh 1 & 2)	3.754	1.973	13.179	211/72	206/72

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across 15 Class I areas included in the CAMx modeling.

[2] Baseline Total Cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold.

[3] Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario.

CAMx modeling results indicate that wet FGD on unit 1 will eliminate all days impacted by the unit over 1 dv at all Class I areas and all but 5 days impacted over 0.5 dv. At the most impacted Class I area, wet FGD on unit 1 will result in visibility improvements of 1.521 dv on the most impacted days at Caney Creek. In addition to the visibility benefits at Caney Creek and Mingo, visibility benefits at two additional Class I areas exceed 0.5 dv. We note that source-wide benefits shown include the benefits from the shutdown of unit 2. In addition, cumulative benefits from wet FGD on unit 1 over all 15 Class I areas exceeds 4.5 dv on the maximum impacted days. DSI operated at 50% control results in approximately half of the wet FGD visibility benefits at the most impacted Class I areas and half of the cumulative benefits over the 15 class I areas included in the modeling.

We conclude that although at $3,824/ton, the cost-effectiveness of wet FGD is higher than for other facilities, it remains within a range that we have previously found to be acceptable. We consider the significant visibility benefits that will result from the installation of wet FGD at Welsh Unit 1 to justify the cost. DSI at 50% control is slightly more cost-effective but results in much less visibility benefit. We therefore propose that SO_2 BART for Welsh Unit 1 should be based on the installation of wet FGD at an emission limit of 0.04 lbs/MMBtu based on a 30 BOD.

5. Harrington 061B & 062B

In reviewing Harrington, we conclude that the installation of SDA on Units 061B and 062B will result in significant visibility benefits. We summarize some of these visibility benefits in the tables below:

TABLE 28—SDA VISIBILITY BENEFITS AT HARRINGTON (CALPUFF)

Source	Improvement at Salt Creek (dv)	Improvement at Wichita Mtns. (dv)	Total cumulative visibility benefit (dv) [1]	Cumulative reduction in number of days above 0.5 dv [2]	Cumulative reduction in number of days above 1.0 dv [2]
Harrington 061B & 062B	0.45	0.74	2.56	53.67	26

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across the following Class I areas: Salt Creek, Wichita Mountains, Pecos, Carlsbad Caverns, and Wheeler Peak.

[2] Using the three years (2001–2003) of CALPUFF modeling results an annual average of the number of days reduced was calculated. The reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the following Class I areas for the baseline scenario subtracted by the number of days over the threshold for the control scenario: Salt Creek, Wichita Mountains, Pecos, Carlsbad Caverns, and Wheeler Peak.

In evaluating Harrington we note there are five Class I areas within the typical range that CALPUFF has been used for assessing visibility impacts. Using the three years of 2001–2003 CALPUFF modeling results we assessed the annual average number of days when the facility impacts were greater than 0.5 del-dv at each of the Class I areas and then summed this value for each of the Class I areas to yield an annual average cumulative value for total number of days impacts were above 0.5 del-dv at all Class I areas within typical CALPUFF range. The reduction in the number of days (annual average) was calculated as the cumulative value of the number of days over the 0.5 del-dv threshold across the Class I areas for the baseline scenario subtracted by the cumulative number of days over the threshold for the control scenario. For the five Class I areas that are within the range that CALPUFF is typically used, the 2001–2003 CALPUFF modeling results indicate wet FGD on both units will eliminate 53.6 days annually (3 year average) when the facility has impacts greater than 0.5 delta deciview. The same analysis was also calculated using a 1.0 del-dv threshold and is reported in the table above. CALPUFF modeling indicates that DSI operated at 50% results in approximately half the benefits of WGFD.

TABLE 29—SDA VISIBILITY BENEFITS AT HARRINGTON (CAMx)

Unit	Improvement at Salt Creek (dv)	Improvement at Wichita Mountains (dv)	Total cumulative visibility benefit (dv) [1]	Baseline total cumulative number of days over 0.5/1.0 dv [2]	Reduction in number of days above 0.5/1.0 dv [3]
Harrington 061B	1.170	0.643	4.832	17/5	11/3
Harrington 062B	1.279	0.723	5.379	17/5	11/3
Source (061B & 0622B)	2.053	1.130	9.329	51/17	37/11

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across 15 Class I areas included in the CAMx modeling.

[2] Baseline Total Cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold.

[3] Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario.

CAMx modeling results indicate SDA on these units will eliminate more than half of all days impacted by the units over 1 dv and 0.5 dv at all Class I areas. At the most impacted Class I areas, SDA on each unit will each result in visibility improvements of approximately 1.2 dv on the most impacted days at Salt Creek and 0.6–0.7 dv at Wichita Mountains, reducing the number of days impacted over 0.5 and 1.0 dv at these Class I areas. In addition, cumulative benefits from SDA on both units over all 15 Class I areas exceeds 9.3 dv on the maximum impacted days. DSI operated at 50% control results in approximately half of the SDA visibility benefits at the most impacted Class I areas and half of the cumulative benefits over the 15 class I areas included in the modeling.

We also conclude that SDA is cost-effective at $3,904 for Unit 061B and $4,180/ton for Unit 062B and, remains within a range that we have previously found to be acceptable. In contrast to other units we have reviewed, the 50% control DSI cost-effectiveness is much less than that for SDA. However, given the additional large total cumulative visibility benefits that will result from the installation of SDA over DSI at 50% control, we consider SDA to justify the additional cost. We therefore propose that SO_2 BART for Harrington Units 061B and 062B should be based on the installation of SDA at an emission limit of 0.06 lbs/MMBtu based on a 30 BOD.

6. W. A. Parish WAP 5 & 6

In reviewing W A Parish, we conclude that the installation of wet FGD on Units 5 and 6 will result in significant visibility benefits. We summarize some of these visibility benefits in the tables below:

TABLE 30—WET FGD VISIBILITY BENEFITS AT W A PARISH (CAMx)

Unit	Improvement at Caney Creek (dv)	Improvement at Upper Buffalo (dv)	Total cumulative visibility benefit (dv) [1]	Baseline total cumulative number of days over 0.5/1.0 dv [2]	Reduction in number of days above 0.5/1.0 dv [3]
W A Parish 5	1.518	0.943	8.171	51/9	51/9
W A Parish 6	1.492	0.922	7.979	48/7	48/7
Source (WAP 4, 5 & 6)	2.665	1.760	15.301	163/49	162/49

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across 15 Class I areas included in the CAMx modeling.

[2] Baseline Total Cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold.

[3] Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario.

CAMx modeling results indicate that wet FGD on each of these units will eliminate all days impacted by each unit over 1 dv and 0.5 dv at all Class I areas. At the most impacted Class I areas, wet FGD on each unit will each result in visibility improvements of approximately 1.5 dv on the most impacted days at Caney Creek and 0.9 dv at Upper Buffalo. Nine Class I areas have modeled source-wide baseline impacts over 1 dv, and wet FGD on both units results in source-wide improvements of 1 dv or greater on the maximum impacted days at eight of these Class I areas. In addition, cumulative benefits from wet FGD on both units over all 15 Class I areas exceeds 15 dv on the maximum impacted days. DSI operated at 50% control results in approximately half of the wet FGD visibility benefits at the most impacted Class I areas and half of the cumulative benefits over the 15 class I areas included in the modeling. We note that source-wide modeling includes a small impact from WAP 4. This unit is gas-fired and was modeled at baseline emissions levels for both the baseline and control case scenarios.

We conclude that wet FGD is cost-effective at $2,417/ton for Unit 5 and $2,259/ton for Unit 6, and remains well within a range that we have previously found to be acceptable. DSI at 50% control is approximately the same cost-effectiveness but results in significantly less visibility benefit. We consider the cost of wet FGD at the W A Parish units to be justified by the significant visibility benefits that will result. We therefore propose that SO_2 BART for W A Parish Units 5 and 6 should be based on the installation of wet FGD at an emission limit of 0.04 lbs/MMBtu based on a 30 BOD.

7. J T Deely 1 & 2

In reviewing J T Deely, we conclude that the installation of wet FGD on Units 1 and 2 will result in significant visibility benefits. We summarize some of these visibility benefits in the tables below:

TABLE 31—WET FGD VISIBILITY BENEFITS AT J T DEELY (CAMx)

Unit	Improvement at Wichita Mountains (dv)	Improvement at Caney Creek (dv)	Total cumulative visibility benefit (dv) [1]	Baseline total cumulative number of days over 0.5/1.0 dv [2]	Reduction in number of days above 0.5/1.0 dv [3]
J T Deely 1	0.487	0.283	4.785	10/0	10/0
J T Deely 2	0.298	0.217	3.650	7/0	7/0
Source (J T Deely 1 & 2, Sommers 1 & 2)	0.699	0.518	8.943	89/13	84/13

[1] Cumulative benefit is calculated as the difference in the maximum visibility impacts from the baseline and control scenario runs summed across 15 Class I areas included in the CAMx modeling.

[2] Baseline Total Cumulative number of days over 0.5 (1.0) dv is calculated as the sum of the number of modeled days at each of the 15 Class I area impacted over the threshold.

[3] Reduction in number of days is calculated as the sum of the number of days over the chosen threshold across the 15 Class I areas included in the CAMx modeling for the baseline scenario subtracted by the number of days over the threshold for the control scenario.

CAMx modeling results indicate wet FGD on each of these units will eliminate all days impacted by each unit over 0.5 dv at all Class I areas. At the most impacted Class I areas, wet FGD on each unit will each result in visibility improvements of 0.487 dv and 0.298 dv on the most impacted days at Wichita Mountains and 0.283 dv and 0.217 dv at Caney Creek. Larger visibility improvements on the most impacted days are anticipated at other Class I areas. Benefits from wet FGD on unit 1 are 0.583 dv at Big Bend, 0.511 dv at Salt Creek, 0.449 dv at Guadalupe Mountains and Carlsbad Caverns, and 0.475 dv at White Mountains. Benefits from wet FGD on unit 2 are 0.583 dv at Big Bend, 0.441 dv at Salt Creek, 0.354 dv at Guadalupe Mountains and Carlsbad Caverns, and 0.375 dv at White Mountains. DSI operated at 50% control results in approximately half of the wet FGD visibility benefits at the most impacted Class I areas and half of the cumulative benefits over the 15 Class I areas included in the modeling. We note that source-wide modeling includes the impact from Sommers units 1 and 2, and as discussed in the BART Modeling TSD, control case scenarios for these units included benefits from switching to lower sulfur fuel oil. However, these modeled improvements are a small fraction of the total visibility benefits from controls at the source.

We conclude that wet FGD is cost-effective at $3,898/ton for Unit 1 and $3,712/ton for Unit 2, and remains within a range that we have previously found to be acceptable. We consider the cost of wet FGD at the J T Deely units

to be justified by the significant visibility benefits that will result at a number of impacted Class I areas. DSI at 50% control is slightly more cost-effective but results in much less visibility benefit. We therefore propose that SO_2 BART for J T Deely Units 1 and 2 should be based on the installation of wet FGD at an emission limit of 0.04 lbs/MMBtu based on a 30 BOD.[134]

B. SO_2 BART for Coal-fired Units With Underperforming Scrubbers

The BART Guidelines state that underperforming scrubber systems should be evaluated for upgrades.[135] Other than upgrading the existing scrubbers, all of which are wet FGDs, there are no competing control technologies that could be considered for these units. The CALPUFF modeling generated facility-wide impacts and the benefits of the scrubber upgrade on Monticello Unit 3 and the three Martin Lake facilities are included in Table 17 above. The following is a listing of each of the affected units along with the resulting CAMx modeled visibility benefits from upgrading their existing scrubbers:

TABLE 32—VISIBILITY BENEFIT FOR COAL-FIRED UNITS WITH EXISTING SO_2 CONTROLS (CAMX)

Unit	Improvement at most impacted (dv)	Improvement at 2nd most impacted (dv)	Total cumulative visibility benefit (dv)	Reduction in number of days above 0.5 dv at——	Reduction in number of days above 1.0 dv at——
Monticello 3	3.719 (CACR)	1.918 (WIMO)	11.940	200/66	188/66
Martin Lake 1	1.165 (CACR)	1.449 (UPBU)	7.575	160/41	151/40
Martin Lake 2	0.655 (CACR)	1.164 (UPBU)	6.199	150/41	134/39
Martin Lake 3	1.146 (CACR)	1.478 (UPBU)	7.863	173/47	163/46

As we state elsewhere in this proposal, because our cost-effectiveness calculations depend on information claimed by the companies as CBI we cannot present it here, except to note that in all cases, the cost effectiveness was $1,156/ton or less. We conclude that in all cases, scrubber upgrades are very cost-effective and result in very significant visibility benefits, significantly reducing the impacts from these units and reducing the number of days that Class I areas are impacted over 1.0 dv and 0.5 dv. We propose that SO_2 BART for all other coal-fired units with underperforming scrubbers should be based on the wet FGD upgrade control levels we have used in our BART analyses of them.

C. SO_2 BART for Gas-Fired Units That Burn Oil

In analyzing potential controls for those gas-fired units that occasionally burn fuel oil we considered scrubber retrofits and lower sulfur fuel oil. We concluded that the cost-effectiveness of scrubber retrofits for these units were likely very high, and not worth the potential visibility benefit.

We also concluded that the cost-effectiveness of switching to a No. 2 fuel oil with a sulfur content of 0.3% is $11,218/gallon, and the cost-effectiveness of switching to ULSD with a sulfur content of 0.0015% is $8,627/gallon. We further noted that one facility already had a contract in place for ULSD at a lower price than we assumed, which if used in our analysis would result in a cost effectiveness of $3,970/ton. Although the cost-effectiveness of switching to a lower sulfur oil (assuming our price for ULSD of $1.667/gal) is higher than other controls that we have typically required under BART, we note certain mitigating factors.

For instance, arguing against control, our calculated cost-effectiveness values are high in relation to other BART controls we have required in the past. Also, our visibility modeling necessarily utilized the maximum SO_2 emissions over a 24-hour timeframe,[136] resulting in the configuring of our visibility modeling to analyze the maximum short-term potential impacts that could occur when the unit burns fuel oil. However, as we discuss elsewhere in our proposal, these units are primarily gas-fired, and have only occasionally burned fuel oil. Their most recent practices appear to reinforce this trend.

Arguing for control, unlike the wet FGD and SDA scrubbers we have costed in other sections of this TSD, which have large capital costs, we are unaware of any significant capital costs involved in switching fuels. This means the overall annual costs are relatively minor, if the units in question adhere to their historical usages. Also, because the units in question have only occasionally burned fuel oil, they have the option to avoid the cost of fuel switching entirely by not continuing to burn fuel oil and instead relying solely on their primary fuel of natural gas. Lastly, we note that the prevalence of ULSD in the fuel oil market is such that it appears to be gradually replacing most other No. 2 fuel oil applications.[137]

The preamble to the Regional Haze Rule counseled that a one percent sulfur content limitation on fuel oil should be considered as a ''starting point,'' [138] and the existing sulfur content limits are lower than one percent. Considering all of this information, we propose that SO_2 BART for the gas-fired units that occasionally burn fuel oil should be no further control. In so doing, we acknowledge the data quality issues we have discussed concerning these units and we specifically request comments on all aspects of our proposed BART analysis for these units from all interested parties. Based on the comments we receive, we may either finalize our BART determinations for these units as proposed, or we may revise them without a re-proposal.

D. PM BART

We propose to disapprove the portion of the Texas Regional Haze SIP that sought to address the BART requirement for EGUs for PM. We note that all of the coal-fired units are either currently fitted with a baghouse, an ESP and a polishing baghouse, or an ESP. We conclude that the cost of retrofitting the subject units with a baghouse would be extremely high compared to the visibility benefit for any of the units currently fitted with an ESP.

[134] We have read reports that CPS Energy, is planning to retire J T Deely Units 1 and 2 by the end of 2018, but we have no enforceable documents to that effect.

[135] 70 FR 39171 (July 6, 2005).

[136] See the BART Guidelines at 70 FR 39162, July 6, 2005: ''We recommend that States use the 24 hour average actual emission rate from the highest emitting day of the meteorological period modeled, unless this rate reflects periods start-up, shutdown, or malfunction.''

[137] *http://www.eia.gov/todayinenergy/detail.php?id=5890. http://blogs.platts.com/2014/05/07/heating-oil-new-york-sulfur/. http://oilandenergyonline.com/challenges-to-the-northeast-supply-picture/.*

[138] 70 FR at 39134.

Consequently, we propose that PM BART for the coal-fired units is an emission limit of 0.030 lb/MMBtu along with work practice standards. We propose that PM and SO_2 BART for the units that only fire gas be pipeline natural gas. We propose that PM and SO_2 BART for those gas-fired units that occasionally burn fuel oil be the existing permitted fuel oil sulfur content of 0.7% sulfur by weight or pipeline natural gas.

V. Proposed Actions

A. Regional Haze

We are proposing to disapprove the portion of the Texas Regional Haze SIP that sought to address the BART requirement for EGUs for PM. We are proposing to promulgate a FIP as described in this notice and summarized in this section to satisfy the remaining outstanding regional haze requirements that are unmet by the Texas' regional haze SIP and that we did not take action on in our January 5, 2016 final action.[139] Our proposed FIP includes SO_2 and PM BART emission limits for sources in Texas to reduce emissions that contribute to regional haze in Texas' two Class I areas and other nearby Class I areas and make reasonable progress for the first regional haze planning period for Texas' two Class I areas.

1. NO_X BART

As discussed elsewhere in this proposal, we are proposing a FIP to replace Texas' reliance on CAIR with reliance on CSAPR to address the NO_X BART requirements for EGUs. This portion of our proposal is based on: The recent update to the CSAPR rule; [140] and the EPA's finalization of a separate proposed finding that the EPA's actions in response to the D.C. Circuit's remand would not adversely impact our 2012 demonstration that CSAPR is better than BART.[141] We cannot finalize this portion of the proposed FIP unless and until the EPA finalizes the proposed finding that CSAPR continues to be better than BART because finalization of that proposal would allow for reliance on CSAPR participation as an alternative to source-specific EGU BART for NO_X in Texas.

2. SO_2 BART for Coal-Fired Units

We propose that SO_2 BART for the coal-fired units be the following SO_2 emission limits to be met on a 30 Boiler Operating Day (BOD) period:

TABLE 33—PROPOSED SO_2 BART EMISSIONS LIMITS FOR COAL-FIRED UNITS

Unit	Proposed SO_2 emission limit (lbs/MMBtu)
Scrubber Upgrades	
Martin Lake 1	0.12
Martin Lake 2	0.12
Martin Lake 3	0.11
Monticello 3	0.05
Scrubber Retrofits	
Big Brown 1	0.04
Big Brown 2	0.04
Monticello 1	0.04
Monticello 2	0.04
Coleto Creek 1	0.04
Fayette 1	0.04
Fayette 2	0.04
Harrington 061B	0.06
Harrington 062B	0.06
J T Deely 1	0.04
J T Deely 2	0.04
W A Parish 5	0.04
W A Parish 6	0.04
Welsh 1	0.04

We propose that compliance with these limits be within five years of the effective date of our final rule for Big Brown Units 1 and 2; Monticello Units 1 and 2; Coleto Creek Unit 1; Harrington Units 061B and 062B; J T Deely Units 1 and 2; W A Parish Units 5 and 6; and Welsh Unit 1. This is the maximum amount of time allowed under the Regional Haze Rule for BART compliance. We based our cost analysis on the installation of wet FGD and SDA scrubbers for these units, and in the past we have typically required that scrubber retrofits under BART be operational within five years.

We propose that compliance with these limits be within three years of the effective date of our final rule for Martin Lake Units 1, 2, and 3; and Monticello Unit 3. We believe that three years is appropriate for these units, as we based our cost analysis on upgrading the existing wet FGD scrubbers of these units, which we believe to be less complex and time consuming that the construction of a new scrubber.

We propose that compliance with these limits be within one year for Fayette Units 1 and 2. We believe that one year is appropriate for these units because the Fayette units have already demonstrated their ability to meet these emission limits.

3. Potential Process for Alternative Scrubber Upgrade Emission Limits

In our BART FIP TSD, we discuss how we calculated the SO_2 removal efficiency of the units we analyzed for scrubber upgrades. We note that due to a number of factors we could not accurately quantify, our calculations of scrubber efficiency may contain some error. Based on the results of our scrubber upgrade cost analysis, we do not believe that any reasonable error in calculating the true tons of SO_2 removed affects our proposed decision to require emission reductions, as all of the scrubber upgrades we analyzed are cost-effective (low $/ton). In other words, were we to make reasonable adjustments in the tons removed to account for any potential error in our scrubber efficiency calculation, we would still propose to upgrade these SO_2 scrubbers. We believe we have demonstrated that upgrading an underperforming SO_2 scrubber is one of the most cost-effective pollution control upgrades a coal fired power plant can implement to improve the visibility at Class I areas. However, our proposed FIP does specify a SO_2 emission limit that is based on 95% removal in all cases. This is below the upper end of what an upgraded wet SO_2 scrubber can achieve, which is 98–99%, as we have noted in our BART FIP TSD. We believe that a 95% control assumption provides an adequate margin of error for any of the units for which we have proposed scrubber upgrades, such that they should be able to comfortably attain the emission limits we have proposed. However, for the operator of any unit that disagrees with us on this point, we propose the following:

(1) The affected unit should comment why it believes it cannot attain the SO_2 emission limit we have proposed, based on a scrubber upgrade that includes the kinds of improvements (*e.g.,* elimination of bypass, wet stack conversion, installation of trays or rings, upgraded spray headers, upgraded ID fans, using all recycle pumps, etc.) typically included in a scrubber upgrade.

(2) After considering those comments, and responding to all relevant comments in a final rulemaking action, should we still require a scrubber upgrade in our final FIP we will provide the company the following option in the FIP to seek a revised emission limit after taking the following steps:

(a) Install a CEMS at the inlet to the scrubber.

(b) Pre-approval of a scrubber upgrade plan conducted by a third party engineering firm that considers the kinds of improvements (*e.g.,* elimination of bypass, wet stack conversion, installation of trays or rings, upgraded spray headers, upgraded ID fans, using all recycle pumps, etc.) typically performed during a scrubber upgrade. The goal of this plan will be to maximize the unit's overall SO_2 removal efficiency.

[139] 81 FR 296.

[140] 81 FR 74504.

[141] 81 FR 78954.

(c) Installation of the scrubber upgrades.

(d) Pre-approval of a performance testing plan, followed by the performance testing itself.

(e) A pre-approved schedule for 2.a through 2.d.

(f) Should we determine that a revision of the SO_2 emission limit is appropriate, we will have to propose a modification to the BART FIP after it has been promulgated. It should be noted that any proposal to modify the SO_2 emission limit will be based largely on the performance testing and may result in a proposed increase or decrease of that value.

4. SO_2 BART for Gas-fired Units That Burn Oil

We propose that SO_2 BART for the following gas-fired units that occasionally burn fuel oil be the existing permit limits for the sulfur content of the fuel oil:

TABLE 34—PROPOSED BART SO_2 EMISSION LIMITS GAS UNITS THAT OCCASIONALLY BURN OIL

Facility	Fuel Oil Sulfur Content (percent by weight)
Graham 2	0.7
Newman 2*	0.7
Newman 3*	0.7
O W Sommers 1	0.7
O W Sommers 2	0.7
Stryker Creek ST2	0.7
Wilkes 1	0.7

*The Newman Units 2 and 3 are further limited to burning fuel oil for no more than 876 hours per year.

5. PM BART

We propose that PM BART limits for the coal units, Big Brown Units 1 and 2; Monticello Units 1, 2, and 3; Martin Lake Units 1, 2, and 3; Coleto Creek Unit 1; J T Deely Units 1 and 2; W A Parish Units 5 and 6; Welsh Unit 1; Harrington Units 061B and 062B; and Fayette Units 1 and 2 are 0.030 lb/MMBtu and work practice standards, which we present below:

TABLE 35—PM BART EMISSIONS STANDARDS AND WORK PRACTICE STANDARDS

Unit Type	PM BART Proposal
Coal-Fired BART Units	0.03 lb/MMBtu filterable PM
	Table 3 to Subpart UUUUU
Gas-Fired Only BART Units	Pipeline quality natural gas
Oil-Fired BART Units when not firing natural gas	Fuel Content not to exceed 0.7% sulfur by weight (also SO_2 BART)

We propose that compliance with these emissions standards and work practice standards be the effective date of our final rule, as the affected facilities' should already be meeting them.

We propose that PM and SO_2 BART for the units that only fire gas, Newman Unit 4; W A Parish Unit 4; and Wilkes Units 2 and 3 be pipeline natural gas.

We propose that PM and SO_2 BART for those gas-fired units that occasionally burn fuel oil, Newman Unit 2 and 3; O W Sommers Units 1 and 2; Stryker Creek Unit ST2; and Wilkes Unit 1 be the existing permitted fuel oil sulfur content of 0.7% sulfur by weight.

B. Interstate Visibility Transport

We are proposing to disapprove Texas' SIP revisions addressing interstate visibility transport under CAA section 110(a)(2)(D)(i)(II) for six NAAQS. We further are proposing a FIP to fully address Texas' interstate visibility transport obligations for: (1) 1997 8-hour ozone, (2) 1997 $PM_{2.5}$ (annual and 24 hour), (3) 2006 $PM_{2.5}$ (24-hour), (4) 2008 8-hour ozone, (5) 2010 1-hour NO_2 and (6) 2010 1-hour SO_2. The proposed FIP is based on the finding that our proposed action to fully address the Texas Regional Haze BART program is adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states in accordance with CAA section 110(a)(2)(D)(i)(II).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Overview

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). The proposed FIP would not constitute a rule of general applicability, because it only proposes source specific requirements for particular, identified facilities (8 total).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. Section 3501 *et seq.* Because it does not contain any information collection activities, the Paperwork Reduction Act does not apply. See 5 CFR 1320(c).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements or

create impacts on small entities. This proposed FIP action under Section 110 of the CAA will not create any new requirement with which small entities must comply. This action, when finalized, will apply to 14 facilities owned by 8 companies, none of which are small entities. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* emission limitations) may or will flow from this action does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. We have therefore concluded that, this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments and the private sector. Under Section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more (adjusted for inflation) in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, Section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under Section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that Title II of UMRA does not apply to this proposed rule. In 2 U.S.C. Section 1502(1) all terms in Title II of UMRA have the meanings set forth in 2 U.S.C. Section 658, which further provides that the terms ''regulation'' and ''rule'' have the meanings set forth in 5 U.S.C. Section 601(2). Under 5 U.S.C. Section 601(2), ''the term 'rule' does not include a rule of particular applicability relating to . . . facilities.'' Because this proposed rule is a rule of particular applicability relating to 12 named facilities, EPA has determined that it is not a ''rule'' for the purposes of Title II of UMRA.

E. Executive Order 13132: Federalism

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

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

This 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

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks [142] applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the EO has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule will limit emissions of SO_2, NO_X, and PM, the rule will have a beneficial effect on children's health by reducing air pollution.

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

This proposed action is not subject to Executive Order 13211 (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. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

[142] 62 FR 19885 (Apr. 23, 1997).

This proposed federal rule limits emissions of NO_X, SO_2, and PM from 14 facilities in Texas.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Dated: December 9, 2016.

Ron Curry,

Regional Administrator, Region 6.

Title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. Section 52.2287 is added to read as follows:

§ 52.2287 Best Available Retrofit Requirements (BART) for SO_2 and Particulate Matter and Interstate pollutant transport provisions; What are the FIP requirements for visibility protection?

(a) *Applicability.* The provisions of this section shall apply to each owner or operator, or successive owners or operators, of the coal or natural gas burning equipment designated below.

(b) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the CAA and in parts 51 and 60 of this title. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes selective catalytic control units, baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants that would be emitted to the atmosphere.

Boiler-operating-day means any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

Daily average means the arithmetic average of the hourly values measured in a 24-hour period.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises any of the coal or natural gas burning equipment designated below.

PM means particulate matter.

Regional Administrator means the Regional Administrator of EPA Region 6 or his/her authorized representative.

Unit means one of the natural gas, gas and/or fuel oil, or coal-fired units covered in this section.

(c) *Emissions limitations and compliance dates for SO_2.* The owner/operator of the units listed below shall not emit or cause to be emitted pollutants in excess of the following limitations from the subject unit. Compliance with the requirements of this section is required as listed below unless otherwise indicated by compliance dates contained in specific provisions.

Unit	Proposed SO_2 emission limit (lbs/MMBtu)	Compliance date (from the effective date of the final rule) (years)
Martin Lake 1	0.12	3
Martin Lake 2	0.12	3
Martin Lake 3	0.11	3
Monticello 3	0.05	3
Big Brown 1	0.04	5
Big Brown 2	0.04	5
Monticello 1	0.04	5
Monticello 2	0.04	5
Coleto Creek 1	0.04	5
Fayette 1	0.04	1
Fayette 2	0.04	1
Harrington 061B	0.06	5
Harrington 062B	0.06	5
J T Deely 1	0.04	5
J T Deely 2	0.04	5
W A Parish 5	0.04	5
W A Parish 6	0.04	5
Welsh 1	0.04	5

(d) *Emissions limitations and compliance dates for PM.* The owner/operator of the units listed below shall not emit or cause to be emitted pollutants in excess of the following limitations from the subject unit. Compliance with the requirements of this section is required as listed below unless otherwise indicated by compliance dates contained in specific provisions.

(1) Coal-Fired Units at Big Brown Units 1 and 2; Monticello Units 1, 2, and 3; Martin Lake Units 1, 2, and 3; Coleto Creek Unit 1; J T Deely Units 1 and 2; W A Parish Units 5 and 6; Welsh Unit 1; Harrington Units 061B and 062B; and Fayette Units 1 and 2.

(i) Normal operations: Filterable PM limit of 0.030 lb/MMBtu.

(ii) Work practice standards specified in 40 CFR part 63, subpart UUUUU, Table 3, and using the relevant definitions in 63.10042.

(2) Gas-Fired Units at Newman Unit 4; Wilkes Units 2 and 3; and W A Parish Unit 4 shall burn only pipeline natural gas, as defined in 40 CFR 72.1

(3) Gas-fired units that also burn fuel oil at Graham Unit 2; Newman Units 2 and 3; O W Sommers Units 1 and 2; Stryker Creek Unit ST2; and Wilkes shall burn 0.7% sulfur content fuel or pipeline natural gas, as defined in 40 CFR 72.1.

(4) Compliance for the units included in Section (d) shall be as of the effective date of the final rule.

(e) *Testing and monitoring.* (1) No later than the compliance date of this regulation, the owner or operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for SO_2 on the units covered under paragraph (c) of this section. Compliance with the emission limits for SO_2 shall be determined by using data from a CEMS.

(2) Continuous emissions monitoring shall apply during all periods of operation of the coal or natural gas burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring SO_2 and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. Hourly averages shall be computed using at least one data point in each fifteen minute quadrant of an hour. Notwithstanding this requirement, an hourly average may be computed from at least two data points separated by a minimum of 15 minutes (where the unit operates for more than one quadrant in an hour) if data are unavailable as a result of performance of calibration, quality assurance, preventive maintenance activities, or backups of data from data acquisition and handling system, and recertification events. When valid SO_2 pounds per hour, or SO_2 pounds per million Btu emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in each 24 hour period and at least 22 out of 30 successive boiler operating days.

(3) Compliance with the PM emission limits for units in paragraph (d)(1) shall be demonstrated by the filterable PM methods specified in 40 CFR part 63, subpart UUUUU, Table 7.

(f) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Regional Administrator required by this section shall be submitted, unless instructed otherwise, to the Director, Multimedia Division, U.S. Environmental Protection Agency, Region 6, to the attention of Mail Code: 6MM, at 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. For each unit subject to the emissions limitation in this section and upon completion of the installation of CEMS as required in this section, the owner or operator shall comply with the following requirements:

(1) For SO_2 each emissions limit in this section, comply with the notification, reporting, and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d).

(2) For each day, provide the total SO_2 emitted that day by each emission unit. For any hours on any unit where data for hourly pounds or heat input is missing, identify the unit number and monitoring device that did not produce valid data that caused the missing hour.

(3) Records for demonstrating compliance with the SO_2 and PM emission limitations in this section shall be maintained for at least five years.

(g) *Equipment operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(2) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit.

■ 3. In § 52.2304, paragraph (f) is added to read as follows:

§ 52.2304 Visibility protection.

* * * * *

(f) *Measures addressing disapproval associated with NO_X, SO_2, and PM.* (1) The deficiencies associated with NO_X identified in EPA's disapproval of the regional haze plan submitted by Texas on March 31, 2009, are satisfied by Section 52.2283.

(2) The deficiencies associated with SO_2 and PM identified in EPA's disapproval of the regional haze plan submitted by Texas on March 31, 2009, are satisfied by Section 52.2287.

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Part III

Environmental Protection Agency

40 CFR Part 171
Pesticides; Certification of Pesticide Applicators; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[EPA–HQ–OPP–2011–0183; FRL–9956–70]

RIN 2070–AJ20

Pesticides; Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is updating the existing regulation concerning the certification of applicators of restricted use pesticides (RUPs) in response to public comments received on the proposal and based on extensive stakeholder review of the existing regulation and its implementation since 1974. The final revised regulation will ensure Federal certification program standards adequately protect applicators, the public, and the environment from risks associated with use of RUPs. The final rule will improve the competency of certified applicators of RUPs, increase protection for noncertified applicators using RUPs under the direct supervision of a certified applicator through enhanced pesticide safety training and standards for supervision of noncertified applicators, and establish a minimum age requirement for certified and noncertified applicators using RUPs under the direct supervision of a certified applicator. Recognizing EPA's commitment to work more closely with Tribal governments to strengthen environmental protection in Indian country, the final rule will provide more practical options for establishing certification programs in Indian country.

DATES: This final rule is effective March 6, 2017.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0183, 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: Kevin Keaney, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460–0001; telephone number: (703) 305–5557; email address: *keaney.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What is the Agency's authority for taking this action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136–136y, particularly sections 136a(d), 136i, and 136w.

B. What is the purpose of the regulatory action?

Applicators are at risk from exposure to RUPs they handle for their work. The public and the environment may also be at risk from misapplication of RUPs by pesticide applicators. This final rule is intended to enhance and improve the competency of certified RUP applicators and persons working under their direct supervision. EPA expects that improving the competency of certified applicators and those under their direct supervision will result in reduced occupational pesticide exposure and the reduced incidence of related illness among certified applicators, noncertified applicators working under their direct supervision, and agricultural workers. EPA also expects that improving the competency of certified applicators will help ensure that RUPs used according to their labeling do not cause unreasonable adverse effects to applicators, workers, the public, or the environment.

C. What are the major changes from the proposal to the final rule?

EPA received extensive comments from entities that administer pesticide applicator certification programs (States, Tribes, Federal agencies; referred to throughout this document as certifying authorities), organizations representing States and Tribes, university extension programs, growers and grower associations, pesticide applicators and applicator organizations, farmworker advocacy organizations, the Small Business Administration Office of Advocacy, other groups, and individual members of the public. Based on the feedback received, EPA has changed elements of the proposal in this final rule. Some of the major changes from the proposal to the final rule include:

- *Recertification.* EPA proposed establishing a maximum certification period of 3 years. The proposal also would have required applicators to earn a specific number of continuing education units (CEUs), based on their existing certification, to maintain their certification. The proposal defined a CEU as 50 minutes of active training time. The final rule establishes a maximum recertification period of 5 years. The final rule does not require applicators to complete a specific number of CEUs or hours of training in order to maintain their certification. Rather, the final rule establishes a framework for certifying authorities to develop a recertification program within their jurisdiction. The recertification program must ensure that applicators maintain a level of competency to use RUPs without causing unreasonable adverse effects to human health and the environment. EPA will approve recertification programs as part of its review of a certifying authority's certification plan.
- *Minimum age.* EPA proposed establishing a minimum age of 18 for private and commercial applicators, as well as for noncertified applicators working under their direct supervision. The final rule establishes a minimum age of 18 for private and commercial applicators. The final rule also establishes a minimum age of 18 for noncertified applicators working under the supervision of private and commercial applicators with a limited exception; the final rule establishes a minimum age of 16 for a noncertified applicator using agricultural RUPs under the supervision of a private applicator who is a member of the noncertified applicator's immediate family, with certain restrictions. The definition of ''immediate family'' in the final rule matches the definition of the same term in the revised Worker Protection Standard (WPS) (40 CFR 170.305).
- *Noncertified applicator qualifications.* EPA proposed requiring noncertified applicators to qualify as competent to use RUPs under the direct supervision of a certified applicator by completing pesticide safety training covering content outlined in the proposal. The proposal also included two alternative ways to qualify—completing pesticide safety training for handlers under the WPS, which covers many noncertified applicators in agriculture, or passing the exam for commercial applicators that covers core competency (but not a category exam). The proposal would have required certifying authorities either to adopt the proposed standards for noncertified applicators or to prohibit the use of RUPs by noncertified applicators. The

final rule allows noncertified applicators to establish their competency by completing pesticide safety training covering content outlined in the rule, by completing pesticide safety training for handlers as required by the WPS, by meeting requirements established by a certifying authority that meet or exceed the standards for noncertified applicator qualifications established in the final rule, or by being a certified applicator in a category other than the category covering the supervised application.

• *Commercial applicator recordkeeping.* EPA proposed requiring commercial applicators to maintain records documenting that noncertified applicators using RUPs under their direct supervision have satisfied the training requirement. FIFRA prohibits EPA from requiring private applicators to maintain records, so EPA did not propose a similar requirement for private applicators. The final rule requires commercial applicators to maintain, verify, and have access to the records of the qualifications of noncertified applicators using RUPs under their direct supervision.

• *Categories of certification.* EPA proposed the addition of ''application method-specific'' categories (aerial application, soil fumigation, and non-soil fumigation) for both commercial and private applicators. The proposal would have required commercial applicators to be certified in at least one category before being eligible to obtain an application method-specific certification (*i.e.,* hold concurrent certifications in a pest control category (*e.g.,* turf and ornamental) and an application method-specific category (*e.g.,* soil fumigation). Under the proposal, private applicators would have needed to hold a valid private applicator certification in order to be eligible to obtain an application method-specific certification. EPA also proposed adding predator control categories for private and commercial applicators, with subcategories under each covering the use of sodium cyanide dispensed through a mechanical ejection device and sodium fluoroacetate dispensed through livestock protection collars. In the final rule, EPA has added categories for both private and commercial applicators covering aerial application, soil fumigation, non-soil fumigation, the use of sodium cyanide dispensed through a mechanical ejection device, and the use of sodium fluoroacetate dispensed through livestock protection collars. These are stand-alone certification categories and do not necessarily require concurrent certification in another existing category.

• *Identification of candidates for certification and recertification.* EPA proposed requiring certifying authorities to verify the identity of persons seeking certification or recertification by checking a government-issued photo identification for each candidate. The final rule requires certifying authorities to verify the identity of persons seeking certification or recertifying by taking a written exam by checking a government-issued photo identification or by using another comparably reliable proof of identity approved by the certifying authority. The final rule requires the certifying authority have a process in place to ensure persons seeking recertification successfully complete the course objectives, which includes verifying the identity of applicators, but does not include a requirement to check a government-issued photo identification.

• *Implementation.* EPA proposed allowing certifying authorities two years from the effective date of the final rule to develop and submit a certification plan for EPA review and approval, and two years for EPA to review and approve certification plans. The proposal allowed certifying authorities that had submitted plans but had not yet received EPA approval to continue operating under their existing certification plan until EPA issued approval of the revised certification plan. The final rule adjusts the proposed implementation timeframe to provide additional flexibility. Existing certification plans approved by EPA before the effective date of the rule will remain in effect until three years after the effective date of the final rule; if a certifying authority submits an amended certification plan to EPA for approval within three years of the effective date of the final rule, its existing certification plan will remain in effect until EPA has reviewed and responded to the amended certification plan, but no longer than two years, unless EPA authorizes further extension in its approval of an amended certification plan. In its approval of an amended certification plan, EPA will specify how much longer the existing plan may remain in effect while the certifying authority prepares to implement its amended certification plan. EPA will base each certifying authority's implementation period on the particular circumstances of that jurisdiction and the requests from the certifying authority, but anticipates that most certifying authorities will be allowed two years from the date of EPA approval to fully implement their revised certification plans.

Other changes from the proposal to the final rule are discussed in the individual areas of the final regulatory requirements.

D. What are the incremental impacts of the final rule?

EPA has prepared an Economic Analysis of the potential impacts associated with this rulemaking (Ref. 1). This analysis, which is available in the docket, is summarized in greater detail in Unit II.C., and the following chart provides a brief outline of the costs and impacts included in the Economic Analysis.

Category	Description	Location in the economic analysis
Monetized Benefits Avoided acute pesticide incidents.	$13.2 to $24.3 million/year from avoided acute pesticide incidents, not adjusted for underreporting of pesticide incidents.	Chapter 4.4.
Qualitative Benefits	• Willingness to pay to avoid acute effects of pesticide exposure beyond cost of treatment and loss of productivity. • Reduced latent effect of avoided acute pesticide exposure. • Reduced chronic effects from lower chronic pesticide exposure to workers, handlers, and farmworker families, including a range of illnesses such as Non-Hodgkins lymphoma, prostate cancer, Parkinson's disease, lung cancer, chronic bronchitis, and asthma. • Reduced harm to wildlife and non-target crops.	Chapter 4.2 & 4.5.
Total Costs	$31.3 million/year	Chapter 3.5.
Costs to Private Applicators	483,000 impacted; $8.6 million/year; average $25 per applicator	Chapter 3.5.
Costs to Commercial Applicators	421,000 impacted; $16.2 million/year; average $46 per applicator	Chapter 3.5.
Costs to States and Other Jurisdictions	68 impacted; $6.5 million/year	Chapter 3.5.

Category	Description	Location in the economic analysis
Small Business Impacts	No significant impact on a substantial number of small entities • The rule may affect over 800,000 small farms that use pesticides, although about half are unlikely to apply RUPs. • Impact less than 1% of the annual revenues for the average small entity.	Chapter 3.7.
Impact on Jobs	The rule will have a negligible effect on jobs and employment • Most private and commercial applicators are self-employed. • Incremental cost per applicator represents from 0.2 to 0.5 percent of the cost of a part-time employee.	Chapter 3.6.

II. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you apply RUPs. You may also be potentially affected by this action if you are: A person who uses RUPs under the direct supervision of a certified applicator; a State, Tribe, or Federal agency who administers a certification program for pesticides applicators or a pesticide safety educator; or other person who provides pesticide safety training for pesticide applicator certification or recertification. 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:

- Agricultural Establishments (Crop Production) (NAICS code 111).
- Nursery and Tree Production (NAICS code 111421).
- Agricultural Pest Control and Pesticide Handling on Farms (NAICS code 115112).
- Crop Advisors (NAICS codes 115112, 541690, 541712).
- Agricultural (Animal) Pest Control (Livestock Spraying) (NAICS code 115210).
- Forestry Pest Control (NAICS code 115310).
- Wood Preservation Pest Control (NAICS code 321114).
- Pesticide Registrants (NAICS code 325320).
- Pesticide Dealers (NAICS codes 424690, 424910, 444220).
- Research & Demonstration Pest Control, Crop Advisor (NAICS code 541710).
- Industrial, Institutional, Structural & Health Related Pest Control (NAICS code 561710).
- Ornamental & Turf, Rights-of-Way Pest Control (NAICS code 561730).
- Environmental Protection Program Administrators (NAICS code 924110).
- Governmental Pest Control Programs (NAICS code 926140).

B. What action is the Agency taking?

The final rule revises the existing Certification of Pesticide Applicators regulation, 40 CFR part 171 (certification rule). The certification rule sets standards of competency for persons who use RUPs and establishes a framework for certifying authorities to administer pesticide applicator certification programs. The rule seeks to ensure that persons using RUPs are competent to use these products without causing unreasonable adverse effects to themselves, the public, or the environment.

The final rule takes into consideration comments received from the public in response to the proposed rule (Ref. 2), as well as additional information such as reported incidents of pesticide-related illness or injury.

EPA is revising the existing regulation to enhance the following: Private applicator competency standards, exam and training security standards, standards for noncertified applicators working under the direct supervision of a certified applicator, Tribal applicator certification, and State, Tribal, Federal agency, and EPA-administered certification plans. The final rule revises the existing regulation to add: Categories of certification for commercial and private applicators, a recertification interval and criteria for recertification programs administered by certifying authorities, and a minimum age for certified applicators and noncertified applicators using RUPs under direct supervision of certified applicators.

1. Private applicator competency standards. The final rule changes the standards of competency a private applicator must meet in order to be certified. The final rule expands the private applicator competency standards to include most of the general standards of competency for commercial applicators (also known as ''core'' competency), standards generally applicable to pesticide use in agriculture, and specific related regulations relevant to private applicators, such as the WPS. The final rule amends the options for determining private applicator competency by requiring the applicator to complete a training program or to pass a written exam that covers the specific competency standards in this rule. The final rule eliminates from the existing rule the non-reader certification option, which allows certification by oral exam to use a single product.

2. Additional categories of certification for commercial applicators and private applicators. The final rule adds to the existing rule additional categories for commercial and private applicators, which certifying authorities may adopt if relevant in their jurisdiction. The final rule adds to the existing rule commercial and private certification categories for aerial application, soil fumigation, non-soil fumigation, sodium fluoroacetate dispensed through livestock protection collars, and sodium cyanide dispensed through mechanical ejection devices.

3. Recertification standards and interval. The final rule establishes a maximum recertification interval of 5 years for commercial and private applicators. The final rule requires certifying authorities to develop a recertification program to ensure that applicators continue to maintain a level of competency necessary to use RUPs without causing unreasonable adverse effects. The final rule specifies that such a recertification program may include exams and/or training.

4. Standards for noncertified applicators using RUPs under supervision. The final rule establishes requirements to ensure that noncertified applicators are competent to use RUPs under the supervision of a certified applicator. In order for noncertified applicators to use RUPs under the direct supervision of a certified applicator, they must qualify as competent under the rule. The final rule includes four options for noncertified applicator qualification: Complete specific training as outlined in the rule, satisfy the handler training requirements under the WPS, satisfy requirements adopted by the certifying authority that meet or exceed EPA's standards for noncertified applicator qualification, or be a

currently certified applicator who is not certified to use RUPs in the category of the application. The final rule requires noncertified applicators to receive annual training or to satisfy the requirements adopted by the certifying authority as part of the certification plan.

The supervising applicator is required to verify that noncertified applicators have satisfied the necessary requirements and must have access to the records documenting that the qualification requirement has been satisfied. The final rule requires that a certified applicator supervising noncertified applicators be certified in each category relevant to the supervised application, to provide noncertified applicators access to a copy of the labeling for the RUPs used, and to ensure that a means for immediate communication between the supervising applicator and noncertified applicators under his or her direct supervision is available.

Certifying authorities have the option to adopt the standards for noncertified applicators outlined in the rule, establish alternative requirements for noncertified applicators that meet or exceed the standards in the rule, and/or prohibit the use of RUPs under the supervision of a private or commercial applicator.

5. Minimum age. The final rule requires commercial and private applicators to be at least 18 years old. The final rule requires noncertified applicators using RUPs under the direct supervision of *commercial* applicators to be at least 18 years old. The final rule requires noncertified applicators using RUPs under the direct supervision of *private* applicators to be at least 18 years old, except that those under the direct supervision of a certified private applicator who is an immediate family member must be at least 16 years old provided that certain conditions are met. The final rule includes a definition for ''immediate family'' that mirrors the definition in the WPS, which was revised in 2015.

6. Indian country certification. The final rule offers three options for certification for applicators in Indian country. A Tribe may choose to allow persons holding currently valid certifications issued under one or more specified State, Tribal, or Federal agency certification plans to apply RUPs within the Tribe's Indian country, develop its own certification plan for certifying private and commercial applicators, or take no action, in which case EPA may, in consultation with the Tribe(s) affected, implement an EPA-administered certification plan within the Tribe's Indian country. EPA currently administers a Federal certification program covering Indian country not otherwise covered by a certification plan (Ref. 3) as well as a certification program specifically for Navajo Indian country (Ref. 4).

7. State, Tribal, Federal agency, and EPA-administered certification plans. The final rule updates the requirements for submission, approval, and maintenance of State, Tribal, and Federal agency certification plans. The final rule deletes the section on Government Agency Plans (GAP) and codifies existing policy on review and approval of Federal agency certification plans. The final rule updates requirements for EPA-administered plans.

C. What are the costs and benefits of the rule?

EPA estimates the total annualized cost of the rule at $31.3 million (Ref. 1). EPA notes that these costs are the incremental costs of complying with the new requirements in the revised rule, not the total costs of administering certification programs. Certifying authorities that administer certification programs would bear annualized costs of about $6.5 million. The upfront costs of revisions to certification plans and programs, including revising laws, regulations, and policies, developing new certification categories and updating tracking databases, are estimated to be about $3.8 million; ongoing administration of exams or trainings for the new certification and recertification requirements would cost an estimated $2.7 million annually. The annual cost to private applicators would be about $8.6 million, or about $25 per year per private applicator. The estimated annual cost to commercial applicators would be $16.2 million, or about $46 per commercial applicator per year. Many of the firms in the affected sectors are small businesses, particularly in the agricultural sector. EPA concludes that there would not be a significant impact on a substantial number of small entities. The impact to the average small farm is anticipated to be less than 1% of annual sales while the impacts to small commercial pest control services are expected to be around 0.1% of annual gross revenue. Given the modest increases in per-applicator costs, EPA also concludes that the final rule will not have a substantial effect on employment.

EPA acknowledges that there is uncertainty in the cost estimates. EPA's cost analysis is generally based on a conservative methodology that tends to overestimate the cost of the rule, as explained in Chapter 3 of the Economic Analysis (Ref. 1). However, because of uncertainties in the estimation, some costs estimated in its the Economic Analysis may be underestimated. The estimated cost of $31.3 million is the best and most reasonable estimate of the total annualized costs of the final rule. However, even if EPA has underestimated the costs or overestimated the quantified benefits of this rule, consideration of the qualitative benefits of the rule leads EPA to conclude that the total benefits would outweigh the costs. These qualitative benefits include reduced chronic illness to applicators from repeated RUP exposure, and benefits to the public from better protections from RUP exposure when occupying treated buildings or outdoor spaces, consuming treated food products, and when near areas where RUPs have been applied. The qualitative benefits also include reduced impact on water and non-target plants and animals from misapplication.

The final rule will improve the pesticide applicator certification and training program substantially. Trained and competent applicators are more likely to apply pesticide products without causing unreasonable adverse effects and to use RUPs properly to achieve the intended results than applicators who are not adequately trained or properly certified. In addition to core pesticide safety and practical use concepts, certification and training assures that applicators possess critical information on a wide range of environmental issues, such as endangered species, water quality, worker protection, and protecting non-target organisms. Pesticide safety education helps applicators improve their abilities to avoid pesticide misuse, spills, and harm to non-target organisms.

The benefits of the final rule accrue to certified and noncertified applicators, the public, and the environment. EPA estimates the quantified value of the 157 to 198 acute illnesses from RUP exposure per year that could be prevented by the rule to be between $13.2 million and $24.3 million per year (Ref. 1).

To arrive at the number of incidents possibly preventable by the rule, EPA reviewed pesticide incident cases reported to the Sentinel Event Notification System for Occupational Risk (SENSOR) database, maintained by the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH). SENSOR covers all occupational injuries and has a specific component for pesticides (SENSOR-

Pesticides). EPA evaluated incidents reported to SENSOR-Pesticides from 2008–2011 that involved a pesticide ingredient commonly associated with RUPs. EPA initially identified 478 possible unintentional cases involving RUPs, but 81 were removed from consideration, leaving 397 cases. The removed cases included incidents including soil fumigants, as well as cases not relevant to the rule. EPA removed the incidents involving soil fumigants because the Agency has implemented chemical-specific mitigation measures aimed at addressing incidents involving these products. For the remaining 397 cases, EPA was able to identify the proximate causes of the exposure causing the incident using the pesticide incident reports from SENSOR-Pesticides including with the assigned prevention codes and additional information where available, such as from California's Pesticide Illness Surveillance Program. EPA reviewed the narrative description of these cases, the information identified in the SENSOR-Pesticide database and additional information from the state if it was available for the cause of the incident, and determined whether the rule included provisions intended to prevent or mitigate such incidents. EPA categorized the incidents as ''preventable'', ''possibly preventable,'' or ''not preventable'' based on whether they were within the intended scope of the rule. EPA's estimates of the benefits of the rule are based on the cases that were categorized as ''preventable'' or ''possibly preventable.'' In order to make sure EPA was not overestimating the expected benefits of the rule, other incidents were categorized as ''not preventable'' if there was not enough information to determine if the incident would have been prevented by the rule changes, if compliance with the rule would not have prevented the incident, or if the incident was not relevant to the rule. EPA classified 202 incidents as ''preventable'', meaning there was a clear link between the application/applicator and the adverse effect, and the information demonstrated an error by the applicator or applicator incompetency that the rule is intended to prevent or mitigate. EPA classified 73 incidents as ''possibly preventable'', meaning there was a clear link between the application/applicator and the effect and an applicator error was possible, but the available information did not identify any specific applicator errors that the rule is intended to prevent or mitigate. EPA removed from consideration 32 incidents related to the use of paraquat because the Agency plans to implement specific mitigation measures to address issues with the use of this product. This approach could underestimate the benefits of the rule, because the final paraquat mitigation measures are not yet known, and because preventable accidents involving paraquat are likely indicative of wider problems with RUP storage and use that may be prevented by the rule changes.

After excluding the paraquat cases, the soil fumigant cases, and the not relevant cases, there were 366 incidents determined to be relevant to the rule. The review of the SENSOR-Pesticides data identified 196 cases that were ''preventable'' under the changes to the rule, and another 51 cases were ''possibly preventable''. These cases include incidents involving RUPs that were registered by EPA at the time of the incident but have since been cancelled, because EPA believes they are indicative of the types of incidents that may occur with other RUPs, including those that may not have been registered during this time period. Accordingly, these incidents reasonably reflect the kinds of incidents expected to be mitigated by the certification rule. Given 366 incidents determined to be relevant to the rule, including those without enough information to determine whether the incident could be prevented, EPA concluded that 54 percent of RUP incidents would be preventable through the rule changes and an additional 14 percent would be possibly preventable. The changes to the rule are expected to improve applicator competency in areas reasonably expected to reduce recent RUP incidents by 54 to 68 percent, and this range was used as the basis for the quantification of benefits. Some commenters believe a lower percentage of incidents would be preventable by the rule changes. If EPA has mischaracterized some incidents as preventable, then the quantified benefits would be lower than estimated. Conversely, if EPA has mischaracterized some incidents as not preventable, then the quantified benefits would be higher than estimated.

However, EPA recognizes that the benefits estimate is biased downward by an unknown degree. First, pesticide incidents, like many illnesses and accidents, are underreported because sufferers may not seek medical care, cases may not be correctly diagnosed, and correctly diagnosed cases may not be filed to the central reporting database. Also, many symptoms of pesticide poisoning, such as fatigue, nausea, rash, dizziness, and diarrhea, may be confused with other illnesses and may not be reported as related to pesticide exposure. Studies estimate that underreporting of pesticide exposure ranges from 20% to 95% (Refs. 5, 6, 7, 8, 9, 10, and 11). EPA included underreporting of pesticide incidents as a factor in the sensitivity analysis of the potential benefits of the final rule (Ref. 1), but based its estimate of the benefits on the rule on figures unadjusted for underreporting.

EPA's approach to estimating the quantitative benefits of the rule only measures avoided medical costs and lost wages, not the willingness to pay to avoid possible symptoms due to pesticide exposure, which could be substantially higher. Many of the negative health impacts associated with agricultural pesticide application are borne by agricultural workers and handlers, a population that more acutely feels the impact of lost work time on their incomes and family health. An increase in the overall level of competency for certified applicators and noncertified applicators working under their direct supervision would also be beneficial to people who work, play, or live in areas treated with RUPs, such as agricultural workers, neighbors of agricultural fields, and consumers whose homes are treated. Under-trained and underqualified pesticide applicators may not be aware immediately of the potential impacts to their own health or the health of those who live or work around areas where RUPs are applied, and therefore may not independently adopt measures protective of themselves or others, necessitating intervention by the government to ensure these populations are adequately protected.

It is reasonable to expect that the qualitative benefits of the rule are more substantial. Although EPA is not able to measure the full benefits that accrue from reducing chronic exposure to pesticides, well-documented associations between pesticide exposure and certain cancer and non-cancer chronic health effects exist in peer-reviewed literature. See the Economic Analysis for this rule for a discussion of the peer-reviewed literature (Ref. 1). The final rule requirements for strengthened competency standards for private applicators, expanded training/qualification for noncertified applicators, additional certification categories, a minimum age for all persons using RUPs, and appropriate certification options in Indian country will lead to an overall reduction in the number of human health incidents related to acute and chronic pesticide exposure and environmental contamination from improper or misapplication of pesticides. Overall, the weight of evidence supports the

conclusion that the final rule requirements will result in long-term health benefits to certified and noncertified applicators, as well as to the public and the environment.

It is reasonable to expect that the final rule will benefit the environment and public health. The final rule enhances private applicator competency standards to include information on protecting the environment during and after application, such as avoiding contamination of water supplies. The requirement to ensure that all applicators continue to demonstrate their competency to use RUPs without unreasonable adverse effect should better protect the public from RUP exposure when occupying treated buildings or outdoor spaces, consuming treated food products, and when near areas where RUPs have been applied. The Economic Analysis for this final rule includes a qualitative discussion of 68 incidents from 2009 through 2013 where applicator errors while applying RUPs damaged crops or killed fish, bird, bees, or other animals (Ref. 1). The final rule is expected to reduce misapplication, and thereby improve environmental quality through cleaner water and less impact on non-target plants and animals.

In addition, the final rule specifically mitigates risks to children. The final rule establishes a minimum age of 18 for certified applicators (private and commercial) and noncertified applicators working under the direct supervision of commercial applicators. The final rule establishes a minimum age of 18 for noncertified applicators using RUPs under the direct supervision of private applicators, with a limited exception requiring noncertified applicators under the supervision of private applicators who are members of their immediate family to be at least 16 years old, provided certain conditions are met. Since children's bodies are still developing, they may be more susceptible to risks associated with RUP application and therefore will benefit from strengthened protections. In addition, research has shown that children may not have developed fully the capacity to make decisions and to weigh risks properly (Refs. 12, 13, 14, 15). Proper application of RUPs is essential to protect the safety of people who work, visit, or live in or near areas treated with RUPs, people who eat food that has been treated with RUPs, and people and animals who depend on an uncontaminated water supply, as well as the safety of the applicator him or herself. Therefore, it is reasonable to expect that restricting certification to persons over 18 years old, with a limited exception, will better protect both the applicators and those who may be affected negatively by improper or misapplication.

Children also suffer the effects of RUP exposure from residential applications and accidental ingestion. Exposure from residential applications can occur when RUPs are applied in areas where children live, attend school, or visit. Accidental ingestion occurs when children get access to an RUP that has been improperly stored (*e.g.,* transferred to an unmarked container or left accessible to the public) (Ref. 16). The final rule requires pesticide safety training for noncertified applicators, strengthens competency standards for private applicators, and requires all applicators to demonstrate continued competency to use RUPs. These changes will remind applicators about core principles of safe pesticide use and storage, reducing the likelihood that children would experience these types of RUP exposures. Thus, the final rule should reduce children's exposure to RUPs and contamination caused by improper application of pesticides.

III. Introduction and Procedural History

Broadly defined, a pesticide is any agent used to kill or control undesired insects, weeds, rodents, fungi, bacteria, or other organisms. See 7 U.S.C. 136(t) & (u). Chemical pest control plays a major role in modern agriculture and has contributed to dramatic increases in crop yields for most field, fruit and vegetable crops. Additionally, pesticides ensure that the public is protected from health risks, such as West Nile Virus, Lyme disease, Zika, and the plague, and help manage invasive plants and organisms that pose significant harm to the environment. Pesticides are also used to ensure that housing and workplaces are free of pests, and to control microbial agents in health care settings. EPA's obligation under FIFRA is to register only those pesticides that do not cause unreasonable adverse effects to human health or the environment. EPA is committed to protecting against these potential harms and to ensure access to a safe and adequate food supply in the United States.

FIFRA requires EPA to consider the benefits of pesticides as well as the potential risks. This consideration does not override EPA's responsibility to protect human health and the environment; rather, where a pesticide's use provides benefits, EPA must ensure that the product can be used without posing unreasonable adverse effects to human health or the environment. Some pesticides that are valuable to society but that might cause unreasonable adverse effects to human health or the environment if applied by inexperienced users are classified for restricted use (known as RUPs). Certified applicators have the knowledge, experience, and skills to understand and reliably follow the precise and often complex risk mitigation measures specified on the RUP labeling. Certification serves to ensure competency of applicators to use these RUPs, and therefore to protect the applicator, persons working under the direct supervision of the applicator, the general public, and the environment through judicious and appropriate use of RUPs.

Applicator certification enables the registration of pesticides that otherwise could not be registered, allowing the use of RUPs for pest management in agricultural production, building and other structural pest management, turf and landscape management, forestry, public health, aquatic systems, food processing, stored grain, and other areas.

The certification rule, which sets standards for applicators using RUPs, is 40 years old and has not had major revisions since 1978. For over 25 years, EPA has been engaging with stakeholders to improve the certification of applicators and improve the existing certification rule. See Unit IV.B. The changes in today's final rule (revising the certification rule) focus on five main objectives:

- Ensure that certified applicators are and remain competent to use RUPs without unreasonable adverse effects.
- Ensure that noncertified applicators receive adequate information and supervision to protect themselves and to ensure they use RUPs without posing unreasonable adverse effects.
- Set standards for States, Tribes, and Federal agencies to administer their own certification programs.
- Protect human health and the environment from risks associated with use of RUPs.
- Ensure the continued availability of RUPs used for public health and pest control purposes.

The proposed changes were issued for public comment on August 24, 2015 (Ref. 17). After 150 days, the comment period closed on January 22, 2016. EPA received over 700 unique comments on the proposed rule. Commenters represented a range of stakeholders and co-regulators, including certifying authorities, organizations representing States and Tribes, university extension programs, growers and grower organizations, pesticide applicators and

applicator associations, farmworker advocacy organizations, the Small Business Administration Office of Advocacy, other groups, and individual members of the public.

Commenters provided valuable input on all aspects of the certification rule. Many comments from certifying authorities and university extension programs provided details about current administration of their applicator certification programs and the impacts various provisions of the proposal would have if finalized. The main areas of interest to commenters included proposed provisions related to: Recertification and equivalency for State, Tribal and Federal agency certification programs, minimum age, implementation, reciprocity between certifying authorities, and noncertified applicators. Commenters also submitted feedback on the impact the proposal would have on applicators of non-RUPs (*i.e.,* general use or unclassified pesticides), the administration of State, Tribal, and Federal agency programs, and the estimated costs of the proposal.

EPA considered the comments received on the proposal and evaluated the costs and benefits of various requirements in developing a final revised rule that is expected to achieve the benefits outlined throughout this preamble. For a summary of the benefits, see the table in Unit I.D. and the discussion of costs and benefits in Unit II.C.

IV. Context, Considerations, and Reasons for This Rulemaking

A. Context for This Rulemaking

1. Statutory authority. FIFRA, 7. U.S.C. 136 *et seq.,* was signed into law in 1947 and established a framework for the regulation of pesticide products, requiring them to be registered by the Federal government before sale or distribution in commerce. Amended in 1972 by the Federal Environmental Pesticide Control Act, FIFRA broadened federal pesticide regulatory authority in several respects, notably by making it unlawful for anyone to use any registered product in a manner inconsistent with its labeling, 7 U.S.C. 136i(a)(2)(G), and limiting the sale and use of RUPs to certified applicators and those under their direct supervision. 7 U.S.C. 136i(a)(2)(F). The amendments provided civil and criminal penalties for violations of FIFRA. 7 U.S.C. 136l. The new and revised provisions augmented EPA's authority to protect humans and the environment from unreasonable adverse effects of pesticides.

As a general matter, in order to obtain a registration for a pesticide under FIFRA, the applicant must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. 7 U.S.C. 136a(c)(5). That standard requires, among other things, that the pesticide performs its intended function without causing ''unreasonable adverse effects on the environment.'' The term ''unreasonable adverse effects on the environment'' takes into account the economic, social, and environmental costs and benefits of the use of any pesticide and includes any unreasonable risk to man or the environment. 7 U.S.C. 136(bb). This standard requires a finding that the risks associated with the use of a pesticide are justified by the benefits of such use, when the pesticide is used in compliance with the terms and conditions of registration, or in accordance with commonly recognized practices. See *Defenders of Wildlife* v. *EPA,* 882 F.2d 1294, 1298–99 (8th Cir. 1989) (describing FIFRA's required balancing of risks and benefits).

A pesticide product may be unclassified, or it may be classified for restricted or for general use. Non-RUPs (*i.e.,* general use or unclassified pesticides) generally have a lower toxicity than RUPs and so pose less potential to harm humans or the environment. The general public can buy and use non-RUPs without special permits or training.

Where EPA determines that a pesticide product would not meet these registration criteria if unclassified or available for general use, but could meet the registration criteria if applied by experienced, competent applicators, EPA classifies the pesticide for restricted use only by certified applicators. 7 U.S.C. 136a(d)(1). Generally, EPA classifies a pesticide as restricted use if its toxicity exceeds one or more human health toxicity criteria or based on other standards established in regulation. EPA may also classify a pesticide as restricted use if it meets certain criteria for hazards to non-target organisms or ecosystems, or if EPA determines that a product (or class of products) may cause unreasonable adverse effects on human health and/or the environment without such restriction. The restricted use classification designation must be prominently placed on the top of the front panel of the pesticide product labeling.

The risks associated with products classified as RUPs require additional regulatory restrictions to ensure that when used they do not cause unreasonable adverse effects on human health or the environment. However, RUPs can be used without unreasonable adverse effects by properly competent and equipped applicators closely following labeling instructions. These products may only be applied by certified applicators who have demonstrated competency in the safe application of pesticides, including the ability to read and understand the complex labeling requirements, or persons working under their direct supervision. FIFRA requires EPA to develop standards for certification of applicators, 7 U.S.C. 136i(a)(1), and allows States to certify applicators under a certification plan approved by EPA. 7 U.S.C. 136i(a)(2).

Provisions limiting EPA's authority with respect to applicator certification include 7 U.S.C. 136i(a)(1), (c), and (d); 7 U.S.C. 136w–5; and 7 U.S.C. 136(2)(e)(4). Section 136i(a)(1) of FIFRA prohibits EPA from requiring private applicators to take an exam to establish competency in the use of pesticides under an EPA-administered certification program, or from requiring States to impose an exam requirement as part of a State plan for certification of applicators.

Section 136i(c) of FIFRA directs EPA to make instructional materials on Integrated Pest Management (IPM) available to individuals, but it prohibits EPA from establishing requirements for instruction or competency determination on IPM. EPA makes IPM instructional materials available to individual users through the National Pesticide Applicator Certification Core Manual, which is used directly or as a model by many States. Additionally, EPA has developed and implemented a variety of programs to inform pesticide applicators about the principles and benefits of IPM. These include the EPA's IPM in Schools Program, the Pesticide Environmental Stewardship Program (PESP), and the Strategic Agricultural Initiative (SAI) Grant Program, as well as several other efforts. The Agency will continue to place a high priority on initiatives and programs that promote IPM practices. For additional information about the range of programs and activities, visit the Office of Pesticide Programs PESP Web page on the EPA Web site at: *https://www.epa.gov/pesp*.

Section 136i(d) of FIFRA prohibits EPA from requiring private applicators to keep records or file reports in connection with certification requirements. However, private applicators must keep records of RUP applications containing information substantially similar to that which EPA requires commercial applicators to maintain pursuant to Department of

Agriculture (USDA) regulations at 7 CFR 110.3.

Section 136w–5 of FIFRA prohibits EPA from establishing training requirements for maintenance applicators (certain applicators of non-agricultural, non-RUPs) or service technicians.

FIFRA's definition of ''under the direct supervision of a certified applicator'' allows noncertified applicators to apply RUPs under the direct supervision of a certified applicator even though the certified applicator may not be physically present at the time and place the pesticide is applied. 7 U.S.C. 136(e)(4). EPA can, on a product-by-product basis and through the pesticide's labeling, require application of an RUP only by a certified applicator.

2. EPA's regulation of pesticides. In order to protect human health and the environment from unreasonable adverse effects that might be caused by pesticides, EPA has developed and implemented a rigorous process for registering and re-evaluating pesticides. The registration process begins when a manufacturer submits an application to register a pesticide. The application must contain (or cite to) required test data, including information on the pesticide's chemistry, environmental fate, toxicity to humans and wildlife, and potential for human exposure. The Agency also requires a copy of the proposed labeling, including directions for use, and appropriate warnings.

Once an application for a new pesticide product is received, EPA conducts an evaluation, which includes a detailed review of scientific data to determine the potential impact on human health and the environment. EPA considers the risk assessments and results of any peer review, and evaluates potential risk management measures that could mitigate any risks that are at or above EPA's level of concern. Risk management measures could include, among other things, classifying the pesticide as restricted use, limitations on the use of the pesticide, or requiring the use of engineering controls.

In the registration process, EPA evaluates the proposed use(s) of the pesticide to determine whether it would cause adverse effects on human health, non-target species, and the environment. FIFRA requires that EPA balance the benefits of using a pesticide against the risks from that use.

If the application for registration does not contain evidence sufficient for EPA to determine that the pesticide meets the FIFRA registration criteria, EPA communicates to the applicant the need for more or better refined data, labeling modifications, or additional use restrictions. Once the applicant has demonstrated that a proposed product meets the FIFRA registration criteria and—if the use would result in residues of the pesticide on food or feed—a tolerance or exemption from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.,* is available, EPA approves the registration subject to any risk mitigation measures necessary to achieve that approval. EPA devotes significant resources to crafting the terms and conditions of each pesticide registration to ensure that each pesticide product meets the FIFRA requirement that pesticides not cause unreasonable adverse effects to the public and the environment.

Part of EPA's pesticide regulation and evaluation process is determining whether a pesticide should be classified for restricted use. As discussed in Unit II.A., EPA classifies products as RUPs when they would cause unreasonable adverse effects on the environment, the applicator, or the public without additional restrictions beyond the labeling requirements. 7 U.S.C. 136a(d)(1)(C). EPA maintains a list of active ingredients with uses that have been classified as restricted use at 40 CFR 152.175. In addition, EPA periodically publishes an ''RUP Report'' that lists RUP products' registration number, product name, status, registration status, company name, and active ingredients (*https://www.epa.gov/pesticide-worker-safety/restricted-use-products-rup-report*). EPA has classified about 900 pesticide products as RUPs, which is about 5% of all registered pesticide products. EPA does not have reliable data on the relative usage of RUPs versus non-RUPs.

When EPA approves a pesticide, the labeling specifies the risk mitigation measures required by EPA. Potential risk mitigation measures include requiring certain engineering controls, such as use of closed systems for mixing pesticides and loading them into application equipment to reduce potential exposure to those who handle pesticides; establishing conditions on the use of the pesticide by specifying certain use sites, maximum application rates or maximum number of applications; and limiting the use of the product to certified applicators (*i.e.,* prohibiting application of an RUP by a noncertified applicator working under the direct supervision of a certified applicator. Since users must comply with the directions for use and use restrictions on a product's labeling, EPA uses the labeling to establish and convey mandatory requirements for how the pesticide must be used to protect the applicator, the public, and the environment from pesticide exposure.

Under FIFRA, EPA is required to review periodically the registration of pesticides currently registered in the United States. The 1988 FIFRA amendments required EPA to establish a pesticide reregistration program. Reregistration was a one-time comprehensive review of the human health and environmental effects of pesticides first registered before November 1, 1984 to make decisions about these pesticides' future use. The Food Quality Protection Act of 1996 (FQPA) amendments to FIFRA require that EPA establish, through rulemaking, an ongoing ''registration review'' process of all pesticides at least every 15 years. The final rule establishing the registration review program was signed in August 2006 (40 CFR 155, subpart C). The purpose of both re-evaluation programs is to review all pesticides registered in the United States to ensure that they continue to meet current safety standards based on up-to-date scientific approaches and relevant data.

Pesticides reviewed under the reregistration program that met current scientific and safety standards were declared ''eligible'' for reregistration. The results of EPA's reviews are summarized in Reregistration Eligibility Decision (RED) documents. The last RED was completed in 2008. Often before a pesticide could be determined ''eligible,'' certain risk reduction measures had to be put in place. For a number of pesticides, measures intended to reduce exposure to certified applicators and pesticide handlers were needed and are reflected on pesticide labeling. Where necessary to address occupational risk concerns, REDs include mitigation measures such as: Voluntary cancellation of the product or specific use(s); limiting the amount, frequency or timing of applications; prohibiting particular application methods; classifying a product or specific use(s) as for restricted use; requiring the use of specific personal protective equipment (PPE); establishing specific restricted entry intervals; and improving use directions.

Rigorous ongoing education and enforcement are needed to ensure that these mitigation measures are appropriately implemented in the field. The framework provided by the certification rule and associated programs are critical for ensuring that the improvements brought about by reregistration and registration review are realized in the field. For example, the requirement for applicators to demonstrate continued competency, or

to renew their certifications periodically, is one way to educate applicators about changes in product labeling to ensure they continue to use RUPs in a manner that will not harm themselves, the public, or the environment. The changes to the final rule are designed to enhance the effectiveness of the existing regulatory structure.

In summary, EPA's pesticide reregistration and registration reviews assess the specific risks associated with particular chemicals and ensure that the public and environment do not suffer unreasonable adverse effects from the products containing those pesticide chemicals. EPA implements the risk reduction and mitigation measures that result from the pesticide reregistration and registration review programs through individual pesticide product labeling.

3. Certification rule. The certification rule is intended to ensure that persons using or supervising the use of RUPs are competent to use these products without causing unreasonable adverse effects to human health or the environment and to provide a mechanism by which States, Tribes, and Federal agencies can administer their own programs to certify applicators of RUPs as competent. FIFRA distinguishes three categories of persons who might apply RUPs:

- *Commercial applicators.* ''Commercial applicator'' is defined at 7 U.S.C. 136(e)(3). This group consists primarily of those who apply RUPs for hire, including applicators who perform agricultural pest control, structural pest control, lawn and turf care, and public health pest control.
- *Private applicators.* ''Private applicator'' is defined at 7 U.S.C. 136(e)(2). This group consists primarily of farmers or agricultural growers who apply RUPs to their own land to produce an agricultural commodity.
- *Noncertified applicators.* A noncertified applicator is a person who uses RUPs under the direct supervision of a certified applicator. The phrase ''under the direct supervision of a certified applicator'' is defined at 7 U.S.C. 136(e)(4).

The existing certification rule establishes requirements for submission and approval of State plans for the certification of applicators. Consistent with the provisions of FIFRA (7 U.S.C. 136i(a)(2)) and the State plan requirements in the existing rule, programs for the certification of applicators of RUPs are currently implemented by all States and most territories. (As used in FIFRA, the term State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa; the term State has the same meaning in this final rulemaking.) Certification programs are also carried out by four other Federal agencies under approved Federal agency plans. In addition, EPA has approved plans for four Tribes. EPA also directly administers a national certification plan for Indian country (Ref. 3) and has implemented a specific certification plan for the Navajo Nation (Ref. 4). The States, Tribes, and Federal agencies certify applicators in accordance with their EPA-approved certification plans (Ref. 18).

The existing certification rule establishes competency standards for persons seeking to become certified as private or commercial applicators. For a person to become certified as a private applicator, he or she must either pass an exam covering a general set of information related to pesticide application and safety or qualify through a non-exam option administered by the certifying authority. For a person to become certified as a commercial applicator, he or she must pass at least two exams—one covering the general or ''core'' competencies related to general pesticide application and environmental safety and an exam related to each specific category in which he or she intends to apply pesticides. The existing certification rule lists 10 categories of certification for commercial applicators: Agricultural pest control—plant; agricultural pest control—animal; forest pest control; ornamental and turf pest control; seed treatment; aquatic pest control; right-of-way pest control; industrial, institutional, structural and health related pest control; public health pest control; regulatory pest control; and demonstration and research pest control. 40 CFR 171.3(b). (Note: Documents from EPA and other certifying authorities sometimes refer to 11 categories of certification, counting the two subcategories under agricultural pest control as individual categories.) Although EPA only requires certification of applicators who use RUPs, most States require all commercial ''for hire'' applicators to be certified, regardless of whether they plan to use RUPs or only non-RUPs. Once the applicator completes the necessary requirements, the certifying authority issues to the applicator a certification valid for a set period of time, ranging from 1–6 years depending on the State, Tribe, or Federal agency that provides the certification.

The existing regulation requires States to implement a recertification process to ensure that applicators maintain ongoing competency to use pesticides safely and properly. 40 CFR 171.8(a)(2). However, the existing rule does not have requirements regarding the frequency, content, or standards for applicator recertification. States, Tribes and Federal agencies have established varying requirements for applicators to be recertified, such as attending a full-day workshop, earning a specific number of CEUs, or passing written exams. Applicators who do not complete the recertification requirements in the established period no longer hold a valid certification and cannot use RUPs after their certification expires.

Under the existing certification rule, noncertified applicators (*i.e.,* persons using RUPs under the direct supervision of certified applicators, must receive general instructions and be able to contact their supervisor in the event of an emergency). The rule does not have specific training requirements, a limit on the distance between the supervisor and noncertified applicator, or a restriction on the number of noncertified applicators that one certified applicator can supervise.

B. Considerations for Improving the Certification Rule

1. Regulatory history. The Agency proposed the existing certification rule in 1974. EPA finalized sections covering applicator competency standards and noncertified applicator requirements (40 CFR 171.1 through 171.6) in 1974 (Ref. 19), followed by sections outlining State plan submission and review and certification in Indian country (40 CFR 171.7 through 171.10) in 1975 (Ref. 20), and the requirements for EPA-administered plans (40 CFR 171.11) in 1978 (Ref. 21). Since 1978, EPA has made minor amendments to the rule, such as requiring dealer recordkeeping and reporting under EPA-implemented plans and establishing standards for EPA-administered plans (Refs. 22 and 23).

In 1990, EPA proposed amendments to the certification rule that included provisions for establishing private applicator categories, adding categories for commercial applicators, revising applicator competency standards, establishing criteria and levels of supervision for the use of an RUP by a noncertified applicator, criteria for approving State noncertified applicator training programs, establishing recertification requirements for private and commercial applicators, and eliminating the exemption for non-

reader certification (Ref. 24). EPA took comments on the proposal but did not finalize it due to constraints on EPA's resources.

Because no major revision has been made to this federal regulation in almost 40 years, States have taken the lead in revising and updating standards for certification and recertification. Many States updated their certification programs based on EPA's 1990 proposal. Others have amended their programs to address changes in technology or other aspects of pesticide application. As a result, the State requirements for certification of applicators are highly varied and most States go well beyond the existing Federal requirements for applicator certification. This situation has created an uneven regulatory landscape and problems in program consistency that complicate registration decisions, inhibit certifying authorities from accepting as valid certifications issued by other certifying authorities, and hinder EPA's ability to develop national program materials that meet the needs of all States.

2. Stakeholder engagement. In 1996, stakeholders from the Federal and State governments and cooperative extension programs formed the Certification and Training Assessment Group (CTAG) to assess the current status of and provide direction for Federal and State pesticide applicator certification programs. CTAG's mission is to develop and implement proposals to strengthen Federal, State and Tribal pesticide certification and training programs, with the goal of enhancing the knowledge and skills of pesticide users. Pesticide certification and training programs are run primarily by State government programs and cooperative extension service programs from State land grant universities, so these stakeholders provide valuable insight into the needs of the program.

In 1999, CTAG issued a comprehensive report, ''Pesticide Safety in the 21st Century'' (Ref. 25), which recommended improvements for State and Federal pesticide applicator certification programs, including how to strengthen the certification rule. The report suggests that EPA update the core training requirements for private and commercial applicators, establish a minimum age for applicator certification, set standards for a recertification or continuing education program, facilitate the ability of applicators certified in one State to work in another State without going through the whole certification process again, and strengthen protections for noncertified applicators working under the direct supervision of a certified applicator (Ref. 25).

Around the same time as CTAG issued its report, EPA initiated the National Assessment of the Pesticide Worker Safety Program (the National Assessment), an evaluation of its pesticide worker safety program (pesticide applicator certification and agricultural worker protection) (Ref. 27). The National Assessment engaged a wide array of stakeholder groups in public forums to discuss among other things, the CTAG recommendations and other necessary improvements to EPA's pesticide applicator certification program. In 2005, EPA issued the ''Report on the National Assessment of EPA's Pesticide Worker Safety Program'' (Ref. 27), which included many recommendations for rule revisions to improve the applicator certification program. The various individual opinions expressed and suggestions made during the course of the assessment centered on a few broad improvement areas: The expansion and upgrade of applicator and worker competency and promotion of safer work practices, improved training of and communication with all pesticide workers, increased enforcement efforts and improved training of inspectors, training of health care providers and monitoring of pesticide incidents, and finally, program operation, efficiency and funding (Ref. 27). Suggestions specific to certification of applicators included improving standards for noncertified applicators working under the direct supervision of certified applicators, establishing a minimum age for applicator certification, requiring all applicators to pass an exam to become certified, and facilitating reciprocity between States for certification of applicators (Ref. 27). While EPA addressed some of the recommendations through grants, program guidance, and other outreach, others could only be accomplished by rulemaking.

During the initial stages of the framing of this proposal, EPA's Federal advisory committee on pesticide issues, the Pesticide Program Dialogue Committee (PPDC), formed a workgroup in 2006 to provide feedback to EPA on different areas for change to the certification rule and the WPS. The workgroup had over 70 members representing a wide range of stakeholders. EPA shared with the workgroup suggestions for regulatory change identified through the National Assessment and solicited comments. The workgroup convened for a series of meetings and conference calls to get more information on specific parts of the regulation and areas where EPA was considering change, and provided feedback to EPA. The workgroup focused on evaluating possible changes under consideration by EPA by providing feedback from each member's or organization's perspective. Comments from the PPDC workgroup members have been compiled into a single document and posted in the docket (Ref. 28).

EPA convened a Small Business Advocacy Review (SBAR) Panel on potential revisions to the certification rule and the WPS in 2008. The SBAR Panel was convened under section 609(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 609(b). As part of the SBAR Panel's activities, EPA consulted with a group of Small Entity Representatives (SERs) from small businesses and organizations that could be affected by the potential revisions. EPA provided the SERs with information on potential revisions to both rules and requested feedback on the proposals under consideration. EPA asked the SERs to offer alternate solutions to the potential proposals presented to provide flexibility or to decrease economic impact for small entities while still accomplishing the goal of improved safety (Ref. 29).

Specific to the certification rule, the SERs provided feedback on requirements for the minimum age of pesticide applicators and protections for noncertified applicators working under the direct supervision of a certified applicator. The SERs' responses were compiled in an Appendix to the final Panel Report and posted in the docket (Ref. 29). EPA considered input from the SERs as part of the evaluation of available options for this rulemaking and SER feedback is discussed where relevant in this preamble.

Consistent with EPA's Indian Policy and Tribal Consultation Policy, EPA's Office of Pesticide Programs conducted a consultation on the proposed rulemaking with Tribes. The consultation was carried out via a series of scheduled conference calls with Tribal representatives to inform them about potential regulatory changes, especially areas that could affect Tribes. EPA also informed the Tribal Pesticide Program Council (TPPC) about the potential changes to the regulation (Ref. 30).

In addition to formal stakeholder outreach, EPA held numerous meetings at the request of various stakeholders to discuss concerns and suggestions in detail.

3. Public comments on the proposal. EPA received over 700 distinct comments on the proposed changes (Ref. 17). Commenters represented program stakeholders and regulators,

including State pesticide regulatory agencies, pesticide safety education programs (university extension programs), farm bureaus, associations, nonprofit organizations, certified applicators, applicator associations and growers.

Many comments from State regulatory agencies and pesticide safety education programs provide details describing intricacies of their certification programs and how the proposal would impact them. Comments cover all areas of the proposal, but the areas of the proposal that received the most critical comments include recertification and equivalency, impact on applicators of non-RUPs, reciprocity, establishing a minimum age of 18 for certified and noncertified applicators, unfunded mandates, implementation timing, and EPA's Economic Analysis of the proposed changes.

During the public comment period, EPA met with stakeholders individually and as organizations to discuss the proposal. EPA met with States through the AAPCO workgroup formed to respond to the proposal, as well as through other State organization meetings. At the request of the Small Business Administration's Office of Advocacy, EPA provided an overview of the proposal to interested small business representatives.

EPA has included a summary of most comments received and EPA's responses in this document. EPA has also prepared a separate document summarizing comments not included in this document and EPA's responses (Ref. 2).

4. Children's health protection. Executive Order 13045 (62 FR 19885, April 23, 1997) and modified by Executive Order 13296 (68 FR 19931, April 18, 2003) requires Federal agencies to identify and assess environmental health risks that may disproportionately affect children. Children who apply pesticides face risks of exposure. A 2003 study identified 531 children under 18 years old with acute occupational pesticide-related illnesses over a 10-year period (Ref. 23). This study raised concerns for chronic impacts: ''Because [the] acute illnesses affect young people at a time before they have reached full developmental maturation, there is also concern about unique and persistent chronic effects'' (Ref. 31). Although the study is not limited to RUPs, its findings indicate the potential risk to children from working with and around pesticides.

The Fair Labor Standard Act's (FLSA) child labor provisions, which are administered by DOL, permit children to work at younger ages in agricultural employment than in non-agricultural employment. Children under 16 years old are prohibited from doing hazardous tasks in agriculture, including handling or applying acutely toxic pesticides. 29 CFR 570.71(a)(9). DOL has established a general rule, applicable to most industries other than agriculture, that workers must be at least 18 years old to perform hazardous jobs. 29 CFR 570.120.

Research has shown differences in the decision making of adolescents and adults that leads to the conclusion that adolescent applicators may take more risks than those who are adults. Behavioral scientists note that responsible decision making is more common in young adults than adolescents: ''Socially responsible decision making is significantly more common among young adults than among adolescents, but does not increase appreciably after age 19. Adolescents, on average, scored significantly worse than adults did, but individual differences in judgment within each adolescent age group were considerable. These findings call into question recent assertions, derived from studies of logical reasoning, that adolescents and adults are equally competent and that laws and social policies should treat them as such'' (Ref. 15). Decision-making skills and competency differ between adolescents and adults. While research has focused on decision making of juveniles in terms of legal culpability, the research suggests similar logic can be applied to decision making for pesticide applications.

In sum, children applying RUPs—products that require additional care when used to ensure they do not cause unreasonable adverse effects on people or the environment—may be at a potentially higher risk of pesticide exposure and illness. The elevated risk to the adolescent applicators, in addition to adolescents' not fully developed decision-making abilities, warrant careful consideration of the best ways to protect them. It is reasonable to expect that the revised regulation will mitigate or eliminate many of the risks faced by adolescents covered by this rule.

5. Retrospective regulatory review. On January 18, 2011, President Obama issued Executive Order 13563 (76 FR 3821, January 21, 2011), to direct each Federal agency to develop a plan, consistent with law and its resources and regulatory priorities, under which the agency would periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. The Executive Order also enumerates a number of principles and directives to guide agencies as they work to improve the Nation's regulatory system.

In developing its plan for the periodic retrospective review of its regulations, EPA sought public input on the design of EPA's plan, as well as stakeholder suggestions for regulations that should be the first to undergo a retrospective review (76 FR 9988, February 23, 2011). EPA issued the final plan, titled ''Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations,'' in August 2011 (*http://www.epa.gov/regdarrt/retrospective/documents/eparetroreviewplan-aug2011.pdf*). The existing certification rule was nominated for retrospective review as part of the public involvement process in 2011. In EPA's final plan, EPA committed to review the existing certification rule to determine how to clarify requirements and modify potentially redundant or restrictive requirements, in keeping with Executive Order 13563.

The results of EPA's review, which included identified opportunities for improving the existing regulation, were incorporated into this rulemaking effort. EPA expects revised regulation to achieve the benefits outlined in Section II.C. For a summary of the benefits, see the table in Unit I.D. and the discussion of costs and benefits of the final rule in Unit II.C.

C. Reasons for This Rulemaking

1. Reasons for regulatory change. The certification rule must be updated to ensure that the certification process adequately prepares and ensures the continued competency of applicators to use RUPs. Several factors prompted EPA to propose changes to the existing rule: The changing nature of pesticide labeling, risks associated with specific methods for applying pesticides, adverse human health and ecological incidents, inadequate protections for noncertified applicators of RUPs, an uneven regulatory landscape, and outdated and obsolete provisions in the rule related to the administration of certification programs by Tribes and Federal agencies.

i. The changing nature of pesticide labeling. As discussed in Unit IV.A., EPA uses a rigorous process to register pesticides. EPA has also implemented the pesticide reregistration program and the registration review program to review registered pesticides periodically

to ensure they continue to meet the necessary standard. As a result of these ongoing evaluations, risk-based labeling changes are occurring more frequently than they were when the certification rule was first issued. Changes address, among other topics, pesticide product formulation and packaging, application methods, types of personal protective equipment, and environmental concerns, such as the need to protect pollinators. Pesticides that present greater risks generally have more detailed risk mitigation measures, which can make the pesticide labeling more complex. For pesticides classified as RUPs, it is essential that applicators stay abreast of the changes to the labeling and understand the risk mitigation measures, because if the products are not used according to their labeling, they may cause unreasonable adverse effects to the applicator, the public or the environment. EPA's registration decisions assume that the applicator follows all labeling instructions; when the labeling is followed, RUPs can be used without unreasonable adverse effects. The current regulation requires that applicators demonstrate continued competency to use RUPs, but does not specify the length of the certification period or standards for recertification and establishes only very basic competencies for private applicators. EPA must ensure that certified applicators demonstrate and maintain an understanding of how to use RUPs in a manner that will not cause unreasonable adverse effects so that EPA can continue to register RUPs. Therefore, EPA is establishing a 5-year certification period, criteria for recertification programs, and specifying in more detail the competency standards for private applicators.

ii. Specific application methods that require additional applicator competency. RUPs are applied using a variety of application methods. Some methods of application may require the applicator to have additional specific competencies to perform these applications in a way that minimizes risk to the applicator, bystander, and the environment. Spray applications, particularly spraying pesticides from an aircraft, may result in off-target drift of the pesticide. For example, a study estimates that 37% to 68% of acute pesticide-related illnesses in agricultural workers are caused by spray drift, including both ground-based and aerial spray applications (Ref. 32). In the 2008 REDs for soil fumigants (Ref. 33), EPA identified risks that required additional training for soil fumigant applicators, and specified labeling amendments requiring additional training in addition to the existing requirement for the applicator to be certified. The soil fumigant REDs also acknowledged that a specific certification category requiring demonstration of competency by passing a written exam related to applying fumigants to soil would be an acceptable alternative risk mitigation measure. EPA must ensure that applicators are competent to use RUPs in a manner that will not cause unreasonable adverse effects. Therefore, EPA is adding to the regulation categories for commercial and private applicators performing aerial application, soil fumigation, and non-soil fumigation.

iii. Adverse human health and ecological incidents. Much has changed over the last 40 years related to use of RUPs—pesticide product formulation and labeling, application methods, types of personal protective equipment, and environmental concerns. EPA is updating the regulation to address these and other changes affecting applicators of RUPs. In addition to the hundreds of potentially avoidable acute health incidents related to RUP exposure reported each year (Ref. 16), several major incidents have occurred that demonstrate that a single or limited misapplication of an RUP can have widespread and serious effects.

In one of the most significant pesticide misuse cases from the mid-1990s, there was widespread misuse of the RUP methyl parathion, an insecticide used primarily on cotton and other outdoor agricultural crops, to control pests indoors. The improper use of this product by a limited number of applicators across several States led to the widespread contamination of hundreds of homes, significant pesticide exposures and adverse health effects for hundreds of homeowners and children, and clean-up costs of millions of dollars (Refs. 34 and 35). The incident resulted in one of the most significant and widespread pesticide exposure cases in EPA's history. In another incident, an applicator using the RUP aluminum phosphide caused the death of 2 young girls and made the rest of the family ill (see, *e.g., http://www.justice.gov/archive/usao/ut/news/2011/bugman%20plea.pdf* and *http://cfpub.epa.gov/compliance/criminal_prosecution/index.cfm?action=3&prosecution_summary_id=2249*). In 2015, improper use of methyl bromide in the Virgin Islands caused serious injury and long-term hospitalization of a four people (see, *e.g., https://www.justice.gov/opa/pr/terminix-companies-agree-pay-10-million-applying-restricted-use-pesticide-residences-us*). Also in 2015, fumigation with sulfuryl fluoride that did not follow proper procedures caused serious injury to a young boy (see, *e.g., https://www.justice.gov/usao-sdfl/pr/fumigation-company-and-two-individuals-pled-guilty-connection-illegal-pesticide*). Finally, several severe health incidents have resulted from the public getting access to RUPs that were unlawfully transferred into different containers (in one case, a soda bottle) that did not have the necessary labeling (Ref. 1).

In addition to human health incidents from RUP exposure, there are instances where use of RUPs has had negative impacts on the environment. Although data on the damage associated ecological incidents are difficult to capture, EPA has identified a number of incidents of harm to fish and aquatic animals, birds, mammals, bees, and crops that could be prevented under the revised certification rule (Ref. 1). See the Economic Analysis for this rule for more information on human health and ecological incidents stemming from RUP use (Ref. 1).

In light of the incidents discussed above, EPA is updating the certification rule to ensure that RUPs can continue to be used without posing unreasonable adverse effects to human health or the environment. EPA's decision to register products as restricted use rests in part on an assumption that applicators will be sufficiently competent and professional that they can be relied upon to make responsible choices and properly follow all labeling instructions. When labeling instructions are followed, RUPs can be used without unreasonable adverse effects. EPA expects the revised rule to reduce human health and environmental incidents related to RUP use by strengthening the standards of competency for certified applicators, training noncertified applicators on pesticide safety, and establishing a maximum certification period and criteria for recertification programs. These changes will be provide better assurance that certified applicators and those under their supervision will generally have a higher level of competency, and therefore more carefully follow pesticide labeling instructions and take proper care to prevent harm.

iv. Inadequate protection for noncertified applicators of RUPs. The existing rule does not require noncertified applicators using RUPs to receive specific instruction on how to protect themselves, their families, other

persons and the environment from pesticide exposure. Although little demographic data exists on this group, in industries including but not limited to agriculture and ornamental plant production, the profile of the population appears to be similar to that of agricultural pesticide handlers under the WPS. Both groups are permitted to mix, load, and apply pesticides with proper guidance from their employer or supervisor. Agricultural handlers under the WPS only use pesticides in the production of agricultural commodities; noncertified applicators may use pesticides in any setting not prohibited by the labeling. In order to mix, load or apply RUPs, however, all noncertified persons, including agricultural handlers, must be working under the direct supervision of a certified applicator. Many noncertified applicators work far from their supervisor, and exercise considerable independence. Although these noncertified applicators do not need to have the same level of competency as the supervising certified applicator, they nevertheless must be sufficiently competent to use RUPs in a manner that will not cause unreasonable adverse effects to themselves, the public, or the environment. The existing certification rule does not have specific standards on which noncertified applicators must receive instruction in order to prepare them to use RUPs. EPA identified six incidents from 2006 to 2010 where noncertified applicators experienced high severity health impacts from working with RUPs (Ref. 1). These adverse health effects were largely due to the noncertified applicators' lack of understanding about the risks posed by the RUPs they were applying, proper application procedures and techniques, and labeling instructions.

Under the WPS, agricultural handlers must receive training that covers, among other topics, hazards associated with pesticide use; format and meaning of pesticide labeling; and proper pesticide use, transportation, storage, and disposal. 40 CFR 170.230(c)(4) and 170.501(c)(2). Agricultural handlers also must have access to the product labeling and any other information necessary to make the application without causing unreasonable adverse effects. EPA revised the WPS in 2015 to, among other changes, add content for agricultural handler training that covers proper use and removal of PPE and specific information on fitting and wearing respirators to ensure agricultural handlers are protected adequately and understand how to follow all relevant labeling provisions (Ref. 36).

Like agricultural handlers, some noncertified applicators may face challenges, such as not speaking or reading English that could put them at greater risk of pesticide exposure. They may bear risks from occupational pesticide exposure because they work with and around pesticides on a daily basis, language and literacy barriers may make effective training and hazard communication challenging, and economic hardship may make them reluctant to question instructions. Under the principles of environmental justice, EPA recognizes the need to reduce the disproportionate burden or risk carried by this population.

Noncertified applicators must receive adequate instruction on understanding and following pesticide labeling to ensure that RUPs are used in a manner that will not cause unreasonable adverse effects to human health or the environment. Additionally, noncertified applicators must have sufficient information in order to protect themselves, others, and the environment before, during, and after pesticide applications. Because of the similar risks faced by agricultural handlers under the WPS and noncertified applicators under the certification rule, EPA has strengthened the standards for noncertified applicators to include provisions comparable to the agricultural handler training requirements under the revised WPS and to ensure that the training is provided in a manner that the noncertified applicators understand, including through audiovisual materials or a translator if necessary.

v. Uneven regulatory landscape. EPA assumes a minimum standard level of competency of RUP applicators as part of the pesticide registration and ongoing review processes, and registers RUPs based on the minimum standard of competency. States, however, may adopt additional requirements as long as they meet the minimum standards established by EPA. The standards for exams and private applicator competency standards in the existing rule lack sufficient specificity sufficient to ensure an acceptable level of competency. The lack of specificity in the existing rule has resulted in States adopting differing standards, some of which do not match EPA's expectation regarding the minimum level of competency of a certified applicator.

For example, in 2006, EPA issued guidance on its interpretation of exams in the existing rule. The guidance notes that EPA interprets any exam administered to gauge applicator competency as being a proctored, closed-book, written exam (Ref. 37). However, not all State certification programs are consistent with this interpretation; several States determine applicator competency based on open-book exams where candidates are allowed to bring in their own reference materials. EPA is concerned that this process compromises exam security. EPA has revised the existing rule to incorporate elements of the 2006 guidance and to clarify its expectations regarding administration of certification exams and training programs to ensure that the process for determining competency meets a standard national baseline.

The existing certification rule lists five points on which a person much demonstrate competency to become a private applicator. While these points cover the main topics that EPA expects an applicator to master before being certified to use RUPs, they do not cover in detail the necessary competencies for a person to use RUPs without causing unreasonable adverse effects. EPA must ensure that private applicators use RUPs competently. Commercial applicators must demonstrate core competency in pesticide use, such as reading and understanding the labeling, calculating application rates, wearing and caring for PPE, how to handle spills and other emergencies, and avoiding environmental contamination from pesticide use, as well as competency in specific categories of application. Private and commercial applicators have access to the same RUPs, and EPA expects that they should have comparable levels of competency related to understanding and following pesticide labeling. Almost 90% of States have adopted specific standards of competency for private applicators that are comparable to the core standards for commercial applicators. Those States that have not adopted such standards for private applicators may be certifying applicators who do not meet the level of competency that EPA believes is necessary to use RUPs. To address this situation, the final rule includes more specific standards of competency for private applicators—the revised standards include many concepts from the commercial core standards as well as competencies necessary to use RUPs in agricultural production.

vi. Outdated and obsolete rule provisions. The existing certification rule has one section regarding Tribal programs that is outdated and one section on government agency certification programs that is not necessary. The existing rule provides three options for applicator certification

programs in Indian country. Consultation with Tribes raised an issue with one of the existing options because it calls for Tribes that chooses to utilize a State certification program and rely on State certifications to obtain concurrence from the relevant States and to enter into a documented State-Tribal cooperative agreement. This option has led to questions about jurisdiction and the appropriate exercise of enforcement authority for such programs in Indian country. EPA has revised this option to allow Tribes to administer programs based on certifications issued by a State, a separate Tribe, or a Federal agency by entering into an agreement with the appropriate EPA Regional office. This will allow Tribes to enter into agreements with EPA to recognize the certification of applicators who hold a certificate issued under an EPA-approved certification plan without the need for State-Tribal cooperative agreements. The agreement between the Tribe and the EPA Regional office will address appropriate implementation and enforcement issues.

The existing rule includes a provision for a Government Agency Plan, a certification program that would cover all Federal government employees using RUPs. No such plan was developed or implemented by EPA or any other Federal agency. Subsequently, EPA issued a policy that allows each Federal agency to submit its own plan to certify its own employees to apply RUPs. Four Federal agencies have EPA-approved certification plans. To streamline the rule and codify the existing policy, EPA has deleted the existing section on a Government Agency Plan and replaced it with requirements consistent with the existing policy on Federal agency certification plans.

2. Surveillance data. i. Incident monitoring. Incident monitoring programs have informed EPA's understanding of common types of pesticide exposures and their outcomes. In 2007, EPA released a report detailing the coverage of all pesticide incident reporting databases considered by EPA (Ref. 38). When developing the proposed changes to the certification rule, EPA consulted three major databases for information on pesticide incidents involving applicator errors while using RUPs.

To identify deaths and high severity incidents associated with use of RUPs, EPA consulted its Incident Data System (IDS). IDS is maintained by EPA's Office of Pesticide Programs (OPP) and incorporates data submitted by registrants under FIFRA section 6(a)(2), as well as other incidents reported by others directly to EPA. EPA's adverse effects reporting rule at 40 CFR part 159 allows the aggregation of individual events in some circumstances, meaning an incident with negative impacts to a number of individuals (*e.g.,* persons, livestock, birds, pollinators) could be reported as a single incident. In addition to incidents involving human health, IDS also collects information on claims of adverse effects from pesticides involving plants and animals (wild and domestic), as well as detections of pesticides in water. EPA used this information to identify incidents involving the use of RUPs that have ecological effects. While IDS reports may be broad in scope, the system does not consistently capture detailed information about incident events, such as occupational exposure circumstances or medical outcome, and the reports are not necessarily verified or investigated.

The second database, SENSOR-Pesticides, is maintained by NIOSH and covers pesticide-related occupational injuries. EPA uses SENSOR-Pesticides to monitor trends in occupational health related to acute exposures to pesticides, to identify emerging pesticide problems, and to build and maintain State surveillance capacity. SENSOR-Pesticides is a State-based surveillance system with 12 State participants. The program collects most poisoning incident cases from:

- State workers' compensation claims when reported by physicians.
- State Departments of Agriculture.
- Poison Control Centers (PCCs).

A State SENSOR-Pesticides contact specialist follows up with workers and obtains medical records to verify symptoms, circumstances surrounding the exposure, severity, and outcome. SENSOR-Pesticides captures incidents only when the affected person has two or more symptoms. Using a standardized protocol and case definitions, SENSOR-Pesticides coordinators enter the incident interview description provided by the worker, medical report, and physician into the SENSOR data system. SENSOR-Pesticides has a severity index, based partly on poison control center criteria, to assign illness severity in a standardized fashion. SENSOR-Pesticides provides the most comprehensive information on occupational pesticide exposure, but its coverage is not nationwide and a majority of the data come from California and Washington State. Since 2009, SENSOR has been including information about how the incidents may have been prevented.

The third database, the American Association of Poison Control Centers, maintains the National Poison Data System (NPDS), formerly the Toxic Effects Surveillance System. NPDS is a computerized information system with geographically-specific and near real-time reporting. While the main mission of PCCs is helping callers respond to emergencies, not collecting specific information about incidents, NPDS data help identify emerging problems in chemical product safety. Hotlines at 61 PCCs nationwide are open 24 hours, every day of the year. There are many bilingual PCCs in predominantly Spanish speaking areas. Hotlines are staffed by toxicology specialists to provide poisoning information and clinical care recommendations to callers with a focus on triage to give patients appropriate care. Using computer assisted data entry, standardized protocols, and strict data entry criteria, local callers report incidents that are recorded locally and updated in summary form to the national database. Since 2000, nearly all calls in the system are submitted in a computer-assisted interview format by the 61 certified PCCs, adhering to clinical criteria designed to provide a consistent approach to evaluating and managing pesticide and drug related adverse incidents. Information calls are tallied separately and not counted as incidents. The NPDS system covers nearly the entire United States and its territories, but the system is clinically oriented and not designed to collect detailed information about the circumstances causing the incident. Additionally, NPDS does not capture EPA pesticide registration numbers, a critical element for identifying the specific product and whether it was an RUP.

It is very likely that these databases significantly undercount the actual number of pesticide adverse effect incidents. Three studies showing undercounting of poison control data indicate the magnitude of the problem. The studies each focus on a specific region and compare cases reported to poison control with those poisonings for which there are hospital records. In all three cases, the studies indicate a substantial underreporting of poisoning incidents to poison control, especially related to pesticides (Refs. 13, 14, and 15).

Underreporting of pesticide incidents is a challenge for all available data sources for a number of reasons. Symptoms of acute pesticide poisoning are often vague and mimic symptoms with other causes, leading to incorrect diagnoses, and chronic effects are difficult to identify and track. There may not be enough information to determine if the adverse effects noted

were in fact the result of pesticide exposure and not another contributing factor because many incident reports lack useful information such as the exact product that was the source of the exposure, the amount of pesticide involved, or the circumstances of the exposure. The demographics of the populations that typically work with or around pesticides also contribute to underreporting of incidents. A more complete discussion of the underreporting and its effect on pesticide incident reporting is located in the Economic Analysis for this proposal (Ref. 1).

The data available do provide a snapshot of the illnesses faced by those applying RUPs and others impacted by the application and the likely avenues of exposure. Review of these data sources shows that certified applicators continue to face avoidable occupational pesticide exposure and in some instances cause exposures to others. EPA notes that RUPs can be used in a manner that does not cause unreasonable adverse effects when labeling directions for use are carefully followed. Deaths and illnesses from applicator errors involving RUPs occur for a variety of reasons, including misuse of pesticides in or around homes, faulty application and/or personal protective equipment, failure to confirm a living space is empty before fumigating, or unknowing persons accidentally ingesting an RUP that was improperly put in a beverage container. Common reasons for ecological incidents include failure to follow labeling directions, inattention to weather patterns at the time of application, and application equipment malfunction (Ref. 1). Generally, EPA's analysis showed that many of the reported incidents could be prevented with strengthened requirements for initial and ongoing applicator competency (certification and recertification), improved training for noncertified applicators working under the direction of a certified applicator, and knowledge of proper techniques for using specific methods to apply pesticides (Ref. 1).

ii. Agricultural Health Study. The National Institutes of Health (National Cancer Institute and National Institute of Environmental Health Sciences) and EPA have sponsored the Agricultural Health Study since 1994. This long-term, prospective epidemiological study collects information from farmers who are certified applicators in Iowa and North Carolina to learn about the effects of environmental, occupational, dietary, and genetic factors on the health of the farmers, pesticide applicators, and their families. The study design involves gathering information over many years about the pesticide applicator and his or her family's health, occupational practices, lifestyle, and diet through mailed questionnaires and individual interviews. See *http://aghealth.nih.gov*.

The Agricultural Health Study includes approximately 52,000 private applicators, 32,000 spouses of private applicators, and 5,000 commercial applicators. All applicators participating in the study are certified (or licensed) in every State in which they work and in each category in which they make applications. All participants were healthy before enrolling in the study, allowing the researchers to consider a number of variables such as pesticide use, lifestyle, and diet.

The Agricultural Health Study is observational and considers a variety of factors including, but not limited to, pesticide use and exposure. Therefore, establishing a link between a specific health outcome and pesticide exposure can be difficult. However, it is possible to demonstrate statistical associations between a certain activity and an outcome. Using the information collected, the investigators working on the Agricultural Health Study have produced a number of articles relevant to the health and safety of pesticide applicators. See *http://aghealth.nih.gov/news/publications.html*. For instance, publications include information on characteristics of farmers who experience high pesticide exposure events and potential links between pesticide use and chronic health effects.

EPA considers the information from the Agricultural Health Study when appropriate, such as during a chemical reassessment. The data also provide information on applicator practices that lead to exposures, some of which EPA plans to address through the changes in this rulemaking.

3. Demographics. The profile of certified applicators of RUPs has shifted over time. The U.S. continues to move away from small agricultural production and more individuals seek professional pest control to address issues in their home or workplace. In 1987, around 1.2 million applicators held a certification, almost 80% of which were private applicators, and 20% of which were commercial applicators (Ref. 39). By 2015, the total number of certified applicators decreased to around 938,000 (Ref. 18). The respective proportions of private and commercial applicators changed more significantly—private applicators account only for 53% of the total certified applicator population and commercial applicators now make up about 47%.

In contrast to private applicators, who per FIFRA may only apply RUPs for the production of agricultural commodities on land owned by the applicator or the applicator's employer (with minor exception), commercial applicators work in a diverse array of situations. Commercial applicators apply RUPs in agricultural production, residential pest control, mosquito spraying for public health protection, industrial and food processing facilities, treating weeds along roadside and railroad rights of way, fumigating rail cars and buildings, maintaining lawns and other ornamental plantings, and controlling weeds and algae in waterways through pesticide application. Specific information on applicators across all industries or in each certification category is difficult to find and summarize. However, the broad trends indicate a decrease in agricultural applicators and an increase in urban and public health pest control.

Since publication of the 1974 certification rule, pesticide usage and reliance on hired pest control applicators have increased. The U.S. Bureau of Labor Statistics expects that ''employment of pest control workers [will] grow by 15 percent between 2008 and 2018, . . . [because] more people are expected to use pest control services as environmental and health concerns and improvements in the standard of living convince more people to hire professionals, rather than attempt pest control work themselves'' (Ref. 40).

4. Summary of the final rule. Units II. and III. describe the stakeholder engagement and reports highlighting the need to update the certification rule. In addition to stakeholder recommendations and public comments, EPA is revising the regulation to address State variability and to support EPA registration decisions. Each of these reasons for updating the rule are discussed in Unit IV.

As noted in Unit III., EPA has not updated the certification rule substantially in almost 40 years. However, many States have adopted updated standards for certification and recertification. As a result, State requirements for certification of applicators are highly varied.

If certification does not represent a uniform degree of competence, this diversity also could compromise EPA's ability to determine confidently that use of a pesticide product by certified applicators will not cause unreasonable adverse effects. In order to retain or expand the number and types of pesticides available to benefit agriculture, public health, and other

pest control needs, EPA is raising the Federal standards for applicator competency. By adopting strengthened and additional competency standards, the rule will provide assurance that certified applicators and noncertified applicators under their direct supervision are competent to use RUPs in a manner that will not cause unreasonable adverse effects. In the absence of such assurance, EPA would have had to seek label amendments imposing other use limitations that could be more burdensome to users, or even cancel certain uses.

Units V. to XX. describe the most significant of the changes to the existing regulation. Each discussion is generally structured to provide, where appropriate:

- A concise statement of the existing rule and proposed change.
- The final revised requirements.
- A summary of the comments received.
- EPA's responses to the comments received.

V. Private Applicator Certification

A. Private Applicator Competency Standards

1. Existing rule and proposal. The existing competency standards for private applicators cover five general topics. EPA proposed to amend the private applicator competency standards from the existing standards to include more specific information on pesticide application and safe use. EPA proposed to enhance private applicator competency standards covering: Label and labeling comprehension; safety; environment; pests; pesticides; equipment; application methods; laws and regulations; responsibilities for supervisors of noncertified applicators; stewardship; and agricultural pest control. EPA also proposed to include a specific competency requirement related to protecting pollinators under the ''environment'' heading. Finally, EPA proposed to require that private applicator competency include the ability to read and understand pesticide labeling.

2. Final rule. In the final rule, EPA has adopted the proposed private applicator competency standards with minor edits, except for the proposed requirement related to protecting pollinators. See Unit VI. The final regulatory text for private applicator competency standards is available at 40 CFR 171.105(a).

3. Comments and Responses

Comments. Some commenters expressed general support for EPA's proposed competency standards for private applicators. They noted that private and commercial applicators have the same access to RUPs and should have the same general level of competency related to understanding and following pesticide labeling. A few commenters supported the adoption of the enhanced competency standards only for States that do not require private applicators to certify by passing a written exam, in order to improve the competency of applicators who certify by training. One commenter supported the adoption of the proposed private applicator competency standards to raise the bar in States that do not require private applicators to certify by passing a written exam because incidents that occur as a result of incompetent applicators can have an indirect impact on all applicators if particular pesticides are further restricted as a result.

Many commenters asserted that private applicators make more limited types of applications than commercial applicators (*i.e.,* they use fewer products and make pesticide applications to a narrow range of sites, so the frequency and potential risk of pesticide exposure for private applicators is lower than it is for commercial applicators). Some commenters asserted that private applicators are more invested in protecting the land and environment than commercial applicators because they are applying pesticides to their own land. For these reasons, commenters asserted that private applicators should not be required to meet the same competency standards as commercial applicators.

Many commenters requested that EPA eliminate the proposed private applicator competency standards or leave development of private applicator competency standards to the discretion of each State. They argued that the existing regulation and State programs adequately cover the necessary content to prepare private applicators to use RUPs in a competent manner. These commenters objected to EPA's proposal to align, for the most part, private applicator competency standards with the core competency standards for commercial applicators, noting that the universes of private and commercial applicators are distinct and their competency standards should be as well.

Many commenters noted that strengthening the competency standards for private applicators may increase the burden for certification, and as a result private applicators who do not use RUPs may forego certification. They assert that this would result in people using non-RUPs without any training or competency in safe pesticide use.

Some commenters opposed the adoption of enhanced competency standards for private applicators because it could result in States having to pursue statutory or regulatory change. Commenters did not feel the potential benefit of enhanced competency standard would warrant the burden of such changes. Commenters also noted that some legislatures may be opposed to making such changes.

Some commenters also noted that the increased burden for certification could lead to farmers using commercial applicator services rather than obtaining a private applicator certification. Some commenters asserted that EPA cannot circumvent FIFRA by requiring private and commercial applicators to meet the same competency standards. Other commenters requested that EPA delete the private applicator competency standards and require private and commercial applicators both to meet the core standards that currently apply only to commercial applicators.

Some commenters suggested that the only way to ensure that applicators are competent is through requiring a written exam, but recognized that EPA cannot require people seeking certification as private applicators to pass a written exam. Some States questioned how EPA could require a demonstration of literacy without requiring private applicators to pass a written exam. One State that certifies private applicators through training noted that evaluating whether each candidate could read would place a significant burden on the private applicator certification program. The State suggested that the University of Nebraska at Lincoln's Label Exercise training module does more to establish an applicator's understanding of the labeling than a certification that a person can read English.

Some States requested that EPA include a grandfathering option to allow private applicators who hold valid certifications to retain them after the revised private applicator competency standards (including the ability to read and understand the labeling) are incorporated into State certification programs. These commenters noted that many applicators were originally certified by training, so reading comprehension was not measured. Commenters also expressed concern specifically about requiring all currently-certified private applicators to go through initial certification again to ensure they have the ability to read and understand the labeling. Some States expressed concerns about administering a two-tiered program if grandfathering is

allowed; they expressed concern at having to distinguish at recertification sessions between those applicators who obtained their initial certification by exam and those who obtained it through training to ensure each set of private applicators met the competency standards relative to their certification. One commenter expressed concern about the government taking away a certification previously issued without any evidence of misuse on the applicator's part.

Commenters made a range of general suggestions related to what EPA should adopt as private applicator competency standards. Some commenters noted that private applicator competency should cover elements such as: How a pesticide label is organized, what information the pesticide label contains, how to read and understand the pesticide label, knowing the difference between mandatory and advisory label language, applying pesticide in accordance with the label, recognizing environmental conditions, and recognizing poisoning symptoms and treatment. Some commenters suggested rather than increasing the standards and expected burden on applicators, EPA should ensure that high quality training on the existing competency standards is provided to improve applicator competency.

A few commenters discussed specific points in the private applicator competency standards. One commenter requested that competency standards include equipment maintenance and troubleshooting, such as how to safely unclog nozzles and clean spray equipment, as well as a safety topic covering specific information about worker protection and PPE. Another commenter suggested that EPA replace ''Recognize local environmental situations that must be considered during application to avoid contamination'' with ''Understand how to prevent unwanted pesticide movement and pesticide drift.'' A few commenters suggested that EPA adopt Iowa's standards, which they noted include ''laws and regulations, storage and safe handling, calibration of application equipment, safe application techniques, pesticide drift reduction, effects of pesticides on groundwater, personal protective equipment, pesticide labels, and pests and pest management.''

A commenter noted that the proposed requirement for private applicators to demonstrate knowledge of specific agricultural pests would be burdensome. The commenter noted that there are a variety of pests that could affect agriculture and knowledge of all would not make an applicator competent. The commenter questioned whether EPA or each State would determine what pests to include.

One commenter suggested an alternative to outlining specific private applicator competency in the regulation. The commenter recommended that EPA designate a specific general training document that outlines the suggested private applicator competencies, which could be included in the cooperative agreements between the States, university extension programs and EPA, and used in the process for updating certification exams.

Responses. EPA generally agrees with commenters who support a consistent level of competency related to understanding and following pesticide labeling for all applicators of RUPs, and has decided to finalize the proposed competency standards for private applicators as proposed with several minor changes. EPA generally agrees with commenters who note distinctions between private and commercial applicators, especially in the type and frequency of applications each group conducts. EPA acknowledges commenters' assertions that private applicators may be invested in protecting their land from pesticides. EPA notes, however, that all certified applicators must be competent to understand and follow the product's labeling in order to apply RUPs in a way that protects the applicator, other persons, and the environment, regardless of where or how they make the application.

EPA does not agree with commenters who argue that private applicators using RUPs should not be required to meet general competency standards with regards to safe use of pesticides that are similar to those for commercial applicators, or that private applicators should be subject to a different minimum competency standard depending on whether the State issuing the certification requires them to pass a written exam. Regardless of the certification method chosen by the certifying authority, FIFRA requires that EPA establish standards for certification that require persons to be determined competent to use and handle RUPs. 7 U.S.C. 136i(a)(1). Under the existing and revised rules, EPA establishes minimum federal standards for certification to use RUPs. States have and will continue to be able to develop and maintain their own certification programs as long as their programs meet or exceed EPA's requirements. EPA also disagrees with contentions that there are no problems with the private applicator competency standards in the existing regulation for reasons discussed in the proposal (Ref. 17, pp. 51369–51372).

EPA agrees with commenters who requested that certifying authorities retain flexibility to adapt the competency standards to the needs of private applicators in their jurisdiction, as long as the program meets or exceeds EPA's standards. EPA recognizes that including a requirement for specific pest identification could result in significant burden on certifying authorities to develop materials covering all potential pests in agriculture, and on applicators to learn about specific pests that they may never encounter based on their crops or geography. Rather than memorization about specific pests, EPA believes applicators must have competency in how to identify pests in order to make proper applications.

In response to these comments, EPA has chosen not to include points in the competency standards related to pollinator protection and specific pest identification. For more information on EPA's consideration of pollinators in applicator competency standards, see Unit VI. In response to the commenter's suggestion that the proposed requirement for private applicators to demonstrate knowledge of specific agricultural pests would be burdensome, EPA has revised the private applicator competency standards under the ''pest'' heading in the final rule. EPA has replaced the proposed requirements with the following: ''(4) Pests. The proper identification and effective control of pests, including all of the following: (i) The importance of correctly identifying target pests and selecting the proper pesticide product(s) for effective pest control. (ii) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).'' Further, EPA has deleted the provision in the proposal that would have required private applicators to demonstrate knowledge of specific pests of agricultural commodities. EPA does not intend these standards to determine which pests private applicators must be able to identify; rather, the standards in the final rule are intended to ensure that private applicators understand how to identify pests properly and how to use pesticides to control those pests. Each certifying authority has discretion to include identification of specific pests in the jurisdiction-specific private applicator competency standards. These general standards balance EPA's need to establish federal standards to ensure users of RUPs are competent with certifying authorities' needs to maintain flexibility to tailor certification

requirements to issues that affect their applicators.

EPA acknowledges requests to apply the same standards for private and commercial applicators, but notes that FIFRA requires EPA to maintain separate standards for private and commercial applicators. EPA disagrees with commenters who argued that EPA's proposed standards violate FIFRA's provision requiring that EPA establish separate standards for private and commercial applicators. 7 U.S.C. 136i(e). EPA developed the standards for private applicators through an analysis that was separate from that used to develop the standards for commercial applicators, and fully took into account the nature and circumstances of private applicators' use of RUPs. In the end, three principle aspects of the final rule distinguish private and commercial applicator competency standards. First, private applicator competency standards cover different content than commercial core competency standards, including information about the WPS and agricultural pest control. Second, private applicators can be certified by demonstrating competency covering the general private applicator standards, while commercial applicators may become certified only by satisfying competency standards covering the commercial core requirements plus at least one category's requirements. Third, for each of the areas of competency identified in the rule, the specific content will be established by the States and Tribes in their certification plans, and EPA anticipates that in those plans the breadth of scope, level of detail, or measures of competency for commercial and private applicators may differ to the extent appropriate to each area of competency.

EPA disagrees that strengthening the competency standards for private applicators will substantially increase the burden for certification. As discussed in the preamble to the proposed rule, almost 90% of States noted that their private applicator certification standards are already comparable to the existing core standards for commercial applicators (Ref. 18). The standards for private applicators are comparable to the core standards for commercial applicators, with important distinctions. The detailed standards in the final rule will assist in ensuring that certification adequately covers topics necessary to ensure that applicators are competent to use RUPs in a manner that protects themselves, other people, and the environment.

Because most States note that they already have private applicator competency standards that are comparable to the commercial applicator core competency standards, EPA disagrees that the updated competency standards are substantially more burdensome than existing State standards and disagrees that they will discourage a significant number of persons from seeking or maintaining certification as private applicators, whether or not they use RUPs. In any case, farmers have and will retain the choice to seek certification, to barter with other farmers certified as private applicators, or to contract with a commercial applicator to perform RUP applications.

EPA recognizes that the updated private applicator standards may require certifying authorities to pursue legislative or regulatory change, but given the comprehensive nature of this rule revision, this is unlikely to be the only aspect of the final rule that will require updates to existing laws and/or regulations. The overall benefits of the revised rule, including the updated private applicator competency standards, outweigh the burden of effecting legislative and regulatory change. EPA is committed to working with certifying authority regulatory agencies throughout the implementation process, including development of certification plans and associated legislative and regulatory changes.

In response to commenters' requests to ''grandfather'' private applicators with valid certifications into the certification program under a revised certification plan, EPA notes that certifying authorities may choose to allow all applicators who hold a valid private applicator certification under the existing certification plan to retain their certifications when revised certification plans are made effective. Only persons seeking initial certification as private applicators after revised certification plans are in effect will be required to meet the revised private applicator competency standards, including demonstrating the ability to read and understand the labeling.

EPA is not requiring that all private applicators currently certified under the existing rule complete the initial certification requirements again under today's revised rule because the burden would be significant and not outweighed by the potential benefits. There are over 480,000 persons currently certified as private applicators, and the costs associated with having each of them either attend a training course or preparing for and taking a written certification exam would dramatically increase the estimated cost of this final rule. EPA recognizes that some private applicators hold certifications obtained by attending a training program that did not require any demonstration of the ability to read or understand the pesticide labeling, and, at the certifying authority's discretion, would continue to retain their certification under a revised certification plan as long as they continued to meet the recertification requirements. However, based on the anticipated burden on private applicators and certifying authorities, EPA is not requiring that all currently-certified applicators go through the initial certification process again as a condition of approval of a certifying authority's revised certification plan.

As noted in the preamble to the proposed rule and by several commenters, FIFRA prohibits EPA from requiring private applicators to take a written exam to obtain certification. EPA expects that as part of the initial certification process, certifying authorities will ensure that candidates have the ability to read and understand pesticide labeling. EPA leaves the mechanism of this determination to each jurisdiction's discretion, and will review the private applicator initial certification program as part of the evaluation of the revised certification plan. EPA notes that requiring persons seeking certification as private applicators to pass a written exam would satisfy the requirement in the final rule for private applicators to be able to read and understand the labeling. States that do not require private applicator certification by exam will need to explain their mechanism for ensuring that those who obtain private applicator certification have the ability to read and understand the labeling. For example, one commenter suggested that the University of Nebraska at Lincoln's Label Exercise training module could establish a person's ability to read and understand labeling. EPA would consider such programs as part of the revised certification plan, if adopted by the State as a mechanism to ensure private applicators have the ability to read and understand the labeling. EPA plans to develop guidance on and engage in discussions with certifying authorities about potential mechanisms that could ensure those seeking private applicator certification can read and understand the labeling without imposing significant additional burden on the certifying authority.

EPA expects that the initial demonstration of competency for

private applicators will include an assurance of each candidate's ability to read and understand the labeling. EPA does not expect that recertification programs will also include a verification of the applicator's ability to read and understand the labeling, and the final rule does not require States to include such a standard in their recertification programs. Therefore, all applicators should be able to attend the same recertification programs regardless of whether they earned their initial private applicator certification (although not a non-reader certification, see Unit V.C.) before or after the revised rule is issued and the revised certification plan implemented.

In response to general suggestions on the contents of private applicator competency standards, EPA notes that the private applicator competency standards in the final rule do cover pesticide labeling generally, environmental considerations, and recognizing poisoning symptoms and treatment. In response to the comments, EPA has added a sub-point under the labeling area of competency regarding ''recognizing and understanding the difference between mandatory and advisory labeling statements.'' EPA disagrees that the existing competency standards adequately outline the competencies necessary for private applicators to use RUPs safely. See the preamble to the proposed rule for EPA's reasoning for amending the private applicator competency standards (Ref. 17, p. 51369).

In response to the comment requesting that competency standards include equipment maintenance and troubleshooting, such as how to safely unclog nozzles and clean spray equipment, as well as a safety topic covering specific information about worker protection and PPE, EPA notes that these topics are within the scope of the competency standards of the final rule. The final rule includes a competency area for application equipment maintenance and calibration at § 171.105(a)(6), and this competency area is reasonably interpreted as encompassing activities such as how to safely unclog nozzles and clean spray equipment. The private applicator competency standards covers worker protection under § 171.105(a)(8); the WPS is listed specifically as a regulation that must be addressed in the competency determination. PPE is included at § 171.105(a)(2)(vi), which covers, in part, ''measures to avoid or minimize adverse health effects, including . . . [n]eed for, and proper use of, protective clothing and personal protective equipment.''

In response to the comment that EPA replace ''Recognize local environmental situations that must be considered during application to avoid contamination'' with ''Understand how to prevent unwanted pesticide movement and pesticide drift,'' EPA notes that the cited provision of the existing rule does not appear in the final rule, and that the final private applicator competency standards include ''Prevention of drift and pesticide loss into the environment'' at § 171.105(a)(7)(iv). Further, the final private applicator competency standards provide more detail about avoiding environmental contamination throughout, specifically at § 171.105(a)(3).

Although EPA did not adopt the language of Iowa's standards, as recommended by a few commenters, EPA notes that all of the elements of Iowa's standards suggested by commenters have corresponding provisions in the final private applicator competency standards.

EPA disagrees with the commenter's suggestion to designate a general training document outlining suggested private applicator competencies, rather than to adopt revised private applicator competency standards in the rule. A reference to a guidance document would not result in a binding requirement, and EPA has determined that regulation is needed based on its experience with the 2006 testing guidance (discussed in Unit IV.C.1.v). EPA has revised the private applicator competency standards in the final rule to ensure that all private applicators meet a baseline level of competency. EPA expects that these standards will be incorporated in certification exams and training programs during the implementation process.

B. Strengthen Private Applicator Competency Gauge

1. Existing rule and proposal. The existing rule requires certifying authorities to ensure that private applicators are competent and that the certification process uses a written or oral exam, or other method approved as part of the certification plan. EPA proposed that certifying authorities may certify private applicators either through a training program or by requiring candidates to pass a written exam. EPA proposed that a training course or exam must meet the proposed standards for private applicator certification, which are discussed in Unit V.A. of this preamble.

2. Final rule. The final rule requires persons seeking to obtain certification as a private applicator to complete a training program approved by the certifying authority or pass a written exam administered by the certifying authority, as proposed. Both the training course and exam must cover the private applicator standards outlined in the rule at § 171.105(a) and discussed in Unit V.A. The final regulatory language for this requirement is available at 40 CFR 171.105(h).

3. Comments and Responses

Comments. EPA received a variety of comments on the options for initial certification of private applicators from States, farm bureaus, grower organizations, farmworker advocacy organizations, private citizens, and others.

Comments were mixed on EPA's proposal to require private applicators to certify by attending a training course or passing a written exam. Several commenters who supported the proposal noted that their certifying authority already requires private applicators to be certified in a manner that would comply with the proposal, if finalized, indicating that the proposed change would have no impact in that jurisdiction.

Some commenters suggested that EPA require all private applicators to be certified by passing a written exam; a few suggested that the private applicator certification exam should be the same as the core exam for commercial applicator certification. Commenters argued that allowing a non-exam option would not provide sufficient assurance of private applicator competency to use RUPs and would prevent EPA from establishing a clear certification standard.

Other commenters did not support EPA's proposal, noting that existing standards adopted at the State level for private applicator certification are sufficient. Some commenters reminded EPA that farmers would be taking time away from their operations to attend training and questioned the need to change what is occurring currently at the State level. Another commenter suggested that EPA evaluate the efficacy of existing State programs to see if there is any value in pursuing more stringent training and testing requirements for private applicators than those already in place.

Commenters provided information in response to EPA's question on the efficacy of training and comparisons between training and testing programs. Many of those commenting noted that training is an appropriate mechanism to transfer information to participants, but is not a way to gauge applicator competency. Some commenters recognized FIFRA's limitation on EPA's

authority to require private applicators to certify by passing a written exam, but stated that without such a barrier EPA should require all private applicators to certify by passing written exams. One commenter noted that training programs may change depending on the instructor or organization providing the training, while testing materials can be standardized to achieve the objectives of the certifying authority. One commenter supporting a requirement for certification by exam only stated its belief that some form of written exam is necessary for measuring competency, especially related to label comprehension, and suggested that EPA require those who certify as private applicators by attending training to complete some limited testing on labeling comprehension.

EPA requested comments on whether it should establish a minimum length for private applicator certification training sessions. States, worker/handler advocacy and legal assistance organizations, farm bureaus, and industry organizations responded to this question. Many of those commenters opposed EPA setting any minimum length for a private applicator training program. In addition, many commenters requested that EPA allow States to determine training content and length, to be included in the certification plan. One commenter noted that arbitrary universal training times are impossible to establish and defend, and noted that training content can only be established reasonably by a careful practitioner job analysis or detailed objective study of the needs of the trainees and the program. Several commenters expressed similar sentiments, noting that variability in agricultural crops and cropping systems means that training would vary greatly. Several commenters stated their belief that the programs in their States are sufficient. One commenter opposing a minimum training length noted that it would be meaningless if the training is poor quality. One commenter requested that if EPA does allow people to certify as private applicators by attending a training program, EPA specify the minimum length of training including expanded content.

Several commenters suggested that training programs that would result in private applicator certification should be at least a full day and a half in length, include hands-on instruction, and offer the opportunity for participants to ask questions. A commenter noted that one certifying authority's pre-certification training program for private applicator is one and a half days. Another certifying authority noted that its current pre-certification training is approximately 11 hours, which is the time necessary to teach the material needed to pass the private applicator certification exam. The commenter noted that covering label comprehension, pesticide safety and PPE, equipment calibration and recordkeeping takes about seven hours, and the other four to five hours are spent on practical exercises, practice testing, quizzes, and interactive tools designed to enhance learning. The commenter highlighted that the expanded content of private applicator competency standards would require lengthening the training course to cover the additional topics.

One commenter requested that EPA allow online training programs to qualify as meeting the standard of training programs resulting in private applicator certification.

Responses. EPA is responsible for ensuring that applicators are competent to use RUPs in a manner that does not cause unreasonable adverse effects to human health or the environment. EPA recognizes that many certifying authorities already administer private applicator certification programs that meet the final standards by requiring those seeking private applicator certification to qualify by passing a written exam or to attend a training course. EPA agrees with commenters that written exams are a reliable way to gauge applicator competency, but notes that other non-exam methods to assure applicators are competent to use RUPs in a manner that does not cause unreasonable adverse effects also exist. Establishing more specific federal standards for private applicator certification can reasonably be expected to increase the likelihood that all private applicators will have the competency necessary to use RUPs in a manner that does not cause unreasonable adverse effects.

EPA disagrees with the commenter who suggested that further evaluation of existing State private applicator certification programs is necessary. EPA outlined the rationale for changing the options for private applicator certification in the proposal, which included a review of existing State programs and does not intend to do further evaluation at this time (Ref. 17, p. 51370).

EPA acknowledges that allowing people to certify as private applicators by attending a training session does not establish an objective certification standard, unlike a requirement to pass a written exam. EPA also acknowledges that FIFRA prohibits EPA from requiring candidates for private applicator certification to take any examination to establish competency. This also prohibits EPA from requiring an exam that only covers labeling comprehension. EPA recognizes that certifying authorities may choose to administer the same exam to private applicators (for certification) and to commercial applicators (as part of the qualification for certification), but they are not required to do so.

EPA recognizes that training programs are less standardized than exams, and may vary depending on the instructor or organization providing the training. However, the final rule establishes basic content requirements that all training programs must cover. See Unit V.A. for discussion on the content of the standards for private certification. The final rule requires certifying authorities who allow people to qualify as private applicators by attending a training program that covers the private applicator competency standards in sufficient detail to allow the private applicator to demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides.

EPA has not established a minimum length for training programs that lead to private applicator certification. EPA generally agrees with commenters who noted that a standard training time would not guarantee applicator competency and that training quality is also important for ensuring applicators are competent. EPA recognizes that there is variability in agricultural crops and cropping systems across the country that would necessitate variations in training materials and depth of coverage of different topics. The final rule establishes a performance standard that a training program for private applicator certification must cover the competency standards in sufficient detail to provide the private applicator with the practical knowledge required by § 171.105.

The final rule adopts the minimum content requirements for training programs used for certification of private applicators with minor changes from the proposed rule as discussed in Unit V.A. of this preamble. Certifying authorities may tailor the training programs for private applicator certification to the needs of their audiences provided that the minimum content requirements specified in the final rule are met. The final rule does not include a requirement for hands-on instruction. EPA recognizes that hands-on instruction can be an effective way to transfer knowledge; however, EPA does not believe it is absolutely necessary for establishing private applicator competency. Certifying

authorities may choose to include hands-on elements in a training program for private applicator certification, which would be included in the certification plan and approved by EPA. Although the final rule does not require hands-on instruction for candidates seeking private applicator certification, EPA encourages certifying authorities to use a variety of approaches to encourage engagement and participation in training sessions.

EPA notes that nothing in the final rule precludes certifying authorities from using online training for private applicator certification programs. However, EPA notes that all programs must meet the standards outlined in § 171.105(h), which includes a requirement for candidates for private applicator certification to present a valid, government-issued photo identification (or other form of similarly reliable identification authorized by the certifying authority) to the certifying authority. See Unit IX. for a discussion of the final requirements regarding exam security and effectiveness.

C. Eliminate Non-Reader Certification for Private Applicators

1. Existing rule and proposal. The existing rule allows non-readers seeking certification as private applicators an option for obtaining a product-specific certification, known as the ''non-reader'' certification option. 40 CFR 171.5(b)(1). This provision allows the certifying authority to use a testing procedure approved by the Administrator to assess the competence of the non-reader candidate related to the use and handling of each individual pesticide for which certification is sought. This generally means that someone has explained the labeling to the non-reader and the non-reader answers questions on the same labeling asked by the certifying authority staff. The person seeking certification is not required to demonstrate the ability to read pesticide labeling. EPA proposed to delete this provision of the rule and to require that private applicator competency include the ability to read and understand pesticide labeling.

2. Final rule. EPA is finalizing this aspect of the rule as proposed, eliminating the provision that allows non-readers to obtain a product-specific private applicator certification.

3. Comments and Responses

Comments. Many commenters supported elimination of the non-reader certification option for private applicators. Commenters generally supported the EPA's proposal to require explicitly that those certified to apply RUPs be able to read and understand pesticide labeling. Some commenters noted that RUPs present higher risks to human health and/or the environment; therefore, the applicator's ability to read and understand the labeling is critical to ensuring that the products are used properly. One State commenter highlighted that the labeling is the chief means by which EPA and State regulatory agencies communicate how to use RUPs in a way that does not result in unacceptable risks to human health and the environment, underscoring the importance of only certifying applicators who can read and understand RUP labeling. The same commenter argued ''that providing a certification for the use of RUPs to individuals whom [sic] are not able to read the required labeling would compromise [EPA's] statutory mandate to prevent unacceptable risk to human and environmental health.'' A few commenters noted that labeling may change frequently and applicators need to be able to read the labeling in order to use the products safely. A few States supporting elimination of this provision noted that they will need to adjust their State laws or regulations to reflect the deletion.

Most States that commented on this provision noted that the elimination of the non-reader certification option would not cause hardship in their States because many have already eliminated this provision through State law. Some commenters acknowledged that eliminating the provision may result in some persons who currently hold non-reader certification not being able to renew their certification; however, they could retain the option to use RUPs under the direct supervision of a certified applicator. Many commenters suggested that EPA allow grandfathering of applicators currently certified under the non-reader certification option. One commenter noted that if the non-reader certification program were administered properly, there would not be a need to grandfather applicators because the certification should be good only for a single growing season or one year.

A few States noted that they offer accommodations to those seeking certification as private applicators under the Americans with Disabilities Act (ADA), 42 U.S.C. 126. For example, one State commented that it offers the option of taking the exam by having someone read the exam and answers, but not assistance with determining the correct answer. Another State provides accommodations in the form of untimed examinations but does not provide any accommodations to assist with reading or comprehending the exam because both are essential elements of applicator certification.

One commenter requested that EPA define ''non-reader,'' noting that many farmworkers and pesticide handlers may be literate in languages other than English.

One commenter asked whether States would retain the option to certify private applicators through training or whether States would be required to administer a written closed-book exam after completion of the training program.

One commenter noted that to ensure that applicators can read and comprehend labels, written exams should be administered in English because a majority of RUP labeling is available only in English.

Responses. EPA agrees with commenters who support elimination of the option for a ''non-reader'' certification to use RUPs. EPA agrees with commenters that an applicator's ability to read and understand the labeling is critical to ensuring that these products are used properly. EPA and States do use labeling to communicate to the applicator important information on using the pesticide in a manner that will not result in unreasonable adverse effects to human health or the environment. Labeling can change frequently, and an applicator must be able to read and follow the labeling that accompanies each product he or she uses. EPA designates pesticides as RUPs because they present a higher risk to human health or the environment than non-RUPs if not used according to the labeling directions, and requires those using RUPs to be certified as competent or working under the supervision of a certified applicator. RUPs can be used without unreasonable adverse effects when labeling instructions are followed. The certified applicator's ability to read and understanding labeling is an essential element of the applicator's competency.

EPA acknowledges that many States have already eliminated the limited or non-reader option for certification, so the impact of eliminating this option from the federal regulation should be small. EPA recognizes that eliminating this option for certification may impact applicators in States that currently offer this type of certification for private applicators.

EPA notes that elimination of the non-reader certification would only impact those applicators who received a non-reader certification to use a single product. Under the final rule, jurisdictions that currently permit this type of certification can continue to offer it until a revised certification plan

has been approved by EPA. See Unit XX. on implementation. Upon approval and implementation of a revised certification plan, applicators will no longer be permitted to obtain a non-reader certification. Applicators who have a non-reader certification at the time a revised certification plan is made effective will have three choices to have RUPs applied. One, the person may improve his or her reading sufficiently to satisfy the certification authority's requirements and obtain a private applicator certification. Two, the person may use RUPs under the supervision of a certified applicator. Three, the person may hire a commercial applicator or barter with a private applicator to have RUPs applied to his or her property.

EPA acknowledges that certifying authorities may already offer accommodations to disabled candidates for certification, and reminds certifying authorities that they must comply with the ADA, 42 U.S.C. 126. However, inability to read is not in itself a disability under the ADA. EPA suggests that certifying authorities work with their offices of legal counsel to determine what accommodations may be made for disabled persons seeking certification under their existing rules and under the revised requirements.

As discussed in Unit V.B., the final rule allows certifying authorities to certify private applicators through either completion of a training program or passing a written exam, and each process must meet the revised competency standards.

EPA recognizes that the majority of RUP labeling is only available in English and suggests that exams be given in English. However, EPA has chosen not to require that certification exams be administered in a specific language because labeling may be offered in different languages and label translation tools may be available to pesticide applicators. EPA recognizes that each certifying authority is in the best position to determine whether the exam should be offered in any language other than English.

VI. Pollinator Issues in Private and Commercial Competency Standards

A. Existing Rule and Proposal

The existing competency standards for private applicators cover five general topics. The current general or ''core'' competency standards for commercial applicators cover nine topics with specific subpoints under each topic. EPA proposed to add to both private and commercial applicator competency standards a specific requirement related to protecting pollinators under the ''environment'' area of competency. EPA also requested comment on whether the commercial category for agricultural—animal pest control adequately covered the competencies necessary to treat bee hives.

B. Final Rule

EPA has decided not to add a specific requirement related to protecting pollinators to either private or commercial applicator competency standards. EPA also has decided not to incorporate any specific competency standards related to treating bee hives.

C. Comments and Responses

Comments. Some commenters expressed general support for adding a point on protecting pollinators to applicator competency standards. Some commenters noted that the addition of such a point would work in conjunction with State-managed pollinator protection plans and specific pesticide product labeling requirements to protect pollinators.

Many commenters, including certifying authorities, university extension programs, applicator organizations, grower organizations and others, requested that EPA not include any specific point in the competency standard related to pollinator protection. Some commenters noted that adding such a specific point to general competency standards would open the possibility for adding a number of specific points related to special interests that may not be applicable to all applicators or in all States. They argued that States and university extension programs should have flexibility to address specific topics that are relevant to their applicators under the broad headings of following pesticide labeling and protecting the environment.

Further, many commenters noted that pollinator protection is already addressed under the certification program and in other ways. They reminded EPA that competency standards already cover pesticide labeling and avoiding harm to non-target organisms. They also noted that EPA's addition of specific information about avoiding harm to pollinators to pesticide labeling has occurred and is a quicker process than updating regulations. They also noted that State-managed pollinator protection plans are being developed to address potential harm to pollinators. Lastly, some commenters suggested that emerging issues, such as potential harm to pollinators from pesticide applications, are better addressed in recertification programs where the most current information about updated labeling requirements can be shared with applicators.

Some commenters responded negatively to EPA's question on whether the agricultural-animal pest control category adequately covers the competencies necessary to treat bee hives. Some commenters noted that bees are not agricultural animals. Commenters also noted that if bee hives were treated with RUPs, it is likely they would be fumigated, and therefore those with a certification to perform fumigation, not agricultural-animal pest control, should perform the application. Commenters also requested that EPA avoid including minor, species-specific competency standards, such as treating bee hives, in the rule.

Response. EPA agrees with commenters' request not to include specific competency standards related to protecting pollinators. EPA is convinced by commenters who asserted that the competency standards in the final rule under the environment heading to be aware of the impact of pesticide use and misuse related to ''presence of fish, wildlife, and other non-target organisms'' is sufficient to allow States to cover the impact of pesticide application on pollinators if relevant without requiring all applicators to be instructed specifically on avoiding negative impact to pollinators regardless of whether they may encounter them. EPA acknowledges commenters' assertions that enumerating many specific topics reduces certifying authorities' flexibility in developing training, exams, and other certification materials and incorporates niche concerns in what should be relatively general standards. Furthermore, EPA agrees that current efforts underway to protect pollinators, such as changes to pesticide labeling and development of State-managed pollinator protection plans, are appropriate ways to address this issue. EPA also agrees that competency standards should be as general and flexible as possible, allowing certifying authorities and university extension programs flexibility to address issues of importance and relevance to their applicators. For these reasons, EPA has chosen not to incorporate a specific point related to protecting pollinators into the competency standards for private or commercial applicators.

EPA agrees with commenters' input on the question of treating bee hives and inclusion in the agricultural-animal pest control category (in the final rule, this category is called livestock pest control). EPA agrees that including treatment of hives under agricultural animal is not

appropriate. Therefore, EPA has chosen not to add treatment of bee hives to the competency standards for any pesticide applicator certification category. Commenters noted that few RUPs may be used on bee hives. To use any RUP to treat bee hives, an applicator must be certified, which means the applicator has demonstrated competency to apply RUPs; in particular, the certified applicator has demonstrated competency to read and understand pesticide labeling. EPA communicates to applicators information related to protecting bees and other pollinators through labeling.

EPA notes that under the final rule, certifying authorities may adopt a specific certification category for applicators treating bee hives, including establishing a limited use category. EPA expects there are few applicators using RUPs to treat bee hives and there are a very limited number of products. EPA acknowledges that this use pattern does not fit precisely under any existing certification category. See Unit VII.B. for more information on the addition for certifying authorities to adopt limited use certification category.

VII. Establish Additional Categories for Commercial and Private Applicators

A. Establish Application Method-Specific Categories for Commercial and Private Applicators

1. Existing rule and proposal. The existing rule has no categories for private applicators. For commercial applicators, the existing rule has 11 pest control categories, although it does not have application method-specific categories.

EPA proposed to establish three new application method-specific categories for private and commercial applicators: Soil fumigation, non-soil fumigation, and aerial application. For commercial applicators, EPA proposed to require applicators seeking certification in an application method-specific category to hold at least one concurrent certification in a relevant pest control category.

2. Final rule. The final rule establishes three additional categories for commercial and private applicators: Soil fumigation, non-soil fumigation, and aerial application. Certifying authorities may adopt any of these categories that are relevant in their jurisdiction. Under the final rule, certifying authorities may opt to combine the soil and non-soil fumigation categories into a single general fumigation category. Commercial and private applicators using the application methods covered by these categories must obtain the relevant certification. However, the final rule does not include the proposed requirement for commercial applicators to hold a concurrent certification in a related pest control category in order to obtain certification in a soil fumigation, non-soil fumigation, or aerial application category. Rather, the final rule permits certifying authorities to certify persons as commercial applicators in a soil fumigation, non-soil fumigation, or aerial application category if they pass the core exam and an exam covering the relevant application method category standards. Likewise, private applicators seeking to apply fumigants or use aerial equipment to make applications must obtain a certification in the category relevant to the application method in addition to their general private applicator certification.

To simplify the rule, and because EPA has relaxed the proposed requirement for commercial applicators to hold certifications in both an application method-specific and pest control category, EPA has combined the current pest control categories and the proposed application method-specific categories and refers to them collectively as categories in the final rule. Similarly, the proposed application method-specific categories for private applicators are identified as categories in the final rule.

The final regulatory text for the additional commercial applicator categories is located at 40 CFR 171.101(m)–(o). The final regulatory text for the additional private applicator categories is located at 40 CFR 171.105(d)–(f).

3. Comments and Responses

Comment. Many States and some farm bureaus expressed concern that EPA's proposal intended that every entity with a certification program would be required to adopt the soil and non-soil fumigation and aerial categories, even if there were no applicators using that application method in the jurisdiction.

Response. EPA does not intend to require certifying authorities to adopt the proposed soil and non-soil fumigation and aerial categories unless the application method is used to apply RUPs in that jurisdiction. The final rule clarifies this distinction. As with the proposal, §§ 171.303(a)(2)(i) and 171.305(3)(i) of the final rule clearly state that a certifying authority may omit any unneeded certification categories.

Comment. Many States opposed a requirement to adopt the soil and non-soil fumigation and aerial categories for private and commercial applicators, preferring that each State independently determine if they are needed on a State-by-State basis. Several commenters, including some states and retailers, supported the soil and non-soil fumigation and aerial categories for both private and commercial applicators, noting that these uses present risks and require specialized training.

Response. EPA disagrees with comments recommending that EPA let individual certifying authorities decide whether fumigation and aerial application of RUPs require specific demonstrations of competency. These applications require specialized skills and present unique risks. EPA believes that establishing specific competency standards for certification of applicators applying RUPs by fumigation or aerial application will provide more consistent levels of competency among applicators using these methods. Because several certifying authorities have already adopted these categories and have implemented them successfully, EPA concludes that, where applicators use these application methods to apply RUPs, demonstration of their competency through certification in the soil and non-soil fumigation and aerial categories is an appropriate means of preventing unreasonable adverse effects.

Comment. A number of States and a national organization for State pesticide regulatory agencies expressed concern about the proposed requirement for commercial applicators using soil and non-soil fumigation and aerial application to obtain both an application method-specific category certification and certification in a relevant pest control categories (*i.e.,* concurrent certification) because the existing standards for core and the proposed standards for application method-specific categories adequately cover pest control topics. These commenters noted that in some States that already require certification in one or more of the three categories, applicators are allowed to demonstrate their competency in regard to the appropriate pest control category or categories through core or application method-specific category exams.

Some of these States asked that EPA consider allowing States to continue administering existing programs where the pest control component is integrated with soil and non-soil fumigation and aerial category certification if such programs provide protection equivalent to what is required by EPA. Several States, farm bureaus, and university extension programs supported allowing commercial applicators to become certified in soil and non-soil fumigation

and aerial categories without certification in any particular pest control category (''stand-alone certification''). One such commenter—a mosquito abatement district—explained that agricultural aerial applicators are needed to supplement public health applicators under some conditions. This commenter expressed concern that these applicators would decide, based on the additional burden of certification, not to certify in the public health category, and their limitation to agricultural sites would impair the district's ability to protect residents from insect-borne diseases. Two States opposed stand-alone certification for commercial applicators in the soil and non-soil fumigation and aerial categories, based on an assumption that applicators would not be tested for competency on core pest control topics.

Response. Information provided by the commenters has convinced EPA that commercial applicators seeking to apply RUPs by fumigation or aerial application can demonstrate competency that covers the necessary pest control information through passing the core competency exam and an exam covering the relevant category standards (*i.e.,* soil fumigation, non-soil fumigation and aerial application), rendering the proposed requirement to obtain concurrent certification in another relevant category unnecessary. The substantive content of the categories that is relevant to fumigation or aerial application can be adequately addressed through the combination of core competency and the competency standards of these new categories. Therefore, EPA has included all categories (existing and new) under the heading of ''categories'' in the final rule, rather than breaking them out into pest control categories and application-method specific categories. The final rule does not have a requirement for commercial applicators to hold a valid certification in any specific category to obtain certification in another category. Commercial applicators must pass the core exam and obtain certification in at least one of the categories specified in § 171.101, which includes both the pest control categories of the existing rule and the proposed application method-specific categories. In the final rule, private applicators seeking to use fumigants, sodium cyanide, or sodium fluoroacetate, or to apply RUPs aerially must obtain a general private applicator certification and in addition become certified in the relevant category. Because FIFRA limits private applicators to the production of agricultural commodities, the general private applicator certification is focused on that sector and the rule does not include other pest control categories for private applicators.

Comment. Another concern raised by many States, farm bureaus, applicator organizations, academics, and university extension programs was the additional burden for recertification faced by applicators certified in one or more of the proposed additional method-specific categories. States and the extension programs were also very concerned about the additional burden on their programs and on applicators that would be generated if EPA finalized the recertification requirements as proposed, in combination with the requirements for the application method-specific and concurrent pest control categories. A few commenters were concerned that private applicators may opt to no longer certify or that there may be non-compliance.

Most States that commented—in opposition to or in support of the additional categories—noted that adding the categories would burden the State and the applicator. One commenter advised EPA that many States would need to revise State laws and regulations, mostly related to private applicators. States with a broadly inclusive commercial fumigation category would be required to establish two separate categories, and applicators would have to either reduce the scope of their applications or increase their existing certification burden. Some States would need to develop new training materials and exams, and hold additional training sessions. A few commenters suggested that EPA either develop the materials or fund States' development of the materials. Some commenters noted that there are few applicators in their States using a particular application method, and that the burden on the States and extension services would be high to support those few applicators.

Response. The proposal included very specific requirements for recertification programs, including requirements for a maximum recertification interval of 3 years, a minimum standard for CEUs, and a defined length of active training time for each CEU. The increased burden for certified applicators to recertify with these additional application method-specific and concurrent pest control categories under the proposed changes was one of the most frequently raised concerns about the proposal. As discussed in Unit XIV, EPA revised the recertification requirements to be more flexible and to accommodate a broader range of approaches in recertification programs. These changes should alleviate or greatly decrease the concerns about the potential burden on certifying authorities and applicators. Please refer to Unit XIV. for additional information about the final recertification requirements.

Also, EPA has not included in the final rule the proposed requirement for applicators who apply RUPs by fumigation or aerial application to obtain concurrent certification in both the application method-specific category and in each relevant pest control category, reducing burden on applicators to certify and recertify in those categories.

To accommodate certifying authorities with few applicators using fumigants and to reduce certifying authorities' training burden, the final rule to allows certifying authorities the option to combine the soil fumigation and non-soil fumigation categories into a single fumigation category. EPA expects this change will provide nearly the same level of protection against unreasonable adverse effects as the proposal, because a general fumigation category must cover the standards of competency for both soil fumigation and non-soil fumigation. Certifying authorities may opt to certify private applicators seeking to use RUPs through soil fumigation, non-soil fumigation, and aerial application in the corresponding commercial category.

In response to comments recommending that EPA provide certifying authorities with training materials and exams for the application method- specific categories, EPA notes that it has worked with State regulatory agencies, cooperative extension agencies, applicators, and industry to develop training manuals and exam item banks for soil fumigation and aerial application that certifying authorities can adopt directly or adapt for use in their certification programs.

Comment. Some States, a registrant organization, and an association that represents pesticide safety trainers said the requirement for a soil fumigation category would be redundant and confusing to applicators in light of the existing labeling requirements for training of soil fumigant applicators. Those States where private applicators must certify by passing an exam said they would prefer that applicators take the registrant-developed training rather than add a soil fumigation category. One State said that the labeling-required training for soil fumigation and fumigant management plans are a more effective approach than requiring a certification in a fumigation-specific category, especially for private

applicators. Another State expressed a preference for requiring compliance with the training requirement on the labeling for private applicators rather than requiring private applicators to certify because the State would require the private applicator to pass an exam for certification.

Response. EPA recognizes that the soil fumigant labeling that currently contains requirements for registrant-training may overlap with the establishment of soil fumigation categories. Under this final rule, certifying authorities must adopt the soil fumigation category or a general fumigation category if such applications are made in their specific jurisdiction. Where registrant-provided training meets some or all of the requirements for certification or recertification, certifying authorities may include the registrant-provided training in their proposed certification plans. Currently, some States have different options for applicators to be able to meet the labeling-required training requirements, which are provided on EPA's Web site: *http://www.epa.gov/fumiganttraining*. EPA will work with the certifying authorities and affected registrants to address the concern about overlapping requirements and burden on applicators, and will support communication of the changes to soil fumigant applicators.

EPA appreciates that the training currently required through soil fumigant labeling offers applicators important information that they may not receive through examination. Under the final rule, certifying authorities have the option to certify private applicators through completion of a training program that covers the competency standards outlined in the rule.

Comment. One commenter recommended grandfathering in currently certified applicators making applications covered by the application method-specific categories. Under this recommendation, only those certified after the new categories are adopted would need to be certified in the additional categories.

Response. EPA is unclear on the commenter's recommendation. If an applicator currently holds a soil fumigation certification, EPA does not anticipate that the applicator would need to complete the initial certification for soil fumigation under the revised certification plan. Rather, assuming the certifying authority allows applicators to retain existing certifications when the revised certification plan is implemented, the applicator could retain his or her valid soil fumigation certification and comply with the recertification requirements the certifying authority adopts for soil fumigation. However, if the applicator is only certified in agricultural plant pest control and performing soil fumigation under this certification, EPA would not consider the applicator's existing certification sufficient to consider the applicator certified in soil fumigation under the revised certification plan. The exam for initial certification would cover the competency standards specific to soil fumigation. Because soil fumigation presents different, and in most cases, greater potential for RUP exposure than other application methods if not performed properly, the final rule requires certification in the specific category to help ensure applicator competency. Upon implementation of a revised certification plan by the certifying authority, this applicator would need to obtain certification in a category covering the soil fumigation competency standards in order to continue performing soil fumigation.

Comment. A pesticide registrant requested that EPA clarify that the additional categories apply only to RUPs with fumigation or aerial application directions on their labeling.

Response. EPA confirms that the soil fumigation, non-soil fumigation, and aerial application categories established through this final rule apply only to applicators using RUPs that are labeled for soil or non-soil fumigation or who make aerial applications of RUPs. EPA does not require applicators who only apply non-RUPs to be certified, irrespective of the method of application; however, certifying authorities retain discretion to implement programs more stringent than the federal rule and many do currently require certification of all ''for-hire'' pesticide users (even if they only use non-RUPs).

Comment. Some certifying authorities commented that rodent control fumigants do not fit in either the soil or non-soil fumigation category, and asked for guidance on the category in which they should be included.

Response. Based on the labeling and use patterns of rodent control fumigants (*e.g.,* they are treating burrows, which are spaces, rather than the soil), EPA anticipates that use of these products would require an applicator to be certified in a non-soil fumigation category. However, EPA notes that certifying authorities do retain discretion to adopt a category or subcategory and corresponding competency standards specific to rodent burrow fumigations, as well as to combine the soil fumigation and non-soil fumigation categories into a single fumigation category.

Comment. A few certifying authorities, farm bureaus and a grower group said that the requirement for application method-specific categories was not well justified for private applicators. One such commenter stated that EPA has failed to demonstrate that there are additional public safety benefits where these categories are in use.

Response. EPA disagrees. Private applicators making fumigant applications use the same products as commercial applicators. Private applicators may use fumigant products less frequently than commercial applicators, but as a result may have less experience and skill using these products and applications which pose significant risks if not used according to the labeling. The products present similar risks to bystanders and the environment as those used by commercial applicators. RUPs applied aerially are no less prone to off-target drift if applied by a private applicator rather than a commercial applicator. As one certifying authority commented in support of the application method-specific categories for private applicators, ''[this State] feels that private applicators should have extensive knowledge of these specialized methods of application.''

In this final rule, EPA has strengthened the competency standards for private applicators to cover more detail than in the existing rule. The final competency standards for private applicators are similar to the commercial core standards because there is a basic level of competency that is necessary in order to apply RUPs without causing unreasonable adverse effects. This same reasoning compelled EPA to establish the requirement that private applicators certify in the application method-specific categories.

In response to the comment that EPA has not demonstrated that public health benefits have accrued where certifying authorities have required certification in these categories, EPA notes that existing databases are insufficient to draw many reliable conclusions about the relative effectiveness of different State's certification programs. EPA believes it is reasonable to expect improvements to applicators' competencies will generally result in improved health of the applicator, the public, and the environment.

Comment. One certifying authority asserted that the proposed aerial and non-soil fumigant categories would not be adequate to establish competency without subcategories, and

recommended that EPA establish method-specific competencies.

Response. EPA disagrees that subcategories are necessary to establish competency for applicators to perform non-soil fumigation or aerial application. The final rule establishes method-specific competencies for soil fumigation, non-soil fumigation, and aerial application. Absent more specific information about what subcategories would be needed to adequately establish competency and why they would be necessary, EPA declines to add subcategories under the non-soil and aerial application categories, as requested. EPA reminds the commenter that certifying authorities may establish subcategories under categories as needed to ensure applicator competency.

Comments. Some certifying authorities, one university extension program, and a farm bureau opposed the requirement for separate soil and non-soil fumigant categories for private applicators, with one commenting that they would not improve competency as compared to a single category. One certifying authority commented that existing private applicator non-soil fumigation certification and recertification requirements, with an emphasis on labels and inspections, are sufficient for competency with the application method-specific categories. Two commenters recommended improving label language on the affected products, instead of requiring States to establish method-specific categories. Some of these commenters also noted that changes to the States' categories would require legislative approvals.

Response. EPA has included in the final rule an option for certifying authorities to adopt a single fumigation category with competency standards covering, at a minimum, the federal competency standards for soil fumigation and non-soil fumigation. EPA will review each certifying authority's revised certification plan to determine whether the existing requirements satisfy the requirements of this final rule.

EPA disagrees with the commenters' request to improve label language in lieu of establishing specific soil and non-soil certification categories. Fumigant applications require specialized skills and present unique risks. EPA believes that establishing categories for certification of applicators performing fumigation or aerial application, and adoption of the associated competency standards, will improve the competency of applicators using these methods, and thereby reduce the likelihood of unreasonable adverse effects. Because several States have successfully implemented these categories, EPA concludes that, in States where private applicators practice these application methods, demonstration of their competency through certification in the application method-specific category is an appropriate means of preventing unreasonable adverse effects.

EPA acknowledges that adopting additional categories may require the certifying authority to pursue regulatory or legislative change.

Comment. A few commenters, including the national organization representing State pesticide regulatory agencies, asserted that an aerial category for private applicators is unnecessary, due to the small number of applicators and because the industry is self-regulating and already federally regulated by the Federal Aviation Administration (FAA).

One commenter noted that, in their State, private aerial applicators are likely certified as commercial, and the federal aerial category for private applicators is therefore not needed. This commenter noted fewer drift complaints from aerial application in the past few years, as compared to drift complaints from ground applications. This commenter also opposed the proposed competency standard for aerial application, stating that State pesticide regulatory agencies and university extension personnel are not authorities on the operation of airplanes or their flight altitude or pattern.

Response. Although the FAA regulates agricultural aerial applicators, its focus is on flight risks rather than pesticide risks. EPA's concerns for aerial pesticide application are centered on the potential for off target application, spray drift, and bystander exposure. Despite the likelihood that there are a small number of private applicators using aerial equipment, the potential for risk and the need for competency in making proper application remains high for those applicators. The commenters have not provided evidence to support the contention that the aerial applicator industry is self-regulated or that such self-regulation adequately addresses the risk of aerial application of RUPs. EPA does not believe that the aerial application industry's self-regulation is an adequate substitute for the competency standards and determinations required in the final rule.

EPA is not opposed to certifying authorities requiring private applicators to meet commercial applicator criteria for aerial application certification. The final rule does not require certifying authorities to offer certification in categories where demand is low. In response to the commenter opposed to the private applicator competency standard for aerial applicators on the grounds that States are not authorities on aviation, EPA reminds the commenter that neither is FAA an authority on pesticide risks. EPA's and FAA's requirements are complementary in regard to aerial application of pesticides. The provisions of this final rule are directly related to the application of RUPs, not general operation of the aircraft. Training and knowledge on the principles of aerial application to minimize drift and off-target movement of RUPs are critical competencies for applicators who apply RUPs aerially.

Comment. One State recommended reducing the number of application method-specific competencies listed in the proposal, stating that many, such as those covering pesticide labels and labeling and target pests, are covered in their core competency standards.

Response. EPA assumes the commenter is requesting that EPA allow a certifying authority to include some portion of the competency standards listed in certain categories in the core competency standards because there appears to be a duplication of some points (*e.g.,* labeling requirements). For example, both commercial core competency standards and the competency standards for soil fumigation include requirements for the applicator to understand labeling requirements. However, EPA notes that the core and category competency standards are different based on context: Category-specific knowledge of labeling concerns common labeling provisions relevant to the products covered by the specific category (*e.g.,* application to livestock, seed treatment, soil fumigation), while the core competency standards cover labeling generally (*e.g.,* understanding the parts of labeling, where to find information, requirements for certified applicators). With the possible exception of Federal agencies (whose commercial applicators may be very specialized), EPA does not anticipate that a certifying authority would adopt into the commercial core competency standards requirements for all commercial applicators to have competency related to a specific category's standards. The certifying authority must specify in its certification plan that the competency standards for each category meet or exceed the competency standards in the rule. EPA will review each certification plan and the proposed categories to determine whether the necessary competencies are covered in a manner

likely to ensure that applicators are competent to use RUPs without causing unreasonable adverse effects.

Comment. Several commenters, primarily aerial applicator organizations and pesticide manufacturer organizations, expressed concerns for the characterization of aerial application as a ''high risk'' method. They state that aerial applicators are typically mature and experienced individuals who receive frequent, ongoing training to ensure competency, and applicators exhibit a high degree of professionalism. The commenter noted that aerial applicators prepare extensively prior to flight and are knowledgeable of proper procedures and safety. One applicator organization observed that the use of the term ''high risk'' places an undue potential for legal liability on the applicator and their customer.

Commenters preferred that the aerial application category be designated as ''specialty,'' ''highly skilled,'' or ''complex'' application method. Several of these commenters agreed that there is some risk associated with aerial application, but aerial applicators seek to use best practices to minimize or eliminate these risks.

Response. EPA has not characterized aerial application as a ''high risk'' application method in the final rule. However, both the proposed and final rules properly reflect the fact that aerial application presents different, and in most cases, greater potential for RUP exposure than other application methods if not performed properly, and therefore requires specialized training and experience.

Comment. One commenter found statements in the preamble in error. Those statements suggested that the national organization representing State pesticide regulatory agencies opposed EPA's soil fumigant risk mitigation approach, which included requirements on labeling for applicators to receive registrant-provided, product-specific training. The commenter asserted that States were not opposed to the concept of relying on labeling to require applicator training for risk mitigation, but instead were concerned for the timeframe that EPA established to complete the work. Correspondence from a national pesticide safety trainers' organization expressed concerns for the mandate for registrant training.

Response. EPA acknowledges that the intention of the statements originating from the national organization representing State pesticide regulatory agencies correspondence was to express concern for the aggressive timeline involved with the implementation of the labeling requirement for registrant-provided training. EPA also acknowledges the correspondence from the national pesticide safety trainers' organization expressed their concern with the requirement for the training that was required to be provided by pesticide registrants.

Comments. Two States mentioned the anticipated use of Unmanned Aerial Vehicles (drones) for pesticide applications. One commenter suggested that EPA define terminology and consider establishing a category for their use. A second commenter suggested that certification of applicators using drones could be accomplished under the existing certification program.

Response. EPA has only a nascent understanding of drone use in RUP application, especially as the field and other federal regulations related to drone use are developing and evolving quickly. EPA may revisit the issue of using drones for RUP applications and whether additional competency standards are necessary in the future, but in the meantime, it seems likely that RUPs applied by drone would be ''applied by fixed or rotary wing aircraft'' and thus be subject to the aerial applicator certification requirements of the final rule. Because the field is new and developing, EPA will not add a specific certification category or competency standards at this time; however, EPA may revise existing standards or add a new category to address this issue in the future if necessary. Certifying authorities may adopt their own categories, and EPA is willing to work with any certifying authority to develop competency standards for certifying applicators who would use this or other emerging technologies.

Comment. One certifying authority commented that the proposal to subdivide the fumigants by method of application and use site is contrary to FIFRA, 7 U.S.C. 136(ee), and sets a precedent for subdividing other categories by method of application, for example, hand pump sprayers, air blast sprayers, and hydraulic sprayers.

Response. The fumigation categories are divided into soil and non-soil on the basis of the site of application. Regarding the concern the commenter has for the proposed requirement for separate categories, EPA was convinced by States' comments and has determined that certifying authorities may establish a single certification category for the fumigants, which encompasses the competency standards for both fumigation types. EPA does not at this time anticipate subdividing categories of use by application equipment type. EPA does not see any inconsistency between the final rule and FIFRA (7 U.S.C. 136(ee)).

Comments. Several States, an organization that represents Tribal interests, and a farmworker advocacy organization responded to EPA's request for comment on the need for a chemigation certification category for applicators who apply RUPs through irrigation systems. All certifying authorities who responded to this question opposed the alternative. Two certifying authorities noted that the category was not needed. One certifying authority where there is substantial use of chemigation responded that their private applicators are trained on this application method and there are questions on the certification exam. Two certifying authorities opposed the addition of a chemigation category because of applicator burden. Another certifying authority opposed adding a chemigation category, stating that the label addresses the need and the establishment of the category would burden the State. Another two certifying authorities did not support the additional category, and recommended instead an assessment of use of RUPs by chemigation while expressing concern for additional burden when combined with the proposed fumigation and aerial categories.

Two commenters supported the addition of a certification category for people using RUPs by chemigation. One of these commenters, a farmworker advocacy organization, noted that applicators need specific skills to use drip lines and there is a need for them to take precautions to prevent contamination of waters.

Response. In drafting the proposal, EPA reviewed certification plans and the available incident data but found that few certifying authorities had adopted a chemigation category, and chemigation is not disproportionately represented among reported incidents. In the proposal, EPA requested comment on adding an application method-specific category for chemigation to gather additional information for decision making. No certifying authorities supported the addition of chemigation as an application method-specific category. Based on these comments and the available information, EPA has concluded that, at this time, requiring chemigation-specific certification is unlikely to reduce risks enough to justify the associated burden, and therefore has not included a requirement for a chemigation category in the final rule.

B. Allow Certifying Authorities To Establish a ''Limited Use'' Category for Commercial Applicators

1. Existing rule and proposal. The existing rule has categories of certification for commercial applicators covering major types of pesticide applications. EPA proposed adding additional application method-specific categories covering particular ways that RUPs are applied. EPA requested comment on adding a ''limited use'' category for small numbers of applicators using RUPs in highly specialized or niche applications that do not fit under an existing or proposed category. Certifying authorities have expressed concern about the numbers of such applicators being too small to justify the cost of developing and offering written examinations meeting the criteria of § 171.103(a)(2) for these niche uses.

The existing rule and final rule require certifying authorities to use written exams to determine the competency of and issue certifications to commercial applicators. Under the existing rule and final rule, commercial applicators must pass written exams covering core competency standards and competency standards for at least one category. The costs of written exams for category certification is a significant obstacle to certifying commercial applicators who use a single product or very few products using specific application techniques that do not fit within other categories. Examples of niche applications are municipal sewer root control, use of biocides in hydraulic fracturing (''fracking'') and wood preservation treatments. In the proposed rule, EPA discussed the option of allowing a ''limited use'' category that would allow certifying authorities to certify commercial applicators based on passing a written exam covering core competency and meeting specific additional standards established by the certifying authority related to the use of a specific RUP or small group of RUPs in a very narrow type of application sites. EPA considered and requested comment on whether to allow certification in the ''limited use'' category based on qualifications other than passing a category-specific exam. EPA discussed three alternatives to passing a category-specific exam: (1) The applicator could be required to comply with industry-provided training or certification requirements specified on the product labeling; (2) the applicator could be required to hold applicable State or Federal professional credentials; or (3) the applicator could demonstrate competency as required by the product's labeling.

2. Final rule. EPA has chosen to add a provision to the final rule that would allow certifying authorities, at their discretion, to add ''limited use'' categories for commercial applicators. To add a ''limited use'' category, the certifying authority must establish specific competency standards and outline the process for ensuring that applicators demonstrate competency. An exception in 40 CFR 171.103(d) and 171.303(a)(4) allow the certifying authority to determine commercial applicator competency for the ''limited use'' category through a method other than a written exam fully conforming to § 171.103(a)(2). However, candidates for a ''limited use'' certification will be required to pass the written exam covering the core standards outlined at 40 CFR 171.103(c). But instead of passing a written examination to satisfy the State-established category-specific competency standards, candidates for a ''limited use'' certification may satisfy those standards by other means, which may include performance testing, individualized evaluations that do not necessarily meet the requirements of § 171.103(a)(2), other professional certification programs, or training and/or evaluation provided by third-parties such as pesticide registrants and other regulatory agencies. The certification plan's description of a ''limited use'' category must include information about how applicators would be recertified. The certifying authority must ensure that any limited use certification credential clearly identifies the limited set of RUPs authorized for purchase and use by the applicator. The regulatory text for allowing the development of a ''limited use'' category and outlining the exception to the requirement for commercial applicators to certify by passing a core and at least one category exam is available at 40 CFR 171.303(a)(4).

Comment. Four States, one private individual, and two industry organizations with applicators that use RUPs in specialized applications supported the addition of a ''limited use'' category for commercial applicators, in order to reduce burden on applicators, educators, and certifying authorities while assuring competency. Commenters noted that certifying authorities have difficulty developing valid exams and finding appropriate training for these users. Commenters also stated that, in those States, applicators must pass exams and take training not relevant to their niche applications or the State must develop and maintain an exam and training program covering very limited, detailed content that is often applicable to very few people in the State. Most of the commenters supported the three proposed alternatives to address the category requirements, with one commenter supporting the option for certifying authorities to develop additional approaches. Four certifying authorities opposed the concept of a federal ''limited use'' category, stating that adopting a ''limited use'' category would increase burden, particularly on enforcement staff, who have to verify the alternative credentials.

Response. EPA recognizes that there are RUP uses that do not fit well within the categories outlined at 40 CFR 171.101 and that have small numbers of commercial applicators. Because of the small numbers of applicators, the per-applicator cost of developing and presenting testing and training materials is high and represents a burden on the certifying authorities and applicators. Materials, exams, and training may be difficult for certifying authorities to develop due to scant information, a small applicator pool with which to develop and validate exam questions, and limited expertise with these specialized applications. The substantive content used for certification in other categories may have little relevance to their work.

EPA is convinced by these comments supporting a ''limited use'' category and concludes that allowing certifying authorities the discretion to certify these applicators through an alternative mechanism, rather than by using the standard requirements to pass a core and category exam is appropriate. The alternative approach must accurately determine the applicator's competency in making these specialized applications, but may do so in a flexible manner that does not place excessive burden on the applicator or the certifying authority. The final rule allows certifying authorities the option to certify commercial applicators for niche uses without having to pass a written category exam conforming to § 171.103(a)(2). The final rule requires commercial applicators seeking ''limited use'' certification to satisfy the core competency standards, including the examination standards of § 171.103(a)(2), by passing a written core exam, in the same manner as other commercial applicators. The difference is the certifying authority's option to develop competency standards for the ''limited use'' category and to ensure the applicator's competency according to those standards through a process other than the written examination required by § 171.103(a)(2). Prior to this final

rule, EPA has relied on other methods to establish applicators' competency in the case of fumigants and predacides, where commercial applicators have been required to pass a core exam, category exam, and satisfy the labeling-mandated competency requirements. EPA believes that it is a viable approach to ensuring safe and effective applications of certain RUPs in very narrow scenarios, and would provide better flexibility for certifying authorities to address the needs of their applicators. Accordingly, the final rule provides that certifying authorities may include in their certification plans specific ''limited use'' categories for certification of commercial applicators through alternative processes (subject to EPA approval) that do not necessarily meet the examination standards of § 171.103(a)(2). Refer to §§ 171.303(a)(4) and 171.305(a)(5) for the regulatory text.

Under the final rule, certifying authorities must provide information about the ''limited use'' categories they plan to establish in their certification plans submitted to EPA. They must provide the related competency standards, as well as their approach to determine competency and to recertify commercial applicators in the ''limited use'' category. Certifying authorities must explain why it is not practical to include the specific product(s) and/or use(s) under any other existing category. The certifying authority is required to ensure that any certification credential clearly identify the limited set of RUPs an applicator holding a limited use certification is authorized to purchase and use.

In response to the concerns from States that a ''limited use'' category could be burdensome on State enforcement programs, EPA notes that certifying authorities are not required to establish a ''limited use'' category.

VIII. Establish Predator Control Categories for Commercial and Private Applicator Certification

A. Existing Rule and Proposal

The existing rule has no categories for private applicators. For commercial applicators, the existing rule has 11 categories but does not have specific categories for the RUPs for predator control, sodium fluoroacetate in a protective collar and sodium cyanide in a mechanical ejection device.

EPA proposed to establish a single predator control category, with two subcategories—one specific to sodium fluoroacetate and one specific to sodium cyanide. EPA proposed the predator control category to codify the competency standards established by each product's labeling. EPA proposed to require that to use sodium fluoroacetate or sodium cyanide, an applicator would require certification in the specific category relevant to the product used.

B. Final Rule

The final rule establishes for both private and commercial applicators two predator control categories—one for sodium fluoroacetate in a protective collar and one for sodium cyanide in a mechanical ejection device. The final rule codifies the standards of competency mandated by the EPA orders (40 FR 44726 (September 29, 1975) and 49 FR 4830 (February 8, 1984)) that govern the use of these products.

The final regulatory text for commercial applicator predator control categories is located at 40 CFR 171.101(k)–(l) and 171.103(d)(11)–(12). The final regulatory text for private applicator predator control categories is located at 40 CFR 171.105(b)–(c).

C. Comments and Responses

Comment. Several States and a State association expressed concern that every jurisdiction would be required to adopt the two predator control categories, even if there were no applicators using that application method. Many certifying authorities pointed out that these products are not used in their jurisdiction. In some jurisdictions, applicators use one or the other predacide products, but not both.

Response. Neither the proposed nor the final rule requires certifying authorities to adopt categories covering the use of sodium cyanide or sodium fluoroacetate. Under the final rule, certifying authorities retain the discretion to adopt only the federal certification categories relevant to their jurisdictions. 40 CFR 171.303(a)(2)(i) and 171.305(a)(3)(i).

Comment. A number of States noted that risks to humans and non-target species from use of these products are great, as the products are highly acutely toxic to mammals and there are no antidotes. Most of these commenters believe that the labeling requirements are sufficient and that the proposed predator control categories are not needed. A few commented that sodium fluoroacetate and sodium cyanide are only for use by highly trained USDA Wildlife Services personnel, and should not be used by private applicators.

Response. EPA agrees that these products can pose unreasonable adverse effects on human health or the environment if not used by competent applicators carefully following the labeling use directions and precautions. Currently, most of the regulatory requirements applicable to these products come from two administrative orders published in the 1975 and 1984. Codifying more of the content of those orders into this rule will provide greater transparency and provide certifying authorities and applicators improved access to information they need to ensure the products are applied by competent applicators.

EPA notes that use of predator control products is not necessarily restricted to USDA Wildlife Services personnel; they are also used by other certified applicators. Private applicators, legally permitted to use these products, are subject to the same labeling-mandated competency standards as are commercial applicators.

Comment. Two States recommended that EPA retain the existing commercial category number assignments in the final rule, instead of inserting the predator control category before the existing Demonstration and Research category. Commenters noted that certifying authorities retain information based on the federal category number, therefore changes to the category numbers would complicate the tracking of their historical information.

Response. The proposed rule inserted the predator control category into the commercial categories as number 10, displacing the Demonstration and Research category to number 11, with the intention of grouping the predator control category with the pest control categories. However, the order of the categories does not significantly affect the readability of the rule, so EPA will order the categories as the commenters requested. In the final rule, EPA has revised the order from the proposal so that Demonstration and Research is category 10 as it is in the existing rule.

Comment. One State supported EPA's intention to promote safer pesticide use by establishing predator control categories for private applicators, but expressed concern for the burden on that certifying authority. They expected that the changes would impact resources to revise rules, and stated that EPA should develop study guides and exams. This certifying authority also was concerned that private applicators would find it too difficult to obtain the additional licenses, and may not be able to protect their commodities as a result.

Response. EPA appreciates the concern raised for the burden on certifying authority resources, and for the potential that private applicators may lose access to these RUPs to protect their investments. However, EPA notes that private applicators using these

products must already comply with the use restrictions and competency standards on the labeling, and can reasonably be expected to achieve certification to equivalent requirements in a certification context. Should they be unable to demonstrate competency in the relevant predator control category, their access to and use of these highly acutely toxic pesticides would be to barter with other farmers certified in this category, to hire commercial applicators, or to obtain the help of State or Federal wildlife officials.

Comment. A federal government agency commented that they were not opposed to codifying the labeling requirements for sodium fluoroacetate and sodium cyanide, but asked for clarification on how applicators would demonstrate competency. They stated that APHIS WS provides specific training for applicators in many States, because certifying agencies do not have the information or training staff with relevant expertise in predator control. They stated that if applicators were required to demonstrate competency by passing a closed- book exam for certification and obtaining six CEUs for recertification that this would be difficult for States to implement for the small numbers of applicators. USDA APHIS preferred to keep things as they are, with this agency providing training for applicators in many jurisdictions.

Response. Federal agencies administering certification plans must comply with any State- or Tribe-specific certification requirements when persons certified under the Federal agency certification plan make applications in a specific State or part of Indian country. Neither the proposed rule nor the final rule requires applicators to obtain certification by completing both a training program and passing a closed-book exam. Under the final rule, commercial applicators would be required to certify by passing the core exam and the appropriate category exam, and therefore, APHIS-provided training without examination would not by itself satisfy the requirements for initial certification. Private applicators seeking to use one or both of the predator control products covered would be required to hold a valid private applicator certification and to obtain certification in the relevant category by passing a written exam or completing training, depending on the certifying authority's requirements for private applicators. The certifying authorities will have the discretion to decide whether to accept APHIS-provided training as satisfying some or all of the requirements for initial certification or recertification in the predator control categories.

The proposal included very specific requirements for recertification programs, including a minimum standard for CEUs per category recertification period. The final rule provides more flexibility to accommodate different approaches by certifying authorities and does not require applicators to complete a specific number of CEUs or hours of training in order to maintain their certification. Rather, the final rule establishes a framework under which certifying authorities may develop a recertification program within their jurisdiction. Recertification for both private and commercial applicators would be consistent with the certifying authority's requirements. Each certifying authority has discretion regarding whether APHIS-provided training is an acceptable component of the certifying authority's recertification program. See Unit XIV, for more discussion on the revisions to the recertification requirements.

IX. Security and Effectiveness of Exam and Training Administration

A. Overview and General Comments

1. Overview. In order to address concerns that administration of pesticide applicator examinations and trainings currently affords opportunity for cheating or fraud, EPA proposed provisions to ensure the security and integrity of examinations and training sessions. EPA proposed that all examinations for certification or recertification be closed-book and proctored. EPA also proposed that certifying authorities verify the identities of candidates seeking certification or recertification by examination or at training sessions. Based on comments received, EPA is revising the proposed examination and administration requirements in the final rule, as discussed in detail in the responses that follow.

2. Comments and Responses

Comments. A number of commenters offered general support for EPA's efforts to improve the security and effectiveness of the certification and recertification examinations and training sessions by requiring candidates to verify their identity and by requiring written examinations to be closed-book and proctored. Some certifying authorities noted that they already require examinations to be closed-book and proctored.

Other commenters stated the belief that the new requirements to ensure the security and effectiveness of examination and training administration would likely place additional burdens on certifying authorities. One commenter noted its expectation that as certifying authorities alter their programs to comply with the proposed provisions, candidates would be left with fewer options for certification and recertification exams and trainings. Some certifying authorities provide the option for private applicators to complete a take-home workbook to obtain certification; according to one commenter, the proposed requirement for closed-book, proctored exams would effectively prevent that option.

Some commenters stated that the proposed provisions are too prescriptive, arguing that a requirement to ensure a certifying authority has implemented examination security provisions as a part of its certification plan should suffice. Some commenters suggested that EPA should require certifying authorities to establish a certification security system that verifies the applicator's identity and provides for examination security, and that any additional examination security requirements would be unnecessary. Another commenter argued that certifying authorities have been administering examinations for years and federal regulation is not needed in this area.

Response. EPA agrees that it is important to maintain the security and integrity of examinations and training sessions to protect the investment of resources into quality examination development and to ensure the competency of pesticide applicators. EPA acknowledges that many certifying authorities already have requirements that meet or exceed the examination administration and security provisions in the final rule.

While EPA agrees that the new requirements to ensure the security and effectiveness of examination and training administration will likely place additional burdens on some certifying authorities, EPA notes that other certifying authorities have already adopted similar requirements and have not considered the burden unreasonable. EPA acknowledges that some certifying authorities will have to alter their programs to comply with this final rule. These changes could result in candidates being left with fewer options for tests and continuing education courses; however, EPA expects that there will be few disruptions for those seeking certification or recertification. EPA believes the benefits of implementing the new requirements related to examination security justify

any increase in burden or reduction in options associated with these activities. EPA acknowledges that the improvements in examination security in the final rule will prohibit certifications based on take-home examinations or at-home workbooks that are not proctored. Certifying authorities retain other options for certification and recertification, such as training (in person or online) or examinations administered in accordance with the standards in this rule.

EPA disagrees with the comments that the security and examination administration requirements are too prescriptive and that federal guidance is not needed in this area. EPA believes the requirements codified in this rule represent a common-sense approach to consistent and reliable examination administration. Codifying a minimum set of requirements for examination administration and security is necessary in order for EPA—which makes registration decisions based on certain assumptions regarding the competence of certified applicators—to have confidence that certified applicators have an appropriate level of competency.

B. Closed-Book Examinations

1. *Existing rule and proposal.* The existing rule does not require closed-book examinations. In 2006, EPA issued guidance regarding examination administration that recommended that examinations be closed-book and proctored. EPA proposed including a requirement for examinations for initial certification and recertification to be closed-book.

2. *Final rule.* In response to comments, EPA did not include the term ''closed-book'' in the final rule. The final rule includes the proposed provision that no reference materials may be used during examinations, except those that are approved by the certifying authority and provided by the proctor. The final regulatory text is available at 40 CFR 171.103(a)(2)(ix).

3. Comments and Responses

Comments. A number of commenters, including some certifying authorities and university extension programs, opposed EPA's proposal for closed-book examinations. Other certifying authorities sought clarification of the term ''closed-book,'' and opposed any prohibition on the use of reference materials. One commenter argued that the requirement to give closed-book examinations violates FIFRA's provision that EPA ''shall not require private applicators to take any examination to establish competency in the use of pesticides.''

One commenter argued that EPA failed to consider the impacts on university extension programs and, in doing so, ignored the cost of revising manuals. The commenter noted their category manuals have been developed with the idea that they can write examination questions that address deeper knowledge because the examinations are open-book. One commenter argued that while the proposal to have closed-book examinations would increase compliance costs, EPA has not demonstrated the increased burden would yield greater protection of workers or the environment.

Some commenters noted that there would be significant impacts from a closed-book examination requirement on their private applicator certification examination program. One commenter stated that even if open-book examinations are allowed under the final rule, if proctors administering the private applicator examination must provide all the materials, there will be increased costs for purchasing and tracking the different private applicator category-training manuals that could be used for the examination. The commenter argued that candidates may have to wait until the certifying authority has provided the necessary reference materials to all testing locations. Another commenter recommended that that the final rule allow certifying authorities who currently allow open-book examinations to convert to closed-book examinations at a rate of two examinations per year.

A number of commenters challenged EPA's assertion that open-book examinations allow a lower standard for the process of determining and assuring competency. One commenter stated that the goal of the examination should be to test understanding of concepts and application of content, rather than memorization, which can be accomplished through closed-book examinations. One commenter stated that there is no proof closed-book examinations would result in more competent applicators than open-book examinations. Some commenters argued that examinations should reflect circumstances under which a person will actually operate, and that open-book examinations train applicators how to look up and use material that will be available. One commenter asserted a belief that it is inconsistent to consider the ability to look up information on labeling to be a required competency, yet the ability to look up information in a key reference material to imply a lack of competency. One commenter noted that rather than gauging the test taker's competency, closed-book examinations would discriminate against those who simply are not good test takers. Another commenter argued that applicators would cram for closed-book examinations, and that cramming does not lead to retention. Another commenter favoring open-book examinations cited a study that found no real differences in retention a week after administering either an open or closed-book examination (Ref. 41). One university extension program stated the belief that open-book examinations allow them to test applicators' knowledge more thoroughly, in particular for category examinations which the commenter believes test more complex material than core examinations. The commenter argued that an applicator should know core material well enough to answer examination questions without needing to refer to the core manual.

Some commenters argued that examination security issues could better be addressed through other means, such as competent, active proctoring, multiple or unique versions of tests, and frequently modified tests, rather than through closed-book examinations or a prohibition on bringing outside materials to the examination. One commenter contended that manuals and all other materials could be provided to applicators at the examination site and turned in at the conclusion of testing to help in maintaining examination integrity. The commenter stated the belief that manuals are long enough that a person not already familiar with the materials would not have time to pass an examination, and thus the manual(s) can only serve as a resource as needed.

Some commenters suggest that EPA require a minimum score that candidates must meet in written examinations to obtain certification.

One commenter suggested that proctors be allowed to translate examination questions into a foreign language in order for the candidate to fully understand words used in the test that are not part of the label.

Response. In response to comments, EPA has not included the term ''closed-book'' in the examination administration requirements in the final rule. EPA is codifying examination administration standards that permit the use of reference materials (*e.g.,* sample labeling, conversion tables, or manuals), as long as they are provided by the proctor or examination administrator and collected at the end of the examination. EPA acknowledges that

the term ''closed-book'' is sometimes interpreted to mean that no reference materials are allowed and that the candidate must rely solely on his or her memory. In response to comments, the final rule allows certifying authorities the flexibility to choose whether to provide candidates with reference materials during examinations. It also allows those certifying authorities that have designed their examinations for candidates equipped with reference materials to continue to use those, as long as the only reference materials used are those approved by the certifying authority, and are provided and collected by the proctor. EPA believes the requirements that reference materials be provided by the certifying authority and collected after the examination will reduce cheating by preventing candidates from entering the examination with prepared answers or copying examination questions into materials taken away from the examination.

EPA disagrees with commenter's assertion that the requirements for examinations to be closed-book violates FIFRA. EPA acknowledges that FIFRA prohibits EPA from requiring private applicators to take an examination to establish competency in the use of pesticides under an EPA-administered certification program or from requiring certifying authorities to impose on private applicators an examination requirement as part of a certification plan. 7 U.S.C. 136i(a)(1). However, FIFRA allows States to regulate more strictly than EPA does in certain cases (FIFRA section 24(a); 7 U.S.C. 136y(a)), so certifying authorities may choose to require testing where EPA has not. And as FIFRA grants EPA the authority to prescribe standards for the certification of pesticide applicators, EPA may prescribe standards applicable to those certifying authorities that choose to certify applicators on the basis of examinations. The final rule does not require that private applicators take any examination, but it also does not prohibit certifying authorities from doing so. And recognizing that many certifying authorities do rely to some extent on examinations to establish the competence of private applicators, EPA is within its authority to specify that those examinations must meet certain minimum standards.

EPA estimated costs that the States and other certifying authorities incur for revising their certification plans, developing examination and training materials, administering (proctoring) examinations, and providing trainings for certification and recertification. EPA estimated the costs of developing new exams and training materials (*e.g.,* non-soil certification exams, and private core competency materials). For example, there will be new proctoring costs for administering aerial and non-soil certification examinations and costs for providing recertification trainings. Certifying agencies, and in some cases in cooperation with university extension programs, have to develop certification examinations and training materials for these new categories. However, EPA acknowledges that it did not estimate the cost of revising examinations to account for the requirement that examinations be closed-book. Since EPA is removing the term ''closed-book'' from the rule and clarifying that reference materials can be provided by the certifying authority, so long as no candidate is permitted to remove from the test site those materials he or she used during the examination, EPA believes the cost of revising examinations to meet this provision is a negligible portion of the cost of routine updates to examinations certifying authorities already undertake. However, examination facilities will need to be stocked with the reference materials. EPA also believes the examination security requirements reduce the burden on certifying authorities associated with updating compromised tests. Further, EPA believes that increasing examination security and preventing cheating will have a beneficial impact on applicator competency by ensuring that candidates have attained the knowledge required to pass an examination. In turn, EPA believes competent applicators are less likely to have mishaps that cause adverse effects on the environment or human health.

EPA acknowledges that the provisions of this final rule will have impacts on private applicator certification examination programs. EPA estimated the costs incurred by certifying authorities associated with examination and training material development and administration. See the Economic Analysis for this rulemaking (Ref. 1). Given the clarification in this final rule regarding the use of reference materials, EPA believes that most certifying authorities will require minor revisions to their manuals and/or tests. Hence, EPA expects disruptions to examinations, if any, to be minimal. EPA believes that, if necessary, certifying authorities can stock examination facilities with reference materials during the implementation period.

EPA has taken into consideration comments addressing EPA's concern that open-book examinations allow a lower standard for the process of determining and assuring competency. EPA agrees that the goal of certification examinations should be to ensure applicator competency (*i.e.,* to test the understanding of concepts and application of content, rather than to test memorization). EPA also agrees that the ability to look up information in reference material does not imply a lack of competency. EPA notes that the authors of a recent review of studies comparing open-book and closed-book examinations conclude that the available data does not appear to favor using either open-book or closed-book examinations (Ref. 42). The authors note that while students may prepare more extensively for closed-book examinations, post-examination outcomes suggest little difference in testing effects. EPA did not find evidence to suggest that retention and competency are affected by such factors as whether the examination reflects the circumstances under which a person will operate, or that closed-book examinations discriminate against poor test takers. EPA agrees that the available evidence suggests that open-book examinations can be designed to test applicator knowledge without compromising competency standards. As a result, EPA is not distinguishing between core and category examinations with regard to the use of reference materials. EPA remains concerned about the possibility of cheating if candidates are allowed to bring outside materials into the examination or take examination materials home. In order to ensure the integrity of the examination process, EPA is retaining the proposed prohibition against candidates bringing in outside materials to the examinations. As discussed above, manuals and other reference materials may be provided by the certifying authority at the time of the examination for use during the examination, but must be collected at the end of the examination period.

In response to commenters who argued that examination security issues could be better addressed through means other than requiring closed-book examinations, EPA agrees. As discussed above, EPA is codifying the requirement that any reference materials used in the examination must be provided by the certifying authority at the examination and collected at the end of the examination. EPA is also establishing a requirement for test takers to provide a valid, government-issued photo identification or other form of similarly reliable identification to the certifying authority. EPA believes that these

measures will assist with assuring the integrity of the examination process.

EPA disagrees with commenters who requested that EPA establish a minimum score on examinations to obtain certification or recertification. Those who develop and administer examinations are in the best position to establish a minimum passing score based on the number, type and difficulty of questions. Even if two certifying agencies used exactly the same questions, differences in the types of reference materials the certifying agencies choose to provide or the time allotted could also influence the decision on where to set the minimum passing score for the examination. Because EPA is not requiring all certifying authorities to administer the same certification examinations or requiring standardization in what materials may be provided during the examination, it would not appropriate for EPA to establish a minimum score for passing an examination.

Finally, in response to the comment that language translation tools be allowed, EPA is not prescribing what reference materials are allowable. EPA will generally defer to certifying authorities to determine what, if any, materials should be provided to candidates, and whether materials would serve as a resource for testing purposes or would compromise the utility of the examination in assessing competency of the candidate. Manuals, foreign language dictionaries or other language translation tools, labeling, and other materials may be provided to the candidate, as long as the materials are approved by the certifying authority for use during the examination and collected at the end of the examination period.

C. Proctor Requirements

1. Existing rule and proposal. The existing rule does not require examinations to be proctored or establish standards for proctors or certifying agencies administering exams. In 2006, EPA issued guidance regarding examination administration that recommended that examinations be closed-book and proctored.

EPA proposed to require that any examination for certification or recertification be proctored by an individual designated by the certifying authority and who is not seeking certification at any examination session that he or she is proctoring. In addition, EPA proposed that the proctor must do the all of the following:

- Verify the identity and age of persons taking the examination by checking identification and having examinees sign an examination roster.
- Monitor examinees throughout the examination period.
- Instruct examinees in examination procedures before beginning the examination.
- Keep examinations secure before, during, and after the examination period.
- Allow only the examinees to access the examination, and allow such access only in the presence of the proctor.
- Ensure that examinees have no verbal or non-verbal communication with anyone other than the proctor during the examination period.
- Ensure that no portion of the examination or any associated reference materials is copied or retained by any person other than a person authorized by the certifying authority to copy or retain the examination.
- Ensure that examinees do not have access to reference materials other than those that are approved by the certifying authority and provided and collected by the proctor.
- Review reference materials provided to examinees after the examination is complete to ensure that no portion of the reference material has been removed or destroyed.
- Report to the certifying authority any examination administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials, and attempts to copy or retain the examination.
- Comply with any other requirements of the certifying authority related to examination administration.

2. Final rule. The final rule establishes requirements for exam administration and proctoring, but differs from the proposal in several ways. The final rule does not include the proposed requirement for the proctor to have examinees sign an examination roster. The final rule clarifies that the certifying authority, rather than the proctor, bears the responsibility for ensuring compliance with examination administration and security requirements. The certifying authority may assign specific elements of examination administration and security procedures to the proctor or to other individuals approved by the certifying authority, but the certifying authority remains responsible for compliance with its certification plan and the final rule. The final rule reorganized the requirements from the proposal and eliminated duplicative tasks. The final regulatory requirements are available at 40 CFR 171.103(a)(2).

The final rule adds flexibility for certifying authorities by allowing them to adopt standards that meet or exceed the standards at 40 CFR 171.103(a)(2). The final regulatory requirements for States to adopt standards that meet or exceed the standards at 40 CFR 171.103(a)(2) are located at 40 CFR 171.303(a)(5) and 171.303(b)(2)(ii)(C).

3. Comments and Responses

Comments. One commenter stated the belief that competent proctoring would reduce the likelihood of questions being copied and shared with subsequent test takers.

Some commenters contended that proctoring requirements should not be in the regulations, as certifying authorities have been administering and securing examinations for years. One commenter suggested that the proctor instructions should be included as part of certification plans rather than being placed in the regulations. One certifying authority indicated that their examinations are already proctored; other commenters noted that the proposal would codify existing policy that all examinations be proctored.

One commenter argued that requiring proctoring of examinations and specific proctoring requirements will place a strain on growers. Another commenter asked whether and for how long the examination roster must be kept.

Response. EPA agrees that examination administration and security are important elements of the certification process. EPA also agrees that requiring examinations to be proctored and establishing minimum examination security requirements will reduce likelihood of cheating during the examinations, including questions being copied and shared with subsequent test takers.

EPA acknowledges that certifying authorities have developed expertise in administering examinations for pesticide applicator certification and recertification. EPA is codifying certain examination security requirements rather than leaving them wholly to the certifying authorities because EPA believes that placing the requirements in the federal regulations will help assure a level of examination security and integrity that is consistent across certifying authorities and appropriate for ensuring applicator competency. In 2006, EPA issued non-binding guidance regarding examination administration that recommended that examinations be closed-book and proctored. EPA notes that while many certifying authorities currently require exams to be proctored, some certifying authorities have no proctoring requirements. The final rule

requires certifying authorities to address exam administration and security in their certification plans and allows certifying authorities to establish different exam administration security standards that meet or exceed EPA's standards.

EPA does not believe that requiring proctored examinations will place a strain on producers. The commenter did not specify what strains producers would be placed under by the requirement that examinations be proctored, but EPA believes that its Economic Analysis has accounted for all reasonably foreseeable impacts of the final rule.

In the final rule, EPA is not requiring certifying authorities to create or keep an examination roster as a record. Therefore, based on comments received, EPA removed the proposed requirement for the proctor to ensure candidates sign a roster. Nevertheless, EPA believes it would be prudent for certifying authorities to maintain a record of individuals present at an examination to track applicators' progress towards certification or recertification, and in case the presence of an individual at an examination is called into question. See Unit IX.D.

D. Verification of Identity

1. Existing rule and proposal. The existing rule does not have a requirement for verification of the identity of persons seeking certification or recertification. EPA proposed to add a requirement for those seeking certification or recertification to present a government-issued photo identification at the time of the examination or training session. EPA requested comment on whether it should consider allowing exceptions to the requirement for candidates to present identification, and if so, under what circumstances. EPA also sought examples of how such exceptions could be implemented.

2. Final rule. The final rule requires both private and commercial applicators seeking certification or recertification by examination to present identification at the time they take the examination. In addition, certifying authorities must also verify the identity of private applicators seeking initial certification through training. The final rule requires that the candidates present a government-issued photo identification or other comparably reliable form of identification authorized by the certifying agency; certifying agencies have discretion to determine what forms of identification are appropriate for their jurisdiction.

In the final rule, EPA has revised the proposed requirement for verifying the identity of participants for recertification. Under the final rule, certifying authorities must specify their identification requirements and procedures for verifying the identities of those seeking certification or recertification in their certification plans. The final rule does not require private or commercial applicators attending continuing education or training sessions for recertification to present a government-issued photo identification or comparably reliable identification authorized by the certifying authority. Instead, the final rule requires certifying authorities to ensure that any continuing education course or event relied upon for recertification include a process to verify applicators' successful completion of the program. This performance standard includes verifying the applicator's identity in some way as well as verifying their successful completion of the program.

3. Comments and Responses

Comments. Many commenters agreed with EPA's proposal to require positive verification of an individual's identity with a government-issued photo-identification at the time of examination. Some commenters agreed with EPA's proposal to require verification of an individual's identity at the time of examination, provided certifying authorities are given the flexibility to determine what is considered acceptable documentation. Of those States requesting that EPA include some measure of flexibility in the requirement for identification, a few cited the need to be able to accommodate religious or other groups that do not allow the use of government-issued photo identification. One commenter suggested that EPA revise the term ''government-issued'' to ''photographic'' or ''verifiable'' as a way of offering States and applicators more options. One commenter suggested that some citizens might not have a government-issued ID. As an alternative, the commenter suggested EPA could require States to have a procedure as part of their certification plans to accommodate candidates and applicators lacking a government-issued photo identification, but not specify in the federal rule what it is. Another commenter proposed that EPA clearly specify that positive identification for purposes of registration for training and testing, and granting of certifications may include any document or combination of documents that satisfy proper completion of the U.S. Citizenship and Immigration Services (USCIS) employment eligibility verification documentation, or the USCIS Form I–9.

Some commenters expressed the concern that the requirement for positive verification of identity would be overly burdensome and unnecessary for recertification training sessions. Some of these commenters anticipated potential issues and additional costs for sponsors of large courses, conferences, or workshops with large numbers of individuals in attendance. They argued that certifying authorities and providers of these services do not have the staff or ability to sign off and check each applicator's government-issued identification after every session. Another commenter asserted that to do so would be cost prohibitive and there would be no additional benefits from adding this step to current recertification processes. One certifying authority that relies on workshop providers noted that they did not have the legal authority to enforce a requirement to check identification of participants for each workshop session. Another commenter contended that a requirement to present government-issued identification for all participants may inhibit or intimidate certain individuals from attending valuable training sessions. The commenter stated that farmworkers and others should be encouraged, not discouraged from seeking training.

Some commenters suggested that successful candidates for a commercial applicator license could be issued a license that includes their photograph, similar to a driver's license, which could be used to verify attendance at recertification courses. One certifying authority that issues a certification card after examination without a photo indicated that they felt that card was sufficient and did not want to add a photo to the card.

One commenter proposed the following two-pronged approach to replace the proposed requirement for applicators to present a government-issued photo identification at every program that offers continuing education credits: (1) Allow all of the verification procedures described in the two CTAG papers, (''Pesticide Applicator Recertification: Verifying Attendance at Training Events'' and ''Pesticide Applicator Recertification: Online Training—Course Design and Structure'', which are available at *http://www.ctaginfo.org*) including sampling and auditing (Refs. 43 and 44); and (2) encourage certifying authorities to find a way to move toward the ideal goal of checking every applicator's photo

identification by limiting the proportion of recertification credits that could be earned at events at which every person's photo identification is not checked.

Response. EPA believes that requiring positive identification of candidates seeking certification and recertification by examination is critical element of maintaining the integrity of the pesticide applicator certification and recertification programs that rely on examinations, evidenced by the number of States that have adopted a requirement to verify the identity of candidates taking examinations. This requirement would help to ensure that the person who takes the examination is the same person who receives the certification, and help prevent fraud and abuse. It also allows certifying authorities the ability to verify that candidates for certification meet the minimum age requirements for certification.

Based on comments, EPA agrees that certifying authorities need flexibility to determine what documentation is acceptable to positively identify candidates taking examinations in order to accommodate candidates who do not have government-issued photo identification, for religious or other reasons. Under the final rule, certifying authorities must require examination candidates to present a government issued photo-identification or other comparably reliable form of identification. While EPA encourages certifying authorities to require a government-issued photo identification for verification purposes, the final rule allows certifying authorities the ability to determine what constitutes acceptable documentation for their jurisdiction. EPA also agrees with the suggestion that EPA require certifying authorities to have a procedure as part of their certification plans to accommodate candidates and applicators lacking a government-issued photo identification. Hence, in the final rule, EPA is requiring certifying authorities to specify their identification verification requirements in their certification plans. EPA disagrees with the request that EPA specify that any document(s) that satisfy USCIS Form I–9 be acceptable as positive identification for purposes of certification. As discussed above, EPA is allowing certifying authorities the ability to determine what documentation is acceptable.

For recertification training sessions, EPA acknowledges that it did not fully consider the potential burden on certifying authorities to require positive identification of candidates, especially at large conferences or workshops with multiple sessions. Based on comments, EPA agrees that the requirement for checking photo identifications could be burdensome and difficult to implement at conferences or workshops with large numbers of individuals in attendance. Furthermore, EPA recognizes that some States have implemented other methods to verify applicators' attendance at recertification training courses or events, such as scanning the barcode on the applicator's license at the beginning and end of the session. While the final rule does not require certifying authorities to identify the applicators attending training sessions, either on-line or in person, by checking a government-issued photo identification, EPA is requiring that certifying authorities ensure that any continuing education course or event includes a process to verify the applicator's successful completion of the course or event. To meet this requirement, there must be a way to identify the candidate for recertification as well as to verify that the candidate completes the program. EPA believes that retaining this requirement, while relaxing the requirement for presenting a government-issued photo identification, will maintain the integrity of the recertification process.

In response to the commenter who stated that some certifying authorities that rely on workshop providers have no legal authority to enforce a requirement on workshop providers to check identification of candidates at recertification trainings, EPA notes that under the final rule they would not be required to do so. Under the final rule, the certifying authority must have some process for verifying the applicators' successful completion of the recertification course or event, which involves some method of verifying the applicators' identity. The final requirements do not preclude certifying authorities from requiring applicators to provide photo identification at private or commercial applicator recertification training sessions. In addition, certifying authorities must specify in their plans how they will ensure that courses or events relied upon for recertification include a process to verify that a certified applicator has actually completed the training required for recertification.

EPA is retaining the requirement that private applicators present proof of identity to the certifying authority at the time of training programs for initial certification. This requirement would help to ensure that the person who takes the examination is the same person who receives the certification, and meets the minimum age and ensures the identity of the person receiving the certification. As with examinations, EPA is allowing certifying authorities the flexibility to determine what documentation is acceptable.

While EPA agrees with the commenter that farmworkers and others involved in the use of RUPs should be encouraged to seek training in their proper use, EPA believes that it is unlikely that farmworkers would attend recertification courses for private and commercial applicators. EPA has no objection at all to farmworkers or other persons taking training for their own purposes without identifying themselves. But if an applicator wants a particular training event to be part of the basis for his or her certification or recertification, the applicator must prove that he or she was in fact the person who successfully completed the training.

EPA disagrees with the request that certifying authorities be required to issue to successful candidates a license or other documentation, which includes their photograph and which could be used to verify attendance at recertification courses. EPA agrees with a certifying authority who commented that requiring certifying authorities to issue a card with a photo could be burdensome. The final rule does requires certifying authorities to issue appropriate credentials or documents verifying certification of successful candidates. In the final rule, EPA is providing certifying authorities the discretion to determine what must appear on the credentialing documentation. EPA is concerned that if the Agency were to require a photograph on the credentialing documentation, it might be considered an official, government-issued photo identification for identification purposes beyond the scope of its original intent. EPA is not prepared at this time to issue appropriate standards or regulations to ensure pesticide applicator credentials are not able to be used for other purposes. In addition, as discussed above, such a requirement with a photograph would still need exceptions for individuals with religious affiliations that prohibit their photograph from being taken. The final rule does not preclude certifying authorities from issuing such license with a photo.

EPA is not codifying the two-pronged approach proposed by one commenter and described above. EPA agrees with the commenter that the ideal goal is to check every applicator's identification at recertification trainings. Based on comments received, however, EPA is not requiring applicators to present

identification at recertification trainings. As discussed elsewhere, EPA is retaining the requirement that any education course or event offered to satisfy recertification training requirements must have a process to verify the applicator's successful completion of the course or event. The verification procedures described in the two CTAG papers, (''Pesticide Applicator Recertification: Verifying Attendance at Training Events'' and ''Pesticide Applicator Recertification: Online Training—Course Design and Structure'') are examples of the types of procedures that would be acceptable to include in certification plans (Refs. 43 and 44).

E. Online Training and Certification Standards

1. Comments and Responses

Comments. Some commenters expressed a belief that EPA should identify language that allows for future avenues of initial certification and recertification training that incorporate electronic identification methods not currently widely used by States. Another commenter argued that computer-based examinations are the norm in both academia and many high-stakes industries and requested assurance that ''in writing'' (§ 171.103(a)(2)(i)) includes electronic media and is not limited to paper copies for examinations. One commenter requested that the rule allow expressly for online training and certification programs that are consistent with applicable on-line education standards.

One commenter asked how online recertification courses will be impacted by the requirement to verify the identity of certified applicators attending recertification training sessions. One certifying authority argued that online tests cannot meet the standards specified in § 171.103(a)(2) and that standards to that level are not called for in the case of private applicators. In particular, the commenter was opposed to requiring States who choose to test private applicators to only offer proctored examinations. The commenter stated the belief that if the requirement goes through as proposed, States will have to consider alternatives including a training-only option for certification and not require an examination at all. Another commenter expressed concern that requiring applicator candidates to present photo identification at the time of examination or training might preclude the use of online programs. The commenter contended that online training and certification is a valuable tool for pesticide education programs for applicators; it allows applicators to receive quality training without incurring the economic costs of traveling to a physical site, including time away from their business and expenses such as meals, transportation, and hotel accommodations. Another commenter suggested that an affidavit signed by the candidate certifying their participation could be used in place of presenting identification for online training to verify the identity of the candidate.

Another commenter asked about the sign-in log the EPA proposed to have proctors keep at all testing locations. The commenter assumes that their computer based testing system will be sufficient as a sign-in log. The system keeps an accurate activity log and all pertinent information on every individual. Coupled with verification by a government issued ID, it appears unnecessary to require a sign in log as well. The commenter had two questions for EPA should a signature log be required: (1) What is the record retention period for the signature log? (2) Does it coincide with the established 2-year record retention for application or the valid term of the applicator's license?

Response. EPA acknowledges that some certifying authorities administer computer-based certification and recertification examinations, and that the use of online and distance-based programs is likely to expand. In this final rule EPA, however, is not expressly codifying language or standards that incorporate electronic identification methods for training sessions or examinations. The final rule does not prohibit the use of online training programs or electronic verification procedures; however, EPA is not prepared at this time to establish by regulation specific standards for online training and education or electronic verification. EPA confirms that the term ''in writing'' as used in the final rule is intended to encompass both paper-based and computer-based formats. Certifying authorities that are using or intend to use electronic verification will need to explain in their proposed plans how their methods satisfy the requirements of the final rule. As EPA gains more experience with how certifying authorities are using electronic verifications methods, EPA may consider providing guidance or explicitly codifying standards for electronic verification at some future date.

EPA agrees that online training and exams are a valuable tool for pesticide education programs for applicators. EPA expects that there will be minimal impact on online or distance learning continuing education programs as a result of this final rule. EPA disagrees with the comment that the examination standards specified in the proposed rule cannot be met through on-line testing. EPA agrees that some on-line testing procedures may not meet the standards in the final rule. For example, some remote on-line testing may not meet the identification verification and proctoring standards in the final rule. However, EPA believes remote, on-line testing can be done in a way the does meet the standards. For example, testing centers that provide proctoring services for a fee are available today in many locations; other alternatives may be available in the future.

EPA believes that the same examination procedures should apply to testing for both private and commercial certifications. EPA does not require examinations for private applicators, and EPA recognizes that some certifying authorities may decide to provide only training options for private applicators. But where a certifying authority intends to certify or recertify private applicators through examination, the examinations must meet the requirements of the final rule. As discussed above, EPA is not prohibiting on-line or remote testing that meets the standards in the final rule. If a certifying authority chooses that option, however, their certification plan should specify how it meets the examinations security and administration procedures in the final rule.

As discussed in the response above, EPA is not requiring applicators taking recertification trainings to present a government-issued photo identification, whether the training is offered in person or online. However, certifying authorities must positively identify both private and commercial applicator candidates taking an examination for initial certification or recertification, as well as those candidates seeking private applicator certification through training. This requirement is necessary to maintain the integrity of the examination process, and to ensure applicators meet the minimum age requirements for initial certification. The identity verification requirements apply to both in person and online examinations, for both initial certification and recertification, as well as to trainings for initial certification. Recertification training courses or events must include verification of each applicator's successful completion of the course or event, which includes some verification of the applicator's identity.

EPA disagrees that requiring candidates to present identification at the time of examination for recertification would preclude the use of online programs for examination. EPA acknowledges that this requirement would preclude remote, online examinations that are not proctored or do not verify proof of identity. As discussed above, however, proctoring services may be available that would permit remote testing. EPA also acknowledges that some training programs for initial certification for private applicators would potentially be impacted. Certifying authorities who allow private applicators to certify initially through training would be required to positively identify the candidates in order to ensure that the candidate himself/herself successfully completed the training, and that minimum age requirements are met.

For recertification training sessions, EPA is not requiring proof of identity to be presented by attendees under the final rule. EPA is, however, retaining the requirement that any continuing program or event, whether online or distance learning, must have a process to verify the applicator's successful completion of the educational objectives of the program, which includes verifying each participant's identity. EPA is not codifying the method by which certifying authorities require that recertification courses or events verify applicators' successful completion of the program. There are a number of ways to verify the applicator's identity as well as whether the applicator completed the program. EPA acknowledges that an affidavit signed by the candidate certifying their participation, as suggested by a commenter, could be a component of such a process.

EPA agrees with the commenter who suggested that a computer-based system would be sufficient as a sign-in log, when coupled with verification of identity. Although EPA is not finalizing a requirement for certifying authorities to maintain sign-in logs, EPA notes that keeping such a log would be a prudent way to verify the presence of a candidate at an examination in the event that other records indicating that the candidate has completed testing are lost, or that the presence of the candidate is disputed. Further, EPA would consider a sign-in log for recertification training sessions as a component of the process of verifying that an applicator has completed the training objectives.

X. Strengthen Standards for Noncertified Applicators Working Under the Direct Supervision of Certified Applicators

A. Qualifications of Noncertified Applicators Working Under the Direct Supervision of a Certified Applicator

1. Existing rule and proposal. FIFRA requires that a noncertified applicator using an RUP under the direct supervision of a certified applicator (hereinafter ''noncertified applicator'') be competent. 7 U.S.C. 136(e)(4). The existing rule requires the certified applicator, if not present during an application, to provide verifiable instructions to the noncertified applicator including detailed guidance on proper applications.

EPA proposed to require that noncertified applicators receive pesticide safety training covering the content outlined in the proposal, and that training be completed annually. EPA proposed two alternatives ways to satisfy this training requirement. Noncertified applicators could become qualified by either satisfying the training requirement for handlers under the WPS annually, or passing the exam on core standards of competency for certified commercial applicators every 3 years. EPA also proposed a requirement that the training be presented orally from written materials or audio-visually in a manner understood by the noncertified applicator, such as through a translator, and that the trainer be present during the entire training program and respond to noncertified applicators' questions.

2. Final rule. The final rule includes four options for noncertified applicators to become qualified to use RUPs under the supervision of a certified applicator. Two of the options are the training options from the proposed rule, with edits to the training content listed in 40 CFR 171.201(d) to parallel the final handler training requirements under the WPS. For the training options, the final rule requires that noncertified applicators receive training covering the content outlined in the rule or satisfy the training requirements for handlers under the WPS. Either method of qualification must be completed within the 12 months preceding the use of an RUP under the direct supervision of a certified applicator and must be completed annually. A third option is that the noncertified applicator has met the qualification requirements established by a certifying authority that meet or exceed the annual training specified in this rule. The final option is that the noncertified applicator is currently a certified applicator but is not certified to perform the type of application being conducted, such as if a commercial applicator certified in ornamental and turf is a noncertified applicator working under the supervision of a certified applicator for a rights-of-way application, or is only certified in another jurisdiction. The final regulatory text for this requirement is located at 40 CFR 171.201(c) and (d).

Certifying authorities will have the option to adopt additional or different requirements for noncertified applicator qualifications, as long as they meet or exceed the requirements in the rule. The final rule specifically lists this option at 40 CFR 171.201(c)(3).

The content of the training in the final rule is similar to what EPA proposed, with minor edits to ensure consistency with the final handler training requirements under the WPS. As proposed, in the final rule training must be presented either orally from written materials or audiovisually in a manner understood by the noncertified applicator, such as through a translator if necessary, and the trainer must be present during the entire training program and must respond to noncertified applicators' questions. The final regulatory text for these requirements is located at 40 CFR 171.201(d).

3. Comments and Responses

General Comments. Some certifying authorities and advocacy organizations generally supported training (with an exam option) for noncertified applicators of RUPs, and noted that some certifying authorities already require training of noncertified applicators of RUPs. Two certifying authorities said that training would be beneficial for new employees and for those who cannot pass a certification exam but could use RUPs as noncertified applicators given adequate training and supervision. One grower organization said allowing noncertified applicators to satisfy the training requirement by taking WPS handler training would reduce the burden on agricultural employers. Certifying authorities requested that EPA develop and approve training materials and allow certifying authorities the flexibility to continue their own programs. One State and some advocacy organizations favored requirements that training must be presented orally from written materials or audiovisually and in a manner the trainee can understand, and that the trainer must be present during the entire training and respond to questions.

Some commenters suggested other approaches. One pesticide applicator,

an advocacy organization and an applicator organization recommended requiring a combination of training and hands-on experience. The applicator organization emphasized the need to allow an option for computer-based training, and noted that computer-based training is permitted for training required by the Occupational Safety and Health Administration.

Some certifying authorities and advocacy organizations emphatically opposed any use of RUPs without full applicator certification because of the potential impacts on people and the environment. In one State, noncertified agricultural handlers are prohibited from using RUPs. One State asserted that establishing a program allowing noncertified applicators to use RUPs contradicts EPA's intention to strengthen federal certification standards with the revised rule. Another certifying authority interpreted the proposal as indicating a conclusion by EPA that the ''under the supervision'' provision does not work.

Three applicator associations, some grower organizations, two university extension programs, a county government, a business organization and a few State farm bureaus were generally opposed to a training requirement for noncertified applicators. They were concerned that the employee turnover rate, already high for noncertified applicators, would substantially increase. They also questioned the need for the proposed training program when noncertified applicators mostly use non-RUPs. These commenters favored State-by-State requirements in lieu of a national requirement. According to one grower organization, many people could be involved in applications on one establishment, thereby requiring the need to train many noncertified applicators. One grower organization concluded that even if a federal standard were established, certifying authorities would always exercise their right to tailor their programs based on pesticide use and the needs.

Many certifying authorities and a State farm bureau asserted that EPA is establishing an unwarranted, de facto certification program, and a new certification classification. They argued that noncertified applicators might as well become certified applicators if they have to take an exam and/or training. One certifying authority suggested EPA add an enforceable alternative to the proposed alternatives, allow on-site (or ''line-of-sight'', ''within-sight'') supervision, which would resolve any certifying authority's need for a ''non-reader'' provision while sparing inexperienced persons from a scripted training program for which they have no context. One certifying authority suggested that from its point of view, EPA's proposal ignored the certifying authority's long established multi-layer and varied classification system of applicators (*i.e.,* apprentices, technicians, journeymen) and would impose requirements on persons who may only occasionally handle pesticides.

A recurring theme of many comments by certifying authorities and university extension programs was a desire for certifying authorities to be able to continue their existing programs, especially if the program meets the same objectives as EPA's. They suggested that the proposed changes would cause confusion and perhaps conflict with the existing regulations of certifying authorities. Many certifying authorities felt strongly that they should be allowed to continue programs already established before EPA's proposal. For example, some commenters noted that their certifying authorities already have in place a noncertified applicator qualification option similar to the proposed option to qualify by passing the commercial core exam. Other commenters opposed the proposed option to qualify as a noncertified applicator by passing the core exam for commercial applicators because in their jurisdiction, passing the commercial core exam confers certification as a private applicator. Another commenter opposed the proposed option to qualify as a noncertified applicator by passing the commercial core exam because it would burden the State's exam centers, which are already operating beyond their intended capacity. The commenter requested that EPA eliminate this option and allow qualification only through training under the certification rule or training as a handler under the WPS. One commenter requested that if an option to qualify by passing the commercial core exam is included in the final rule, the requalification interval and requirements should be linked to the certifying authority's applicator recertification program, rather than requiring requalification by retesting within 3 years, completing training under the certification rule, or training as handler under the WPS. Some advocacy organizations opposed allowing certifying authorities to have different requirements, resulting in migrant workers using RUPs as noncertified applicators having to take multiple trainings throughout a year. One certifying authority was uncertain whether the proposal would require noncertified applicator training with each new employer. Another commenter questioned whether medical doctors and veterinarians would be exempt from the requirements for direct supervision of noncertified applicators by certified applicators.

Responses. EPA acknowledges commenters' point that the most protective and safest approach would be to require all users of RUPs to become certified applicators, and recognizes that some certifying authorities do prohibit RUP use by anyone other than a certified applicator. However, FIFRA permits RUP use by noncertified applicators under the direct supervision of a certified applicator who may not be physically present, and EPA may not prohibit the use of RUPs by noncertified applicators except through product-specific labeling decisions. EPA seeks to reduce the risks associated with use of RUPs by noncertified applicators by adding requirements for noncertified RUP applicators to be qualified, either through training, being a certified applicator in a different category or jurisdiction, or meeting requirements established by the certifying authority that meet or exceed EPA's requirements. The options for qualifying as a noncertified applicator are flexible and significantly less burdensome than the requirements for becoming a certified applicator. Further, the options to qualify by training are tailored to the responsibilities of noncertified applicators applying RUPs under the supervision of a certified applicator who may not be physically present.

Noncertified applicators of RUPs in nonagricultural settings are just as likely to experience illness and injury from pesticide exposure, and cause harm to others and the environment, as agricultural handlers of RUPs. However, agricultural handlers are required to receive pesticide safety training under the WPS, while nonagricultural handlers currently are not. And in both agricultural and nonagricultural contexts, noncertified applicators are often using RUPs with considerable independence, far from the supervising certified applicator. FIFRA requires noncertified applicators to be ''competent'' and acting under the direct supervision of a certified applicator who is available if and when needed, but neither FIFRA nor EPA's existing regulations specify competency standards for noncertified applicators of RUPs. Because RUPs generally present a greater risk to health or the environment than other pesticides, noncertified applicators need to be more competent in regard to pesticide use than the average person. In order that EPA's

registration decisions regarding RUPs can presume a nationwide minimum standard of competency among noncertified applicators, it is reasonable to establish competency standards for noncertified applicators by requiring pesticide safety training similar to what is required for agricultural handlers under the WPS.

EPA agrees with the comment that a combination of training and hands-on experience would be ideal, but recognizes that setting criteria for hands-on experience would be a complicated proposition given the various types of application categories and uses involved. At a minimum, the requirement would have to be tailored to each application category. Given the many possible RUP use scenarios, EPA has chosen not to require a hands-on experience requirement in the final rule. However, EPA recognizes that some certifying authorities currently require noncertified applicators to have hands-on experience, and may continue to do so under the final rule.

Many commenters opposed a required training program for noncertified applicators because most of the time they use non-RUPs. EPA notes that the federal training requirements will only apply to those noncertified applicators using RUPs. The training required for noncertified applicators under the final rule is important whether they use an RUP once a year or every day. Certifying authorities that currently do not distinguish between RUP and non-RUP noncertified applicators may reconsider whether such a distinction is more appropriate in the context of this final rule. A company with many noncertified applicators whose business involves applying a few RUPs and many non-RUPs might control costs by training a small number of the noncertified applicators as users of RUPs.

In response to the request by commenters to be able to maintain existing programs, EPA specifically added a provision to the noncertified applicator qualification requirements to accommodate other approaches and will consider approval of such programs in lieu of the federal requirement during the certification plan approval process. EPA acknowledges that an option to qualify as a noncertified applicator by passing the commercial core exam, along with an appropriate method to ensure requalification, would meet or exceed the standards for noncertified applicator qualification in the final rule. However, in response to comments regarding certifying authorities' need to maintain flexibility to choose which non-training qualifications for noncertified applicator are appropriate in their jurisdiction (subject to approval by EPA under the certification plan), in the final rule EPA is not requiring certifying authorities to accept passing the commercial core exam as sufficient qualification to use RUPs under the supervision of a certified applicator; EPA leaves the decision of whether or not to allow this and other methods of qualification to the discretion of each certifying authority.

Because EPA added a requirement to the final rule for the supervising applicator to be certified in an appropriate category relative to the RUP use, EPA also added a corresponding method for qualification as a noncertified applicator to the final rule. Absent this addition, a person who holds a valid certification would not be considered a certified applicator for RUP uses outside the category(ies) in which the applicator is certified. For example, a person could hold a valid certification in the turf and ornamental category, but for the purposes of conducting a fumigation of turf, the person would be considered a noncertified applicator because he or she does not hold a valid certification to perform soil fumigation. Such a person has clearly demonstrated competency to use certain RUPs by obtaining a certification. EPA acknowledges that obtaining a certification in any category exceeds the standards for noncertified applicator qualification. Therefore, EPA added an option to the final rule to allow certified applicators who are not certified in the category of the RUP use to operate under the supervision of an applicator holding a valid certification to conduct and supervise the use of the RUP without additional training or qualification requirements.

Regarding the burden of providing training, EPA will support the development of training materials. EPA will review computer-based and online training programs, such as those allowed by Occupational Safety and Health Administration (OSHA) (*e.g.,* 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response) and other entities, and will consider issuing guidelines on computer-based and online programs.

If training is used to qualify noncertified applicators, subsequent supervising certified applicators do not have to provide noncertified applicators under their direct supervision training provided they can verify the existence of and have access to documentation establishing that the noncertified applicator has completed training within the previous 12 months. Noncertified applicators who work in more than one jurisdiction must comply with the requirements of each certifying authority as specified in its EPA-approved certification plan. EPA has clarified the final rule to state that medical doctors and veterinarians, who are exempt from the standards for certification of commercial applicators under both the existing and final rules, are also exempted from the requirements for direct supervision of noncertified applicators by certified applicators.

Comments on Requalification Interval. While there is general agreement that there should be an interval or cycle for requalification for noncertified applicators (*e.g.,* retaking training), commenters favored intervals ranging from one to five years. One certifying authority organization requested that EPA establish the same retraining or requalification interval for noncertified and certified applicators to minimize confusion. Several advocacy organizations and one Tribal organization favored a one-year retraining interval because more frequent repetition increases retention and is consistent with the WPS handler training interval. One State expressed support for establishing a three-year interval to be consistent with the proposed recertification interval for certified applicators. Two commenters asserted that a five-year interval would be reasonable given that noncertified applicators receive continuous hands-on experience. A few certifying authorities requested that they establish their own requalification period up to a maximum that is no longer than the period established by EPA. One applicator association requested that the noncertified applicator training interval be identical to the certified applicator recertification interval.

Responses. EPA agrees with commenters favoring a one-year interval for retraining noncertified applicators. As expressed by several advocacy organizations, repetition increases retention. EPA notes that the annual training requirement is consistent with the interval for WPS handler training. EPA recognizes that a person may be both a noncertified applicator and a WPS handler, so allowing the WPS handler training to qualify a noncertified applicator prevents duplication and burden on the noncertified applicator, trainers, and supervisors. Also, an annual interval could be easier to track and remember than longer intervals. Given the potential for harmful effects to humans and the environment, it is reasonable to provide noncertified applicators using RUPs with pesticide safety training at

least every 12 months. The training content for noncertified applicators covers a limited number of key pesticide safety points and is less substantial than the continuing education required for recertification by certifying authorities, so a shorter interval for noncertified applicators is reasonable. During the certification plan approval process, EPA may consider different requalification intervals for noncertified applicators if the certifying authority proposes another method of qualification that meets or exceeds EPA's standards in the final rule as permitted under 40 CFR 171.201(c)(3).

Comments on Training Content. One advocacy organization supported the proposal to require that training include information on how to report a suspected illness to a State agency. In response to EPA's question about whether a point on protecting pollinators should be added to the noncertified applicator training program, certifying authorities and a grower organization expressed general opposition. Commenters argued that it was not relevant to all applicator categories and would already be incorporated where applicable.

Responses. The final rule revises the proposed requirement for training to include information on how to report a suspected illness related to pesticide exposure to the regulatory agency. This change was made to be consistent with the final WPS handler training content. EPA has chosen not to add a point to the noncertified applicator training on pollinator protection, for the same reasons it was not included in the competencies for private or commercial applicators. See the discussion in Unit VI. for more details. However, the final rule requires training on environmental concerns ''such as drift, runoff, and wildlife hazards'' which would reasonably be expected to include pollinators in situations where that is appropriate. EPA expects that at minimum, noncertified applicators will get information on protecting pollinators where relevant and on a case-by-case basis when the labeling includes pollinator protection language.

Comments on Burden. Certifying authorities expressed concern that a training requirement for RUP noncertified applicators places a burden on pesticide safety education programs, certifying authorities, and exam centers that are already strained, and that EPA simply should require all applicators using RUPs to be certified. One certifying authority requested that EPA not require an exam option because applicator candidates in their jurisdiction already face a two-month wait to take an exam. One certifying authority noted that if supervisory requirements were adequate, there would be no need for a training program. Another certifying authority asserted that instead of creating more work for States, trainers, certified applicators, and noncertified applicators by establishing a training program, EPA should simply require all applicators using RUPs to be certified.

Responses. EPA maintains that training or some other method of ensuring that noncertified applicators have a basic understanding of pesticide safety is important for noncertified applicators to ensure that they are able to use RUPs without causing unreasonable adverse effects to themselves, other persons, or the environment. If EPA were to tighten supervisory requirements (*e.g.,* limitations on proximity, number of persons supervised, types of activities) enough to eliminate the need for training noncertified applicators, it would be significantly more disruptive and burdensome than the training requirements of the final rule. Moreover, even if supervisory requirements were substantially strengthened, there would still be benefits in noncertified applicators understanding the potential hazards associated with using RUPs.

The final rule allows certifying authorities to adopt different requirements for noncertified applicator qualifications that meet or exceed the requirements in the final rule. This may include approaches such as prohibiting the use of RUPs by noncertified applicators or requiring noncertified applicators to pass a written exam.

B. Establish Qualifications for Training Providers

1. Existing rule and proposal. The existing rule does not require that noncertified applicators be trained, and therefore, does not specify qualifications of trainers of noncertified applicators.

EPA proposed to require that providers of noncertified applicator training be qualified by being a certified applicator, a trainer of certified applicators or handlers designated by the certifying authority, or a person who has completed a WPS train-the-trainer course for training handlers.

2. Final rule. The final rule adopts the proposed requirement with minor edits. Under the final rule, the person conducting noncertified applicator training as specified in 171.201(d) must be a certified applicator, a trainer of certified applicators or handlers designated by the certifying authority, or a person who has completed a WPS train-the-trainer course for training handlers. The final regulatory text for this requirement is located at 40 CFR 171.201(d)(2).

3. Comments and Responses

Comments. In general, most certifying authorities expressed appreciation that a certified applicator could be a trainer of noncertified applicators. These commenters were concerned that without this qualifying option there would be a shortage of noncertified applicator trainers. Several applicator organizations suggested that EPA create a national train-the-trainer program for trainers of structural applicators.

Several certifying authorities, an association of certifying authorities, and a grower organization opposed EPA's proposal on noncertified applicator trainer requirements. These commenters asserted that the proposal was a WPS-like training program with little value added. Certifying authorities were generally concerned with adding burden to their programs. One certifying authority requested that EPA allow them to set their own requirements for noncertified applicator trainers. One organization of certifying authorities opposed WPS trainers giving training to nonagricultural noncertified applicators. One grower organization opposed any requirement, but agreed that if EPA adopted the proposed requirement, trainers designated by certifying authorities and WPS trainers were qualified to train noncertified RUP applicators.

Response. The final rule retains the proposal's three options for persons to qualify as a trainer of noncertified applicators to ensure an adequate number of trainers would be available while seeking to ensure that those conducting training are adequately qualified to do so. The options for noncertified applicator trainer qualifications should make it easier for supervisors and noncertified applicators to find qualified trainers so that they can comply with the training requirement. In many cases, the certified applicator supervisor may be tasked with providing training. Allowing certified applicators and WPS trainers to become trainers of noncertified applicators lifts the potential burden on certifying authorities to designate trainers. WPS trainers are qualified to provide WPS-required training to agricultural handlers, and have the background that should enable them also to effectively present the noncertified applicator training content required under this final rule to train noncertified applicators. This should not be a problem for WPS trainers since the

noncertified applicator training content in § 171.201(d) is a subset of the WPS handler training content plus one point about the information that a certified applicator should provide to noncertified applicators. Lastly, in response to the commenter who requested that EPA allow certifying authorities to establish their own requirements for trainers of noncertified applicators, EPA notes that the final rule allows certifying authorities to set their own requirements for noncertified applicators and the supervision of noncertified applicators, including designating who is qualified to conduct training for noncertified applicators, as long as the certifying authority's requirements meet or exceed the requirements in § 171.201.

EPA does not plan to create train-the-trainer programs for trainers of noncertified applicators in the structural pesticide application industry or other pest control industries. However, certifying authorities may review for approval any such programs developed for use in their jurisdiction for State-designated trainers of noncertified applicators using RUPs.

C. Establish Qualifications for Certified Applicators Supervising Noncertified Applicators

1. Existing rule and proposal. The existing rule requires certified applicators supervising noncertified applicators to demonstrate a practical knowledge of Federal and State supervisor requirements related to the application of RUPs by noncertified applicators. The supervising certified applicator must be available if and when needed directly related to the hazard of the situation.

EPA proposed to require that certified applicators supervising noncertified applicators must meet the following requirements:

- Be certified in a category applicable to the supervised RUP use.
- Have practical knowledge of applicable Federal, State and Tribal supervisory requirements, including any on the label or labeling regarding use of RUPs by noncertified applicators.
- Be physically present when required by the product labeling.

EPA also proposed to make the certified applicator responsible for ensuring that each noncertified applicator meets certain requirements before using RUPs under the certified applicator's supervision. Specifically, noncertified applicators must:

- Be at least 18 years old.
- Have received the required training within the last 12 months.
- Have been instructed in the safe operation of equipment before use and within the previous 12 months.
- Have a copy of the full labeling in possession during use of the product.
- Have any label-required PPE (clean and in proper operating condition) and use it correctly for its intended purpose.

In addition, EPA proposed to require that the certified applicator supervisor must take the following actions:

- Prepare and maintain noncertified RUP applicator training records for two years from the date of meeting training requirements.
- Before each application made under the certified applicator's supervision, provide the noncertified applicator with use-specific instructions from the labeling, conditions of the application and how to use the application equipment.
- Ensure before each day of use that equipment is inspected and if worn or damaged, it is repaired or replaced.
- Ensure a method is available for immediate communication with the noncertified applicator.

EPA requested comment on but did not propose other restrictions related to supervision of noncertified applicators, including:

- Requiring the supervising certified applicator to be physically present with the noncertified applicator during application.
- Limiting the number of noncertified applicators that could be supervised by each certified applicator at any one time.
- Limiting the distance between the supervising certified applicator and noncertified applicator when the application is taking place.

EPA did not propose, but requested comment on whether certified applicators should be required to provide translators and/or translated labeling to non-English speaking noncertified applicators of RUPs.

2. Final rule. The final rule retains the proposed requirements with several changes. First, the final rule establishes a minimum age of 18 for noncertified applicators working under the direct supervision of certified applicators and adds an exception to the minimum age of 18 for noncertified applicators working under the direct supervision of private applicators when certain conditions are met. See Unit XIII. Second, rather than requiring the supervising certified applicator to provide a copy of each applicable product labeling to the noncertified applicator as proposed, the final rule requires the supervising applicator to ensure that at all times during a supervised RUP use the noncertified applicator has access to relevant labeling. Third, the final rule clarifies that the use-specific instructions must be provided in a manner that the noncertified applicator can understand. Fourth, the requirement for use-specific instructions does not include instructions on how to use the application equipment nor does the certified applicator have to inspect the equipment before each use. Instead, the certified applicator must ensure the noncertified applicator has been instructed within the last 12 months in the safe operation of any equipment before mixing, loading, transferring or applying pesticides, and that before each day of use equipment is in proper operating condition as intended by the manufacturer and can be used without causing harm to the noncertified applicator, other persons, or the environment. Lastly, the final rule reorganizes the responsibilities of the certified applicator into three main sections: Qualifications of the supervising certified applicator, qualifications of the noncertified applicator and requirements the supervising certified applicator must ensure are met before a noncertified applicator uses an RUP under his or her supervision. The supervising certified applicator is responsible for ensuring compliance with all of these requirements.

Under the final rule, the supervising certified applicator must meet the following qualifications:

- Be certified in the category(s) applicable to the supervised use.
- Have practical knowledge of applicable Federal, State and Tribal supervisory requirements, including any requirements on the product label or labeling, regarding the use of RUPs by noncertified applicators.

Under the final rule, the supervising certified applicator must ensure each noncertified applicator meets all of the following requirements before using an RUP under his or her direct supervision:

- Be at least 18 years of age, except that a noncertified applicator must be at least 16 years of age if certain conditions are met. See Unit XIII. for the conditions of the exception.
- Meets at least one qualification for noncertified applicators outlined under the rule.
- Has been instructed within the last 12 months on the safe operation of any equipment used for mixing, loading, transferring, or applying pesticides.

Under the final rule, the supervising certified applicator must ensure the following conditions are met before a noncertified applicator uses an RUP under his or her direct supervision:

• The noncertified applicator has access to the applicable product labeling at all times during a supervised use.

• Where the labeling of a pesticide product requires PPE be worn for mixing, loading, application, or any other use activities, the certified applicator must ensure that the noncertified applicator has clean labeling-required PPE in proper operating condition, and that the PPE is worn and used it correctly for its intended purpose.

• The supervising certified applicator has provided the noncertified applicator, in a manner the noncertified applicator can understand, instructions specific to the site and the pesticide used, including labeling directions, precautions and requirements applicable to the specific use and site; how characteristics of the use site (*e.g.,* surface and ground water, endangered species, local population, and risks) and the conditions of the application (*e.g.,* equipment, method of application, formulation) might increase or decrease the risk of adverse effects.

• Equipment intended to be used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without causing harm to the noncertified applicator, others, or the environment.

• Each noncertified applicator working under his or her direct supervision has a means to immediately communicate with the certified applicator.

• The certified applicator is physically present during use when required by the product labeling.

The final regulatory text for these requirements is located at 40 CFR 171.201(b).

3. Comments and Responses

Comments on the Certification Category of the Supervisory Applicator. Some certifying authorities and some advocacy organizations supported requiring the certified applicator to be certified in the same category as the supervised application. One certifying authority stated that it had interpreted years ago that the existing federal requirement was the same as EPA's proposal to require the supervisor to be certified in the category of supervised application.

Some certifying authorities, a grower organization, and an association of university extension programs were opposed to requiring the supervising certified applicator to be certified in the same category as the application. Instead, they requested that EPA allow certifying authorities to set requirements, or that EPA permit the supervising applicator to be certified in any category.

Several certifying authorities misunderstood the proposal, and were concerned that persons who had qualified to be trainers of WPS handlers by completing a WPS Train-the-Trainer program would be able to supervise non-agricultural, noncertified applicators during RUP use.

Response. EPA is finalizing the proposed requirement that commercial applicators become certified in one or more categories applicable to the supervised RUP use. If an applicator certified in one category were allowed to supervise the use of an RUP by a noncertified applicator in an unrelated category, the certified applicator would be, through the actions of the supervisee, bypassing applicator certification requirements. Such an approach would allow any certified applicator to apply any category or RUP, simply by directing a noncertified applicator to do so. This would defeat the purposes of the certification categories.

EPA is aware that most certifying authorities do not have the same pesticide applicator categories as specified in the federal rule. Many certifying authorities have applicator categories separated out differently (*e.g.,* instead of ''industrial, institutional, structural, and health related pest control'' they might have separate category for each of those), with subcategories (*e.g.,* ''structural—general pest control and structural—fumigation''). Under the final rule, the supervising certified applicator must be certified in the category applicable to the RUP used by the noncertified applicator.

Lastly, EPA seeks to clarify some commenters' misunderstanding of the proposal. EPA stresses that an RUP may only be used by a certified applicator or a noncertified applicator working under the direct supervision of a certified applicator. EPA notes that completing a WPS Train-the-Trainer program is not sufficient to qualify as a certified applicator. Only certified applicators may supervise the use of RUPs, so completion of a WPS train-the-trainer program alone is not sufficient qualification to allow a person to supervise RUP use by a noncertified applicator. EPA reminds readers that under the final rule, a person who has completed a WPS train-the-trainer course for pesticide handler training is qualified as a trainer of noncertified applicators; this qualification alone does not mean the trainer is a certified applicator authorized to supervise noncertified applicators using RUPs.

Comments on Immediate Communication. Many certifying authorities, university extension programs, a grower organization and an applicator organization requested that EPA allow any form of immediate communication to satisfy EPA's requirement for communication between the supervising certified applicator and the noncertified applicator. They explained that this would allow for changes in technology, give flexibility depending on the type of application and site involved, as well as permit many certifying authorities to keep their own communication requirements. The choice of communication methods may depend on many variables such as geography, cost, business model, portability and viability. One certifying authority and a grower organization suggested that if a type of application required a specific communication method between the supervisor and noncertified applicator, it should be required by labeling.

Several certifying authorities requested that EPA define ''immediate communication'' as voice-to-voice contact (cell phone or two-way radio), and prohibit texting, computer-generated voice paging or voicemail. Other certifying authorities supported establishing a definition of ''immediate,'' but did not offer a suggested definition. One certifying authority preferred ''a reasonable amount of time'' instead of ''immediate communication.'' One certifying authority noted that people are using video-conferencing applications on their cell phones to show the supervisor the situation in real time.

In the opinion of one certifying authority, communications technology such as cell phones or two-way radios are not cost prohibitive, and should be required by EPA. On the opposite side, a grower organization thought that EPA underestimated the cost for cell phone service because applicators may use their own cell phones but request reimbursement from the employer for cell phone service or a separate service.

One certifying authority was concerned that certified applicator supervisors cannot always comply with a requirement to be in ''immediate communication'' when there are areas lacking cell phone coverage. The same commenter also asserted that immediate communication is not always necessary for all types of application, but when it is warranted it should be added to the product label's requirements instead.

Response. EPA is aware of the need for flexibility, and therefore the final

rule does not restrict or define ''immediate communication'' as a specific method of communication or with a limit on travel distance or time. EPA agrees with commenters who noted there are many variables related to communication with a noncertified applicator. In some situations the certified applicator supervisor may need to be within eyesight while in other situations they could supervise adequately away from the RUP use site. When a certified applicator is within the line of sight or earshot, face-to-face oral communication may be sufficient. Where cell phone service is lacking, supervisors and noncertified applicators could use two-way radios or satellite phones. EPA does not expect that there are many situations in which all forms of immediate communication between the supervisor and noncertified applicator would be impractical. However, as with many parts of the final rule, certifying agencies may propose to include in their certification plans other requirements related to supervision of noncertified applicators that would provide protection in such scenarios that would meet or exceed EPA's standards (see 40 CFR 171.303(b)(5)(iii)). As noted by commenters, additional limits and restrictions may be included in the labeling.

EPA disagrees with commenters who allege that the estimated cost of cell phone service in the Economic Analysis for the proposal was not accurate. EPA recognizes that some noncertified applicators might request reimbursement from their supervisors for their cell phone bills or request to be issued a work-only cell phone. However, EPA stands by the assumption that the costs for the immediate communication requirements are negligible because EPA expects that use of a cell phone by noncertified applicators to contact a supervising certified applicator will be infrequent compared to use of a cell phone for personal reasons. However, EPA maintains that the costs for the final requirement are negligible because cell phone use would be limited to emergencies or unexpected situations.

Comments on Providing a Copy of the Labeling. One certifying authority mentioned that the difficulty of obtaining the most current labeling from retail or wholesale suppliers could be a compliance problem. Several certifying authorities questioned the need to provide the labeling if the supervising certified applicator is required to review the use-specific information from the labeling in person with the noncertified applicator. Several grower associations argued that even if the noncertified applicator was given a copy of the labeling, the certified applicator may not be present to verify that they have the labeling with them at all times. Two grower organizations asserted that providing the noncertified applicator with a copy of the labeling is redundant because it is already on the container of the product they are about to use, and the WPS requires that agricultural handlers have access to labeling. One certifying authority remarked that a labeling would not be useful to a Spanish-speaking noncertified applicator.

One application company pointed out that the proposed requirement to ''ensure that the applicator have the full labeling for the product in their possession during use'' can be problematic for some application types. They claim that in some areas, ''possession'' means ''on the person.'' The commenter suggested that when it is impractical for the person to have the labeling on them, they should be allowed to have the label in the truck and accessible in a reasonable amount of time.

Response. In response to the comments, EPA has revised the proposed requirement. The final rule requires the supervising certified applicator to ensure that the noncertified applicator has ''access to'' the labeling at all times during use of an RUP, rather than the proposed requirement to provide a copy of all applicable labeling to the noncertified applicator. The final requirement achieves EPA's intention to allow the noncertified applicator to quickly and easily access the labeling when a question arises or in the event of an emergency, and does not require each noncertified applicator to have a copy of the labeling on his or her person.

EPA acknowledges that the final rule does impose specific requirements on the supervising certified applicator to provide use-specific instructions, ensure equipment is operating properly, provide and ensure proper use of PPE, and provide a means for the noncertified applicator to communicate with the supervisor. These requirements do not negate the need for the noncertified applicator to have access to the product's labeling during use. The labeling provides important information on use directions, environmental precautions, and how to deal with an emergency. Noncertified applicators who do not speak English can request assistance in consulting the labeling from someone at the application site who does speak English, but would not be able to do so absent the requirement that they have access to the labeling.

Comments on a Maximum Physical Distance or Travel Time between the Supervising Certified Applicator and the Noncertified Applicator. EPA requested comment on, but did not propose, a maximum physical distance or travel time between the supervising certified applicator and noncertified applicator using RUPs under his or her direct supervision. A few certifying authorities and a worker/handler advocacy organization supported EPA setting a maximum distance. One certifying authority requested that the supervisor be required to be within a maximum distance of two hours of the application site, in addition to a requirement of real-time, immediate communication. Many certifying authorities and a worker/handler advocacy organization supported a combination of a maximum travel time (or a ''reasonable distance'') and immediate communications. One certifying authority proposed that EPA require the supervising certified applicator to be able to reach the noncertified applicator during RUP use within ''a reasonable amount of time,'' rather than a set maximum length of travel time. One certifying authority, several grower groups, and a few other commenters favored an either/or approach, such as a maximum 30 minutes travel time or immediate communications via voice, two-way radio or cell phone connection. Many worker/handler advocacy organizations suggested EPA adopt California's requirements that the certified applicator be aware of site conditions and able to halt the application when warranted (such as for inclement weather), and that the noncertified applicator have a means to contact the supervisor if problems arise.

One county government and an advocacy organization requested that EPA require on-site supervision. They explained that the supervising certified applicator should be present to help respond to emergencies and urgent questions, that application sites can be far away from the office, and that every second counts in an emergency. Several certifying authorities encouraged EPA to allow ''on-site'' supervision as an option, especially for noncertified applicators who speak another language or cannot pass an exam.

Many certifying authorities, some university extension programs, an association of university extension programs, an agricultural organization and a Federal agency opposed EPA setting a maximum distance between the supervising certified applicator and noncertified applicators using RUPs

under his or her direct supervision. One commenter noted that it would be difficult to calculate the specific distance or time in remote areas, and immediate communication between the supervisor and noncertified applicator should be sufficient. The commenter explained that the characteristics of a site are highly variable depending on ''the type of application, product being applied, industry operating procedures, geographic locations, etc.'' Although some certifying authorities included in their comments a description of their existing time or distance requirements related to supervision of noncertified applicators, they opposed a federal requirement based on the variety of existing requirements across the country.

Some certifying authority commenters recommended defining ''direct supervision'' as being within ''eye and earshot'' for commercial applicators and as being available ''if and when needed'' for private applicators, or being within the line of sight or hearing distance during an RUP use. Some certifying authorities recommended establishing a distance/travel time of three hours, or a distance of one hour/50 air miles. Some commenters opposed to establishing a national standard for distance or time between the supervising certified applicator and noncertified applicators under their supervision supported EPA allowing certifying authorities to set their own requirements. One grower was against requiring on-site supervision. One certifying authority and several worker/handler organizations said the availability of the supervisor should be proportional to the potential or actual hazard of the situation. One certifying authority commented that the real concern should be the effectiveness of the supervision, not a distance.

Response. In response to commenters' concerns and for the reasons outlined in the proposal (Ref. 17, pp. 51383–51384), EPA is not establishing a maximum time or distance between the supervising certified applicator and noncertified applicators using RUPs under his or her direct supervision. It is evident from the comments that situations can vary greatly depending on factors such as geographic locations, State and site characteristics, and type of application. The comments have not significantly clarified EPA's questions about the practicality or the potential for risk reduction that might result from requiring any particular time or distance between certified applicators and noncertified applicators using RUPs under their direct supervision. However, certifying authorities may retain their existing maximum time and/or distance limits, or set new limits if they choose.

Comments on Limiting the Number of Noncertified Applicators under the Direct Supervision of a Certified Applicator. EPA requested comment on an alternative to the proposal about setting a limit on the number of noncertified applicators that one certified applicator could supervise at a time. A few certifying authorities were in favor of such a limit. One alleged they knew of companies that allowed the certified applicator to supervise an ''unreasonably large number'' of noncertified applicators. Another set a limit of 15 persons, of which only eight could be noncertified applicators, while another is promulgating regulations to set a 12-person limit. One certifying authority suggested that EPA impose a limit on the number of noncertified applicators that a certified applicator could supervise only when the noncertified applicator qualified by taking training rather than by passing the core exam.

Many certifying authorities and an applicator organization opposed any federal limit to the number of noncertified applicators supervised by one certified applicator at any one time. Instead, they expressed a preference for EPA to allow certifying authorities to set their own limits, especially since there are so many variables involved. One certifying authority asserted that they have not set a limit because they say they never experienced a problem. One certifying authority that opposed EPA establishing any limit on the number of persons that could be supervised by a single applicator commented that they set a 20-person supervising limit after discovering that one company allowed a ratio of 50 noncertified RUP applicators to one certified applicator. One organization of certifying authorities suggested that any limit would be seen as an arbitrary number.

Response. The comments have not significantly clarified EPA's understanding of the practicality or the potential for risk reduction that might result from a national limit on the number of noncertified RUP applicators one certified applicator can supervise at a time. EPA has decided not to establish a federal requirement; however, certifying authorities retain discretion to establish their own maximum time and/or distance limits within their jurisdiction.

Comments on Inspecting Equipment Each Day before Use. One certifying authority, an applicator organization and a university extension program opposed a federal requirement that the certified applicator supervisor inspect equipment each day before use. Commenters asserted their experience that most applicators and their supervisors make a daily visual inspection of application equipment. They were concerned that as written, the proposed requirement would be difficult to comply with because many parts of the equipment are not easy to access (*e.g.,* the proposal would require supervisors to disconnect and take apart hoses to see if there was a clog). Instead, one commenter suggested that EPA amend the proposal to require that the equipment be ''visually inspected for leaks or damaged parts.'' On the other hand, several commenters asserted that it would be difficult to enforce a requirement to visually inspect equipment.

Response. In response to commenters' concerns, EPA has revised the final requirement. The final rule requires that the supervisor ensure equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without causing harm to the noncertified applicator, others, or the environment. EPA expects that the certified applicator could accomplish this requirement in various ways such as visually inspecting the equipment, testing the equipment, or using the equipment before use by any noncertified applicator under his or her direct supervision. If the supervising applicator finds leaks, clogging, or worn or damaged parts, the equipment must be repaired or replaced before use in order to meet the requirement that it be in proper operating condition as intended by the equipment manufacturer.

Comments on Providing PPE. One professional organization of university extension programs and one of their members suggested that the certified applicator be required to give the noncertified applicator the proper PPE in good condition along with training on the correct use, but not be responsible for the noncertified applicator ultimately wearing and using it correctly. They explained it was impractical given that the supervisor may not be on site and that the noncertified applicator must take sole responsibility for wearing and correctly using PPE as trained.

Response. Neither the proposed rule nor the final rule specifies the steps a supervising certified applicator must take in order to ensure that the noncertified applicator wears and uses PPE correctly for its intended use. In some cases, it may be reasonable and appropriate for the supervisor to trust an

experienced noncertified applicator to wear and use PPE properly without any oversight, while in other cases, it may be necessary to supervise closely and consistently. The PPE requirements specified on pesticide labeling are necessary to prevent unreasonable adverse effects, and the certified applicator is responsible for ensuring that those requirements are met. Accordingly, the final rule requires the supervising certified applicator to ensure the noncertified RUP applicator wears or uses any label-required PPE correctly for its intended purpose.

Comments on Site-Specific Instructions before Each Application. One application company, many applicator organizations and several certifying authorities emphatically opposed a requirement to provide site-specific instructions to the noncertified applicator before each application. They explained that it would be unmanageable because many certified and noncertified applicators routinely service 10 or more sites each day. Instead, commenters recommended that noncertified applicators be able to rely on their training and professional judgment based on site conditions along with the option to contact their supervisor in the event of any questions or problems. One applicator association asked EPA to clarify the meaning of ''site-specific'' and interpreted EPA's proposal as requiring a ''site-specific plan.'' One certifying authority asserted its belief that its existing requirements satisfy the proposed requirement.

Response. In the final rule EPA defines ''use-specific instructions'' as the information and requirements specific to a particular pesticide product or work site that an applicator needs to use the RUP in accordance with applicable requirements without causing unreasonable adverse effects. EPA's intention is that the certified applicator make the noncertified applicator aware of labeling requirements and site-specific conditions that are critical for safe use, or that may not be obvious and/or could be problematic. The final rule does not require the supervising certified applicator to be physically present, but it does require that the supervisor learn enough about the site that he or she can give the noncertified applicator instructions adequate to prevent unreasonable adverse effects. The supervisor is responsible for ensuring that the RUP application conforms to the labeling and does not result in misuse by the noncertified applicator. Therefore, it is up to the supervising certified applicator to familiarize him or herself with the application site (first-hand or through reliance on others) and provide the noncertified applicator the particular use and site-specific information necessary to prevent unreasonable adverse effects.

Comments on Translation Needs. Two certifying authorities requested that certifying authorities be allowed to determine whether there is a need for translators and label translations. Many worker/handler organizations emphasized the need for English/Spanish bilingual product labeling. In the absence of bilingual labeling, these organizations urged EPA to require that the supervisor take steps to ensure that noncertified applicators understand all of the safety information on the RUP labeling.

Response. The final rule requires certified applicators to provide use-specific instructions to noncertified applicators in a manner the noncertified applicator can understand. Apart from this requirement, the final rule allows certifying authorities to decide whether to require that labeling be translated. EPA has been developing a pilot project to test the usefulness of translated labels (or sections of labels) for Spanish-speaking noncertified applicators, but it is in too early a stage to inform this rulemaking.

Comments on Supervisor Qualifications. One certifying authority commented that supervisors should demonstrate practical knowledge of supervisory requirements by adding it to core training.

Response. EPA agrees that certified applicators who would supervise noncertified applicators should have practical knowledge of supervisory requirements. In both the proposal and the final rule, EPA added competency standards related to the ''responsibilities of supervisors of noncertified applicators,'' for both commercial applicators (in the core competency standards, 40 CFR 171.103(c)(9)) and private applicators (in the general competency standards; 40 CFR 171.105(a)(9)). This standard addresses understanding and complying with the requirements for supervisors of noncertified applicators in the rule, providing use-specific instructions to noncertified applicators, and explaining appropriate State, Tribal, and Federal laws and regulations to noncertified applicators.

General Comments. Many worker/handler advocacy organizations urged EPA to adopt language providing that the supervising applicator's license (*i.e.,* certification document allowing them to purchase and use RUPs) may be refused, revoked or suspended by the certifying authority if negligent in their supervisory duties.

Response. The final rule requires certifying authorities to include in their certification plans provisions for reviewing, and where appropriate, suspending or revoking an applicator's certification based on proven violations of FIFRA or state laws or regulations relevant to the certification plan. Pursuant to those certification plan provisions, EPA expects that all certifying authorities will be able to refuse, revoke or suspend the license of a certified applicator supervisor whose neglect of supervisory responsibilities results in a proven violation of FIFRA or relevant State law.

XI. Expand Commercial Applicator Recordkeeping To Include Noncertified Applicator Training

A. Existing Rule and Proposal

The existing rule does not require training of noncertified applicators, and consequently does not require training records.

EPA proposed to require commercial applicators to collect and maintain records for each noncertified applicator using RUPs under their direct supervision for two years from the date of the noncertified applicators meeting the necessary qualifications. EPA proposed that the records include:

- The noncertified applicator's printed name and signature.
- The date the noncertified applicator completed the required training.
- The name of the person who provided the training or the certifying agency, as applicable.
- The supervising certified applicator's name.

B. Final Rule

In the final rule, EPA revised the requirement to document noncertified applicators' qualifications. The final rule separates the records to be maintained by the method of qualification for the noncertified applicator. For records documenting compliance with the training outlined at 40 CFR 171.201(d), the final rule does not require that the record include the supervising certifying applicator's name or the name of the certifying agency. In addition to the name of the person who provided the training, the final rule requires the record to include the title or description of the training. For records documenting qualification by having valid training as a handler under the WPS, the rule specifies that the records documenting completion of training under the WPS satisfy the requirements under this rule. For

documenting qualification by a method established by the certifying authority, the final rule requires documentation of the qualification as required by the certifying authority. Finally, for documenting qualification by being a certified applicator not certified in the category or jurisdiction of the supervised application, the rule requires the record to include the noncertified applicator's name, the certification number and expiration date of the certification, and the certifying authority that issued the certification.

The final rule also adjusts the proposed requirement related to recordkeeping. As an alternative to requiring the supervising commercial applicator to create and maintain records, the final rule requires the supervising commercial applicator to create and maintain, or verify the existence of and have access to the training record. In addition, the final rule requires that the records be retained for two years from the date of use of the RUP by the noncertified applicator rather than two years from the date of meeting the qualification, as described in the proposal.

The final regulatory text for this requirement is located at 40 CFR 171.201(e).

C. Comments and Responses

Comments. EPA received several comments on the recordkeeping requirement for noncertified applicator training. Two certifying authorities opposed a recordkeeping requirement for noncertified applicator training. One commenter asserted that the proposed recordkeeping requirement would add to the recordkeeping burden for WPS handler training. A grower organization recommended the use of a simple form with a signature to be kept in the personnel file. Some commenters noted that a noncertified applicator may work under the supervision of multiple certified commercial applicators while employed by one business, resulting in duplicative records of meeting the training requirement. No commenters responded to EPA's question of whether the noncertified applicator should receive a copy of the training record.

Response. Training reduces the chance that RUP applications will result in unreasonable adverse effects. It is reasonable to expect that requiring documentation of the training will increase the likelihood of noncertified applicators receiving training.

The WPS requires agricultural and commercial handler employers to maintain records of handlers' completion of the training requirements. An agricultural or commercial handler employer could rely on the training record required by the WPS to satisfy the recordkeeping requirements under this final rule and those under the WPS.

EPA notes that certified applicators supervising noncertified applicators may develop and use a simple form as long as the form contains or can be filled in with all of the information required by the rule. For example, if a pest control company employs the same trainer and uses the same materials, that information could be pre-printed on the form; the remaining, noncertified applicator-specific information, such as the date of the training and the noncertified applicator's name and signature would need to be completed on an individual basis.

Further, EPA addressed this comment in the final rule by requiring the certified applicator to create or verify the existence of training records and to have access to them during the two year retention period, rather than retaining the proposed requirement for each supervising certified applicator to collect and maintain the records. EPA has amended the recordkeeping to delete the requirement for the record to include the supervising applicator's name. EPA expects that the language in the final rule would allow an operation in which multiple commercial applicators may supervise the same noncertified applicator to maintain one copy of the necessary record that is accessible to all supervising certified applicators. It would also allow that where a noncertified applicator changes employers and brings a copy of his or her training record, the new supervising certified applicator may comply with the training and recordkeeping requirements by making and retaining a copy of that training record.

XII. Establish Minimum Age for Certified Applicators

A. Existing Rule and Proposal

The existing rule does not establish any age restriction for certified applicators. EPA proposed to establish a minimum age of 18 for any person to become certified as a private or commercial applicator.

B. Final Rule

The final rule prohibits persons younger than 18 years old from being certified as a commercial or private applicator to apply RUPs. The final regulatory text for these provisions are located at §§ 171.103(a)(1) and 171.105(g), respectively.

C. Comments and Responses

Comments. Many commenters expressed support for establishing a minimum age of 18 for certified commercial applicators, including certifying authorities, farmworker advocacy organizations, pesticide applicator associations, and small entity representatives. Commenters expressed less support for establishing a minimum age of 18 for certified private applicators. Some commenters addressed minimum age requirements generally for all applicators of RUPs and did not distinguish between certified and noncertified applicators under the supervision of a certified applicator. General comments covering the minimum age and those specific to certified applicators are summarized in this Unit, while comments specific to establishing a minimum age for noncertified applicators applying RUPs under the supervision of a certified applicator are addressed in Unit XIII.

Comments in support of a minimum age of 18 for all applicators of RUPs highlighted the protection of children, the environment and others from pesticide exposure. Commenters, including those from farmworker advocacy organizations, noted that adolescents' bodies are still developing and they may be more susceptible to the effects of pesticide exposure. Commenters also noted that adolescents are less mature and their judgment is not as well developed as that of adults. This immaturity may mean that adolescents may be less consistently aware of risks associated with handling and applying RUPs, that they may not adequately protect themselves or others from known risks, and that spills, splashes, and improper handling practices may be more likely. In addition, a few commenters noted that persons under 18 years old are protected in other industries by OSHA and should receive similar protections under this rule, and that many States have already set a minimum age for certification of applicators. Some supporters considered the proposal a logical step to protect youth and noted that it is consistent with the minimum age of 18 in the revised WPS for agricultural pesticide handlers and early-entry workers in pesticide treated areas.

On the other hand, some commenters did not agree with the EPA's rationale for proposing a minimum age and did not consider age as determining competency. These commenters noted that applicators are determined to be competent when they pass certification exams, which have been established as the gauge of competency to determine who can apply RUPs. A few commenters asserted that the proposal did not have sufficient quantifiable

benefits related to establishing a minimum age.

Some commenters recommended alternatives to the proposed minimum age of 18. The Small Business Administration Office of Advocacy recommended that EPA follow the recommendations of the SBAR panel, which was to consider establishing a minimum age of 18 for commercial applicators, 18 for hired private applicators, and 16 for private applicators that are family members, with a grandfather clause to allow currently certified applicators to retain their certification after the minimum age requirement becomes effective.

Some commenters opposed establishing any minimum age. Some certifying authorities and farm bureaus asserted that establishing any minimum age for pesticide applicators of RUPs is a matter that should be determined by the States, not EPA. A few of these commenters asserted that EPA should not take any action because the DOL's hazardous occupations orders under the Fair Labor Standards Act (FLSA) already prohibit adolescents under 16 years old from handling pesticides in toxicity categories I and II in agriculture with limited exceptions. Some commenters supported establishing a lower minimum age of 16 for all applicators of RUPs, applicators from small and family businesses, and/or youth in educational/vocational programs. Many of these comments expressed concerns for fiscal impacts and hardships to family businesses if the proposed minimum age of 18 were finalized.

Some certifying authorities expressed concerns about the burdens and political difficulty of implementing a minimum age requirement, including the need to make legislative and/or regulatory changes in order to establish or change a minimum age, and the burden to verify and track the age. A few commenters expressed concern in handling personally identifiable information (PII). A commenter requested that the requirement include a phased implementation to allow youth already certified to apply RUPs be grandfathered in. A few certifying authorities expressed doubt that they could effectively manage and track exceptions or exemptions to the minimum age or purchase of RUPs.

Certifying authorities and pesticide applicator associations expressed an understanding that the proposed rule would apply to applicators using RUPs. However, they noted that certifying authorities have long required commercial applicators to be certified regardless of whether they use RUPs, non-RUPs or both. Many certifying authorities expressed concern that the rule could have a significant impact on non-RUP applicators, and cause substantial hardships within the agricultural community and in some nonagricultural industries, such as structural pest control. Some certifying authorities asserted that certifying agencies could not manage and track separate non-RUP and RUP programs, and therefore, a minimum age requirement in effect would be applied to both types of applicators. A few certifying authorities highlighted the benefits of requiring certification for all commercial applicators (demonstrated competency to apply pesticides safely, even if not using RUPs), which would be lost if a certifying authority opts to remove the broader commercial applicator certification requirements when developing and implementing a revised certification plan. A few commenters requested that EPA issue a specific clarification that the minimum age requirement is only intended to apply to RUPs.

Many certifying authorities generally supported a minimum age of 18 specifically for commercial applicators. A number of certifying authorities supporting a minimum age of 18 already have a minimum age of 18 for commercial applicators. Some of these certifying authorities commented that a federally-required minimum age would have little or no impact on their certification programs. A few certifying authorities expressed a belief that they have few applicators under the age of 18, and therefore, again, the proposed minimum age requirement would have little impact. A few certifying authorities supporting the proposed minimum age highlighted that adults, those persons over the age of 18 years old, can ordinarily be held legally responsible for their actions; adolescents, those persons under the age of 18, are less likely to be held legally responsible for their actions. Alternatively, a few commenters asserted that the certified applicator is legally responsible regardless the age.

Comments were generally less supportive of a minimum age of 18 for private applicators than for commercial applicators. Comments opposing the proposed minimum age of 18 for private applicators emphasized concerns for impacts to family farms. Many commenters representing certifying authorities, pesticide applicator associations, small business advocates and applicators recommended that EPA consider the impacts of a minimum age to family farms. A few commenters expressed general support for a minimum age of 16 for private applicators. Other commenters who supported establishing a minimum age of 16 noted that this requirement would align with DOL's restriction on handling pesticides in toxicity categories I and II in agriculture. A few commenters suggested establishing a minimum age of 16 or including an exemption from the minimum age for private applicators that certify through training courses provided by technical or vocational schools.

Some commenters requested that EPA add an exemption from any minimum age requirement for members of immediate family on family-owned farms. Some commenters supported adding an exception to the minimum age requirement for members of the farm owner's immediate family, similar to the WPS exemption. Some commenters in support of an exemption for immediate family recommended applying the same definition for immediate family in the WPS to this rule. Some commenters requested that EPA outline criteria for an exemption for youth education and vocational programs. A few commenters recommended that EPA establish a minimum age of 16 for certain educational programs. Some commenters expressed concerns for impacts of a minimum age on nonagricultural family businesses, small businesses, and businesses that hire seasonal workers and recommended that EPA establish exemptions for these commercial applicators to obtain certification while under the age of 18. Other commenters asserted that adolescents' developmental status does not differ whether they are an employee on a farm owned by an immediate family member or by someone unrelated to them, and therefore, are opposed to any exception to a minimum age requirement.

Responses. Based on the comments received and an evaluation of existing literature related to adolescents' development of maturity and judgment, EPA has decided that the benefits of restricting certification to use RUPs to persons at least 18 years old justify the costs; the final rule prohibits persons under 18 years old from becoming certified to apply RUPs. EPA recognizes that adolescents' bodies and judgment are still developing. While studies have not demonstrated a clear cut off point at which adolescents are fully developed, literature indicates that their development may continue until they reach their early to mid-20s. EPA also agrees that research has shown that adolescents may take more risks, be less aware of the potential consequences of their actions on themselves and others,

and be less likely to protect themselves from known risks. All of this information supports a minimum age of 18 years old in order to allow those applying RUPs to develop more fully before putting themselves, others, and the environment at risk.

EPA agrees that it is appropriate to take reasonable precautions to protect adolescents from pesticide exposures, both because of the potential impact of pesticides on further development and because adolescents may not properly appreciate (and take appropriate steps to avoid) the risks of potential pesticide exposure (Ref. 17, pp. 51385–51388). Although EPA is not able to measure the full benefits that accrue from reducing chronic exposure to pesticides, well-documented associations between pesticide exposure and certain cancer and non-cancer chronic health effects exist in peer reviewed literature. See the Economic Analysis for this rule for a discussion of the peer-reviewed literature (Ref. 1). While statistical associations have been observed in studies that estimate the relation between pesticide exposure and chronic health outcomes such as cancer, the causal nature of these associations has not yet been determined; thus quantifying the magnitude of the chronic health risk reduction expected as a result of pesticide exposure reduction is not possible. However, based on what is known about the potential for biologically active chemicals generally to disrupt developmental processes, it is reasonable to have heightened concern for adolescents under the age of 18 in situations where they face particularly high pesticide exposures and exposure to pesticides classified as RUPs. Although EPA agrees that certification exams are a gauge of competency, they are not the only relevant gauge, and EPA disagrees with the contention that age should not be a consideration for determining competency. Generally prohibiting adolescents under the age of 18 from applying RUPs will protect them from any potential risks of using RUPs, ensuring that adolescents do not cause or suffer unreasonable adverse effects from using RUPs.

EPA recognizes that DOL prohibits persons under 18 years old from engaging in hazardous tasks in other industries, and that some certifying authorities have taken action to prohibit certain adolescents from applying RUPs (minimum ages for applicators of RUPs, where established, range from 16 years old to 18 years old). These examples of protections for adolescents in other industries or by certifying authorities reflect a broader societal agreement that some workplace activities are inappropriate for adolescents. Use of RUPs is reasonably included among those workplace activities considered inappropriate for adolescents.

EPA disagrees with commenters' request to establish a minimum age lower than 18 for certified applicators. While there is no single, definitive age where one passes from immature judgment to mature judgment (research shows that brains continue to develop until people are in their early to mid-20s), the minimum age to engage in many hazardous activities has been established as 18 years old. EPA acknowledges that, in the event of a mishap with potential legal consequences, the certified applicator is responsible. However, it may not be possible to hold a person who is not at least 18 years old legally responsible for such a mishap. Requiring all certified applicators to be at least 18 years old will ensure all certified applicators can be held legally accountable in the event of violations of FIFRA and other State or Tribal laws.

EPA has established a minimum age of 18 for employees who are not immediate family members and who handle agricultural pesticides or enter treated areas while a restricted entry interval is in effect under the WPS (known as early-entry workers). 40 CFR 170.309(c), 170.313(c), 171.605(a). EPA agrees that restricting youth from applying RUPs in non-agricultural is consistent with EPA's decision to require a minimum age of 18 for handlers in the WPS (Ref. 36, p. 67525). Irrespective of the decision in this certification rule, persons using RUPs in agriculture will be subject to the WPS age limit where applicable beginning January 2, 2017, the compliance date for the recent WPS revisions.

EPA also disagrees with commenters' assertions that EPA should defer to certifying authorities or the FLSA and not establish any age-related restrictions related to use of RUPs. EPA has the responsibility under FIFRA to regulate the use of pesticides to avoid unreasonable adverse effects, apart from any requirements established by other federal or state laws. The DOL's actions under the FLSA limiting the use of certain pesticides to persons at least 16 years old do not preclude EPA from taking actions to ensure that human health and the environment are protected from unreasonable adverse effects of pesticides. While DOL's hazardous occupations order prohibiting those under 16 years old from handling certain pesticides satisfies the purposes of the FLSA, those purposes are distinct from those of FIFRA. EPA has concluded that because, as discussed previously, adolescents' bodies, maturity, and judgment are still developing, the application of RUPs by persons under 18 years old presents an unreasonable likelihood of adverse effects. Therefore, the final rule generally limits the application of RUPs to persons who are at least 18 years old.

EPA acknowledges that the minimum age requirement may require changes in legislation, regulation, and/or Tribal code in some States or Indian country. In the final rule, EPA has revised the proposed implementation provisions to provide adequate time for certifying authorities to make the necessary legislative and regulatory changes. In response to comments (such as those provided by the Small Business Administration Office of Advocacy) requesting that certified applicators who are not 18 when the final rule, including the minimum age requirement, is implemented be allowed to retain their certification, a certifying authority may allow applicators who hold a valid certification but who are not at least 18 years old at the time the revised certification plan is implemented to retain their existing certifications; however, once certifying authorities implement plans complying with this rule, no one under 18 years old may obtain an initial certification. See Unit XX. on implementation of the final rule.

In addition, EPA recognizes some certifying authorities may need to revise their tracking systems as part of their process to verify the age of those seeking initial certification. The final rule requires certifying authorities to verify the identity and age of a person as part of initial certification. Verifying the identity of certification candidates through a government-issued photo identification or other comparable method should provide the age-specific information needed to verify the person meets the minimum age requirement. In response to concerns about collection and retention of PII, EPA notes that the final rule has no requirements to maintain records of birth dates, so concerns about PII are not warranted. There is no recordkeeping requirement related to minimum age. See Unit IX. on exam administration, for more discussion on identification needed at time of initial certification.

Although this rule applies only to RUP use, EPA recognizes that many certifying authorities have established certification programs for commercial applicators that do not distinguish between applicators of RUPs and non-RUPs. Certifying authorities have the discretion to apply the minimum age

requirement to both non-RUP and RUP certifications or to make the necessary changes to separate and manage non-RUP and RUP certifications. EPA agrees that applicators of non-RUPs benefit from the training and certification programs and supports their continuation; although this rule regulates the application of RUPs and does not directly impose a minimum age on the commercial applicators of non-RUPs, EPA believes the minimum age requirement may provide additional benefits in reduction of pesticide exposures in States with combined certification programs by preventing youth from applying any pesticide commercially. Few certifying authorities combine non-RUP and RUP certifications for private applicators, and moreover, EPA notes that beginning January 2, 2017, persons using both RUP and non-RUP agricultural pesticides will be subject to the WPS age limit where applicable. Therefore, EPA believes the minimum age requirement will not significantly impact private applicators' use of non-RUPs.

EPA recognizes that some family-owned farms or family-owned businesses may employ members of the owner's immediate family who are under 18 years old to apply RUPs. However, EPA agrees with commenters who noted that adolescents' developmental status does not differ if they are employees on a farm owned by an immediate family member or by someone unrelated to them. Due to the risk to the applicator, environment and public health if RUPs are not applied properly, EPA has decided to restrict certification as a private or commercial applicator to persons at least 18 years old. EPA is not allowing a lower minimum age or exemption from the minimum age requirement for certification for applicators working on family farms or for family businesses, for small businesses, or hired seasonally/temporarily. EPA recognizes the benefits to adolescents and society of vocational education and training programs. Adolescents may participate in these programs but will be required to be at least 18 years of age before being eligible to be a certified applicator of RUPs. However, as discussed in Unit XIII., EPA is accommodating the needs of family-owned farms by allowing an exception in limited circumstances for noncertified applicators using RUPs under the supervision of a certified private applicator who is also an immediate family member.

XIII. Establish Minimum Age for Noncertified Applicators

A. Existing Rule and Proposal

The existing rule does not establish a minimum age for noncertified applicators using RUPs under the direct supervision of a certified applicator. EPA proposed to require that noncertified applicators who use RUPs under the direct supervision of a certified applicator be at least 18 years old.

B. Final Rule

The final rule establishes a minimum age of 18 for noncertified applicators applying RUPs under the direct supervision of certified applicators. The rule includes an exception to the minimum age requirement; noncertified applicators supervised by a certified private applicator who is also an immediate family member must be at least 16 years old. The exception does not apply to soil and non-soil fumigation, aerial applications, and use of predator control products (sodium cyanide and sodium fluoroacetate); these uses require the noncertified applicator to be at least 18 years of age and the supervising private applicator to be certified in the appropriate category for fumigation, aerial application, or predator control.

The final regulatory text for this requirement and the exception is available 40 CFR 171.201(b)(2)(iii).

C. Comments and Responses

Comments. Some commenters supported establishing a minimum age of 18 for noncertified applicators. Fewer commenters supported establishing a minimum age of 18 for noncertified applicators applying RUPs under the direct supervision of private applicators. The Small Business Administration Office of Advocacy recommended that EPA follow the recommendations of the SBAR panel to consider establishing a minimum age of 18 for noncertified applicators applying RUPs under the direct supervision of commercial applicators and 16 for noncertified applicators applying RUPs under the direct supervision of private applicators. Commenters supporting a minimum age of 18 for noncertified applicators highlighted the protection of children, environment and others from pesticide exposure. Some commenters opposed to the proposed minimum age of 18 suggested that EPA establish a lower minimum age requirement of 16 years old for all noncertified applicators. Some commenters did not support establishing any minimum age requirements. See in Unit XII. for general comments in support of and opposition to the proposed minimum age requirement for applicators of RUPs.

A few commenters did not agree with EPA's rationale for proposing a minimum age, and instead suggested that EPA emphasize improving the competence of noncertified applicators. A commenter cited information to support adolescents' cognitive capabilities and reasoning skills as well-developed in early adolescence (Refs. 15 and 45). A few alternatives to the minimum age requirement suggested by commenters include requiring noncertified applicators to take an exam, allowing noncertified applicators to obtain a provisional certification, or requiring classroom and hands-on experiences to develop competency in adolescents. One commenter recommended that EPA allow an applicator to be under the age of 18 when the individual provides a signed approval from a parent or guardian. Some certifying authorities and farmworker advocacy organizations opposed any use of RUPs by noncertified applicators; they suggested that all persons using RUPs should be certified.

Few certifying authorities require a minimum age for noncertified applicators of RUPs. Commenters opposed to establishing a minimum age of 18 for noncertified applicators emphasized concerns for impacts to family farms, businesses and youth in vocational/educational programs. Many commenters from certifying authorities, grower organizations, and applicators recommended that EPA consider the impacts of a minimum age to family farms. A few commenters expressed support for a minimum age of 16 for immediate family members. A few commenters who supported a minimum age of 16 noted that this requirement would align with DOL's restriction on handling pesticides in toxicity categories I and II in agriculture. Some commenters opposed establishing any minimum age for immediate family members applying RUPs on family farms.

Some commenters requested that EPA add an exemption from any minimum age requirement for immediate family members on family-owned farms. Commenters supported adding an exception for members of the owner's immediate family similar to the exemption to the minimum age requirements under the WPS. Commenters suggested applying the same definition for immediate family in the WPS to this rule.

In the case of family-owned commercial businesses, a few

commenters expressed concerns that limiting noncertified applicators to those at least 18 years old would prevent younger family members from learning the family business, such as in lawncare and landscape businesses and in the structural pest control industry. Some commenters expressed concerns for commercial businesses that hire seasonal or temporary workers, such as lawncare and landscape businesses.

Some commenters, including university extension services and certifying authorities stated the proposed minimum age requirement would negatively impact adolescent education and vocational programs in high schools, such as Future Farmers of America and 4–H. Some commenters requested that EPA outline criteria for an exemption for participants in these types of programs. One commenter suggested an exemption to the minimum age requirement with parental approval for adolescents to apply RUPs. Several commenters speculated that RUPs may not be widely applied in these programs. However, other commenters pointed out that non-RUPs and RUPs are treated similarly by some certifying authorities, and therefore the proposal would also impact applicators of non-RUPs in these programs. Other commenters asserted that adolescents' developmental status does not differ if they are an employee on a farm owned by an immediate family member or by someone unrelated to them and therefore oppose any exception to the proposed minimum age.

Responses. Based on the comments received and an evaluation of existing literature related to adolescents' development of maturity and judgment, EPA has decided that the benefits of generally prohibiting persons under 18 years old from applying RUPs justify the costs. See the responses in Unit XII. for general discussion of minimum age requirements for all applicators of RUPs, as similar comments were received for the proposed age requirements for certified and noncertified applicators of RUPs.

EPA agrees that improving the competency of noncertified applicators applying RUPs under the direct supervision of a certified applicator strengthens protections for applicators, others and the environment. The final rule includes requirements aimed at enhancing the competency of noncertified applicators beyond the minimum age requirement. See Unit X.

EPA recognizes that DOL prohibits persons under 18 years old from engaging in hazardous tasks in other industries, and that some certifying authorities have taken action to prohibit certain adolescents from applying RUPs. See Unit XII. for a discussion of EPA's consideration of existing rules related to the minimum age requirement.

EPA disagrees with commenters' request to establish a minimum age lower than 18. While research shows that brains continue to develop until people are in their early to mid-20s, the minimum age to engage in many hazardous activities has been established as 18 years old. In addition, EPA recognizes that adolescents may not feel empowered to question or refuse tasks assigned to them that would put them or others at risk, which is important when using RUPs.

EPA has established in the WPS a minimum age of 18 generally applicable to persons handling agricultural pesticides and for early-entry workers. Persons using RUPs in agriculture would be subject to both the WPS and this certification rule. Noncertified applicators as defined by this rule are also handlers under the WPS when using certain agricultural pesticides. Establishing a consistent minimum age would ensure consistent protections for noncertified applicators working in agriculture and other industries, and would avoid the confusion that could result if noncertified applicators were subject to different minimum age requirements in agriculture versus other industries.

EPA agrees that adolescents' developmental status does not differ if they are employees on a farm owned by an immediate family or by someone unrelated to them, as also discussed in Unit XII. However, EPA recognizes that imposing a minimum age for noncertified applicators applying under the direct supervision of a certified applicator could significantly disrupt some family-owned farms. Given the high social cost of imposing a minimum age of 18 years old on noncertified applicators on family farms, EPA has included in the final rule an exception to this requirement. The exception allows noncertified applicators who are at least 16 years old to use RUPs under the direct supervision of a private applicator who is also an immediate family member. The final rule adds a definition of immediate family that matches the definition included in the revised WPS. However, the exception in this rule is different from the complete exemption from the minimum age requirement in the WPS for handlers and early-entry workers who are for members of the owner's immediate family, because even in the context of the family-owned farm, the heightened risks of RUPs warrant both training and a minimum age of 16. Although under the WPS, owners and their immediate family members are also exempted from certain provisions of the WPS (*e.g.,* providing pesticide safety training for immediate family members), this certification rule does not include any exemption from or exception to the training requirement for noncertified applicators. In addition, the exception does not apply to certain types of RUP applications that present greater potential for adverse effects: The exception does not apply soil and non-soil fumigations, aerial applications, and use of predator control products (sodium cyanide and sodium fluoroacetate). Noncertified applicators who use RUPs in these application categories must be at least 18 years old.

EPA does not agree with commenters' requests to establish exceptions to the minimum age requirement for noncertified applicators working under the direct supervision of commercial applicators, regardless of whether the supervising commercial applicator is a member of the noncertified applicator's immediate family. Noncertified applicators under the supervision of commercial applicators are more likely to use RUPs at sites where misapplication could cause harm to other people, such as to schools, homes, hospitals, parks, shopping centers and offices. To ensure an adequate level of protection not only for the noncertified applicator, but also for those who live in, work at, or visit areas treated by these noncertified applicators, EPA has chosen to require that all noncertified applicators under the supervision of commercial applicators must be at least 18 years old.

XIV. Recertification

A. Existing Rule and Proposal

The existing rule requires States to ensure applicators maintain a continuing level of competency and ability to apply pesticides safely and properly as part of their certification plans. 40 CFR 171.8(a)(2). The existing rule requires that under certification plans administered by EPA, commercial applicators must be recertified every three years and private applicators must be recertified every four years. 40 CFR 171.11. A policy applicable to Federal agency plans directs Federal agencies to include in their certification plans a requirement for applicators to recertify every three years.

EPA proposed a minimum set of criteria for recertification that certifying authorities would have to meet. Applicators would have to recertify by continuing education or an exam and would have to recertify at least every

three years. The continuing education program would have to be approved by the certifying authority and be designed to ensure the applicator continues to demonstrate the level of competency required for initial certification. In addition, a continuing education program would have to meet certain criteria, including: (1) Applicators would have to earn at least half of the required training in the last 18 months; (2) a CEU would be defined as 50 minutes of active training time; and (3) applicators would have to complete a minimum amount of training based on their certification. Specifically, the proposal would have required commercial applicators to earn at least six CEUs of core training and six CEUs for each category (pest control and application method-specific) of certification. The proposal would have required private applicators to earn at least six CEUs in general private applicator training and three CEUs per application method-specific category of certification.

B. Final Rule

EPA has completely revised the approach for recertification in the final rule in response to comments. Instead of establishing prescriptive minimum requirements for all recertification programs, the final rule establishes several performance standards for recertification programs and describes the information about recertification programs that must be provided in certification plans submitted by certifying authorities. The final rule requires applicators to recertify through continuing education or an exam and to recertify at least every five years. The recertification program established by a certifying authority may rely on continuing education or an exam or both.

The final regulatory text for recertification programs is available at 40 CFR 171.107. The final regulatory text for State plans related to recertification is located at 40 CFR 171.303(b)(4). The final regulatory text for Federal agency plans related to recertification is located at 40 CFR 171.305(b)(3). The final regulatory text for Tribal plans related to recertification is located at 40 CFR 171.307(b).

C. Comments and Responses

Comments—Support Overall Approach or a More Stringent Approach. Several individual commenters generally supported the proposed requirements to increase the amount of training required. One individual supported standardizing the amount of training and another urged EPA to require training annually instead of every three years. Several worker/handler advocacy organizations urged EPA to make the recertification requirements more stringent by requiring certified applicators to recertify every year and take more training than was proposed. They also suggested that EPA require all pesticide applicators to take a written exam after every recertification training to demonstrate their competency and verify their attendance.

Response—Support Overall Approach or a More Stringent Approach. As explained below, EPA was convinced by the majority of comments that a more flexible approach to recertification is the best path forward. The frequency, content, and quantity of training are factors that the certifying authorities will have to specify in their certification plans, in addition to the frequency, content, and quality of any examinations. EPA disagrees that it is necessary for pesticide applicators to take a written exam after every recertification training. Instead, the final rule requires certifying authorities to ensure that any recertification continuing education course or event includes a process for verifying the applicator's successful completion of that course or event.

Comments—Oppose Overall Approach. There was widespread and strong opposition to the proposed recertification requirements across most commenter categories, including States, university extension programs, applicators, growers, farm bureaus, and the Small Business Administration (SBA) Office of Advocacy. Commenters generally agreed with allowing recertification through continuing education or exams, although most preferred continuing education as more effective in improving applicator competency. However, commenters opposed the other proposed recertification criteria, including a three-year certification period, the minimum number of CEUs for commercial and private applicators, requiring half of the training in the last 18 months of the certification period, and defining the length of a CEU as 50 minutes.

Many commenters argued that States have invested resources in determining appropriate continuing education programs and the commenters largely believe that existing recertification programs are effective. State pesticide regulatory agencies or university extension programs in a few States cited relatively low violation rates to justify the effectiveness of their certification and recertification programs. For example, there were 4,600 pesticide use inspections conducted in Florida from 2010 to 2015. Of these, 2,701 involved a licensed applicator but only 132 of the inspections identified RUP violations. Of the 132 inspections with RUP violations, there were 290 individual RUP violations listed and 260 of these were ''failure to maintain applicator RUP records,'' so only about 30 of the RUP violations that were identified were something other than recordkeeping deficiencies.

Further, many commenters suggested that the one-size-fits-all proposed approach would require a lot of States to completely revamp their programs without adequate justification and that EPA's proposed approach seemed arbitrary. Many commenters stated that the costs of the proposed recertification criteria to States, university extension programs and applicators were not adequately accounted for in the Economic Analysis of the proposed rule. Some States and a State organization commented that the proposed approach would not facilitate certifying authorities reliance on other jurisdictions' certifications because that is a State-specific decision and is often determined by factors that the certification rule would not address, such as state laws that prohibit such reliance, State-specific differences that make such reliance impractical, and the time needed to coordinate certification standards and records with another State.

A few States supported the proposed certification (and recertification) period of three years because they already follow that approach. However, many other commenters including States, university extension programs, applicators, growers and farm bureaus opposed establishing three years as a maximum certification period, arguing that it would greatly increase the burden on States, university extension programs and applicators without any clear benefit. Approximately half of the States have a four- or five-year certification period. As an example of the potential impact, a certifying authority described the potential impact on its private applicator recertification program, which has a certification period of five years. Instead of spreading recertification training for 21,000 private applicators over five years (an average of 4,200 per year), the university extension program would have to provide training to 7,000 private applicators each year. This would require additional staff to meet the training demand. Some training programs are required to be self-funded through fees charged for the training,

increasing the probability of higher fees for training to support additional staff. One certifying authority stated that it changed the certification period from three years to five years and found that a five-year certification period significantly reduced administrative costs without sacrificing the effectiveness of the program, although no evidence was provided to support this belief.

Many commenters opposed the proposed minimum number of CEUs for a variety of reasons. First, some commenters pointed out that the proposed CEU approach does not account for workshop-type programs, which are not based on CEUs that are used in about 15 States. Some other commenters asked if the category-specific CEU requirements would apply to the federal categories or to the State-defined categories that often reflect a subset of a federal category. Many commenters pointed out that requiring six CEUs per category for commercial applicators could be very burdensome for applicators who hold certifications in multiple categories. For example, one certifying authority commented that its program has a total of 26 categories. More than 7,000 of the certifying authority's 15,000 commercial applicators are certified in four or more categories, and business owners, who must certify in all categories their business covers, often are certified in seven to ten categories. Because there was not a proposed cap on the number of category-specific CEUs, the proposed rule would have required some applicators to obtain 30 to 70 hours of training every three years. Many commenters expressed concern about the burden and effect this could have on applicator businesses and the decisions made by applicators. The Small Business Administration Office of Advocacy's comments included the following points: (1) Obtaining the proposed number of CEUs would impose excessive costs as a result of increased time away from the job, travel expenses to attend trainings, and the training fees; (2) applicators may choose to opt out of recertification classes and retest instead because it would be less burdensome; (3) retesting is a less effective way to provide applicators with the most current knowledge, technology and skills than recertification classes because tests and manuals are updated less frequently than training material; and (4) EPA should encourage States to require recertification by training rather than testing. Other commenters pointed out that there was a lot of overlap in the training for certain categories, such as the identification of weed pests common to the categories of agricultural pest control—plant, forest pest control, ornamental and turf pest control and right-of-way pest control.

Many commenters stated that the necessary amount of training depends on the category. There are not many changes or new material for some categories, such as wood treatment, seed treatment or some small state-specific categories. This could lead to training becoming repetitive, which is not effective and actually could be negative. Further, many commenters argued that the effectiveness of training depends on a number of factors besides frequency (certification period) and the amount of training, such as the content that is covered, the quality of the training, how training providers are approved and auditing or somehow assessing the delivery of the training. Many of the commenters argued that the quality of the training was the most important factor in how effective the training is for the applicators.

There was more variation in the comments regarding the proposed requirement for commercial applicators to obtain some training on core competencies and some on category-specific content, although no commenter supported the proposed requirement of six CEUs of core content and six CEUs per category. One State farm bureau commented that core (general) training is more important to protecting the consumer, environment and applicator and should reflect the majority of the training hours. A few other commenters, mostly States, suggested that there is value in covering both core and category content but the actual amount of core training should be reduced or should not be mandated. Some other commenters pointed out that a lot of topics covered in training cover both core and category-specific content. They also commented that implementing the proposed approach would be problematic because States would have to identify whether specific training sessions counted for core or a category; tracking these different requirements would be burdensome and would require expensive changes to databases that were not included in the Economic Analysis. Some other commenters, including States and university extension programs, argued that requiring six CEUs of core training is too high, and would lead to repetitive and ineffective training. For example, the Iowa State University extension program combines pertinent core information with category-specific content, which has increased applicator understanding and retention of topics based on exit surveys. Therefore, this university extension program commented that providing generalized, non-specific core information to applicators rather than concise information tailored to their specific category needs would be a step backward.

Commenters suggested a number of alternative approaches to EPA's proposed requirements for recertification of pesticide applicators. Many commenters urged EPA to withdraw or not finalize the proposed recertification requirements. Comments from the Small Business Administration Office of Advocacy covered two other common recommendations from a variety of commenters and suggested that EPA should reduce the number of required CEUs for private and commercial applicators by consolidating or streamlining the CEU requirements or that EPA should accept the States' requirements for recertification. Most of the States and many other commenters urged EPA to leave decisions about the certification period and the amount of recertification continuing education to the States who are more familiar with the specific applicator, funding and pesticide conditions and can facilitate changes when needed. In a survey of States submitted as part of the comments from a State organization, 33 of the 42 States responding (almost 80%) indicated that they have changed their pesticide regulations (not necessarily certification regulations) in the past five years and 26 have changed their pesticide statutes in that time period. Another suggestion from some States and applicator associations was for EPA to allow an equivalency approach similar to the process used for State pesticide containment programs that could allow States to have a longer certification period, different approaches for continuing education and a different amount of required continuing education.

Response—Oppose Overall Approach. The comments make it clear that State recertification programs have gone many different ways over the past 40 years, which led EPA to conclude that it is too late to set detailed numeric federal standards for recertification to encourage acceptance of other jurisdictions' certifications. In addition, the comments explained that there are many reasons a State may or may not accept certifications from other jurisdictions and EPA acknowledges that recertification programs seem to be a minor factor in that decision. EPA has also been convinced that the effectiveness of recertification training

depends on a number of factors besides the two addressed in the proposed rule—the frequency (certification period) and amount (hours of training per recertification period). Finally, EPA generally agrees with the commenters' assessment that certifying authorities have adopted a wide variety of approaches that would not necessarily fit under EPA's proposed recertification scheme but nevertheless are effective in maintaining applicator competency.

Therefore, EPA has completely revised the approach for recertification in the final rule. Instead of establishing prescriptive minimum requirements for all recertification programs, the final rule establishes several performance standards for recertification programs and describes the information about recertification programs that must be provided in certification plans submitted by certifying authorities. The final rule requires applicators to recertify through continuing education or an exam and to recertify at least every five years. The recertification program established by a certifying authority may rely on continuing education or an exam or both. EPA acknowledges that there are different ways to accomplish the goals of ensuring the continued competency of pesticide applicators. The approach in the final rule provides more flexibility and accommodates the different approaches that States have developed including: Recertifying by exams only; recertifying by continuing education or exams; providing continuing education by workshops or by CEUs; providing continuing education by university extension programs, industry groups or other organizations; dividing the universe of certified applicators into a larger number of more specific categories; and using a wide variety of approaches to establish the amount of continuing education required to maintain certification.

EPA also acknowledges that the Economic Analysis of the proposed rule did not account for the costs of all of the changes certifying authorities and pesticide safety educators would have had to make to comply with the proposed approach. For example, changing from workshop-based continuing education to CEU-based programs would have required about 15 certifying authorities to completely redesign their recertification programs. Also, all certifying authorities would have had to develop or revise systems to track core versus category CEUs and the distribution of CEUs over the first and last 18 months of the certification period. Additionally, certifying authorities with longer certification periods would have had to provide more continuing education opportunities to accommodate more applicators needing training each year, so more pesticide safety educators would have been needed in States where training is done solely by the university extension program. Finally, the Economic Analysis did not fully account for applicators who are certified in multiple categories, especially in states that have 20 or more categories. The proposed requirement for six CEUs per category would have required more training than EPA's estimate, which assumed that each commercial applicator was certified in two categories. However, EPA does not have to include the costs described in this paragraph associated with the proposed rule in the revised Economic Analysis because the final rule adopts a more flexible, performance standard approach instead of the prescriptive requirements and quantitative standards of the proposed rule.

The final rule requires applicators to recertify either through a written examination that conforms to the certification exam standards or through a continuing education program. A recertifying authority's recertification program may rely on written examinations, continuing education programs or both. This requirement did not change from the proposed rule and was generally supported by commenters. The SBA Office of Advocacy urged EPA to encourage States to require recertification by training rather than by testing because training is a better way to provide updated information to applicators. EPA notes that most States already promote their continuing education program as the primary option for recertification and include exams as an option available to applicators if they cannot obtain the required amount of training.

In the final rule, EPA revised the maximum length of time that an applicator's certification is valid from three years to five years. Nearly all certifying authorities currently require recertification within five years or less, and therefore will not be affected by this change (although they will not be free to lengthen recertification periods beyond five years in the future). This requirement will bring any certifying authorities with longer recertification periods into line with the majority, and should provide a more uniform national level of competency. EPA also revised the regulatory text to clarify that five years is the maximum and that a certifying authority may establish a shorter period for how long an applicator's certification is valid.

The final rule incorporates the proposed requirement that written examinations used for recertification must be designed to evaluate whether the certified applicator demonstrates the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators. EPA has adopted a similar, performance standard approach to continuing education programs as well.

EPA was convinced by comments that the effectiveness of training depends on a number of factors. In the final rule, § 171.107(b)(2)(i) establishes a performance standard for continuing education programs that broadly groups the factors into the quantity, content and quality of continuing education programs, which collectively must be sufficient to ensure the applicator continues to demonstrate the competency required by § 171.103 for commercial applicators or § 171.105 for private applicators. This provides flexibility to accommodate the different approaches taken by States, Tribes and Federal agencies. It also allows each certifying authority to determine how the continuing education is provided—by workshops, a CEU-based program or another method. However, this broad performance standard also makes it difficult to specifically describe what would be ''sufficient'' quantity, content and quality of continuing education programs. This will ultimately be determined on a case-by-case basis between the certifying authority and EPA during preparation, review and approval of individual certification plans. EPA plans to develop a guidance document after the final rule is published to describe some characteristics and parameters of sufficient quantity, content, and quality based on information provided in the comments and anticipates further dialogue with certifying authorities before the guidance is issued.

The final rule establishes two additional requirements regarding the quality of continuing education programs. First, a certifying authority must approve any continuing education course or event relied upon for applicator recertification as being suitable (on its own or in combination with other recertification program elements) for its purpose in the certifying authority's recertification process. 40 CFR 171.107(b)(ii). Second, a certifying authority must ensure that any continuing education course or event, including an online or other distance education course, that provides continuing education for applicator recertification includes a process to verify the applicator's successful

completion of the course or event. 40 CFR 171.107(b)(iii). This is intended to be flexible and allow a variety of ways to ensure that an applicator successfully completed the course or event. As discussed in Unit IX., this performance standard also requires the continuing education course or event to somehow identify the certified applicator, which is a necessary part of verifying that the applicator successfully completed the course or event.

The final rule also expands the information about recertification that a certifying authority must provide in its certification plan. Specifically, §§ 171.303, 171.305 and 171.307(b) require State, Federal agency and certain Tribal certification plans to contain sufficient documentation that the recertification standards meet or exceed the standards in § 171.107, including:

- A list and detailed description of all the standards for recertification adopted by the certifying authority including the elements described below.
- The certification period, which may not exceed 5 years.
- If recertification relies upon written examination, a description of the certifying authority's process for reviewing, and if necessary, updating the written examination(s) to ensure that the written examination(s) evaluates whether that a certified applicator demonstrates the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators.
- If recertification relies upon continuing education, an explanation of how the quantity, content and quality of the Federal agency's continuing education program ensures that a certified applicator continues to demonstrate the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators, including but not limited to:
- The amount of continuing education required to maintain certification.
- The content that is covered by the continuing education program and how the certifying authority ensures that content is covered.
- The process the certifying authority uses to approve continuing education training courses or events, including information about how the certifying authority ensures that any continuing education courses or events verify the applicator's successful completion of the course or event.
- How the certifying authority ensures the on-going quality of the continuing education program.

This required information will include several narrative explanations, which is a change from the current manner in which certifying authorities enter their certification plan information into CPARD (*i.e.,* drop-down menus or entering specific information). However, this level of description is necessary for EPA to make a determination of whether the quantity, content and quality of continuing education programs is sufficient to ensure continued competency of applicators.

Comments—Require Half of Training in the last 18 Months. Many commenters, including States, university extension programs, applicators, growers, farm bureaus, farmworker advocacy organizations, other non-governmental organizations and the SBA Office of Advocacy, strongly opposed the proposed requirement to earn at least half of the training credits in the last 18 months of the certification period. In summary, the commenters asserted their belief that this proposed requirement would be unnecessary and unworkable, and would not add benefit.

Many commenters pointed out that applicators are professionals and can retain information for more than 18 months. Other commenters stated that the proposed requirement would not accomplish the goals of spreading training out over the whole certification period because nothing would prevent an applicator from taking all of the training in the last year. Several of the commenters supported a requirement for the training to occur throughout the entire recertification period such as requiring some training annually. A few other commenters suggested that establishing a limit on the maximum number of CEUs that could be earned each year would be a more effective way to spread the training over time. Some other commenters stated that this proposed requirement is not needed because applicators end up taking their training over time based on their schedules and the availability of training.

Many commenters also addressed the burden this proposed requirement would put on certifying authorities, university extension programs and applicators. First, certifying authorities do not have systems in place to track CEUs on 18-month intervals and would need to update their tracking systems to do this. The Michigan Department of Agriculture and Rural Development estimated it would cost at least $100,000 to update their tracking system, which cost $250,000 in 2006. Second, applicators would also have to track their progress over time, which would make the process more difficult and would create an incentive for them to take exams instead of the continuing education. Third, this would create more of a burden for university extension programs and applicators to have the needed training courses available at the required times. Since most training happens in the winter and early spring, there could be limited opportunities for applicators to obtain the necessary training in the last 18 months of their certification period in general and especially if sessions are cancelled due to weather or other conditions. Obtaining the required amount of training in the last half of the certification period could be even more difficult for applicators who have a second job and for those in the military because their availability may be even more limited.

Response—Require Half of Training in the last 18 Months. EPA has been convinced by commenters that it is not necessary to establish a limit in the federal certification rule for when continuing education has to take place. While EPA continues to see value in applicators receiving continuing education on a regular basis, this often happens under current recertification programs because of the design of existing recertification programs or because of the logistics determined by applicator and training availability. In addition, the need for certifying authorities and applicators to track the credits over a subset of the certification period could be burdensome. It is not clear that the proposed requirement to earn at least half of the training credits in the last 18 months of the certification period would provide additional improvements in applicator competency sufficient to justify the associated burdens. Therefore, EPA is not finalizing the proposed requirement that half of the required continuing education must be obtained in last 18 months of the certification period. EPA notes that certifying authorities may choose to establish limits in their own programs, such as establishing a maximum number of CEUs that can be earned in a year, as some States currently do.

Comments—Length of a CEU. A State, a university extension program and an individual supported EPA's proposal to define a CEU to be 50 minutes. Some commenters from a variety of commenter groups opposed the proposed definition of a CEU. The alternative suggestions for defining a CEU from States and a university extension program included 30 minutes, 60 minutes and 60 minutes with a 10 minute tolerance. Grower organizations,

retailer organizations and the SBA Office of Advocacy suggested that the CEU requirement should be based on the subject matter since some might require less than or more than 50 minutes. A few commenters pointed out that the definition of the CEU is only in the preamble of the proposed rule and needs to be added to the regulatory text.

Response—Length of a CEU. EPA is not finalizing the proposed definition of a CEU as 50 minutes. Because of the revised approach to recertification, it is no longer necessary to define a CEU as a specific length of time. This further supports the flexible approach in the final rule to clearly allow continuing education to be provided by workshops, CEUs or another method. A certifying authority has the ability to establish its own definition of a CEU where applicable.

Comments—Impact on Commercial Applicators of Non-RUPs. Commenters including States, pesticide applicator organizations, university extension programs, agricultural retail organizations, grower organizations, a pesticide manufacturer organization, a farm bureau, and an advocacy group expressed concerns regarding the impact that the proposed rule might have on non-RUP applications. Commenters expressed concern that the proposed rule could unintentionally impact applicators of non-RUPs because commercial applicators are treated similarly in some States (*i.e.,* they require all for-hire/commercial applicators to be certified whether they use RUPs, non-RUPs, or both).

While the proposed rule would apply only to the certification of applicators using federal RUPs, many States commented that they would have to update their existing statutes and rules to meet the new requirements and it would be infeasible for them to create and implement an effective two-tiered system by separating requirements for RUP and non-RUP applicators. Many States whose certification programs cover applicators who do not use RUPs noted that the cost and administrative burden that would be imposed on State certification programs and applicators by the proposed requirements might force them to relinquish implementation of the federal program back to EPA. This would result in a State left with a dual compliance standard, one administered and enforced by EPA for federal RUP use, and a second administered and enforced by a State for State RUP and non-RUP use. A university extension program expressed concern that some States might decide to rescind the requirement for commercial applicators to participate in the certification program even if they only use non-RUPs to reduce the certified applicator population and the burden on applicators.

Pesticide applicator representatives commented that the proposed rule would create many new requirements for all applicators and would negatively impact applicators that occasionally apply RUPs and the vast majority that only apply non-RUPs with little supporting evidence that the existing certification system is not adequate.

Response—Impact on Commercial Applicators of Non-RUPs. While these comments do not specifically mention the proposed recertification requirements, EPA assumes that the proposed recertification requirements are a large part of the cost and burden mentioned in these RUP/non-RUP comments, based on the comments summarized earlier in this section. EPA acknowledges that many certification (and recertification) programs apply to a broader range of applicators than the federal certification rule requires, especially for commercial applicators. It is not clear whether jurisdictions that currently require certification of commercial applicators of non-RUPs will continue to do so, or whether they will choose to modify their approach to certification. In any case, this is a choice for each State and Tribe, based on their own evaluations of the expected costs and benefits.

XV. General Certification Plan Requirements

A. Overview

1. Existing rule and proposal. The existing provisions at 40 CFR 171.7 and 171.8 establish the requirements for the submission, approval and maintenance of State plans. These sections of the rule set the content of State plans and outline the specific regulatory provisions, legal authorities, and components that States must have in order for EPA to approve a State plan. An EPA-approved State plan allows the State to certify and recertify RUP applicators. In order to clarify requirements for content, submission and approval of State plans, raise the minimum standards for State pesticide applicator certification programs, and update the requirements for State plans, EPA proposed to revise the provisions of the rule related to submission, approval, and maintenance of State plans. Since the requirements for Tribal and Federal agency plans reference the standards for State plans, the proposed changes would also have impacted the requirements for Tribal and Federal agency plans.

2. *Final rule.* The final rule differs from the existing rule primarily in the following areas: Requirements for State plans to conform with the final rule specifically related to the standards for the certification of commercial and private applicators, recertification, and direct supervision of noncertified applicators; additional reporting and accountability requirements; required enforcement authorities; recordkeeping requirements for commercial applicators; recordkeeping requirements for RUP dealers; standards for certification credentials; requirements for States' recognition of certifications issued by other States (known as reciprocal certification); and maintenance, modification, and withdrawals of State plans. As discussed in Unit VII.B., the final rule also includes a provision that allows certifying authorities, at their discretion, to add ''limited use'' categories for commercial applicators. The specific provisions of the final rule are discussed in more detail below.

B. Modification of Existing Certification Plans To Conform to the Final Rule

1. Proposal. EPA proposed to add provisions to ensure that State plans conform to the proposed standards and requirements proposed in other parts of the rule. The proposed changes included standards for the certification of commercial and private applicators, recertification, and direct supervision of noncertified applicators. EPA proposed to retain the existing provision permitting states to adopt, as they considered appropriate, the federal categories appropriate for their States, add subcategories under the federal categories, and add state-specific categories not reflected by the federal categories. EPA proposed that States would be required to adopt the exam administration and security standards outlined as proposed at 40 CFR 171.103(b)(2), including a requirement for the certifying authority to verify the identity of candidates seeking certification or recertification by requiring candidates to present a government-issued photo identification.

2. Final rule. The final rule adds provisions to ensure that State plans conform to the standards and requirements of the final rule. This includes the standards for the certification of private and commercial applicators, recertification of applicators, and direct supervision of noncertified applicators. States will continue to be permitted to adopt federal categories appropriate for their States, add subcategories under the federal categories, delete federal

categories not needed, and add state-specific categories not reflected by the federal categories.

In general, the changes to this section of the final rule provide States with more flexibility to establish requirements that meet or exceed the standards established by EPA in §§ 171.101 through 171.201 as discussed in previous units of this preamble. For example, the changes to the final rule require States to provide a list and detailed description of the recertification standards demonstrating that the State recertification program meets or exceeds the requirements in § 171.107. In addition, the final rule allows States to implement a mechanism for noncertified applicator qualification that meets or exceeds the requirements at § 171.201.

For standards for direct supervision of noncertified applicators, EPA has adopted a different requirement than proposed. The final rule allows certifying authorities to adopt the standards listed at § 171.201, to prohibit the use of RUPs by anyone other than a certified applicator, or to adopt standards for noncertified applicators that meet or exceed the standards at § 171.201.

For exam administration and security standards, EPA has revised the proposed approach to allow more flexibility for States to adopt different approaches that meet or exceed EPA's standards at § 171.103(a)(2). The final rule allows States to adopt the standards listed at § 171.103(b)(2), or to adopt standards for exam security and administration that meet or exceed the standards at § 171.103(b)(2). The final rule requires the certifying authority to check the age and identification of candidates for initial certification, regardless of whether they certify by written exam or training for private applicators, and for recertification by examination. However, the final rule adopts a more flexible requirement by allowing States to authorize candidates to present a government-issued photo identification or a similarly reliable form of identification authorized by the certifying authority, rather than just a government-issued photo identification as proposed. The final rule requires States to specify in their certification plans whether they authorize any other forms of identification and, if so, how they are comparable to a government-issued photo identification.

The final regulatory text for these requirements is located at 40 CFR 171.303(a) and (b).

3. Comments and Responses

Comments. Commenters raised concerns about the proposal limiting States to adopting the proposed standards for noncertified applicators or prohibiting the use of RUPs by anyone other than a certified applicator. Many certifying authorities commenting on the proposal noted that they implement programs for noncertified applicators that are more stringent than EPA's proposal, but would not be acceptable if the proposal were finalized. Some commenters noted the need for flexibility for certifying authorities to adopt standards for noncertified applicators that that meet or exceed EPA's standards and that fit within the certifying authority's certification program.

Response. EPA acknowledges that many certifying authorities may have existing programs for the protection of noncertified applicators that are sufficient to ensure that noncertified applicators under the supervision of certified applicators are competent to use RUPs without causing unreasonable adverse effects. In response to the comments, EPA has added a provision to the final rule adding an option for certifying authorities regarding noncertified applicator programs—allowing the adoption of requirements that meet or exceed EPA's standards in the final rule. EPA will evaluate a certifying authority's program against EPA's noncertified applicator program as part of the State plan review and approval process. See Unit X. for more details.

C. Program Reporting

1. Existing rule and proposal. The existing rule requires States to report annually on information related to the administration of the applicator certification program under the EPA-approved certification plan.

To reflect the proposed changes to applicator certification categories and to ensure EPA receives adequate information to monitor the certifying authority's implementation of its certification plan, EPA proposed to require certifying authorities to report the information below to EPA annually.

- The numbers of new, recertified, and total applicators holding a valid general private certification at the end of the last 12-month reporting period.
- For each application method-specific category specified in 40 CFR 171.105(c), the numbers of new, recertified, and total private applicators holding valid certifications at the end of the last 12-month reporting period.
- The numbers of new, recertified, and total commercial applicators holding a valid core and at least one category certification at the end of the last 12-month reporting period.
- For each commercial applicator certification category specified in 40 CFR 171.101(a), the numbers of new, recertified, and total commercial applicators holding a valid certification in each of those categories at the end of the last 12-month reporting period.
- For each application method-specific category specified in 40 CFR 171.101(b), the numbers of new, recertified, and total valid certifications for the last 12 month reporting period.
- If a State had established subcategories within any of the commercial categories, the report would have to include the numbers of new, recertified, and total commercial applicators holding valid certifications in each of the subcategories.
- A description of any modifications made to the approved certification plan during the last 12-month reporting period that have not been previously evaluated by EPA.
- A description of any proposed changes to the certification plan that the State anticipates making during the next reporting period that may affect the certification plan.
- The number and description of enforcement actions taken for any violations of Federal or state laws and regulations involving use of RUPs during the last 12-month reporting period.
- A narrative summary describing the misuse incidents or enforcement activities related to use of RUPs during the last 12-month reporting period, including specific information on the pesticide(s) used, circumstances of the incident, nature of the violation, and information on the applicator's certification. This section should include a discussion of potential changes in policy or procedure to prevent future incidents or violations.

2. Final rule. The final rule incorporates the proposed reporting requirements with a few changes. The final rule does not distinguish between ''pest control categories'' and ''application method-specific categories'', designating them all formally equivalent categories. The final rule does not include the proposed requirement to report misuse incidents and reduces the proposed reporting on enforcement activities.

The final regulatory text for the program reporting is located at 40 CFR 171.303(c).

3. Comments and Responses

Comments. Many commenters, including certifying authorities,

requested that EPA refrain from finalizing the proposed requirement for a narrative summary of enforcement activities. Commenters cited existing reporting requirements related to pesticide use and applicator certification programs, and noted that the proposed requirement would be duplicative. Some commenters also noted that it would be difficult to separate out RUP incidents from the data currently collected (*i.e.,* identifying whether the product was an RUP). Commenters noted that tracking such detailed narrative information, maintaining the information, and compiling the information to report would be time consuming. Commenters asserted that CPARD is not the proper reporting mechanism for this information, if required; they suggested that it be included in the ''5700 form'' that States, Tribes, and territories submit to EPA's Office of Enforcement and Compliance Assistance. Finally, commenters noted that they may discuss major incidents already in their year-end reports to EPA.

Responses. EPA appreciates the concerns raised by the commenters. In light of the burden on certifying agencies to track, maintain, and compile detailed narrative information, as well as the potential for EPA to obtain the information about enforcement activities generally through other existing reporting requirements, EPA has chosen not to include the proposed requirement to provide a narrative summary of misuse incidents or enforcement activities in the final rule.

D. Civil and Criminal Penalty Authority

1. Existing rule and proposal. The existing rule is not clear on whether States must have authority to impose both criminal and civil penalties on commercial and private applicators. EPA proposed to revise the rule to expressly require that States have both civil and criminal penalty provisions.

2. Final rule. EPA is finalizing the civil and criminal penalty authorities as proposed. The final regulatory requirements for civil and criminal penalty authority is located at 40 CFR 171.303(b)(7)(iii).

3. Comments and Responses

Comments. EPA received comments on this provision from certifying authorities and from certifying authority and pesticide safety educator associations. Almost all commenters suggested that EPA eliminate the proposed requirement for States to have both civil and criminal penalty authority. Commenters generally requested that EPA retain the existing language ''. . . for assessing criminal and/or civil penalties,'' rather than the proposed language ''. . . for assessing criminal and civil penalties.'' Commenters recognized that FIFRA has a requirement for States to have both criminal and civil penalty authority, but requested that EPA retain more lenient language.

Commenters also expressed concerns about the proposal at § 171.303(b)(6)(i), suggesting that the proposal would make recordkeeping violations a criminal matter. (''Provisions for and listing of the acts which would constitute grounds for denying, suspending and revoking certification of applicators. Such grounds must include, at a minimum, misuse of a pesticide and falsification of any records required to be maintained by the certified applicator.'') Commenters noted that without further explanation of what ''falsification'' means, and at what threshold that action would be considered a criminal act, they had concerns that something as innocent as a typographical error might appear to be intentional falsification, which could result in criminal prosecution.

Responses. FIFRA requires certifying authorities to have both criminal and civil penalty authority. EPA disagrees with commenters' request to retain the more lenient ''and/or'' language, and is finalizing the rule's requirement to mirror what is required by FIFRA.

In response to the comments raising concerns about the language in the proposal at § 171.303(b)(6)(i), EPA notes that this requirement has been in the existing rule since the 1970s. Likewise, falsification of records and reports has been a violation of FIFRA since 1972. 7 U.S.C. 136j(a)(2)(M). Commenters did not raise any instances where a missing or incomplete definition of ''falsification'' has resulted in a typographical error resulting in criminal prosecution. Enforcement agencies, prosecutors and courts all have considerable experience distinguishing typographical errors from criminal falsification. Therefore, EPA has chosen to retain the existing regulatory language. EPA will work with certifying authorities as needed to provide interpretations of and guidance on regulatory language and provisions.

E. Commercial Applicator Recordkeeping

1. Existing rule and proposal. The existing rule mandates that State plans include requirements for certified commercial applicators to maintain for a least two years routine operational records containing information on kinds, amounts, uses, dates and places of applications of RUPs.

EPA proposed to clarify what records commercial applicators must maintain. EPA proposed recordkeeping requirements substantially similar to the recordkeeping requirements established for private applicators under the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, November 28, 1990, 104 Stat 3359, which is administered by USDA. EPA proposed recordkeeping for commercial applicators that included the following:

- The name and address of the person for whom the pesticide was applied.
- The location of the pesticide application.
- The size of the area treated.
- The crop, commodity, stored product, or site to which the pesticide was applied.
- The time and date of the pesticide application.
- The brand or product name of the pesticide applied.
- The EPA registration number of the pesticide applied.
- The total amount of the pesticide applied.
- The name and certification number of the certified applicator that made or supervised the application, and if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.
- Records related to the supervision of noncertified applicators working under the direct supervision of a certified applicator described in Unit XI.

2. Final rule. EPA has finalized the commercial applicator RUP recordkeeping requirements as proposed, except that EPA has changed the substance of the recordkeeping related to supervision of noncertified applicators. See Unit XI. for a discussion of the final requirement for recordkeeping of noncertified applicator training.

The final regulatory requirements for commercial applicator recordkeeping are located at 40 CFR 171.303(b)(6)(vi).

3. Comments and Responses

Comments. Commenters were generally neutral or supportive toward the proposed recordkeeping requirements. Many certifying authorities noted that they already require commercial applicators to maintain records with at least the same content as EPA's proposal. One certifying authority opposed adoption of commercial applicator recordkeeping requirements. The commenter asserted that certifying authorities are responsible under State primacy

authority for inspection, violation determinations and enforcement, which includes examination and review of application records to verify label compliance and proper application, and that States currently have recordkeeping requirements in place and are the best judge of what records must be kept.

One commenter raised concern about documenting the area treated, especially for spot treatments.

Responses. EPA has chosen to finalize the approach that adopts a consistent national standard for commercial applicator recordkeeping to ensure that the same minimum information about RUP use is maintained by all RUP applicators.

EPA notes that the requirement to record the area treated can be met by recording the number of acres, or other appropriate measure, to which the pesticide was applied. Other appropriate measures could include an area within which treatments were made with a notation that the entire area was not treated (*e.g.,* ''spot treatments within 600 sq. ft. lawn'').

F. RUP Dealer Recordkeeping

1. Existing rule and proposal. The existing rule does not have a requirement for dealers of RUPs to maintain records; however, all 50 States currently have recordkeeping requirements for RUP dealers. EPA proposed to require certifying authorities to have provisions requiring RUP retail dealers to keep and maintain at each individual dealership, for a period of at least two years, records of each transaction where an RUP is distributed or sold by that dealership to any person. EPA proposed that records of each such transaction include all of the following information:

- Name and address of the residence or principal place of business of each person to whom the RUP was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified applicator to whom the RUP was distributed or sold for use by a certified applicator.
- The applicator's unique certification number on the certification document presented to the dealer evidencing the valid certification of the certified applicator authorized to purchase the RUP; the State, Tribe or Federal agency that issued the certification document; the expiration date of the certified applicator's certification; and the categories in which the certified applicator is certified.
- The product name and EPA registration number of the RUP(s) distributed or sold in the transaction, and the State special local need registration number on the label of the RUP if applicable.
- The quantity of the pesticide(s) distributed or sold in the transaction.
- The date of the transaction.

2. Final rule. EPA has finalized the RUP dealer recordkeeping requirement as proposed with a few minor wording changes. The final regulatory text for the RUP dealer recordkeeping requirement is located at 40 CFR 171.303(b)(7)(vii).

3. Comments and Responses

Comments. Some commenters expressed general support for the proposal. Other commenters questioned the need for a federal requirement for RUP dealer recordkeeping when EPA acknowledged in the proposal that all 50 States already have provisions in place requiring RUP dealers to maintain records.

A few commenters suggested that EPA require RUP dealers to maintain the records for four years instead of two years, citing the requirement in California for RUP dealers to maintain records for four years.

Several commenters opposed RUP dealer recordkeeping on the category of certification. Commenters noted that it would be unreasonable to expect RUP dealers to have knowledge of the labeling for each RUP to be able to tell whether the uses on the labeling were covered by each certification category. Other commenters noted that the proposed requirement to collect and verify the applicator's category of certification would impose substantial burdens on dealers.

Response. EPA disagrees with commenters who suggested that a federal RUP dealer recordkeeping requirement is not necessary. The federal rule sets a minimum standard with which all certifying authorities must comply. Recordkeeping is an important way to verify compliance with the provisions of the rule. In order to ensure that all certifying authorities maintain a requirement for RUP dealers to keep records of sales, and to ensure that all records cover minimum necessary information, EPA has decided to retain the proposed requirement.

EPA disagrees with commenters' request to extend the period the records must be maintained from two years to four years. EPA established a two-year recordkeeping period to correspond with the length of time other records under the certification rule and FIFRA must be kept. Absent justification from stakeholders that a longer period is necessary to ensure compliance with the rule or to improve protection of human health and the environment, EPA has chosen to retain the proposed timeframe of two years.

EPA acknowledges commenters' concerns that verifying and recording the applicator's category of certification could be burdensome. However, EPA notes that applicator certification only covers use of products covered by the category of certification, and that labeling already requires RUP dealers to verify that the applicator is certified in an appropriate category for use of the RUP he or she is purchasing. EPA's regulations require RUP labeling to state: ''For retail sale to and use only by Certified Applicators or persons under their direct supervision and *only for those uses covered by the Certified Applicator's certification.*'' (emphasis added) 40 CFR 156.10(j)(2)(i)(B). Therefore, RUP dealers are already responsible for knowing the use patterns of the RUPs they sell and which categories of certification are appropriate. For these reasons, EPA has chosen to retain the proposed requirement for the RUP dealer to record the applicator's category(ies) of certification.

G. Certified Applicator Credentials

1. Existing rule and proposal. The existing rule does not have requirements related to content in the credentials that States must issue to certified applicators.

EPA proposed to require States to issue appropriate credentials or documents verifying certification of applicators, containing all of the following information:

- The full name of the certified applicator.
- The certification, license, or credential number of the certified applicator.
- The type of certification (private or commercial).
- The category(ies), including any application method-specific category(ies) and subcategories of certification, in which the applicator is certified, as applicable.
- The expiration date of the certification.
- A statement that the certification is based on a certification issued by another State, Tribe, or Federal agency, if applicable, and the identity of that State, Tribe or Federal agency.

2. Final rule. The final rule includes a requirement for States to ''describe the credentials or documents the State certifying authority will issue to each certified applicator verifying certification.'' The final rule does not include the proposed general requirement for applicator credentials to

contain specific information. The final regulatory text for applicator certification credentials is located at 40 CFR 171.303(a)(8).

3. Comments and Responses

Comments. EPA received comments from certifying authorities, certifying authority associations, pesticide safety educator associations, advocacy organizations, and individuals. Most commenters on this issue did not support EPA's proposal and requested that EPA leave the content of certification credentials to the certifying authority's discretion. Many commenters noted that States have processes in place for issuing licenses, and mandating specific information to be included on a certification credential would disrupt the existing processes without any reason for the change. Several commenters noted that the certifying authority's ability to add additional information to the certification document may be limited (*i.e.,* a broad State regulation or law may govern issuance of all licenses). One certifying authority described its recently implemented an internet-based licensing system under which the certifying authority issues the applicator a credential with the applicator's name, license number, and barcode, as well as information on how to access other certification information (*e.g.,* categories of certification, recertification status) online. This system allows the certifying authority to update the categories of certification within 24 hours of a change (*e.g.,* passing category exam), rather than issuing a new certification credential with the additional category information or issuing a separate credential for each category of certification. This system also allows the certifying authority to document attendance at recertification courses by scanning the barcode on the license document. Given the ease of use, investment in developing and implementing a new system, and lack of identification of problems associated with the absence of a federal standard for applicator credentials, the commenter requested EPA not finalize the proposal for the content of applicator credentials because the credentials issued under the certifying authority's licensing system would not meet the proposed content requirements for applicator credentials.

A few commenters expressed specific opposition to the proposal to add to the credential, if applicable, a statement specifying whether the certification was issued in reliance upon another jurisdiction's certification. Applicators may be certified in several categories, and some but not others may be based on certifications received from other jurisdictions. Commenters said that distinguishing between the categories of certification issued by the certifying authority and those based on certifications earned in another jurisdiction would impose significant burden on the certifying authority and be difficult to accomplish.

A few certifying authorities noted that they already issue certification credentials with the proposed content. One individual commenting suggested that EPA require the credential to include all of the proposed content, plus the expiration date for each category.

Responses. EPA recognizes that certifying authorities have already developed a variety of requirements for issuing applicator credentials. EPA is convinced by the comments received that the proposal to require applicator certification credentials to include specific content would cause significant additional burden for many certifying authorities, without commensurate additional benefit. EPA has decided to continue with the existing regulatory requirement for certifying authorities to have in place a provision for issuance of the appropriate credentials or documents verifying certification of applicators instead of the proposed approach to specify the information that must be on credentials. EPA notes that this requirement is intended to allow the certifying authority, enforcement personnel, and RUP dealers to verify that the person purchasing or using RUPs has a valid certification and is certified in the appropriate categories for the products being purchased or used.

H. Reliance on Certification by Other Certifying Authorities

1. Existing rule and proposal. The existing rule requires States to provide information in their certification plans a description of any arrangements that a State has made or plans to make relating the acceptance of certified applicators from those States or jurisdictions.

EPA proposed to revise these provisions to allow certification relying on certification by another certifying authority under the following conditions:

- A certifying authority could only rely on current, valid certifications issued under another certifying authority's approved certification plan, and could only rely on a certification issued by a certifying authority that issued its certification based on an independent determination of competency without reliance on any other existing certification or authority. For each category of certification that would be accepted, the certifying authority must determine that the standards of competency in the other jurisdiction are comparable to the standards of the accepting certifying authority.
- Any certifying authority which chooses to certify applicators based, in whole or in part, on the applicator having been certified by another certifying authority, must implement a mechanism to ensure the certifying authority would immediately terminate an applicator's certification if the applicator's original certification terminates for any reason.
- The certifying authority issuing a certification based, in whole or in part, on the applicator having been certified by another certifying authority would have to issue an appropriate credential or document in accordance with the requirements of this section.

2. Final rule. The final rule adopts the proposal with one substantive changes. EPA is not finalizing the proposed provisions requiring the certifying authority to automatically terminate certifications issued based on the applicator's certification in another jurisdiction immediately upon termination of the original certification. The final regulatory requirements are as follows:

- A certifying authority may only rely on current, valid certifications issued under an approved certification plan.
- The certifying authority has examined the standards of competency in the jurisdiction that originally certified the applicator and has determined that, for each category of certification that will be accepted, they are comparable to its own standards.
- Any certifying authority that chooses to certify applicators based, in whole or in part, on the applicator having been certified by another State, Tribe, or Federal agency, must implement a mechanism that allows the certifying authority to terminate an applicator's certification upon notification that the applicator's original certification terminates because the certificate holder has been convicted under section 14(b) of FIFRA (7 U.S.C. 136l(b) or has been subject to a final order imposing a civil penalty under section 14(a) of FIFRA (7 U.S.C. 136l(a).
- The certifying authority issuing a certification based, in whole or in part, on the applicator having been certified by another State, Tribe or Federal agency must issue an appropriate credential or document in accordance with the requirements of § 171.303(a)(8).

The final regulatory text for these provisions is located at 40 CFR 171.303(a)(9).

3. Comments and Responses

Comments. EPA received comments on this proposal and the issue of reliance on prior certifications generally from certifying agencies and their associations, pesticide safety educators and their associations, pesticide applicator associations, individuals, and USDA APHIS.

Overall, most commenters did not support EPA's proposal to require certifying authorities that choose to issue reciprocal certification to outline the process they would use in the certification plan and to abide by specific conditions. Commenters asserted that including the proposed requirements in the final rule could result in certifying authorities that currently issue such certifications to discontinue the practice because it would become too time consuming without additional benefit to the certification program. Almost all commenters requested that EPA leave to the discretion of the individual certifying authorities all decisions related to reliance on other jurisdictions' certifications.

Many commenters specifically opposed the proposed provisions requiring that the certifications issued in reliance on another jurisdictions' certification ''must terminate immediately if the applicator's original certification terminates for any reason'' and requiring that certifying authorities ''must implement a mechanism to ensure the State will immediately terminate an applicator's certification if the applicator's original certification terminates for any reason.'' They noted that implementation of such a provision would be extremely difficult or impossible. Once a certification has been issued, a certifying authority does not generally track whether it was based on a certification issued in another jurisdiction. Further, the jurisdiction in which the applicator earned the original certification is unlikely to track which other jurisdictions used its certification as the basis for certification or notify the other jurisdictions when action is taken against the applicator that could result in termination of the certification. Commenters noted that absent a national certification database that would provide notifications when an applicator's certification status changed, certifying authorities would not be able to track the status of each's applicator original certification. Commenters also pointed out that what caused termination of a certification in one jurisdiction may have no impact on another jurisdiction's certification. One jurisdiction noted that it will award an initial certification based on certification granted by another certifying authority, but the applicator must satisfy all of the second certifying authority's recertification requirements. This commenter noted that many applicators who receive their initial credential based on certification awarded by another jurisdiction will let the original certification lapse and continue to meet the necessary recertification requirements in the reciprocal State to maintain their certification. Under the proposal, this would require the certifying authority that relied on another jurisdiction's certification to terminate its certification despite the applicator satisfying all necessary recertification requirements within that jurisdiction.

Some commenters generally supported the concept of reciprocal certifications, but not the proposed changes to the rule. These commenters noted that requiring the proposed provisions as part of certification plans would not have an impact on a certifying authority's decision on whether to rely on other jurisdictions' certifications.

A few commenters supported the proposal and suggested that EPA should do more to encourage or require reliance on other jurisdictions' certifications, especially to reduce the burden on the pest management industry. One commenter suggested that EPA should require adjacent States to: Enter into reciprocal agreements, harmonize categories and subcategories, and allow CEUs to transfer between jurisdictions. One commenter suggested that the information and training requirements for core certification lend themselves to standardized materials. This commenter suggested that EPA develop such materials and distribute to certifying authorities. The commenter also suggested that EPA could also provide standard training materials for CEUs and testing materials for pest control and application method-specific categories. Another commenter suggested that EPA require consistency by requiring all certifying authorities to use the same titles for their categories and subcategories.

Some commenters seemed to interpret EPA's proposal as requiring mandatory reliance on other jurisdictions' certifications, and strongly opposed any efforts by EPA to require certifying authorities to engage in issuing reciprocal certifications.

Reponses. EPA agrees that each certifying authority should have discretion to rely or not rely on other jurisdictions' certification programs and notes that EPA is not mandating such reliance in any form. However, EPA notes that the existing rule contains provisions similar to some of the elements EPA proposed; requiring that a certification plan must describe any reliance on other jurisdictions' certifications is not new.

EPA acknowledges commenters' concerns about implementing the proposed provisions requiring automatic termination of a certification. While EPA continues to believe that it would be straightforward to establish a requirement that a reciprocal certification terminates automatically if the applicator's original certification terminates for any reason, EPA has decided not to finalize this requirement. First, there are situations where an applicator's certification may terminate that are not problematic, such as if the applicator allows the certification in the original State lapse because he/she no longer works there but continues to stay certified in the second State by completing that State's recertification requirements. This is a very different scenario than if the applicator's original certification was revoked because of serious pesticide use violations. Second, EPA generally agrees that there would be implementation challenges with the proposed requirement because States may not become aware of the applicator's initial certification terminating without a national applicator certification data base or significant effort by the State. However, EPA has retained the requirement for certifying authorities to have provisions allowing them to terminate reciprocal certifications, which would allow a certifying authority to terminate an applicator's certification if they are notified of the termination and if the termination was for a violation of FIFRA or other acts identified by the certifying authority.

Many comments seemed to misinterpret the proposal and suggested that EPA proposed to mandate reciprocal certification between jurisdictions. EPA did not propose and is not including any mandatory reciprocal certification requirements in the final rule.

I. Certification Plan Maintenance, Modification, and Withdrawal

1. Existing rule and proposal. The existing rule specifies that an EPA-approved certification plan may not be substantially modified without the prior approval of the Administrator. EPA issued guidance in 2006 outlining EPA's interpretation of the types of plan revisions that would constitute substantial modifications and therefore

require additional review and approval by EPA.

EPA proposed to replace the provisions in the existing rule related to maintenance, modification, and withdrawals of State certification plans with a codification of the provisions of the 2006 guidance. The proposed revisions would codify existing interim program policy and guidance issued by EPA in 2006 (Ref. 37).

2. Final rule. EPA has finalized the proposal with some changes. The final rule adds a provision for modification and withdrawal of approval of existing certification plans while certifying authorities are developing and implementing certification plans that meet the standards of this final rule. The final regulatory text for modification and withdrawal of approval of State plans is located at 40 CFR 171.309.

3. Comments and Responses

Comments. Several certifying authorities and a certifying authority association submitted comments on the proposal related to substantial modifications. Several commenters noted that the clarified language was an improvement from the existing rule. However, they expressed concern that the wording of the proposed requirement would place a burden on certifying authorities to conduct regular reviews and to inform EPA of any modifications to the certification plan. These commenters recommended that the final rule clearly indicate that certifying authorities would only be required to notify EPA of proposed substantial modifications at the year-end review or pre-award negotiation meeting.

One certifying authority requested that EPA leave the definition of what constitutes a substantial modification to the certifying authorities.

Responses. EPA is finalizing the certification plan modification section mostly as proposed. EPA recognizes that States may be concerned about increased burdens to review and report to EPA but notes that EPA is not requiring regular reviews of approved certification plans. EPA disagrees with commenters' requests to require reporting of substantial changes only at the year review or pre-award negotiation meeting. Given the need to ensure that any significant change to the plan, which is likely to require substantial effort on the part of the certifying authority to implement, would not result in EPA rescinding approval of the certification plan, it is reasonable for EPA to require notification prior to the substantial modification.

EPA disagrees with the commenter who requested that EPA leave the definition of what constitutes a substantial modification to the certifying authorities. By defining substantial modifications in the rule, EPA will reduce burden on certifying authorities and the Agency to determine what qualifies as a substantial modification, requiring prior notification to EPA and additional review.

J. Certified Applicator Lists Available to the Public

1. Option considered but not proposed. EPA did not propose a requirement for certifying authorities to make available publically a list of all applicators it has certified, but did ask for comments. Under this alternative, EPA considered whether such a list could be made available electronically (*e.g.,* via the internet, and could be used by the public to identify pest control operators certified to perform the application properly and effectively.

2. Final rule. EPA has not added any requirements for certifying authorities to make information about certified applicators available to the public.

3. Comments and Responses

Comments. Most commenters on this option opposed it. Several commenters noted that certifying authorities may have limits on what information can be released publically, especially related to personally identifiable information. One commenter cited the potential for the information to be misused if made available to the public.

Response. EPA has chosen not to add to the rule a requirement to make information about certified applicators available to the public. However, EPA suggests that certifying authorities explore workable options within their jurisdictions to make information about certified applicators available to the public, such as maintaining a Web site to verify that an applicator's certification is valid. EPA's Web site already offers general information to the public about RUPs and restrictions on their use (*i.e.,* for use only by certified applicators or someone under their direct supervision). RUPs have the potential to cause unreasonable adverse effects to the environment and injury to applicators or bystanders if not used by a competent applicator, and are not available for purchase or use by the general public. EPA's Web site also notes that certifying authorities may have more restrictive requirements (*e.g.,* require certification for all ''for hire'' users of pesticides, not only RUP users). EPA's Web site also provides links to State certification program coordinators so the public can direct their inquiries to the appropriate agency. EPA intends to work with certifying agencies to develop resources for those seeking to hire certified applicators, such as fact sheets summarizing certification requirements, and a Web site providing links to publically available certified applicator information.

XVI. Establish Provisions for Review and Approval of Federal Agency Plans

A. Existing Rule and Proposal

The existing rule includes a provision for a Government Agency Plan (GAP) certification program that would cover all employees of all Federal agencies using RUPs in the course of their duties. However, the GAP certification process was never developed or implemented by EPA or the Federal government. In 1977, EPA announced a policy that provided an alternative approach for Federal agencies to develop and implement their own plans for the certification of applicators of RUPs (Ref. 46). In the 1977 policy, EPA noted that the standards for Federal agency plans were to be essentially equal to or more stringent than requirements for State plans. Currently, four Federal agencies have EPA-approved Federal agency plans that were approved prior to 1990: Department of Defense (DOD), USDA, Department of Energy (DOE) and the Department of the Interior (DOI).

In order to streamline the rule and codify the existing policy, EPA proposed to add to the rule a provision for review and approval of Federal Agency Plans, eliminate the GAP certification program for federal government employees, and establish new requirements for Federal agency certification plans similar to those proposed for State and Tribal plans. EPA proposed to clarify and expand the requirements for Federal agency plans from the existing policy to include:

- Compliance with all applicable standards for certification, recordkeeping, and other similar requirements for State/Tribal plans.
- Ensure compliance with applicable State pesticide use laws and regulations, including those pertaining to special certification requirements and use reporting when applying pesticides on State lands.
- Compliance with all applicable Executive Orders.
- Specific requirements for annual reporting and certification plan maintenance.

B. Final Rule

The final rule includes the proposed requirements for Federal agency

certification plans with minor revisions and deletes the GAP section. It also includes many of the same changes made to the requirements for State plans to accommodate changes made to the requirements for certification, recertification, and supervision of noncertified applicators. The final regulatory text for these requirements is available at 40 CFR 171.305.

C. Comments and Responses

Comments. EPA received only a few comments regarding this proposal. None of the four Federal agencies that currently have EPA-approved Federal Agency Plans (*i.e.,* DOD, USDA, DOE and DOI) addressed the issue during the comment period.

In general, commenters representing States and grower organizations did not express opposition regarding provisions for Federal agency plans, and supported EPA requiring equivalent program standards and approval processes for certification plans of States and Federal agencies.

A State and an applicator organization representative commented that the current standard under the 1977 policy is adequate and each State should be allowed to continue oversight of applicators operating within each State without having the rules revised, ''so that Federal employees are accountable for State requirements.''

Response. EPA notes that if applicators certified under a Federal agency certification plan are using RUPs in States or Indian country, they must follow the applicable laws and regulations of the jurisdiction where the use occurs. Under the final rule, Federal agency employees will be accountable for complying with relevant State requirements.

XVII. Certification Programs in Indian Country

A. Clarifying Options for Certification Programs in Indian Country

1. Existing requirement and proposal. The existing rule provides three options for applicator certification programs in Indian country:

- Tribes may utilize State certification to certify applicators, which requires concurrence by the State(s) and should be memorialized in an appropriate State-Tribal agreement;
- Tribes may develop and implement a Tribal certification plan, which requires Tribes to develop and submit an appropriate Tribal certification plan to EPA for approval; or
- EPA may administer a Federal certification plan for applicators in Indian country, such as EPA's national plan for Indian country (Ref. 3).

EPA proposed to revise the mechanisms for establishing applicator certification programs in Indian country as follows:

- Revise the current option for Tribes relying on State certification by providing for Tribes to utilize State, Tribal, or Federal agency certification; and replacing the provision regarding Tribes entering into cooperative agreements with States, with a requirement for Tribes to enter into agreements with EPA Regional offices. The proposal also eliminated current requirements for States to include in their State certification plans references to any cooperative agreements with Tribes for recognizing the States' certificates.
- Clarify that EPA can, in consultation with the affected Tribe(s), implement a Federal certification plan in any area of Indian country not covered by an approved certification plan.
- Update the requirements for Tribal plans by providing for submission of Tribal plans directly to the EPA; and requiring those Tribes that choose to manage their own certification plan to conform to the new standards being proposed for State and Federal agency certification plans for initial certification and recertification of private and commercial applicators and the training and supervision of noncertified applicators who apply RUPs under the direct supervision of a certified applicator. However, Tribes would not be required to meet criminal enforcement requirements that would apply to State plans.

2. Final rule. EPA is finalizing the options for applicator certification in Indian country as proposed with some changes. The final regulatory text for this requirement is available at 40 CFR 171.307.

3. Comments and Responses

Comments—General

Ten commenters provided comments on the options for establishing a certification program in Indian country (four States, two applicators, one grower association, one private citizen, one Federal agency, and one Tribal organization). In general, the commenters expressed support for the proposed options. However, some comments indicated that additional clarification on the options is needed.

Comments—State notification. One State commenter and one Tribal organization expressed support for EPA's proposal that Indian Tribes may enter into agreements with EPA to recognize certifications issued under other EPA-approved or administered certification plans (*e.g.,* State, Tribal, or Federal) instead of entering into agreements with States administering EPA-approved plans. However, both commenters asked how a State would know whether a Tribe had an agreement with EPA to recognize the certification of the State. The State commenter stated that the certifying State must be notified because multiple Indian Tribes, nations, and entities are present in many States, each with their own authorities and programs, making coordination of pesticide regulation challenging. The State commenter suggested that notification to all parties of certification actions taken by any party is also necessary to avoid confusion to the applicator as well as the regulatory entities, and that such notification of certification actions is the only way to ensure that Tribes are aware of cancelled or modified certifications so they can take appropriate action under Tribal authority.

Response—State notification. In both the proposed and final rules, if a Tribe chooses to allow persons holding currently valid certifications issued under one or more specified State, Tribal, or Federal agency certification plans to apply RUPs within the Tribe's Indian country, the Tribe's certification plan and/or the Tribal-EPA agreement must identify the State(s), Tribe(s) or Federal agency(ies) upon whose certifications the Tribe relies. These plans and agreements will be made publicly available to interested parties, including States, once approved.

Comments—Requesting clarification of ''jurisdiction'' in the definition of ''Indian country.'' Two commenters (one State and one Tribal organization) requested further explanation of ''jurisdiction'' in EPA's clarification of the definition of ''Indian country.'' The State commenter indicated that not all land inside reservations is under Tribal jurisdiction. For example, the commenter stated that non-trust land (also called deeded land or non-Indian fee land) within the boundaries of established reservations in their State is under the primary jurisdiction of the State. The State commenter stated that this distinction of jurisdiction is important because without it, for example, applicators may potentially be unable to continue to use FIFRA Section 18 Emergency Exemptions, 7 U.S.C. 136p, or Section 24(c) Special Local Need Registrations, 7 U.S.C. 136v(c), anywhere within the boundaries of a reservation, resulting in lost resources and revenue on deeded or fee-owned land.

A Tribal organization also asked for further clarification on jurisdiction, indicating that jurisdiction on Tribal fee lands has been an issue for a Tribal member who also has a State applicator's license. The commenter stated that the Tribal member has been prevented from applying pesticides on Tribal fee lands in aquatic situations because the State that issued his license will not cover him under its National Pollutant Discharge Elimination System permit program for discharges from pesticide applications because the fee land is Tribal land (*e.g.,* not trust land), and EPA will not cover his application of pesticides because it claims the land is under the jurisdiction of the State.

In addition to these questions, the Tribal organization also asked for clarification on which entity's RUP list will be adopted under a Tribal-EPA agreement. The commenter stated that the RUP list for a State and EPA will not necessarily be the same, and that it was uncertain which one will control. Complicating the situation is how an RUP will be treated on Tribal trust lands. The commenter stated that the Tribal member identified in the previous paragraph has indicated that a pesticide he uses is not an RUP under the EPA list, but once he is on fee lands of the Tribe, the pesticide is considered an RUP on the State list.

A third commenter recommended that EPA delete the definition of ''Indian country,'' but did not provide a rationale or alternative language for this recommendation.

Response—Requesting clarification of ''*jurisdiction*'' *in the definition of* ''*Indian Country.*'' Section 171.3 of the proposed and final rule define ''Indian country'' as follows:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

2. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State.

3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

This definition is consistent with the definition of Indian country at 18 U.S.C. 1151. Under EPA's longstanding approach, EPA treats as reservations, and thus as Indian country, lands held by the United States in trust for an Indian Tribe even if the Tribal trust land is located outside the boundaries of a formal Indian reservation. (See, *e.g.,* 56 FR 64876, 64881 (December 12, 1991); 63 FR 7254, 7258 (February 12, 1998)).Under relevant principles of federal Indian law, jurisdiction in Indian country generally lies with the federal government and the relevant Tribe, and not with the States. *Alaska* v. *Native Vill. of Venetie Tribal Gov't,* 522 U.S. 520, 527 n.1 (1998). State certification plans are, therefore, generally not approved by EPA to operate in Indian country absent an express demonstration of authority by a State—*e.g.,* under a separate federal statute granting the State such authority—and an express approval by EPA of the State plan for such area. Currently, most of Indian country is covered by EPA's existing Federal certification plan for Indian country, and will continue to be covered by that plan unless and until replaced by an EPA-approved plan.

For purposes of implementing the certification plan under FIFRA and EPA's regulations, only products classified as RUPs by EPA trigger certification requirements; non-RUPs can be used by any person and do not require the user to be certified. States must use EPA's list of RUPs, but may classify additional non-RUPs as restricted at the State level. This additional State product restriction would trigger the certification requirements at the State level, but would not necessarily trigger certification requirements in Indian country. Because Indian country includes all lands within the exterior boundaries of an Indian reservation irrespective of who owns the land, an applicable certification plan administered pursuant to a Tribal-EPA agreement (*i.e.,* pursuant to section 171.307(a) of the proposed rule), would generally apply on all land that is located within the exterior boundaries of an Indian reservation. Although proposed section 171.307(a) (like section 171.10(a) of the existing rule) permits Indian Tribes to allow RUP use by applicators holding valid State certifications, the rule would not authorize or approve any State plan or exercise of State jurisdiction in Indian country under FIFRA, whether on fee-owned land or otherwise. For purposes of the certification plan, jurisdiction under this scenario would be exercised by the relevant Tribe and EPA in accordance with the Tribal-EPA agreement. To the extent the Tribal fee land described in the Tribal organization's comment is within the exterior boundaries of an Indian reservation, it would be reservation land and, thus, Indian country, regardless of the fact that a Tribe or other entity holds a deed of ownership to the land. EPA notes that there may be circumstances where non-reservation lands are entirely surrounded by reservation lands. This may occur, for instance, where an Indian reservation is formed around an area that is never made part of the reservation, where land located within the original exterior boundaries of an Indian reservation loses its reservation status by virtue of an act of Congress, or in other unusual circumstances. To the extent the Tribal fee land described in the comment is non-reservation (and non-Indian country) land, then the State's RUP list would apply as it would in any other non-Indian country area.

Comments—EPA-administered certification plan in Indian country. One Tribal organization stated that they did not support a Federal certification plan that would cover applicators using RUPs in different, non-contiguous parts of Indian country. Instead, the commenter expressed support for the existing EPA plan for the certification of applicators of RUPs within Indian country which provides that ''[t]he certification on which the Federal certificate will be based must be from a State or Tribe with a contiguous boundary to the relevant areas of Indian country (Ref. 3).'' Additionally, the commenter stated that the existing EPA plan for certification in Indian country indicated that EPA Regional offices have little discretion in allowing Federal certification under the final EPA plan based on valid certifications from nearby States or Tribes not directly contiguous to the Indian country area at issue.

One Federal agency stated that EPA should consider certification under the corresponding State plan to be sufficient in place of the EPA national plan. The commenter believed that this would reduce the burden for applicators, particularly for APHIS Wildlife Services commercial applicators, whose assistance has been requested by the Tribe and who are already certified in that State.

Additionally, two applicators stated that the rules and certification within Indian country should be the same as the rules and regulations governed by the State in which the Indian country exists.

Response—EPA-administered certification plan in Indian country. It is EPA's position that certification plans in Indian country should serve the needs of the relevant Tribe and Indian country community. Tribes are not required to develop their own plans. Where EPA

has not approved a certification plan for an area of Indian country, the Agency is authorized to implement an EPA-administered plan for the Federal certification of applicators of RUPs pursuant to FIFRA sections 11 and 23. 7 U.S.C. 136i, 136u. In any area of Indian country where EPA has not approved a Tribal certification plan and no other EPA-approved or administered plan applies, EPA will implement the 2013 ''EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country'' (Ref.3).

The comments regarding an EPA-administered certification plan for Indian country appear to reflect a misunderstanding of what was meant in the proposal. EPA wishes to clarify that the EPA-administered plan would cover applicators in different, non-contiguous parts of Indian country in the sense that it is intended to serve all areas of Indian country throughout the United States where no other certification mechanism exists (*i.e.,* Indian country of those Tribes that do not implement their own certification plan or base their certification on those of another certifying authority, or where no other approved plan is in place). Such a plan is already in place and the options for certification methods established in the 2013 ''EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides within Indian Country'' are unaffected by these rule changes (Ref. 3). EPA anticipates that in most cases it will issue certifications to individuals with documentation of certification to apply federally designated RUPs through a Federal plan or through an EPA-approved State or Tribal plan with a contiguous boundary to the relevant area of Indian country. Additionally, an EPA-issued certification will only be valid in those areas of Indian country specified by that certification and will not necessarily be applicable to different, non-contiguous areas of Indian country.

Most areas of Indian country are not covered by an EPA-approved plan, so the EPA-administered plan for the federal certification of applicators of RUPs within Indian country already applies to most of Indian country. Since private and commercial applicators certified by a State have no authority to apply RUPs in Indian country except pursuant to a Tribal plan or the Federal plan, EPA believes any provisions that facilitate these plans will be a benefit to State-certified applicators, rather than a burden. EPA does not believe that the requirements for the EPA-administered plan in the final rule will negatively impact or cause undue burden on private or commercial applicators because applicators with an approved certification from a certifying authority with a contiguous boundary to the relevant area of Indian country will likely be able to obtain certification under the EPA-administered plan. The changes in the final rule are primarily a clarification of existing requirements and policy, and not the imposition of substantial new requirements or obligations with respect to the EPA-administered plan. As such, applicators seeking certification in areas of Indian country under the EPA-administered plan are already familiar with this process.

B. EPA's Consultation Process With Tribal Governments

Comments. One Tribal organization provided comments on EPA's consultation process during the proposed rulemaking, expressing the view that the Tribal consultation regarding the proposed rule fell short for at least three reasons. First, the commenter stated that EPA failed to indicate to whom the letters of invitation for consultation were sent, such as Tribal leaders, administrators and/or environmental department directors. The commenter stated that this is important information to know in order to determine whether EPA provided Indian Tribes with proper notice about consultation regarding the proposed rule. Second, the commenter stated that EPA failed to provide proof that the Tribal representatives who participated on the Tribal consultation calls were designated by their respective Tribes to consult with EPA. Absent such a designation, the commenter suggested that these representatives were likely participating for informational purposes only. Third, the commenter indicated that the Tribal consultation took place several years ago, long before EPA knew what portions of the Certification of Pesticide Applicators rule it was considering revising, and suggested that EPA should have invited Tribes to participate in additional government-to-government consultation at a time closer to the proposal being issued. The commenter stated that EPA must engage in meaningful government-to-government consultation now to allow for each individual Tribe to consider the proposal in its own way.

Response. As stated in the proposed rule, EPA consulted with Tribal officials during the development of this action via a series of scheduled conference calls with Tribal representatives to inform them about potential regulatory changes, especially areas that could affect Tribes, and to inform EPA's development of the proposed rule. EPA also informed the commenter about the potential changes to the rule. A summary of EPA's Tribal consultation is provided in the docket for this action (Ref. 30).

During the consultation process, the Agency prepared a letter of invitation (Ref. 47) and a fact sheet (Ref. 48) on the Certification of Pesticide Applicators rule for mailing to federally-recognized Tribal leaders, environmental directors, and pesticide program directors. Approximately one thousand letters and fact sheets were mailed to Tribal leaders in early April 2010, prior to the scheduled consultation calls. An initial call was held with the commenter on April 7, 2010, to inform them of the consultation and provide an overview of the regulatory revisions. The consultation calls were held on April 27 and 29, 2010. Twenty-five Tribal representatives attended one or both calls. Among the nearly 20 different Tribes represented during the calls, EPA was able to document participation from the following Tribes:

- Sac & Fox Tribe of the Mississippi in Iowa (Meskwaki Nation)
- Salt River Pima-Maricopa Indian Community
- Yakama Nation
- Flandreau Santee Sioux Tribe
- Jicarilla Apache Nation
- Gila River Indian Community
- Southern Ute
- Confederated Salish and Kootenai Tribes
- Winnebago Tribe of Nebraska
- Oglala Sioux Tribe

EPA began the consultation process noting that the regulatory process was continuing to move forward and this was the time for Tribes to offer their comments and suggestions prior to proposal, and that there would be further opportunities to comment after the proposed rule was published. The background of the rule was presented, and discussions were held among the participants.

As indicated by the commenter and docketed material, EPA sent the Tribes the letter inviting Tribal leaders to participate in consultations on April 1, 2010, and the consultation meetings occurred April 27 and 29, 2010. EPA acknowledges that this was a short timeframe between receiving the notification and holding the consultation meeting, and that the Agency should continue to strive to improve our consultation protocols to ensure that sufficient time is available for Tribes to participate in consultations. EPA notes that this consultation occurred prior to the

Agency issuing its Tribal consultation policy in May 2011, titled ''EPA Policy on Consultation and Coordination with Indian Tribes,'' (Ref. 49) and that the Agency's consultation procedures have continued to improve following finalization of that Policy. In conducting consultation on this regulatory revision, EPA followed the procedures that were in effect at that time. Additionally, EPA believes that the consultation efforts in 2010, which covered both the Worker Protection Standard rulemaking and Certification of Pesticide Applicators rule (Ref. 30), provided adequate materials (*e.g.,* presentation (Ref. 50), fact sheet (Ref. 48), follow-up report (Ref. 30)) for Tribal leaders and representatives to review. The information provided in those materials and the consultation meetings represented proposals that were not substantially different from what EPA eventually published in the proposed rule, which include efforts to revise the rule to streamline opportunities for Tribes to participate in the certification and training program. Given that EPA believes it provided adequate information and materials to the Tribes on the proposed changes, that the rule closely corresponds to the proposals in regard to certification in Indian country, and that EPA did not receive any comments on the proposals from individual Tribes, EPA does not believe that further consultation is needed prior to finalizing the rule.

EPA plans to provide at least two informational sessions for Tribes on the final rule to assist Tribes in understanding the changes to the rule and the resource needs for both implementation and enforcement. One of these informational sessions will be provided to the Tribal organization that provided the comment, while the other session will be an open session for all 567 federally recognized Tribes. These informational sessions will be in addition to the general outreach and implementation and compliance assistance that EPA plans to offer to all stakeholders over the next year.

XVIII. Revise Provisions for EPA-Administered Plans

A. Existing Rule and Proposal

The existing rule establishes requirements for EPA-administered certification of applicators of RUPs in States or areas of Indian country without EPA-approved certification plans in place, including specific standards for certification and recertification of pesticide applicators.

EPA proposed to revise the existing rule to incorporate the proposed changes to State certification plans related to applicator certification, recertification, and noncertified applicator qualifications, as well as reporting and maintenance requirements. EPA intended the proposed revisions to parallel the proposed revisions to requirements proposed for States, Tribes, and other Federal agencies.

B. Final Rule

EPA is finalizing the requirements for EPA-administered certification plans to parallel State certification plan requirements. The final requirements are substantially similar to the proposal, except where the proposed requirements for State certification plans have changed in the final rule, corresponding changes have been adopted in the EPA-administered plan section. The final regulatory requirements for EPA-administered plans are available at 40 CFR 171.311.

C. Comments and Responses

Comments. One commenter expressed general support for the proposed revisions to this section. Two commenters suggested that EPA-administered plans should fall within the same standards as the State within which the plan is being administered.

Response. EPA notes that by definition, an EPA-administered plan cannot fall within the same standards as the State within which the plan is being administered, because EPA only administers certifications if there is no certification plan in place for the jurisdiction. However, any EPA-administered plan will meet or exceed the standards for State plans in § 171.303 of the final rule.

XIX. Revise Definitions and Restructure 40 CFR Part 171

A. Definitions

1. Existing rule and proposal. The existing rule includes definitions for terms related to the rule, as well as terms defined in FIFRA.

EPA proposed to delete, amend, and add definitions to the rule. EPA proposed to delete terms defined in FIFRA, as well as terms not relevant to the proposed rule. EPA proposed to redefine ''agricultural commodity'', ''certification'', ''compatibility'', ''competent'', ''dealership'', ''non-target organism'', ''ornamental'', ''practical knowledge'', ''principal place of business'', and ''toxicity.'' EPA proposed to replace five existing terms with new terms: Replace ''accident'' with ''mishap,'' replace ''calibration of equipment'' with ''calibration,'' replace ''protective equipment'' with ''personal protective equipment,'' replace ''uncertified persons'' with ''noncertified applicator,'' and replace ''restricted use pesticide dealer'' with ''restricted use pesticide retail dealer.'' EPA proposed to add new terms and definitions: ''Application,'' ''application method,'' ''application-method specific certification category,'' ''applicator,'' ''fumigant'' and ''fumigation,'' ''Indian country'' and ''Indian Tribe,'' ''use'' and ''use-specific instructions.''

2. Final rule. The final rule deletes all terms as proposed, except for ''Agency'' (retained existing definition with minor changes). The final rule adds two terms and definitions: ''Applying'' and ''immediate family.'' EPA is not finalizing two proposed terms and definitions: ''Application method,'' and ''application-method specific category.'' About half of the proposed definitions are being finalized as proposed while the other half have been revised, as described below. Commenters requested that EPA add the following definitions, but they are not included in the final rule: ''Active training time,'' ''drones,'' ''immediate,'' and ''immediately.'' Relevant definitions and terms are discussed below in alphabetical order.

The final regulatory text for these definitions is available at 40 CFR 171.3.

3. Active training time. i. Existing rule and proposal. ''Active training time'' is not defined in the current or proposed rules.

ii. Final rule. The final rule does not include a definition for ''active training time.''

iii. Comments and responses.

Comments. One certifying authority requested a definition for the term ''active training time,'' noting that EPA used the term in discussions of the length of time that constitutes a CEU.

Response. The final rule does not define CEUs or the number of CEUs that an applicator must earn to maintain certification. Therefore, EPA has not included this term in the final rule.

4. Agricultural commodity. i. Existing rule and proposal. EPA proposed to modify the definition of ''agricultural commodity'' in the existing rule by inserting the phrase ''but not limited to,'' as follows (emphasis added): ''agricultural commodity means any plant, or part thereof, or animal, or animal product, produced by a person (including, *but not limited to,* a farmer, rancher, vineyardist, plant propagator, Christmas tree grower, aquaculturist, floriculturist, orchardists forester, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.''

ii. Final rule. The final rule revises the proposed definition to include fungus and algae. Agricultural commodity means any plant, fungus, or algae, or part thereof, or any animal or animal product, produced by a person (including, but not limited to, farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or use by man or animals.

iii. Comments and responses.

Comment. One commenter suggested the EPA consider expanding the definition of agricultural commodity to include fungi (*e.g.,* mushrooms) and algae.

Response. In the final rule, EPA is revising the definition of ''agricultural commodity'' as suggested by the commenter to ensure that mushrooms and algae are included in the scope of the definition.

5. Agency. i. Existing rule and proposal. ''Agency'' is defined in the existing rule to mean the United States Environmental Protection Agency unless otherwise specified. EPA unintentionally omitted this definition from the proposal.

ii. Final rule. The final rule retains ''Agency'' and the existing definition of Agency, with some changes to the order of the words.

6. Application and applying. i. Existing rule and proposal. ''Application'' is not defined in the existing rule. EPA proposed to define ''application'' to mean ''the dispersal of a pesticide on, in, at, or around a target site.''

ii. Final rule. EPA has revised the proposed definition in the final rule to replace ''around'' with ''directed toward.'' EPA has also revised the term defined to include both ''application'' and ''applying.'' The final definition is ''Application and applying mean the dispersal of a pesticide on, in, at, or *directed toward* a target site.''

iii. Comments and responses.

Comments. Commenters expressed a belief that the inclusion of the word ''around'' in the definition could be interpreted as allowing pesticide overspray or drift. They explained that a target site is a specific defined area where a pesticide is applied, and that using the word ''around'' could lead someone to think that it is acceptable if a treatment is ''in the ballpark.'' Commenters urged EPA to eliminate the word ''around'' from this definition. One commenter recommended EPA replace the term ''around'' with ''perimeter.''

Response. EPA agrees with commenters that the word ''around'' in this context could be misconstrued as permitting off-target application. In the final rule, EPA has replaced ''around'' with ''toward,'' to shift the focus to the user's intention to direct the application towards the target site. The revised definition appears sufficient for distinguishing between application and other pesticide-related activities (*e.g.,* mixing, disposal), and should not be interpreted as a statement regarding what applications are lawful. EPA notes that off-target application of an RUP is misuse and a violation of FIFRA.

7. Application method and application method-specific category. i. Existing rule and proposal. ''Application method'' and ''application method-specific category'' are not defined in the existing rule. EPA proposed to add these two terms to the rule.

ii. Final rule. EPA is not adding either of these terms to the final rule. EPA has chosen not to distinguish application method-specific categories from other use categories in the final rule, so adding these terms to the rule is not necessary.

8. Applicator and certification. i. Existing rule and proposal. ''Applicator'' is not defined in the existing rule. EPA proposed to define ''Applicator'' to mean ''any individual using a restricted use pesticide. An applicator may be certified as a commercial or private applicator as defined in FIFRA or may be a noncertified applicator as defined in this part.''

In the existing rule, ''certification'' means ''the recognition by a certifying agency that a person is competent and thus authorized to use or supervise the use of restricted use pesticides. EPA proposed to define ''certification'' to mean ''a certifying authority's issuance, pursuant to this part, of authorization to a person to use or supervise the use of restricted use pesticides.''

ii. Final rule. The final rule includes ''applicator'' and ''certification'' as proposed.

iii. Comments and responses.

Comments. One commenter argued that since almost every State also defines ''applicator'' and ''certification'' to include general use pesticides, both definitions in this rule should include non-RUPs. Another commenter supported the definitions as proposed.

Response. EPA acknowledges that many certifying authorities may define ''applicator'' and ''certification'' to include non-RUPs. However, FIFRA allows EPA to establish standards for certification only for users of RUPs, not all pesticides. Therefore, EPA has decided to finalize the definitions as proposed, including only RUPs, not all pesticides.

9. Calibration. i. Existing rule and proposal. In the existing rule, EPA defines ''calibration of equipment.'' EPA proposed minor changes to the definition, removing the phrase ''of equipment'' and adding the phrase ''if applicable,'' to read: ''Calibration means measurement of dispersal or output of application equipment and adjustment of such equipment to establish a specific rate of dispersal and, *if applicable,* droplet or particle size of a pesticide dispersed by the equipment.''

ii. Final rule. The final rule revises the definition of calibration to mean ''measurement of dispersal or output of application equipment and adjustment of such equipment to establish a specific rate of dispersal, and, if applicable, droplet or particle size of a pesticide, and/or equalized dispersal pattern.''

iii. Comments and Responses

Comment. One commenter noted that the existing and proposed definitions of calibration do not contain a reference to equalized pattern or product dispersion. The commenter contended that these elements are critical to proper use.

Response. EPA agrees with the commenter and as a result has amended the definition to include ''equalized dispersal pattern.''

10. Certified applicator. i. Existing rule and proposal. In the existing rule, ''certified applicator'' means any individual who is certified to use or supervise the use of any restricted use pesticides covered by his certification. EPA proposed to remove the definition from the rule.

ii. Final rule. The final rule does not include a definition of certified applicator.

11. Certifying authority. i. Existing rule and proposal. ''Certifying authority'' is not defined in the existing rule. EPA proposed to define ''certifying authority'' as ''the Agency, or a State, Tribal, or Federal agency that issues restricted use pesticide applicator certifications pursuant to a certification plan approved by the Agency under this part.''

ii. Final rule. EPA is finalizing the definition as proposed.

12. Compatibility. i. Existing rule and proposal. The existing rule includes a definition of ''compatibility.'' EPA proposed to redefine ''compatibility'' to mean ''the extent to which a pesticide can be combined with other chemicals without causing undesirable results.''

ii. Final rule. EPA is finalizing the definition as proposed.

13. Competent (competency) and practical knowledge. i. Existing rule and proposal. The existing rule defines ''competent'' and ''practical knowledge.'' EPA proposed to redefine ''competent'' to mean ''having the practical knowledge, skills, experience, and judgement necessary to perform functions associated with restricted use pesticide application without causing unreasonable adverse effects, where the nature and degree of competency required relate directly to the nature of the activity and the degree of independent responsibility'', and ''practical knowledge'' to mean ''the possession of pertinent facts and comprehension sufficient to properly perform functions associated with the application of restricted use pesticides, including properly responding to reasonable foreseeable problems and situations.''

ii. Final rule. EPA is changing the term from ''competent'' to ''competency'' and finalizing the definition as proposed for the term ''competent.'' In the final rule, EPA is revising the definition of ''practical knowledge'' by replacing the phrase ''application of restricted use pesticides'' with ''use of restricted use pesticides'' to clearly include all of the activities included in the definition of use. In the final rule, ''practical knowledge'' means ''the possession of pertinent facts and comprehension sufficient to properly perform functions associated with the use of restricted use pesticides, including properly responding to reasonable foreseeable problems and situations.''

iii. Comments and Responses

Comments. One commenter supported the proposed definition for ''competent.'' Another commenter argued that the definitions of ''competent'' and ''practical knowledge'' are unsatisfactory because they raise the question of who determines what counts as practical. The commenter suggested that these definitions require clarity and ought to be grounded in the basic tenets of credentialing practice. The commenter recommended replacing the term ''competent'' with ''competencies'' defined as ''the collective knowledge, skills, and abilities necessary to perform a job.'' The commenter recommended replacing ''practical knowledge'' with ''job knowledge,'' defined as ''an article of information job holders need to know in order to perform the job.'' The commenter recommended adding ''job skill'' defined as ''an acquired proficiency needed to perform a job activity;'' ''job analysis'' defined as ''the collection and organization of information about a job in terms of what jobholders do and the qualities they need to possess in order to perform the job-derived from actual jobholders or persons who immediately supervise the work;'' and ''standard'' defined as ''a recognized degree of proficiency, as determined by a passing score on a job-related examination.''

Response. EPA appreciates the commenter's suggestions to align the definitions with basic credentialing tenets, but does not agree with changing the definitions or adding the terms proposed by the commenter. EPA believes the proposed definitions appropriately contextualize basic credentialing tenets within the framework of FIFRA and the certification of RUP applicators. EPA recognizes that there is an element of subjectivity to these definitions, and expects each certifying authority to exercise its sound judgment in determining—within the parameters set by these definitions and subject to EPA's approval of the certifying authority's certification plan—what is practical and who is competent to apply RUPs.

14. Dealership. i. Existing rule and proposal. The current rule defines dealership, and the definition applies only to dealerships in States or in Indian country where EPA administers the certification plan. EPA proposed to redefine ''dealership'' to mean ''any establishment owned or operated by a restricted use pesticide retail dealer where restricted use pesticides are distributed or sold,'' and to apply the definition to all situations.

ii. Final rule. EPA is finalizing the definition as proposed.

15. Drone. i. Existing rule and proposal. The term ''drone'' is not included or defined in the existing or proposed rules.

ii. Final rule. The final rule does not include or define ''drone.''

iii. Comments and Responses

Comment. One commenter argued that EPA should define the term ''drone'' because the commenter expects that the use of drones, also known as ''Unmanned Aerial Vehicles (UAVs)'' in agricultural practices, including for aerial application of pesticides, will increase.

Response. EPA is not defining ''drone'' in this rulemaking, but may consider it for future rulemaking.

16. Fumigant and Fumigation. i. Existing rule and proposal. The existing rule does not include or define ''fumigant'' or ''fumigation.''

EPA proposed to define ''fumigant'' to mean ''any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state'', and ''fumigation'' as ''the application of a fumigant''.

ii. Final rule. The final rule revises definition of ''fumigant,'' to mean ''a restricted use pesticide that bears labeling designating it as a fumigant.'' The final rule revises the definition of ''fumigation'' to mean ''the use of a fumigant.''

3. Comments and Responses

Comments. EPA received comments on these definitions from two certifying authorities, a pesticide manufacturer, an organization of pesticide manufacturers, a pesticide applicator organization, and a university extension program. One commenter supported the proposed definitions. Other commenters opposed the proposed definitions, and two commenters explained that there were programmatic consequences to the proposed definition. For example, some commenters contended that as written, the definitions of fumigation and fumigant would unnecessarily require applicator certification and excessive training and education for non-RUP, low-risk products and prohibit the use by applicators who are now qualified to use them.

Commenters explained that the proposed definition describes products that have fumigant activity (based on their ability to harm plants via vapor drift) but are not fumigants, such as foggers, pest strips, mothballs, and the herbicides 2,4–D and clomazone. One commenter noted that the vast majority of all pesticides form gasses to one degree or another. One commenter requested that the definition be specific to pesticides that are active gasses. Another commenter contended that the proposed definition does not consider materials like phosphides, which do not form a gas upon application but instead release gas as the product reacts with atmospheric moisture. Another commenter argued that vapor and gas are ill-defined terms that mean different things to different people, even among physical chemists. Furthermore, the commenter contends that a product's mode of action (*i.e.,* vapor or gas) is irrelevant. Instead, what is relevant is the risk profile of a pesticide classified as an RUP and a fumigant.

Several commenters offered alternative definitions. One commenter suggested changing the definition to ''fumigant means a restricted use pesticide in which the target mode of action is achieved by the product in a gaseous or vapor state or by a reaction to form a gas or vapor.'' Another

commenter suggested ''any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.'' One commenter explained the importance of including the phrase ''whose pesticidal action is through the gaseous state.'' This phrase excludes pesticides that vaporize and cause pesticidal action with limited weak movement that does not penetrate commodities or structures in the same way true fumigants do. One commenter argued that EPA could remove the ambiguity of the proposed definition by defining a fumigant as one that is labeled a fumigant. Another noted that because the proposed rule applies only to RUPs, the definition should be ''fumigant means a restricted use pesticide whose label classifies the product as a fumigant.''

Response. EPA acknowledges that the proposed definition could be interpreted to exceed the intended scope. In response to the comments, EPA defines fumigant for the purposes of this rule as an RUP whose labeling designates it as a fumigant.

17. Immediate and immediately. i. Existing rule and proposal. The terms are not defined in the existing or proposed rules.

ii. Final rule. The final rule does not define the terms ''immediate'' and ''immediately.''

iii. Comments and Responses

Comments. Some commenters urged EPA to add a definition for the terms ''immediate'' or ''immediately available'' as they apply to the availability of a supervisor of a noncertified applicator. One commenter argued that while in practice adequate supervision is going to vary considerably by site, situation, pesticide being used, geography, abilities of the supervisor, and other factors, the commenter expressed a belief that there is a need to not leave the terms completely open ended. Some commenters suggested defining these terms to allow for the supervisor to be able to arrive at the site of application within three hours of communication from the noncertified applicator, or to be physically present at the site of application. One commenter contended that immediate communication should mean that individuals can contact each other and communicate orally such as a two-way radio or cell phone, but should not include text messaging or voicemail.

Response. EPA has chosen not to define ''immediate communication'' in the final rule to allow it to be interpreted as needed according to the characteristics of the application and application site. Although some commenters requested a definition, they also explained that there are many variables involved that determine the type of communication, such as the type of application and product applied, geographic locations and distances in remote areas, and the availability of cell phone service. EPA recognizes that some certifying authorities have established definitions for ''immediate communication'' and expects that those certifying authorities will continue to use their existing definitions, which may include limits on time, distance, and method of communication.

18. Immediate family. i. Existing rule and proposal. The term ''immediate family'' is not defined in the existing or proposed rules.

ii. Final rule. EPA is adding a definition for ''immediate family'' to the final rule. This definition is relevant to the exception to the minimum age requirement for noncertified applicators under the direct supervision of private applicators. The final rule defines ''immediate family'' as it is defined in the revised WPS (40 CFR 170.305). Immediate means familial relationships limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. ''First cousin'' means the child of a parent's sibling, *i.e.,* the child of an aunt or uncle.

iii. Comments and Responses

Comments. Some commenters requested an exception or exemption to the proposed minimum age requirements for family farms. As part of the exception, some commenters recommended defining ''immediate family'' as defined in the Worker Protection Standard (WPS).

Response. EPA considered commenters' requests for an exemption or exception to the minimum age requirement and to use the same definition of ''immediate family'' as defined in the WPS. In the revised WPS, EPA expanded the definition to include grandparents, grandchildren, some in-laws, cousins, aunts, uncles, nieces and nephews to better reflect the actual patterns of family-based farm ownership in the United States (Ref 36, p. 67540). Because the two regulations cover persons using RUPs in agriculture, EPA agrees that the same definition of immediate family should be applied. In the Certification Rule, EPA has finalized the definition of ''immediate family'' as the same definition provided in the WPS. See Unit XIII. for a discussion of the exception from the minimum age requirement for a noncertified applicator applying RUPs under the direct supervision of a certified private applicator who is an immediate family member of the noncertified applicator.

19. Indian country. i. Existing rule and proposal. The term ''Indian country'' is not defined in the existing rule. EPA proposed to define ''Indian country'' to mean ''1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation. 2. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State. 3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

ii. Final rule. EPA is adding the term ''Indian country'' with the definition as proposed.

iii. Comments and responses. See Unit XVII. for a complete discussion of comments and EPA's consideration of the definition of ''Indian country'' in conjunction with the options for establishing a certification program in Indian country.

20. Indian Tribe or Tribe. i. Existing rule and proposal. The term ''Indian Tribe'' is not defined in the existing rule. EPA proposed to define ''Indian Tribe'' or ''Tribe'' to mean ''any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community included in the list of Tribes published by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act.''

ii. Final rule. EPA is finalizing the definition as proposed.

iii. Comments and Responses

Comment. One commenter requested that EPA omit the definition of Indian Tribe in the final rule.

Response. EPA disagrees with the commenter's request to omit the definition. The commenter did not propose a rationale for omitting the definition or alternatives.

21. Mishap. i. Existing rule and proposal. In the existing rule, the term mishap is not defined, but a similar term, ''accident,'' is defined to mean ''an unexpected, undesirable event, caused by the use or presence of a pesticide, that adversely affects man or the environment.'' EPA proposed to replace

the term ''accident'' with ''mishap,'' defined to mean ''an event that may adversely affect man or the environment and that is related to the use or presence of a pesticide, whether the event was unexpected or intentional.''

ii. Final rule. The final rule retains the term ''mishap,'' but omits ''may'' from ''may adversely affect.'' The final definition is ''an event that adversely affects man or the environment and that is related to the use or presence of a pesticide, whether the event was unexpected or intentional.''

iii. Comments and Responses

Comments. A number of certifying authorities noted that the definition of ''accident'' is when an adverse event *has* occurred, while the proposed definition of ''mishap'' would include an adverse event *may have* occurred. Instead of using and defining the term ''mishap,'' the commenters requested that EPA retain the term ''accident'' as currently defined in 40 CFR 171. Furthermore, one commenter stated that ''mishap'' appears to be unique to 40 CFR 171. Commenters argued that the new term is unnecessary, could be confused with similar terms already used (*e.g.,* ''incident'') and is inconsistent with terminology used for pesticide incidents or events. The commenter urged EPA to remove this term, or to revise it to be consistent with existing definitions in the majority of certifying authorities' statutes and regulations.

Response. EPA agrees with commenters that the word ''may'' does not belong in the definition, as the term mishap is intended to encompass events that *do* adversely affect man or the environment, not events that *may* adversely affect them. The term ''accident'' usually connotes an unintentional event, but ''mishap'' encompasses both intentional and unintentional events. EPA believes the broader term is appropriate as used in this rule.

22. Non-target organism. i. Existing rule and proposal. In the existing rule, ''non-target organism'' means ''a plant or animal other than the one against which the pesticide is applied.'' EPA proposed to redefine ''non-target organism'' to mean ''any plant, animal or other organism other than the target pests that a pesticide is intended to affect.''

ii. Final rule. EPA is finalizing the definition as proposed.

23. Noncertified applicator. i. Existing rule and proposal. In the existing rule, ''uncertified applicator'' means ''any person who is not holding a currently valid certification document indicating that he is certified under section 11 of FIFRA in the category of the restricted use pesticide made available for use.'' EPA proposed to replace uncertified applicator with noncertified applicator, defined as ''any person who is not certified in accordance with this part to use or supervise the use of restricted use pesticides in the pertinent jurisdiction, but who is using restricted use pesticides under the direct supervision of a person certified as a commercial or private applicator in accordance with this part.''

ii. Final rule. In the final rule, EPA is deleting ''uncertified applicator'' and revising the proposed definition of ''noncertified applicator'' to add the phrase ''in the category appropriate to the type of application being conducted.'' In the final rule, ''noncertified applicator'' means ''any person who is not certified in accordance with this part to use or supervise the use of restricted use pesticides in the category appropriate to the type of application being conducted in the pertinent jurisdiction, but who is using restricted use pesticides under the direct supervision of a person certified as a commercial or private applicator in accordance with this part.'' The change in the definition from the proposal to the final rule was made because a person who is a certified applicator in one category, such as turf and ornamental, would be a noncertified applicator if involved in the application of an RUP in a different category, such as industrial, institutional and structural pesticide control, and therefore would have to work under the supervision of a certified applicator.

24. Ornamental. i. Existing rule and proposal. In the existing rule, ''ornamental'' means ''trees, shrubs, and other plantings in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial and institutional buildings.'' EPA proposed to redefine the term ''ornamental'' to mean ''trees, shrubs, flowers, and other plantings intended primarily for aesthetic purposes in and around habitations, buildings, and surrounding grounds, including residences, parks, streets, and commercial, industrial, and institutional buildings.''

ii. Final rule. EPA is finalizing the definition as proposed.

25. Personal protective equipment. i. Existing rule and proposal. In the existing rule, ''protective equipment'' means ''clothing or any other materials or devices that shield against unintended exposure to pesticides.'' EPA proposed to replace ''protective equipment'' with ''personal protective equipment'' and define it to mean ''devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.''

ii. Final rule. EPA is finalizing the definition of ''personal protective equipment'' as proposed.

26. Principal place of business. i. Existing rule and proposal. In the existing rule, ''principal place of business'' means ''the principal location, either residence or office, in the State in which an individual, partnership, or corporation applies pesticides.'' This definition only applies to dealers, dealerships and transactions in States or on Indian Reservations where EPA directly administers a pesticide applicator certification program. EPA proposed to redefine ''principal place of business'' to mean ''the principal location, either residence or office, where a person conducts a business of applying restricted use pesticides. A person who applies restricted use pesticides in more than one State or area of Indian country may designate a location within a State or area of Indian country as its principal place of business for that State or area of Indian country.''

ii. Final rule. EPA is finalizing the proposed definition with one revision to replace ''business of applying RUPs'' with ''business that involves the use of RUPs.'' The final definition is ''*Principal place of business* means the principal location, either residence or office, where a person conducts a business that involves the use of restricted use pesticides. A person who applies restricted use pesticides in more than one State or area of Indian country may designate a location within a State or area of Indian country as its principal place of business for that State or area of Indian country.''

27. Regulated pest. i. Existing rule and proposal. In the existing rule, ''regulated pest'' means ''a specific organism considered by a State or Federal agency to be a pest requiring regulatory restrictions, regulations, or control procedures in order to protect the host, man and/or his environment.'' EPA proposed to revise the definition of ''regulated pest'' to ''a particular species of pest specifically subject to Tribal, State or Federal regulatory restrictions, regulations, or control procedures

intended to protect the hosts, man and/or the environment.''

ii. Final rule. EPA is finalizing the definition as proposed.

28. Restricted use pesticide. i. Existing rule and proposal. In the existing rule, ''restricted use pesticide'' is defined as ''a pesticide that is classified for restricted use under the provisions of section 3(d)(1)(C) of the Act.'' EPA proposed to revise the definition of ''restricted use pesticide'' to be ''a pesticide that is classified for restricted use under the provisions of FIFRA section 3(d).''

ii. Final rule. In the final rule, EPA is revising the definition of ''restricted use pesticide'' to be more complete. The definition in the final rule is ''restricted use pesticide'' means ''a pesticide that is classified for restricted use under the provisions of section 3(d) of FIFRA and 40 CFR part 152, subpart I.''

29. Restricted use pesticide retail dealer. i. Existing rule and proposal. In the existing rule ''restricted use pesticide dealer'' means ''any person who makes available for use any restricted use pesticide, or who offers to make available for use any such pesticide.'' EPA proposed to replace ''restricted use pesticide dealer'' with ''restricted use pesticide retail dealer'' and to define it to mean ''any person who distributes or sells restricted use pesticides to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities.''

ii. Final rule. EPA is finalizing the definition as proposed.

iii. Comments and Responses

Comments. A few certifying authorities supported the inclusion of a restricted use pesticide retail dealer definition, and recommended clearer wording, such as ''means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted use pesticides for distribution directly to users.'' One certifying authority offered as an alternative definition, ''any person who is engaged in the wholesale or retail sale of restricted use pesticides.''

Response. EPA is finalizing the proposed definition. The phrase ''distribute or sell'' is defined in FIFRA, 7 U.S.C. 136(gg), and includes all of the activities in the first suggested definition as well as others, so it is more clear for the definition to use the language from FIFRA. The final definition correctly excludes certain transactions, which could be included in ''wholesale or retail sale'' of RUPs.

30. Toxicity. i. Existing rule and proposal. In the existing rule, the term ''toxicity'' means ''the property of a pesticide to cause any adverse physiological effects.'' EPA proposed to redefine ''toxicity'' to mean ''the property of a pesticide that refers to the degree to which the pesticide and its related derivative compounds are able to cause an adverse physiological effect on an organism as a result of exposure.''

ii. Final rule. EPA is revising this definition to be ''toxicity'' means ''the property of a pesticide that refers to the degree to which the pesticide, and its degradates and metabolites, are able to cause an adverse physiological effect on an organism.''

31. Under the direct supervision of. i. Existing rule and proposal. In the existing rule at § 171.2(a)(28) EPA defines the term ''under the direct supervision of'' to mean the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. ''Direct supervision'' is not defined in the existing or proposed rules.

ii. Final rule. EPA is deleting ''under the direct supervision of'' and is not codifying a definition of the term ''direct supervision'' in the final rule.

iii. Comments and Responses

Comments. EPA received comments from two certifying authorities. One commenter requested a definition for ''direct supervision'' and suggested that the term ''under the direct supervision of'' be defined to mean ''the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.'' Another commenter noted that their State definition of direct supervision differs from the federal in that the State requires the physical presence of a certified applicator within line of sight or hearing distance of a non-certified applicator using RUPs in a private application setting or any category pesticide in a commercial application setting.

Response. EPA appreciates the interest from commenters, but EPA's discretion to interpret ''under the direct supervision of a certified pesticide applicator'' is constrained by FIFRA section 2(e)(4), which provides that ''unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.'' Because of this statutory definition, it is not necessary to define either term in the final rule.

32. Use. i. Existing rule and proposal. The existing rule does not define ''use''. EPA proposed to define ''use'' as in ''to use a pesticide'' means any of the following:

(a) Pre-application activities involving mixing and loading the pesticide.

(b) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a noncertified applicator.

(c) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

ii. Final rule. The final rule differs from the proposed definition in that it omits the proposed pre-application activities except for mixing and loading and adjusts the wording of paragraph (c) to be consistent with the description of ''other pesticide-related activities'' in the WPS definition of use in 40 CFR 170.305. The final definition is: *Use, as in ''to use a pesticide''* means ''any of the following:

(a) Pre-application activities involving mixing and loading the pesticide.

(b) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a noncertified applicator.

(c) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.''

iii. Comments and Responses

Comments. Many certifying authorities, organizations of certifying authorities, some applicator organizations, farm bureaus, and university extension programs commented on the definition of ''use''. All commenters were opposed to the

proposed definition. Many commenters addressed consequences of the change, while others offered suggestions to change the definition.

Many commenters argued the definition of ''use'' was too broad and expansive. A few commenters expressed concern that certifying authorities would have to change their definition of ''use'' in their law, or it could be outside of the scope of their charter. There was some concern on the part of one commenter about the impacts to certifying authorities' staff time and resources to make such changes since the definition change has far reaching implications involving other elements of a regulatory program. Another commenter asked whether EPA would expand the label instructing ''users'' on how to perform the listed pre- and post-application activities like arranging for the application and cleaning equipment and whether the definition of ''misuse'' would be redefined to correspond with the new definition of ''use''. Another commenter contended that in some States the definition would apply equally to users of restricted and non-RUPs. As a result, it would be unmanageable to enforce pre- or post-use requirements of non-restricted pesticide use, on individuals who are not required by certifying agencies to be licensed or to maintain records.

A number of commenters argued that the proposed definition of 'use' should be limited to activities where an individual has the potential for exposure to pesticides, specifically the actions involved in the application or direct handling (*i.e.,* mixing, loading, dispersing and disposing) of pesticides. One commenter asked that the definition include only individuals involved in the actual application. Some commenters contend that the written definition should specifically exclude all activities that cannot or do not lead to direct exposure to the pesticide product itself, pesticide containers, or pesticide residues.

Many commenters took issue with the inclusion of most pre-application activities in the proposed definition. One commenter contended that including pre-application decisions or activities in the term ''use'' is not consistent with how this term is used in other parts of FIFRA, especially where ''use inconsistent with the label'' is perhaps the most frequently-used violation used for enforcement purposes. 7 U.S.C. 136j. Many pesticide applicator organizations, some certifying authorities, university extension programs and farm bureaus, and a couple of certifying authority organizations were strongly opposed to including ''arranging for the application of a pesticide'' in the definition. One commenter believes that in States where the ''end user'' is responsible for the proper use of the pesticide, some of the activities in the proposed definition (*i.e.,* arranging for the application of the pesticide) may not be conducted by the end user and may therefore be unenforceable by the State. Commenters argued that arranging for the application involves individuals who may never come into contact with an RUP, such as truckers, staff at a pest control firm, consultants, sales staff, veterinarian clinical staff, entomologists, arborists, farmers who hire pesticide applicators and homeowners. Generally, such pre-application activities are not referenced on the pesticide product label. Instead, commenters stated that ''use'' should only refer to activities listed in existing label language under directions for use. Also, it would be difficult to enforce and costly to investigate violations for each instance of a pesticide application.

Some commenters thought post-application activities would also be difficult to comply with and enforce, such as transporting open containers. It is unclear what part of ''transportation'' is being addressed and the use violation EPA is trying to prevent. As is, the scope of the definition would include anyone who is cleaning equipment, simply storing pesticide containers that have been opened or even washing shovels used in spill cleanup. One commenter opposed the inclusion of post-application activities of transporting opened containers, and disposing of equipment wash water and other materials contaminated with pesticides.

Commenters disliked other parts of the definition of ''use.'' Specifically, some were against including responsibilities related to providing training, a copy of a label and use-specific instructions to noncertified applicators. They explained that trainers, industry experts, and corporate partners would have to become certified applicators of RUPs. One commenter asserted that only certified applicators could train noncertified applicators if training was part of ''use.'' One commenter opposed a reference to the WPS in the definition. Another commenter argued that including ''disposal of waste water'' in the definition of use would require facilities to make modifications and that this requirement was not considered in the EPA's assessment of financial impact. In addition, one applicator association argued that properly rinsed containers and properly cleaned equipment should not be included within the term ''use'' because the contaminants have been removed. One commenter opposed use of the phrase ''including, but not limited to'' in the proposed definition of ''use'' because it is open to interpretation by a regulator, trainer and applicator and makes it difficult to comply with and enforce.

Suggestions to change the definition were offered by some certifying authorities and their organization, some university extension programs, and a few worker/handler advocacy organizations. These commenters mostly favored including broad activities directly related to the application or handling of pesticides. Similarly, some commenters argued that the definition of ''use'' should include activities related to handling open or empty containers, following label directions, disposing of rinsate or leftover pesticides and similar activities, and the direct application of pesticides, and should not include any other handling procedures related to the pesticide. One State suggested their definition of ''use'' which includes the ''loading, transport, storage or handling after manufacturer's seal is broken . . .'' One commenter suggested broadly defining ''use'' such as ''. . . the application of a pesticide in the production of agricultural crops or other purposes by a pesticide applicator.''

Response. In response to commenters' concerns, EPA revised the final definition of ''use'' so it is not as broad or far reaching as the proposed definition. The final definition limits the pre-application activities to mixing and loading the pesticide rather than the longer list of activities included in the proposed definition and in the WPS definition. EPA generally agrees with commenters that activities such as arranging for the pesticide application do not have to be done by a certified applicator or a noncertified applicator working under their supervision.

The final definition retains the proposed activities regarding opened containers, cleaning equipment and disposal but changes the heading to ''Other pesticide-related activities'' and revising the wording to be consistent with the WPS definition. Transporting and storing opened containers, and disposal of pesticides and pesticide containers are all part of the core standards of competency for private, commercial and noncertified applicators as safety measures to avoid or minimize adverse health effects. While not in the competency standards, the activities of cleaning equipment and disposing of equipment wash waters may expose the persons engaging in those activities to pesticides and their residues.

Commenters who are concerned about any possible inconsistencies between the federal and certifying authorities' definition of ''use'' are reminded that in the context of this rule, ''use'' is associated with RUPs only. Certifying authorities that currently do not distinguish between RUP and non-RUP applicators may reconsider whether such a distinction is more appropriate in the context of this final rule.

EPA appreciates the suggested changes to phrases used in the proposed definition. However, EPA does not agree that the suggested phrase ''after the manufacturer's seal is broken'' is substantially different from the phrase in the definition ''containers that have been opened''. Both can refer to either containers that are open or containers that have been opened and closed by the user, but are no longer in the same condition as at the time of purchase. EPA has chosen to retain the language ''containers that have been opened''. The definition suggested by another commenter, ''the application of a pesticide in the production of agricultural crops or other purposes by a pesticide applicator'' is too general and does not encompass mixing, loading or the other-pesticide related activities that present exposure concerns. EPA maintains that the final definition sufficiently and adequately includes the main activities of applicators in the application and handling of pesticides, and their residues and containers that present significant concerns for exposure and risk to users, the public, and the environment.

The final definition of ''use'' retains the phrase ''including but not limited to'', because it is neither necessary nor practical to specify every aspect of pesticide use that is addressed—or could in the future be addressed—on pesticide labeling.

33. Use-specific instructions. i. Existing rule and proposal. The existing rule does not define the term ''use-specific instructions''. EPA proposed to define ''use-specific instructions'' to mean ''the information and requirements specific to a particular pesticide product or work site that are necessary in order for an applicator to use the pesticide in accordance with applicable requirements and without causing unreasonable adverse effects.''

ii. Final rule. In the final rule, EPA is revising the definition by replacing ''that are necessary in order for an applicator to'' with ''that a user needs in order to.'' The definition of ''use-specific instructions'' is ''the information and requirements specific to a particular pesticide product or work site that a user needs in order to use the pesticide in accordance with applicable requirements and without causing unreasonable adverse effects.''

B. Restructuring of 40 CFR Part 171

1. Existing rule and proposal. The existing rule is a single part with no subparts. The first sections (40 CFR 171.1 through 171.6) describe the standards for commercial and private applicators, and the requirements for persons working under the direct supervision of a certified applicator; they also include definitions and a statement of purpose. The second half of the existing rule (40 CFR 171.7 through 171.11) describes the procedures for States, Tribes, Federal agencies, and EPA to administer certification programs. The existing rule has a section titled ''Government Agency Plan'' describing a certification plan covering the entire Federal government that has not been developed or implemented.

EPA proposed to reorganize the rule into four subparts: ''General Provisions''—scope, definitions and effective date, ''Certification Requirements for Applicators of Restricted Use Pesticides''—all standards for the certification and recertification of commercial and private applicators, ''Supervision of Noncertified Applicators''—all relevant standards for the certified applicator and the noncertified applicator using RUPs under his or her direct supervision, and ''Certification Plans''—requirements for States, Tribes and Federal agencies to submit and modify their certification plans, as well as a description of an EPA-administered applicator certification plan.

2. Final rule. EPA is adopting the new structure as proposed.

3. Comment and response. EPA received one comment expressing general support for proposal to restructure the rule. EPA is codifying the proposed restructuring scheme.

XX. Implementation

A. Proposal

EPA proposed to make the final rule effective 60 days after the final rule is published in the **Federal Register**. EPA proposed to require States, Tribes, and Federal agencies administering EPA-approved certification plans to submit amended certification plans to EPA for approval within two years of the effective date of the final rule. EPA proposed to review and respond to all certification plans submitted within 2 years. Therefore, EPA proposed to allow existing certification plans to remain in effect for up to four years from the effective date of the final rule. After four years, a State, Tribe, Federal agency, and EPA would be permitted to certify applicators of RUPs only if they have an EPA-approved certification plan that meets or exceeds all of the applicable requirements of the final rule. The proposal included a provision allowing existing certification plans to remain in effect until EPA approved the revised certification plan if the certifying authority had submitted the plan to EPA but EPA had not completed its review of the plan within the proposed timeframe.

B. Final Rule

The final rule is effective 60 days after the date the rule is published in the **Federal Register**, March 6, 2017, as proposed. The final rule adjusts the proposed implementation timeframe to provide certifying authorities additional flexibility. Existing certification plans approved by EPA before the effective date of the rule will remain in effect until three years after the effective date of the final rule; if a certifying authority submits an amended certification plan to EPA for approval within three years of the effective date of the final rule, its existing certification plan will remain in effect until EPA has reviewed and responded to the amended certification plan, but no longer than two more years, unless EPA authorizes further extension in its approval of an amended certification plan. In its approval of an amended certification plan, EPA will specify how much longer the existing plan may remain in effect while the certifying authority prepares to implement its amended certification plan. EPA will base each certifying authority's implementation period on the particular circumstances of that jurisdiction, but anticipates that most certifying authorities will be allowed two years from the date of EPA approval to implement the plan.

There are currently two EPA-administered certification plans, the EPA Plan for Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country and the Federal Plan for Certifying Applicators in Navajo Indian Country. EPA intends to revise these plans to conform to the final rule no later than the dates applicable to existing plans in 171.5, and these plans will remain in effect consistent with 171.5.

C. Comments and Responses

Comments. Two certifying authorities supported the proposed timeline. Many other States, certifying authority associations, university extension

programs, Tribes, some applicator associations, a farm bureau and few individuals opposed the proposed schedule and requested more time to submit certification plans, to allow for regulatory changes, and to implement the changes. Commenters contended it would take a tremendous amount of time and resources to make legislative and regulatory changes. According to a survey of certifying authorities by their associations, 34% of all certifying authorities indicated that they would need to revise regulations while 64% would have to revise both laws and regulations. Many certifying authorities explained their process and estimated timelines for making such changes, demonstrating a tremendous variety in timeframes and process among all programs. Some examples of steps in certifying authorities' processes that would make it difficult to revise the certification plan in the proposed timeframe:

- Engage in local legislative initiatives
- Hold public hearings
- Have final statutory and regulatory changes in place before submitting the revised certification plan to EPA
- Engage legislature on statutory revisions, which can require multiple exchanges; some legislatures meet on a biennial schedule so revised statutes take 2 years to enact.

Some commenters were concerned that opening up statutes and regulations would increase the possibility of other changes being introduced. In all, comments demonstrated the complex nature of legislative and regulatory change that would be necessary to implement revised certification plans.

Certifying authorities also commented that EPA's plan to develop and provide training materials and exams to support implementation would not relieve them of the burden and many resources needed to implement changes.

Many certifying authorities and their organizations emphasized that EPA underestimated the amount of resources in staff and time to coordinate and implement legislative and regulatory change.

Commenters requested that EPA articulate in the final rule that during the entire period for certification plan development and submission, and during EPA's review of submitted plans, there will be open and transparent negotiations with the certifying authorities. These commenters asserted that without such a discussion, certifying authorities would have a much harder time convincing the elected officials that the federal rule is warranted. Commenters also requested that EPA include in the final rule a clear and understandable outline showing the expected process by which the certifying authority and EPA will work toward a mutually acceptable outcome. Commenters also raised questions about the consequences to the certifying authority if EPA cannot accept the revised certification plan.

Responses. EPA recognizes that implementing the final rule will require cooperation with each certifying authority. EPA intends to engage in open and transparent discussions and negotiations with certifying authorities as they develop revised certification plans and during EPA's review of the revised certification plans to ensure the certifying authority has adequate feedback to develop and submit a plan that EPA can approve and that meets the needs of the certifying authority. The submission, review, and negotiation process will involve the certifying authority, appropriate EPA Regional office (for States and Tribes), and EPA's Office of Pesticide Programs. EPA will establish an internal workgroup with participants from EPA headquarters and Regional offices for the review of certification plans that will provide nationally-consistent oversight and guidance, and answer any questions that arise during the process.

EPA recognizes that certifying authorities and pesticide safety education programs will need to devote resources to additional training, manual development, exam development and review, exam administration, and other services that support certification and education of pesticide applicators in conformance with the final rule. EPA will continue to give priority to funding the States and Tribes for these programs through the State and Tribal Assistance Grants program. In addition, EPA is committed to working with the States and Tribes to provide resources and assistance to alleviate burdens as EPA's budget allows, such as by supporting development of training materials and exams that can be adopted in whole or part by States and Tribes for use in certification and training programs. Further, EPA will continue to provide funding to pesticide safety education programs from service fees collected under the Pesticide Registration Improvement Act and subsequent reauthorizations. Under the existing law, EPA must commit at least $500,000 of the funds collected by EPA related to pesticide registration-related actions to support the pesticide safety education program.

In response to commenters' concerns, EPA has adopted a final rule with options for more flexible time frames. The final rule lengthens the time for certifying authorities to submit revised plans and allows EPA discretion to grant certifying authorities more or less than two years to implement newly approved plans. Certifying authorities will have three years to revise and submit their certification plans.

The final rule adds a provision to grant conditional approval of certification plans. Certifying authorities unable to complete necessary legislative and regulatory changes before submitting their new certification plan would be allowed to submit a draft plan conditioned upon those changes becoming effective. EPA expects certifying authorities to submit a written request for conditional approval with a justification and anticipated time frame. EPA will grant conditional approvals to certifying authorities in writing.

When EPA approves a plan, conditionally or unconditionally, it will establish and implementation schedule specific to that approved plan. EPA anticipates that most certifying authorities will be allowed two years from the date of EPA approval to implement the plan, but may set shorter or longer implementation periods as circumstances warrant. EPA will develop a process for certifying authorities to follow when submitting a draft or final certification plan and notifying EPA of final implementation.

In response to commenters' questions about the status of a certification program if EPA does not approve the revised certification plan, EPA emphasizes that it plans to work jointly with each certifying authority to develop a workable certification plan that can be implemented in the jurisdiction and that meets EPA's standards. Decisions on certification plans will be made on a case-by-case basis. The process for EPA administering a certification plan is outlined in 40 CFR 171.311.

XXI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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2. EPA. Response to Comment on the Proposed Changes to the Certification of Pesticide Applicators Rule. 2016.
3. EPA. Final EPA Plan for the Federal Certification of Applicators of Restricted Use Pesticides Within Indian Country; Notice of Implementation. Notice. **Federal Register** (79 FR 7185, February 6, 2014) (FRL–9904–18).
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19. EPA. Certification of Pesticide Applicators. 40 CFR part 171. **Federal Register** (39 FR 36446, October 9, 1974) (FRL–269.1).
20. EPA. Submission and Approval of State Plans for Certification of Commercial and Private Applicators of Restricted Use Pesticides. **Federal Register** (40 FR 11698, March 12, 1975) (FRL–340.6).
21. EPA. Federal Certification of Pesticide Applicators in States or Indian Reservations Where There is No Approved State or Tribal Certification Plan in Effect. Final Rule. **Federal Register** (43 FR 24834, June 8, 1978) (FRL–881–7).
22. EPA. Certification of Pesticide Applicators; Expansion of Recertification Time Period. Final Rule. **Federal Register** (48 FR 29854, June 29, 1983) (FRL–2338–8).
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49. EPA. EPA Policy on Consultation and Coordination with Indian Tribes. 2011. *https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes*
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51. EPA. Information Collection Request (ICR) for the Certification of Pesticide Applicators (Final Rule). EPA ICR No. 2499.02 and OMB Control No. 2070–0196. 2016.

XXII. 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 a significant regulatory action and was therefore submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011). A changes made in response to OMB recommendations received during that review have been documented in the docket. In addition, EPA prepared an Economic Analysis of the potential costs and benefits associated with this action, which is available in the docket and summarized in Unit II.C. (Ref. 1).

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted to OMB for approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR No. 2499.02 and OMB Control No. 2070–0196 (Ref. 51). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information collection activities related to the existing certification rule are already approved by OMB in an ICR titled ''Certification of Pesticide Applicators'' (EPA ICR No. 0155.10; OMB Control No. 2070–0029). Therefore, EPA ICR number 2499.02 only addresses the changes to the existing certification rule. These include:

- Updating the information States, Tribes, and Federal agencies report to EPA.
- Updating the process and requirements for modifying a certification plan.
- Updating certifying authorities' databases to track the certification of applicators.
- Adding a provision for States to require recordkeeping by RUP dealers.
- Adding specific requirements for noncertified applicator training.
- Adding a provision for commercial applicators to keep records of noncertified applicator training.

Respondents/affected entities: Certified applicators; private and commercial. The number of applicators is based on the Certification Plan and Reporting Database for the years 2009 to 2014 (CPARD, 2015), there are 420,999 commercial applicators and 482,925 private applicators.

Noncertified applicators under the direct supervision of certified applicators. It is estimated that there are 918,892 noncertified applicators who apply RUPs under the direct supervision of commercial certified applicators, and there are 28,092 noncertified applicators who apply RUPs under the direct supervision of private certified applicators.

RUP dealers. EPA estimates that there are approximately 10,000 retail dealers. According to the Agricultural Retailers Association, there are approximately 9,000 agricultural retailers in the United States. Not all are licensed to sell RUPs. EPA estimates that there are far fewer nonagricultural pesticide retailers licensed to sell RUPs, given that more RUPs are registered for agricultural use than for other uses.

Authorized agencies. Authorized agencies, termed certifying authorities in the final rule, are the entities that are authorized by EPA to administer applicator certification plans under 40 CFR part 171. Authorized agencies includes States, territories, federally recognized Tribes and Federal agencies authorized to operate certification programs. Authorized agencies administer certification plans in 50 States, the District of Columbia, and 6 territories (Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, Commonwealth of Northern Mariana Islands, and the Republic of Palau). In addition, there are four approved Tribal certification plans and five approved Federal agency certification plans. The Federal agencies administering certification plans are DOD, DOE, USDA APHIS PPQ, USDA Forest Service (the two USDA plans are separate plans), and DOI (the DOI plan covers three agencies within DOI BLM, BIA and NPS, but no others). EPA administers two certification plans, but is not included as a respondent because the burden to EPA is estimated separately. Wage rates vary according to the entity.

Respondent's obligation to respond: Mandatory (7 U.S.C. 136–136y, particularly sections 136a(d), 136i, and 136w).

Estimated number of respondents: 1,860,974.

Frequency of response: Rule familiarization is expected to occur annually for the first 3 years. Revising and submitting certification plans will occur one time. Training of noncertified applicators will occur annually. Recordkeeping of RUP sales will occur each time an RUP is sold, which EPA estimates will be 195 times per year per RUP dealer.

Total estimated burden: 2,280,849 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $68,573,790 (per year), which includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I certify that promulgation of the requirements contained in this final rule will not have a significant economic impact on a substantial number of small entities. There are two types of small entities subject to the requirements of this action: Small farms with private applicators and noncertified applicators using RUPs under their direct supervision, and small firms employing commercial applicators and noncertified applicators using RUPs under their direct supervision. EPA estimates that up to 820,000 small farms use pesticides and may be affected by the rule, although not all will use RUPs. EPA further estimates that at least 167,000 small firms employing commercial applicators may be affected by the rule. The Agency has determined that for private applicators, the average impact of the rule is about $25 per year and represents less than 1% of annual sales revenue for the average small farm and even to small-small farms with sales of less than $10,000. Costs to small firms employing commercial applicators are estimated to average less than $100 per year, which is less than 1% of average annual revenue for these firms.

Impacts to the smallest farms, especially in high-impact States such as Alaska, Kentucky, and Rhode Island, where costs could be around $100 per year, could exceed 1% of annual sales revenue. However, the number of farms facing such impacts is small relative to the number of small farms affected by the rule. EPA estimates that around 13,000 farms may face impacts of one percent or more of annual revenue. These farms comprise less than one percent of all 1.5 million small farms and less than two percent of all 820,000 small farms that use pesticides that may be affected by the rule. For small firms employing commercial applicators, average impacts of the rule represent less than 0.1% of annual revenue for the average small firm. Even for the high cost scenarios, where costs might be as high as $474 per year, the impacts are expected to be 0.3% or less of annual revenues. Details of this analysis are presented in the Economic Analysis (Ref. 1).

Although not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel because the EPA has determined that this action would not have a significant economic impact on a substantial number of small entities, the EPA originally convened a panel to obtain advice and recommendations from small entity representatives potentially subject to this rule's requirements. A copy of the SBAR Panel Report (Ref. 29) is included in the docket for this rulemaking.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531 through 1538, and does not significantly or uniquely affect small governments. As such, the requirements of sections 202, 203, 204, or 205 of UMRA do not apply to this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action requires Tribes that certify applicators to perform RUP applications in Indian country to comply with the revised regulation. EPA currently directly administers a national certification plan for Indian country (Ref. 3) and has implemented a specific certification plan for the Navajo Nation (Ref. 4). This rule provides Tribes with the option to develop and administer their own applicator certification programs, to participate in the EPA-administered applicator certification program for Indian country, or to enter into an agreement with EPA regarding administration of an applicator certification program. As explained in Unit XVII., EPA does not believe the revisions would place any unreasonable burden on Tribes because the rule does not require Tribes to implement certification programs. There are currently only four Tribes with EPA-approved certification plans. The rule requires existing Tribal certification plans to be revised and resubmitted to EPA for review and approval. EPA estimates the costs to these Tribes would be similar to the costs to States for updating and submitting to EPA for approval a revised certification plan, and that they would not result in a significant impact on Tribal entities or programs. Thus, Executive Order 13175 does not apply to this action.

Consistent with EPA's Policy on Consultation and Coordination with Indian Tribes, EPA consulted with Tribal officials during the development of this action. A summary of that consultation is provided in the docket for this action (Ref. 30).

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 it is not an economically significant regulatory action as defined by Executive Order 12866. Information on EPA's consideration of the risks to children in development of this action can be found in Unit III.C.3. and in the Economic Analysis for this action (Ref. 1). EPA nevertheless believes that the environmental health or safety risks addressed in this rule could have a disproportionate effect on children.

The primary risk to children that is within the scope of this rulemaking is exposure to RUPs during their work as applicators of RUPs. The rule is intended to minimize these exposures and risks. By establishing a minimum age for persons to become a certified applicator or to use RUPs as a noncertified applicator under the direct supervision of a certified applicator, children would receive less exposure to pesticides that may lead to chronic or acute pesticide-related illness. In addition, the final rule expands training for noncertified applicators to include topics that should also assist in reducing potential risks to children from incidental pesticide exposure, such as avoiding bringing pesticide residues home on clothing.

Like DOL's regulations that implement the FLSA, the rule regulates the ages at which children can apply pesticides. The final rule establishes a minimum age of 18 for persons to

become certified to apply RUPs and to apply RUPs as noncertified persons under the direct supervision of certified applicators, except that a noncertified person using agricultural RUPs under the direct supervision of a private applicator who is also a member of the noncertified applicator's immediate family must be 16 years old. Since many RUPs present heightened risks to harm human health relative to other pesticides, EPA feels that they warrant additional risk mitigation measures beyond those applicable to non-RUPs. EPA expects that the establishment of minimum ages will mitigate or eliminate many risks faced by young applicators of RUPs.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

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

This action is not expected to have disproportionately high and adverse human health or environmental effects on minority or low-income populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action will increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

K. Congressional Review Act (CRA)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 171

Environmental protection, Applicator competency, Agricultural worker safety, Certified applicator, Pesticide safety training, Pesticide worker safety, Pesticides and pests, Restricted use pesticides.

Dated: December 12, 2016.

Gina McCarthy,

Administrator.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 171—[AMENDED]

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

■ 2. Add a new heading for subpart A to read as follows:

Subpart A—General Provisions

■ 3. Revise § 171.1 to read as follows:

§ 171.1 Scope.

(a) This part establishes Federal standards for the certification and recertification of applicators of restricted use pesticides, and requirements for pesticide applicator certification plans administered by State, Tribal, and Federal agencies. The standards address the requirements for certification and recertification of applicators using restricted use pesticides, requirements for certified applicators supervising the use of restricted use pesticides by noncertified applicators, and requirements for noncertified persons using restricted use pesticides under the direct supervision of a certified applicator.

(b) A person is a certified applicator for purposes of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.,* only if the person holds a certification issued pursuant to a plan approved in accordance with this part and currently valid in the pertinent jurisdiction. As provided in FIFRA section 12(a)(2)(F), it is unlawful for any person to make available for use or to use any pesticide classified for restricted use other than in accordance with the requirements of this part.

§ 171.2 [Reserved]

■ 4. Remove § 171.2.

■ 5. Revise § 171.3 to read as follows:

§ 171.3 Definitions.

Terms used in this part have the same meanings they have in FIFRA and 40 CFR part 152. In addition, the following terms have the meaning specified in this section when used in this part:

Agricultural commodity means any plant, fungus, or algae, or part thereof, or any animal or animal product, produced by a person (including, but not limited to, farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.

Agency means the U.S. Environmental Protection Agency (EPA), unless otherwise specified.

Application and *applying* means the dispersal of a pesticide on, in, at, or directed toward a target site.

Applicator means any individual using a restricted use pesticide. An applicator may be certified as a commercial or private applicator as defined in FIFRA or may be a noncertified applicator as defined in this part.

Calibration means measurement of dispersal or output of application equipment and adjustment of such equipment to establish a specific rate of dispersal and, if applicable, droplet or particle size of a pesticide, and/or equalized dispersal pattern.

Certification means a certifying authority's issuance, pursuant to this part, of authorization to a person to use or supervise the use of restricted use pesticides.

Certifying authority means the Agency, or a State, Tribal, or Federal agency that issues restricted use pesticide applicator certifications pursuant to a certification plan approved by the Agency under this part.

Compatibility means the extent to which a pesticide can be combined with other chemicals without causing undesirable results.

Competency means having the practical knowledge, skills, experience, and judgment necessary to perform functions associated with restricted use pesticide application without causing unreasonable adverse effects, where the nature and degree of competency required relate directly to the nature of the activity and the degree of independent responsibility.

Dealership means any establishment owned or operated by a restricted use pesticide retail dealer where restricted use pesticides are distributed or sold.

Fumigant means a restricted use pesticide that bears labeling designating it as a fumigant.

Fumigation means the use of a fumigant.

Immediate family means familial relationships limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. ''First cousin'' means the child

of a parent's sibling, *i.e.,* the child of an aunt or uncle.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State.

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or *Tribe* means any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community included in the list of Tribes published by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act.

Mishap means an event that adversely affects man or the environment and that is related to the use or presence of a pesticide, whether the event was unexpected or intentional.

Nontarget organism means any plant, animal or other organism other than the target pests that a pesticide is intended to affect.

Noncertified applicator means any person who is not certified in accordance with this part to use or supervise the use of restricted use pesticides in the category appropriate to the type of application being conducted in the pertinent jurisdiction, but who is using restricted use pesticides under the direct supervision of a person certified as a commercial or private applicator in accordance with this part.

Ornamental means trees, shrubs, flowers, and other plantings intended primarily for aesthetic purposes in and around habitations, buildings and surrounding grounds, including residences, parks, streets, and commercial, industrial, and institutional buildings.

Personal protective equipment means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

Practical knowledge means the possession of pertinent facts and comprehension sufficient to properly perform functions associated with use of restricted use pesticides, including properly responding to reasonably foreseeable problems and situations.

Principal place of business means the principal location, either residence or office, where a person conducts a business that involves the use of restricted use pesticides. A person who applies restricted use pesticides in more than one State or area of Indian country may designate a location within a State or area of Indian country as its principal place of business for that State or area of Indian country.

Regulated pest means a particular species of pest specifically subject to Tribal, State or Federal regulatory restrictions, regulations, or control procedures intended to protect the hosts, man and/or the environment.

Restricted use pesticide means a pesticide that is classified for restricted use under the provisions of section 3(d) of FIFRA and 40 CFR part 152, subpart I.

Restricted use pesticide retail dealer means any person who distributes or sells restricted use pesticides to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities.

Toxicity means the property of a pesticide that refers to the degree to which the pesticide, and its degradates and metabolites, are able to cause an adverse physiological effect on an organism.

Use, as in ''to use a pesticide'' means any of the following:

(1) Pre-application activities involving mixing and loading the pesticide.

(2) Applying the pesticide, including, but not limited to, supervising the use of a pesticide by a noncertified applicator.

(3) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

Use-specific instructions means the information and requirements specific to a particular pesticide product or work site that an applicator needs in order to use the pesticide in accordance with applicable requirements and without causing unreasonable adverse effects.

§ 171.4 [Removed]

■ 6. Remove § 171.4.

■ 7. Revise § 171.5 to read as follows:

§ 171.5 Effective date.

(a) This part is effective March 6, 2017. Certification plans approved by EPA before the effective date remain approved except as provided in §§ 171.5(b)–(d) and 171.309.

(b) *Status of certification plans approved before effective date.* A certification plan approved by EPA before March 6, 2017 remains approved until March 4, 2020, except as provided in paragraph (c) of this section and § 171.309.

(c) *Extension of an existing plan during EPA review of proposed revisions.* If by March 4, 2020, a certifying authority has submitted to EPA a proposed modification of its certification plan pursuant to subpart D of this part, its certification plan approved by EPA before March 6, 2017 will remain in effect until EPA has approved or rejected the modified plan pursuant to § 171.309(a)(4) or March 4, 2022, whichever is earlier, except as provided in paragraph (d) of this section and § 171.309(b).

(d) *Extension of an existing plan after EPA has approved a revised plan.* Where EPA has approved a certifying authority's modified certification plan pursuant to § 171.309(a)(4), the certification plan approved by EPA before March 6, 2017 shall remain in effect as specified in EPA's approval of the modified certification plan.

(e) States, Tribes, or Federal agencies that do not have an EPA-approved certification plan in effect may submit to EPA for review and approval a certification plan that meets or exceeds all of the applicable requirements of this part any time.

§§ 171.6, 171.7, 171.8, 171.9,171.10,171.11 [Removed]

■ 8. Remove §§ 171.6, 171.7, 171.8, 171.9, 171.10, 171.11.

■ 9. Subpart B is added to part 171 to read as follows:

Subpart B—Certification Requirements for Applicators of Restricted Use Pesticides

Sec.

171.101 Commercial applicator certification categories.
171.103 Standards for certification of commercial applicators.
171.105 Standards for certification of private applicators.
171.107 Standards for recertification of certified applicators.

§ 171.101 Commercial applicator certification categories.

Certification categories. Categories of commercial applicators using or supervising the use of restricted use pesticides are identified below.

(a) *Agricultural pest control.*

(1) *Crop pest control.* This category applies to commercial applicators who

use or supervise the use of restricted use pesticides in production of agricultural commodities, including but not limited to grains, vegetables, small fruits, tree fruits, peanuts, tree nuts, tobacco, cotton, feed and forage crops including grasslands, and non-crop agricultural lands.

(2) *Livestock pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides on animals or to places on or in which animals are confined. Certification in this category alone is not sufficient to authorize the purchase, use, or supervision of use of products for predator control listed in paragraphs (k) and (l) of this section.

(b) *Forest pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides in forests, forest nurseries and forest seed production.

(c) *Ornamental and turf pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides to control pests in the maintenance and production of ornamental plants and turf.

(d) *Seed treatment.* This category applies to commercial applicators using or supervising the use of restricted use pesticides on seeds in seed treatment facilities.

(e) *Aquatic pest control.* This category applies to commercial applicators who use or supervise the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in as specified in paragraph (h) of this section.

(f) *Right-of-way pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas.

(g) *Industrial, institutional, and structural pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides in, on, or around the following: Food handling establishments, packing houses, and food-processing facilities; human dwellings; institutions, such as schools, hospitals and prisons; and industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structures and adjacent areas, public or private, for the protection of stored, processed, or manufactured products.

(h) *Public health pest control.* This category applies to State, Tribal, Federal or other governmental employees and contractors who use or supervise the use of restricted use pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance.

(i) *Regulatory pest control.* This category applies to State, Tribal, Federal, or other local governmental employees and contractors who use or supervise the use of restricted use pesticides in government-sponsored programs for the control of regulated pests. Certification in this category does not authorize the purchase, use, or supervision of use of products for predator control listed in paragraphs (k) and (l) of this section.

(j) *Demonstration and research.* This category applies to individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration and to persons conducting field research with restricted use pesticides, and in doing so, use or supervise the use of restricted use pesticides. This includes such individuals as extension specialists and county agents, commercial representatives demonstrating restricted use pesticide products, individuals demonstrating application or pest control methods used in public or private programs, and State, Federal, commercial, and other persons conducting field research on or involving restricted use pesticides.

(k) *Sodium cyanide predator control.* This pest control category applies to commercial applicators who use or supervise the use of sodium cyanide in a mechanical ejection device to control regulated predators.

(l) *Sodium fluoroacetate predator control.* This pest control category applies to commercial applicators who use or supervise the use of sodium fluoroacetate in a protective collar to control regulated predators.

(m) *Soil fumigation.* This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate soil.

(n) *Non-soil fumigation.* This category applies to commercial applicators who use or supervise the use of a restricted use pesticide to fumigate anything other than soil.

(o) *Aerial pest control.* This category applies to commercial applicators who use or supervise the use of restricted use pesticides applied by fixed or rotary wing aircraft.

§ 171.103 Standards for certification of commercial applicators.

(a) *Determination of competency.* To be determined to have the necessary competency in the use and handling of restricted use pesticides by a State, Tribe, or Federal agency, a commercial applicator must receive a passing score on a written examination that meets the standards specified in paragraph (a)(2) of this section and any related performance testing that is required by the State, Tribe, or Federal agency. Examinations and any alternate methods employed by the certifying authority to determine applicator competency must include the core standards applicable to all categories (paragraph (c) of this section) and the standards applicable to each category in which an applicator seeks certification (paragraph (d) of this section). Certification processes must meet all of the following criteria:

(1) *Commercial applicator minimum age.* A commercial applicator must be at least 18 years old.

(2) *Examination standards.* The certifying authority must ensure that examinations conform to all of the following standards:

(i) The examination must be presented and answered in writing.

(ii) The examination must be proctored by an individual designated by the certifying authority and who is not seeking certification at any examination session that he or she is proctoring.

(iii) Each person seeking certification must present at the time of examination valid, government-issued photo identification or other form of similarly reliable identification authorized by the certifying authority as proof of identity and age to be eligible for certification.

(iv) Candidates must be monitored throughout the examination period.

(v) Candidates must be instructed in examination procedures before beginning the examination.

(vi) Examinations must be kept secure before, during, and after the examination period so that only the candidates have access to the examination, and candidates have access only in the presence of the proctor.

(vii) Candidates must not have verbal or non-verbal communication with anyone other than the proctor during the examination period.

(viii) No portion of the examination or any associated reference materials described in paragraph (a)(2)(ix) of this section may be copied or retained by any person other than a person authorized by the certifying authority to copy or retain the examination or any

associated reference materials described in paragraph (a)(2)(ix) of this section.

(ix) The only reference materials used during the examination are those that are approved by the certifying authority and provided and collected by the proctor.

(x) Reference materials provided to examinees are reviewed after the examination is complete to ensure that no portion of the reference material has been removed, altered, or destroyed.

(xi) The proctor reports to the certifying authority any examination administration inconsistencies or irregularities, including but not limited to cheating, use of unauthorized materials, and attempts to copy or retain the examination.

(xii) The examination must be conducted in accordance with any other requirements of the certifying authority related to examination administration.

(xiii) The certifying authority must notify each candidate of the results of his or her examination.

(b) *Additional methods of determining competency.* In addition to written examination requirements for determining competency, a certifying authority may employ additional methods for determining applicator competency, such as performance testing. Any such additional methods must be specified in the certifying authority's Agency-approved certification plan and must comply with the applicable standards in paragraph (a) of this section.

(c) *Core standards for all categories of certified commercial applicators.* Persons seeking certification as commercial applicators must demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides by passing a written examination. Written examinations for all commercial applicators must address all of the following areas of competency:

(1) *Label and labeling comprehension.* Familiarity with pesticide labels and labeling and their functions, including all of the following:

(i) The general format and terminology of pesticide labels and labeling.

(ii) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.

(iii) Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling.

(iv) Understanding labeling requirements that a certified applicator must be physically present at the site of the application.

(v) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator.

(vi) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application.

(vii) Understanding the meaning of product classification as either general or restricted use and that a product may be unclassified.

(viii) Understanding and complying with product-specific notification requirements.

(ix) Recognizing and understanding the difference between mandatory and advisory labeling language.

(2) *Safety.* Measures to avoid or minimize adverse health effects, including all of the following:

(i) Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides.

(ii) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.

(iii) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.

(iv) Common types and causes of pesticide mishaps.

(v) Precautions to prevent injury to applicators and other individuals in or near treated areas.

(vi) Need for, and proper use of, protective clothing and personal protective equipment.

(vii) Symptoms of pesticide poisoning.

(viii) First aid and other procedures to be followed in case of a pesticide mishap.

(ix) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) *Environment.* The potential environmental consequences of the use and misuse of pesticides, including the influence of all of the following:

(i) Weather and other indoor and outdoor climatic conditions.

(ii) Types of terrain, soil, or other substrate.

(iii) Presence of fish, wildlife, and other non-target organisms.

(iv) Drainage patterns.

(4) *Pests.* The proper identification and effective control of pests, including all of the following:

(i) The importance of correctly identifying target pests and selecting the proper pesticide product(s) for effective pest control.

(ii) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).

(5) *Pesticides.* Characteristics of pesticides, including all of the following:

(i) Types of pesticides.

(ii) Types of formulations.

(iii) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.

(iv) Hazards and residues associated with use.

(v) Factors that influence effectiveness or lead to problems such as pesticide resistance.

(vi) Dilution procedures.

(6) *Equipment.* Application equipment, including all of the following:

(i) Types of equipment and advantages and limitations of each type.

(ii) Use, maintenance, and calibration procedures.

(7) *Application methods.* Selecting appropriate application methods, including all of the following:

(i) Methods used to apply various forms and formulations of pesticides.

(ii) Knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, sodium cyanide, or sodium fluoroacetate requires additional certification.

(iii) How selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse.

(iv) Prevention of drift and pesticide loss into the environment.

(8) *Laws and regulations.* Knowledge of all applicable State, Tribal, and Federal laws and regulations.

(9) *Responsibilities of supervisors of noncertified applicators.* Knowledge of the responsibilities of certified applicators supervising noncertified applicators, including all of the following:

(i) Understanding and complying with requirements in § 171.201 of this part for certified commercial applicators who supervise noncertified applicators using restricted use pesticides.

(ii) The recordkeeping requirements of pesticide safety training for noncertified applicators who use restricted use pesticides under the direct supervision of a certified applicator.

(iii) Providing use-specific instructions to noncertified applicators

using restricted use pesticides under the direct supervision of a certified applicator.

(iv) Explaining pertinent State, Tribal, and Federal laws and regulations to noncertified applicators who use restricted use pesticides under the direct supervision of a certified applicator.

(10) *Professionalism.* Understanding the importance of all of the following:

(i) Maintaining chemical security for restricted use pesticides.

(ii) How to communicate information about pesticide exposures and risks with customers and the public.

(iii) Appropriate product stewardship for certified applicators.

(d) *Specific standards of competency for each category of commercial applicators.* In addition to satisfying the requirements of paragraph (c) of this section, to be certified as commercial applicators, persons must demonstrate through written examinations practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides for each category for which they intend to apply restricted use pesticides, except as provided at §§ 171.303(a)(4) and 171.305(a)(5). The minimum competency standards for each category are listed in paragraphs (d)(1) through (15) of this section. Examinations for each category of certification listed in § 171.101 must be based on the standards of competency specified in paragraphs (d)(1) through (15) of this section and examples of problems and situations appropriate to the particular category in which the applicator is seeking certification.

(1) *Agricultural pest control.*

(i) *Crop pest control.* Applicators must demonstrate practical knowledge of crops, grasslands, and non-crop agricultural lands and the specific pests of those areas on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. The required knowledge includes pre-harvest intervals, restricted entry intervals, phytotoxicity, potential for environmental contamination such as soil and water problems, non-target injury, and other problems resulting from the use of restricted use pesticides in agricultural areas. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.

(ii) *Livestock pest control.* Applicators must demonstrate practical knowledge of such animals and their associated pests. The required knowledge includes specific pesticide toxicity and residue potential, and the hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(2) *Forest pest control.* Applicators must demonstrate practical knowledge of types of forests, forest nurseries, and seed production within the jurisdiction of the certifying authority and the pests involved. The required knowledge includes the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications, the relevant organisms causing harm and their vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application method and proper use of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.

(3) *Ornamental and turf pest control.* Applicators must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental plants and turf. The required knowledge includes the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods that will minimize or prevent hazards to humans, pets, and other domestic animals.

(4) *Seed treatment.* Applicators must demonstrate practical knowledge including recognizing types of seeds to be treated, the effects of carriers and surface active agents on pesticide binding and germination, the hazards associated with handling, sorting and mixing, and misuse of treated seed, the importance of proper application techniques to avoid harm to non-target organisms, and the proper disposal of unused treated seeds.

(5) *Aquatic pest control.* Applicators must demonstrate practical knowledge of the characteristics of various aquatic use situations, the potential for adverse effects on non-target plants, fish, birds, beneficial insects and other organisms in the immediate aquatic environment and downstream, and the principles of limited area application.

(6) *Right-of-way pest control.* Applicators must demonstrate practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights-of-way, recognition of target pests, and techniques to minimize non-target exposure, runoff, drift, and excessive foliage destruction. The required knowledge also includes the potential for phytotoxicity due to a wide variety of plants and pests to be controlled, and for persistence beyond the intended period of pest control.

(7) *Industrial, institutional, and structural pest control.* Applicators must demonstrate a practical knowledge of industrial, institutional, and structural pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to problem identification and control. Applicators must demonstrate practical knowledge of types of formulations appropriate for control of industrial, institutional and structural pests, and methods of application that avoid contamination of food, minimize damage to and contamination of areas treated, minimize acute and chronic exposure of people and pets, and minimize environmental impacts of outdoor applications.

(8) *Public health pest control.* Applicators must demonstrate practical knowledge of pests that are important vectors of disease, including recognizing the pests and signs of their presence, their habitats, their life cycles, biology and behavior as it may be relevant to problem identification and control. The required knowledge also includes how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures.

(9) *Regulatory pest control.* Applicators must demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of regulated pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They must demonstrate knowledge of factors influencing introduction, spread, and population dynamics of regulated pests.

(10) *Demonstration and research.* Applicators must demonstrate practical knowledge of the potential problems, pests, and population levels reasonably expected to occur in a demonstration situation and the effects of restricted use pesticides on target and non-target organisms. In addition, they must

demonstrate competency in each pest control category applicable to their demonstrations.

(11) *Sodium cyanide predator control.* Applicators must demonstrate practical knowledge of mammalian predator pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to pest identification and control. Applicators must demonstrate comprehension of all laws and regulations applicable to the use of mechanical ejection devices for sodium cyanide, including the restrictions on the use of sodium cyanide products ordered by the EPA Administrator. . Applicators must also demonstrate practical knowledge and understanding of all of the specific use restrictions for sodium cyanide devices, including safe handling and proper placement of the capsules and device, proper use of the antidote kit, notification to medical personnel before use of the device, conditions of and restrictions on when and where devices can be used, requirements to consult U.S. Fish and Wildlife Service maps before use to avoid affecting endangered species, maximum density of devices, provisions for supervising and monitoring applicators, required information exchange in locations where more than one agency is authorized to place devices, and specific requirements for recordkeeping, monitoring, field posting, proper storage, and disposal of damaged or used sodium cyanide capsules.

(12) *Sodium fluoroacetate predator control.* Applicators must demonstrate practical knowledge of mammalian predator pests, including recognizing those pests and signs of their presence, their habitats, their life cycles, biology, and behavior as it may be relevant to pest identification and control. Applicators must demonstrate comprehension of all laws and regulations applicable to the use of sodium fluoroacetate products, including the restrictions on the use of sodium fluoroacetate products ordered by the EPA Administrator. Applicators must also demonstrate practical knowledge and understanding of the specific use restrictions for sodium fluoroacetate in the livestock protection collar, including where and when sodium fluoroacetate products can be used, safe handling and placement of collars, and practical treatment of sodium fluoroacetate poisoning in humans and domestic animals. Applicators must also demonstrate practical knowledge and understanding of specific requirements for field posting, monitoring, recordkeeping, proper storage of collars, disposal of punctured or leaking collars, disposal of contaminated animal remains, vegetation, soil, and clothing, and reporting of suspected and actual poisoning, mishap, or injury to threatened or endangered species, humans, domestic animals, or non-target wild animals.

(13) *Soil fumigation.* Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including all the following:

(i) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all of the following:

(A) Labeling requirements specific to soil fumigants.

(B) Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under their direct supervision.

(C) Entry-restricted periods for tarped and untarped field application scenarios.

(D) Recordkeeping requirements.

(E) Labeling provisions unique to fumigant products containing certain active ingredients.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely.

(E) Steps to take if a fumigant applicator experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where and when to take samples.

(G) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(H) First aid measures to take in the event of exposure to a soil fumigant.

(I) Labeling requirements for transportation, storage, spill clean up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.

(iii) *Soil fumigant chemical characteristics.* Characteristics of soil fumigants, including all of the following:

(A) Chemical characteristics of soil fumigants.

(B) Specific human exposure concerns for soil fumigants.

(C) How soil fumigants change from a liquid or solid to a gas.

(D) How soil fumigants disperse in the application zone.

(E) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods, including but not limited to water-run and non-water- run applications, and equipment commonly used for each soil fumigant.

(B) Site characteristics that influence fumigant exposure.

(C) Understanding temperature inversions and their impact on soil fumigant application.

(D) Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.

(E) Conducting pre-application inspection of application equipment.

(F) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.

(G) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair.

(H) Calculating the amount of product required for a specific treatment area.

(I) Understanding the basic techniques for calibrating soil fumigant application equipment.

(v) *Soil and pest factors.* Soil and pest factors that influence fumigant activity, including all of the following:

(A) Influence of soil factors on fumigant volatility and movement within the soil profile.

(B) Factors that influence gaseous movement through the soil profile and into the air.

(C) Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application.

(D) Identifying pests causing the damage and verifying they can be controlled with soil fumigation.

(E) Understanding the relationship between pest density and application rate.

(F) The importance of proper application depth and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(C) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(D) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(vii) *Fumigant management plans and post-application summaries.* Information about fumigant management plans, including all of the following:

(A) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(B) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(C) The person responsible for verifying that a fumigant management plan is accurate.

(D) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(viii) *Buffer zones and posting requirements.* Understanding buffer zones and posting requirements, including all of the following:

(A) Buffer zones and the buffer zone period.

(B) Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.

(C) Using the buffer zone table from the labeling to determine the size of the buffer zone.

(D) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.

(E) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(F) Proper choice and placement of warning signs.

(14) *Non-soil fumigation.* Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of restricted use pesticides to sites other than soil, including all the following:

(i) *Label & labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.

(ii) *Safety.* Measures to minimize adverse health effects, including all of the following:

(A) Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants.

(B) Common problems and mistakes that can result in direct exposure to fumigants.

(C) Signs and symptoms of human exposure to fumigants.

(D) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.

(E) Steps to take if a fumigant applicator experiences sensory irritation.

(F) Understanding air monitoring, when it is required, and where and when to take samples.

(G) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(H) First aid measures to take in the event of exposure to a fumigant.

(I) Labeling requirements for transportation, storage, spill clean up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.

(iii) *Non-soil fumigant chemical characteristics.* Characteristics of non-soil fumigants, including all of the following:

(A) Chemical characteristics of non-soil fumigants.

(B) Specific human exposure concerns for non-soil fumigants.

(C) How fumigants change from a liquid or solid to a gas.

(D) How fumigants disperse in the application zone.

(E) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(iv) *Application.* Selecting appropriate application methods and timing, including all of the following:

(A) Application methods and equipment commonly used for non-soil fumigation.

(B) Site characteristics that influence fumigant exposure.

(C) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions.

(D) Conducting pre-application inspection of application equipment and the site to be fumigated.

(E) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.

(F) Calculating the amount of product required for a specific treatment area.

(G) Understanding the basic techniques for calibrating non-soil fumigant application equipment.

(H) Understanding when and how to conduct air monitoring and when it is required.

(v) *Pest factors.* Pest factors that influence fumigant activity, including all of the following:

(A) Influence of pest factors on fumigant volatility.

(B) Factors that influence gaseous movement through the area being fumigated and into the air.

(C) Identifying pests causing the damage and verifying they can be controlled with fumigation.

(D) Understanding the relationship between pest density and application rate.

(E) The importance of proper application rate and timing.

(vi) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(A) Following labeling directions for required personal protective equipment.

(B) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(C) Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(D) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(vii) *Fumigant management plans and post-application summaries.* Information about fumigant management plans and when they are required, including all of the following:

(A) When a fumigant management plan must be in effect, how long it must

be kept on file, where it must be kept during the application, and who must have access to it.

(B) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(C) The person responsible for verifying that a fumigant management plan is accurate.

(D) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(viii) *Posting requirements.* Understanding posting requirements, including all of the following:

(A) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.

(B) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(C) Proper choice and placement of warning signs.

(15) *Aerial pest control.* Applicators must demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of restricted use pesticides, including all the following:

(i) *Labeling.* Labeling requirements and restrictions specific to aerial application of pesticides including:

(A) Spray volumes.

(B) Buffers and no-spray zones.

(C) Weather conditions specific to wind and inversions.

(ii) *Application equipment.* Understand how to choose and maintain aerial application equipment, including all of the following:

(A) The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application.

(B) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift.

(C) Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles.

(D) Interpreting a nozzle flow rate chart.

(E) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width.

(F) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence.

(G) Where to place nozzles to produce the appropriate droplet size.

(H) How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, and checking nozzles for excessive wear.

(I) How to calculate required and actual flow rates.

(J) How to verify flow rate using fixed timing, open timing, known distance, or a flow meter.

(K) When to adjust and calibrate application equipment.

(iii) *Application considerations.* The applicator must demonstrate knowledge of factors to consider before and during application, including all of the following:

(A) Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation.

(B) How to determine wind velocity, direction, and air density at the application site.

(C) The potential impact of thermals and temperature inversions on aerial pesticide application.

(iv) *Minimizing drift.* The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including all of the following:

(A) How to determine drift potential of a product using a smoke generator.

(B) How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration.

(C) Selecting techniques that minimize pesticide movement out of the area to be treated.

(D) Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.

(v) *Performing aerial application.* The applicator must demonstrate competency in performing an aerial pesticide application, including all of the following:

(A) Selecting a flight altitude that minimizes streaking and off-target pesticide drift.

(B) Choosing a flight pattern that ensures applicator and bystander safety and proper application.

(C) The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern.

(D) Tools available to mark swaths, such as global positioning systems and flags.

(E) Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

(e) *Exceptions.* The requirements in § 171.103(a)–(d) of this part do not apply to the following persons:

(1) Persons conducting laboratory research involving restricted use pesticides.

(2) Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

171.105 Standards for certification of private applicators.

(a) *General private applicator certification.* Before using or supervising the use of a restricted use pesticide as a private applicator, a person must be certified by an appropriate certifying authority as having the necessary competency to use restricted use pesticides for pest control in the production of agricultural commodities, which includes the ability to read and understand pesticide labeling. Certification in this general private applicator certification category alone is not sufficient to authorize the purchase, use, or supervision of use of the restricted use pesticide products in the categories listed in paragraphs (b) through (f) of this section. Persons seeking certification as private applicators must demonstrate practical knowledge of the principles and practices of pest control associated with the production of agricultural commodities and effective use of restricted use pesticides, including all of the following:

(1) *Label and labeling comprehension.* Familiarity with pesticide labels and labeling and their functions, including all of the following:

(i) The general format and terminology of pesticide labels and labeling.

(ii) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling.

(iii) Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling.

(iv) Understanding when a certified applicator must be physically present at the site of the application based on labeling requirements.

(v) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator.

(vi) Understanding that applicators must comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the appropriate category to use restricted use pesticides for fumigation or aerial application, or predator control devices containing

sodium cyanide or sodium fluoroacetate, if applicable.

(vii) Understanding the meaning of product classification as either general or restricted use, and that a product may be unclassified.

(viii) Understanding and complying with product-specific notification requirements.

(ix) Recognizing and understanding the difference between mandatory and advisory labeling language.

(2) *Safety.* Measures to avoid or minimize adverse health effects, including all of the following:

(i) Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides.

(ii) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity.

(iii) Recognition of likely ways in which dermal, inhalation, and oral exposure may occur.

(iv) Common types and causes of pesticide mishaps.

(v) Precautions to prevent injury to applicators and other individuals in or near treated areas.

(vi) Need for, and proper use of, protective clothing and personal protective equipment.

(vii) Symptoms of pesticide poisoning.

(viii) First aid and other procedures to be followed in case of a pesticide mishap.

(ix) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

(3) *Environment.* The potential environmental consequences of the use and misuse of pesticides, including the influence of the following:

(i) Weather and other climatic conditions.

(ii) Types of terrain, soil, or other substrate.

(iii) Presence of fish, wildlife, and other non-target organisms.

(iv) Drainage patterns.

(4) *Pests.* The proper identification and effective control of pests, including all of the following:

(i) The importance of correctly identifying target pests and selecting the proper pesticide product(s).

(ii) Verifying that the labeling does not prohibit the use of the product to control the target pest(s).

(5) *Pesticides.* Characteristics of pesticides, including all of the following:

(i) Types of pesticides.

(ii) Types of formulations.

(iii) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations.

(iv) Hazards and residues associated with use.

(v) Factors that influence effectiveness or lead to problems such as pesticide resistance.

(vi) Dilution procedures.

(6) *Equipment.* Application equipment, including all of the following:

(i) Types of equipment and advantages and limitations of each type.

(ii) Uses, maintenance, and calibration procedures.

(7) *Application methods.* Selecting appropriate application methods, including all of the following:

(i) Methods used to apply various forms and formulations of pesticides.

(ii) Knowledge of which application method to use in a given situation and that use of a fumigant, aerial application, or predator control device containing sodium cyanide or sodium fluoroacetate requires additional certification.

(iii) How selection of application method and use of a pesticide may result in proper use, unnecessary or ineffective use, and misuse.

(iv) Prevention of drift and pesticide loss into the environment.

(8) *Laws and regulations.* Knowledge of all applicable State, Tribal, and Federal laws and regulations, including understanding the Worker Protection Standard in 40 CFR part 170 and the circumstances where compliance is required.

(9) *Responsibilities for supervisors of noncertified applicators.* Certified applicator responsibilities related to supervision of noncertified applicators, including all of the following:

(i) Understanding and complying with requirements in § 171.201 of this part for private applicators who supervise noncertified applicators using restricted use pesticides.

(ii) Providing use-specific instructions to noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator.

(iii) Explaining appropriate State, Tribal, and Federal laws and regulations to noncertified applicators working under the direct supervision of a certified applicator.

(10) *Stewardship.* Understanding the importance of all of the following:

(i) Maintaining chemical security for restricted use pesticides.

(ii) How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons.

(11) *Agricultural pest control.* Practical knowledge of pest control applications to agricultural commodities including all of the following:

(i) Specific pests of relevant agricultural commodities.

(ii) How to avoid contamination of ground and surface waters.

(iii) Understanding pre-harvest and restricted entry intervals and entry-restricted periods and areas.

(iv) Understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities.

(v) Relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.

(b) *Sodium cyanide predator control.* In addition to satisfying the requirements in paragraph (a) of this section, in order to use sodium cyanide in a mechanical ejection device, private applicators must demonstrate comprehension of all laws and regulations applicable to the use of mechanical ejection devices for sodium cyanide, including the restrictions on the use of sodium cyanide products ordered by the EPA Administrator. Applicators must also demonstrate practical knowledge and understanding of all of the specific use restrictions for sodium cyanide devices, including safe handling and proper placement of the capsules and device, proper use of the antidote kit, notification to medical personnel before use of the device, conditions of and restrictions on where devices can be used, requirements to consult U.S. Fish and Wildlife Service maps before use to avoid affecting endangered species, maximum density of devices, provisions for supervising and monitoring applicators, required information exchange in locations where more than one agency is authorized to place devices, and specific requirements for recordkeeping, monitoring, field posting, proper storage, and disposal of damaged or used sodium cyanide capsules.

(c) *Sodium fluoroacetate predator control.* In addition to satisfying the requirements in paragraph (a) of this section, in order to use sodium fluoroacetate, private applicators must demonstrate comprehension of all laws and regulations applicable to the use of sodium fluoroacetate products, including the restrictions on the use of sodium fluoroacetate products ordered by the EPA Administrator. Applicators must also demonstrate practical knowledge and understanding of the

specific use restrictions for sodium fluoroacetate in the livestock protection collar, including where and when sodium fluoroacetate products can be used, safe handling and placement of collars, and practical treatment of sodium fluoroacetate poisoning in humans and domestic animals. Applicators must also demonstrate practical knowledge and understanding of specific requirements for field posting, monitoring, recordkeeping, proper storage of collars, disposal of punctured or leaking collars, disposal of contaminated animal remains, vegetation, soil, and clothing, and reporting of suspected and actual poisoning, mishap, or injury to threatened or endangered species, humans, domestic animals, or non-target wild animals.

(d) *Soil fumigation.* In addition to satisfying the requirements in paragraph (a) of this section, private applicators that use or supervise the use of a restricted use pesticide to fumigate soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigant applications, including all the following:

(1) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including all of the following:

(i) Labeling requirements specific to soil fumigants.

(ii) Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators must provide to noncertified applicators using fumigants under the direct supervision of certified applicators.

(iii) Entry-restricted period for different tarped and untarped field application scenarios.

(iv) Recordkeeping requirements imposed by product labels and labeling.

(v) Labeling provisions unique to products containing certain active ingredients.

(vi) Labeling requirements for fumigant management plans, such as when a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it; the elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan; the person responsible for verifying that a fumigant management plan is accurate; and the elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(2) *Safety.* Measures to minimize adverse health effects, including all of the following:

(i) Understanding how certified applicators, noncertified applicators using fumigants under the direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants.

(ii) Common problems and mistakes that can result in direct exposure to fumigants.

(iii) Signs and symptoms of human exposure to fumigants.

(iv) Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely.

(v) Steps to take if a fumigant applicator experiences sensory irritation.

(vi) Understanding air monitoring, when it is required, and where and when to take samples.

(vii) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(viii) First aid measures to take in the event of exposure to a soil fumigant.

(ix) Labeling requirements for transportation, storage, spill cleanup, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers.

(3) *Soil fumigant chemical characteristics.* Characteristics of soil fumigants, including all of the following:

(i) Chemical characteristics of soil fumigants.

(ii) Specific human exposure concerns for soil fumigants.

(iii) How soil fumigants change from a liquid or solid to a gas.

(iv) How soil fumigants disperse in the application zone.

(v) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(4) *Application.* Selecting appropriate application methods and timing, including all of the following:

(i) Application methods, including but not limited to water-run and non-water-run applications, and equipment commonly used for each soil fumigant.

(ii) Site characteristics that influence fumigant exposure.

(iii) Understanding temperature inversions and their impact on soil fumigant application.

(iv) Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions.

(v) Conducting pre-application inspection of application equipment.

(vi) Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use.

(vii) Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair.

(viii) Calculating the amount of product required for a specific treatment area.

(ix) Understanding the basic techniques for calibrating soil fumigant application equipment.

(5) *Soil and pest factors.* Soil and pest factors that influence fumigant activity, including all of the following:

(i) Influence of soil factors on fumigant volatility and movement within the soil profile.

(ii) Factors that influence gaseous movement through the soil profile and into the air.

(iii) Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application.

(iv) Identifying pests causing the damage and verifying they can be controlled with soil fumigation.

(v) Understanding the relationship between pest density and application rate.

(vi) The importance of proper application depth and timing.

(6) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(i) Following labeling directions for required personal protective equipment.

(ii) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(iii) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(iv) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(7) *Fumigant management plans and post-application summaries.* Information about fumigant management plans, including all of the following:

(i) When a fumigant management plan must be in effect, how long it must be

kept on file, where it must be kept during the application, and who must have access to it.

(ii) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(iii) The person responsible for verifying that a fumigant management plan is accurate.

(iv) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(8) *Buffer zones and posting requirements.* Understanding buffer zones and posting requirements, including all of the following:

(i) Buffer zones and the buffer zone period.

(ii) Identifying who may be in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period.

(iii) Using the buffer zone table from the labeling to determine the size of the buffer zone.

(iv) Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits.

(v) Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(vi) Proper choice and placement of warning signs.

(e) *Non-soil fumigation.* In addition to satisfying the requirements in paragraph (a) of this section, private applicators that use or supervise the use of a restricted use pesticide to fumigate anything other than soil must demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications to sites other than soil, including all the following:

(1) *Label and labeling comprehension.* Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants.

(2) *Safety.* Measures to minimize adverse health effects, including all of the following:

(i) Understanding how certified applicators, handlers, and bystanders can become exposed to fumigants.

(ii) Common problems and mistakes that can result in direct exposure to fumigants.

(iii) Signs and symptoms of human exposure to fumigants.

(iv) When air concentrations of a fumigant triggers handlers to wear respirators or to exit the work area entirely.

(v) Steps to take if a person using a fumigant experiences sensory irritation.

(vi) Understanding air monitoring, when it is required, and where and when to take samples.

(vii) Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone.

(viii) First aid measures to take in the event of exposure to a fumigant.

(ix) Labeling requirements for transportation, storage, spill clean up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers.

(3) *Non-soil fumigant chemical characteristics.* Characteristics of non-soil fumigants, including all of the following:

(i) Chemical characteristics of non-soil fumigants.

(ii) Specific human exposure concerns for non-soil fumigants.

(iii) How fumigants change from a liquid or solid to a gas.

(iv) How fumigants disperse in the application zone.

(v) Compatibility concerns for tanks, hoses, tubing, and other equipment.

(4) *Application.* Selecting appropriate application methods and timing, including all of the following:

(i) Application methods and equipment commonly used for non-soil fumigation.

(ii) Site characteristics that influence fumigant exposure.

(iii) Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications when specific conditions are present.

(iv) Conducting pre-application inspection of application equipment and the site to be fumigated.

(v) Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use.

(vi) Calculating the amount of product required for a specific treatment area.

(vii) Understanding the basic techniques for calibrating non-soil fumigant application equipment.

(viii) Understanding when and how to conduct air monitoring and when it is required.

(5) *Pest factors.* Pest factors that influence fumigant activity, including all of the following:

(i) Influence of pest factors on fumigant volatility.

(ii) Factors that influence gaseous movement through the area being fumigated and into the air.

(iii) Identifying pests causing the damage and verifying they can be controlled with fumigation.

(iv) Understanding the relationship between pest density and application rate.

(v) The importance of proper application rate and timing.

(6) *Personal protective equipment.* Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

(i) Following labeling directions for required personal protective equipment.

(ii) Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment.

(iii) Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters.

(iv) Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping.

(7) *Fumigant management plans and post-application summaries.* Information about fumigant management plans and when they are required, including all of the following:

(i) When a fumigant management plan must be in effect, how long it must be kept on file, where it must be kept during the application, and who must have access to it.

(ii) The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan.

(iii) The person responsible for verifying that a fumigant management plan is accurate.

(iv) The elements, purpose and content of a post-application summary, who must prepare it, and when it must be completed.

(8) *Posting requirements.* Understanding posting requirements, including all of the following:

(i) Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas.

(ii) Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each.

(iii) Proper choice and placement of warning signs.

(f) *Aerial pest control.* In addition to satisfying the requirements in paragraph (a) of this section, private applicators that use or supervise the use of restricted use pesticides applied by fixed or rotary wing aircraft must

demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application, including all the following:

(1) *Labeling.* Labeling requirements and restrictions specific to aerial application of pesticides including:

(i) Spray volumes.

(ii) Buffers and no-spray zones.

(iii) Weather conditions specific to wind and inversions.

(iv) Labeling-mandated recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

(2) *Application equipment.* Understand how to choose and maintain aerial application equipment, including all of the following:

(i) The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application.

(ii) Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift.

(iii) Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles.

(iv) Interpreting a nozzle flow rate chart.

(v) Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width.

(vi) How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence.

(vii) Where to place nozzles to produce the appropriate droplet size.

(viii) How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, and checking nozzles for excessive wear.

(ix) How to calculate required and actual flow rates.

(x) How to verify flow rate using fixed timing, open timing, known distance, or a flow meter.

(xi) When to adjust and calibrate application equipment.

(3) *Application considerations.* The applicator must demonstrate knowledge of factors to consider before and during application, including all of the following:

(i) Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation.

(ii) How to determine wind velocity, direction, and air density at the application site.

(iii) The potential impact of thermals and temperature inversions on aerial pesticide application.

(4) *Minimizing drift.* The applicator must demonstrate knowledge of methods to minimize off-target pesticide movement, including all of the following:

(i) How to determine drift potential of a product using a smoke generator.

(ii) How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration.

(iii) Selecting techniques that minimize pesticide movement out of the area to be treated.

(iv) Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift.

(5) *Performing aerial application.* The applicator must demonstrate competency in performing an aerial pesticide application, including all of the following:

(i) Selecting a flight altitude that minimizes streaking and off-target pesticide drift.

(ii) Choosing a flight pattern that ensures applicator and bystander safety and proper application.

(iii) The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern.

(iv) Tools available to mark swaths, such as global positioning systems and flags.

(g) *Private applicator minimum age.* A private applicator must be at least 18 years old.

(h) *Private applicator competency.* The competency of each candidate for private applicator certification must be established by the certifying authority based upon the certification standards set forth in paragraphs (a) through (g) of this section in order to assure that private applicators have the competency to use and supervise the use of restricted use pesticides in accordance with applicable State, Tribal, and Federal laws and regulations. The certifying authority must use either a written examination process as described in paragraph (h)(1) of this section or a non-examination training process as described in paragraph (h)(2) of this section to assure the competency of private applicators in regard to the general certification standards applicable to all private applicators outlined in paragraph (a) of this section, and, if applicable, the specific standards for the each of the categories outlined in paragraphs (b) through (f) of this section in which a private applicator is to be certified.

(1) *Determination of competency by examination.* If the certifying authority uses an examination process to determine the competency of private applicators, the examination process must meet all of the requirements of § 171.103(a)(2).

(2) *Training for competency without examination.* Any candidate for certification as a private applicator may complete a training program approved by the certifying authority to establish competency. A training program to establish private applicator competency must conform to all of the following criteria:

(i) *Identification.* Each person seeking certification must present a valid, government-issued photo identification, or other form of similarly reliable identification authorized by the certifying authority, to the certifying authority or designated representative as proof of identity and age at the time of the training program to be eligible for certification.

(ii) *Training programs for private applicator general certification and category certification.*

(A) The training program for general private applicator certification must cover the competency standards outlined in paragraph (a) of this section in sufficient detail to allow the private applicator to demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides.

(B) The training program for each relevant category for private applicator certification must cover the competency standards outlined in paragraphs (b) through (f) of this section in sufficient detail to allow the private applicator to demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides for each category in which he or she intends to apply restricted use pesticides, and must be in addition to the training program required for general private applicator certification.

(i) *Exceptions.* The requirements in § 171.105(a)–(h) of this part do not apply to the following persons:

(1) Persons conducting laboratory research involving restricted use pesticides.

(2) Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

§ 171.107 Standards for recertification of certified applicators.

(a) *Maintenance of continued competency.* Each commercial and private applicator certification shall expire five years after issuance, unless

the applicator is recertified in accordance with this section. A certifying authority may establish a shorter certification period. In order for a certified applicator's certification to continue without interruption, the certified applicator must be recertified under this section before the expiration of his or her current certification.

(b) *Process for recertification.* Minimum standards for recertification by written examination, or through continuing education programs, are as follows:

(1) *Written examination.* A certified applicator may be found eligible for recertification upon passing a written examination approved by the certifying authority and that is designed to evaluate whether the certified applicator demonstrates the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators. The examination shall conform to the applicable standards for examinations set forth in § 171.103(a)(2) of this part.

(2) *Continuing education programs.* A certified applicator may be found eligible for recertification upon successfully completing a continuing education program pursuant to the certifying authority's EPA-approved certification plan.

(i) The quantity, content, and quality of a continuing education program to maintain applicator certification must be sufficient to ensure the applicator continues to demonstrate the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators.

(ii) Any continuing education course or event relied upon for applicator recertification must be approved by the certifying authority as being suitable for its purpose in the certifying authority's recertification process.

(iii) A certifying authority must ensure that any continuing education course or event, including an online or other distance education course or event, relied upon for applicator recertification includes a process to verify the applicator's successful completion of the course or event.

■ 10. Subpart C is added to part 171 to read as follows:

Subpart C—Supervision of Noncertified Applicators

Sec.

171.201 Requirements for direct supervision of noncertified applicators by certified applicators.

171.201 Requirements for direct supervision of noncertified applicators by certified applicators.

(a) *Applicability.* This section applies to any certified applicator who allows or relies on a noncertified applicator to use a restricted use pesticide under the certified applicator's direct supervision.

(b) *General requirements.* (1) Requirements for the certified applicator.

(i) The certified applicator must have a practical knowledge of applicable Federal, State and Tribal supervisory requirements, including any requirements on the product label and labeling, regarding the use of restricted use pesticides by noncertified applicators.

(ii) The certified applicator must be certified in each category as set forth in §§ 171.101 and 171.105(a) through (f) applicable to the supervised pesticide use.

(2) Requirements for the noncertified applicator. The certified applicator must ensure that each noncertified applicator using a restricted use pesticide under his or her direct supervision meets all of the following requirements before using a restricted use pesticide:

(i) The noncertified applicator has satisfied the qualification requirements under paragraph (c) of this section.

(ii) The noncertified applicator has been instructed within the last 12 months in the safe operation of any equipment he or she will use for mixing, loading, transferring, or applying pesticides.

(iii) The noncertified applicator has met the minimum age required to use restricted use pesticides under the supervision of a certified applicator. A noncertified applicator must be at least 18 years old, except that a noncertified applicator must be at least 16 years old if all of the following requirements are met:

(A) The noncertified applicator is using the restricted use pesticide under the direct supervision of a private applicator who is an immediate family member.

(B) The restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate.

(C) The noncertified applicator is not applying the restricted use pesticide aerially.

(3) Use-specific conditions that must be met in order for a noncertified applicator to use a restricted use pesticide. The certified applicator must ensure that all of the following requirements are met before allowing a noncertified applicator to use a restricted use pesticide under his or her direct supervision:

(i) The certified applicator must ensure that the noncertified applicator has access to the applicable product labeling at all times during its use.

(ii) Where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the certified applicator must ensure that any noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for its intended purpose.

(iii) The certified applicator must provide to each noncertified applicator before use of a restricted use pesticide instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (*e.g.,* surface and ground water, endangered species, local population) and the conditions of application (*e.g.,* equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The certified applicator must provide this information in a manner that the noncertified applicator can understand.

(iv) The certified applicator must ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.

(v) The certified applicator must ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.

(vi) The certified applicator must be physically present at the site of the use being supervised when required by the product labeling.

(vii) If the certified applicator is a commercial applicator, the certified applicator must create or verify the existence of the records required by paragraph (e) of this section.

(c) *Noncertified applicator qualifications.* Before any noncertified applicator uses a restricted use pesticide under the direct supervision of the certified applicator, the supervising certified applicator must ensure that the noncertified applicator has met at least one of the following qualifications:

(1) The noncertified applicator has been trained in accordance with paragraph (d) of this section within the last 12 months.

(2) The noncertified applicator has met the training requirements for an agricultural handler under 40 CFR 170.501 of this title within the last 12 months.

(3) The noncertified applicator has met the requirements established by a certifying authority that meet or exceed the standards in § 171.201(c)(1).

(4) The noncertified applicator is currently a certified applicator but is not certified to perform the type of application being conducted or is not certified in the jurisdiction where the use will take place.

(d) *Noncertified applicator training program.* (1) General noncertified applicator training must be presented to noncertified applicators either orally from written materials or audiovisually. The information must be presented in a manner that the noncertified applicators can understand, such as through a translator. The person conducting the training must be present during the entire training program and must respond to the noncertified applicators' questions.

(2) The person who conducts the training must meet one of the following criteria:

(i) Be currently certified as an applicator of restricted use pesticides under this part.

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by EPA, the certifying authority, or a State, Tribal, or Federal agency having jurisdiction.

(iii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of handlers under 40 CFR part 170.

(3) The noncertified applicator training materials must include the information that noncertified applicators need in order to protect themselves, other people, and the environment before, during, and after making a restricted use pesticide application. The noncertified applicator training materials must include, at a minimum, the following:

(i) Potential hazards from toxicity and exposure that pesticides present to noncertified applicators and their families, including acute and chronic effects, delayed effects, and sensitization.

(ii) Routes through which pesticides can enter the body.

(iii) Signs and symptoms of common types of pesticide poisoning.

(iv) Emergency first aid for pesticide injuries or poisonings.

(v) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Noncertified applicators must be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water. Noncertified applicators must also be instructed to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible.

(vi) How and when to obtain emergency medical care.

(vii) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(viii) Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides.

(ix) Potential hazards from pesticide residues on clothing.

(x) Wash work clothes before wearing them again and wash them separately from other clothes.

(xi) Do not take pesticides or pesticide containers used at work to your home.

(xii) Potential hazards to children and pregnant women from pesticide exposure.

(xiii) After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xiv) How to report suspected pesticide use violations to the appropriate State or Tribal agency responsible for pesticide enforcement.

(xv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and meaning of the restricted use product statement, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment.

(xvi) Need for, and appropriate use and removal of, personal protective equipment.

(xvii) How to recognize, prevent, and provide first aid treatment for heat-related illness.

(xviii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xix) Environmental concerns such as drift, runoff, and wildlife hazards.

(xx) Restricted use pesticides may be used only by a certified applicator or by a noncertified applicator working under the direct supervision of a certified applicator.

(xxi) The certified applicator's responsibility to provide to each noncertified applicator instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (*e.g.,* surface and ground water, endangered species, local population, and risks) and the conditions of application (*e.g.,* equipment, method of application, formulation, and risks) might increase or decrease the risk of adverse effects. The certified applicator must provide these instructions in a manner the noncertified applicator can understand.

(xxii) The certified applicator's responsibility to ensure that each noncertified applicator has access to the applicable product labeling at all times during its use.

(xxiii) The certified applicator's responsibility to ensure that where the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each noncertified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and use correctly for its intended purpose.

(xxiv) The certified applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the noncertified applicator, other persons, or the environment.

(xxv) The certified applicator's responsibility to ensure that a means to immediately communicate with the certified applicator is available to each noncertified applicator using restricted use pesticides under his or her direct supervision.

(e) *Recordkeeping.* (1) Commercial applicators must create or verify the existence of records documenting that each noncertified applicator has the qualifications required in paragraph (c) of this section. For each noncertified applicator, the records must contain the information appropriate to the method of qualification as provided in paragraphs (e)(1)(i) through (e)(1)(iv).

(i) If the noncertified applicator was trained in accordance with paragraph (c)(1) of this section, the record must contain all of the following information:

(A) The noncertified applicator's printed name and signature.

(B) The date the training requirement in paragraph (c) of this section was met.

(C) The name of the person who provided the training.

(D) The title or a description of the training provided.

(ii) If the noncertified applicator was trained as an agricultural handler under 40 CFR 170.501 in accordance with paragraph (c)(2) of this section, the record must contain all of the information required at 40 CFR 170.501(d)(1).

(iii) If the noncertified applicator qualified by satisfying the requirements established by the certifying authority, as described in paragraph (c)(3) of this section, the record must contain the information required by the certifying authority.

(iv) If the noncertified applicator is a certified applicator who is not certified to perform the type of application being conducted or not certified in the jurisdiction where the use will take place, as described in paragraph (c)(4) of this section, the record must include all of the following information:

(A) The noncertified applicator's name.

(B) The noncertified applicator's certification number.

(C) The expiration date of the noncertified applicator's certification.

(D) The certifying authority that issued the certification.

(2) The commercial applicator must create or verify the existence of the record containing the information in paragraph (e)(1) of this section before allowing the noncertified applicator to use restricted use pesticides under his or her direct supervision.

(3) The commercial applicator supervising any noncertified applicator must have access to records documenting the information required in paragraph (e)(1) of this section at the commercial applicator's principal place of business for two years from the date the noncertified applicator used the restricted use pesticide.

(f) *Exceptions.* The requirements in § 171.201(a) through (e) of this part do not apply to the following persons:

(1) Persons conducting laboratory research involving restricted use pesticides.

(2) Doctors of Medicine and Doctors of Veterinary Medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

■ 11. Subpart D is added to part 171 to read as follows:

Subpart D—Certification Plans

Sec.

171.301 General.
171.303 Requirements for State certification plans.
171.305 Requirements for Federal agency certification plans.
171.307 Certification of applicators in Indian country.
171.309 Modification and withdrawal of approval of certification plans.
171.311 EPA-administered applicator certification programs.

§ 171.301 General.

(a) *Jurisdiction.* A certification issued under a particular certifying authority's certification plan is only valid within the geographical area specified in the certification plan approved by the Agency.

§ 171.303 Requirements for State certification plans.

(a) *Conformance with Federal standards for certification of applicators of restricted use pesticides.* A State may certify applicators of restricted use pesticides only in accordance with a State certification plan approved by the Agency. The State certification plan must meet all of the following requirements:

(1) The State certification plan must include a full description of the proposed process the State will use to assess applicator competency to use or supervise the use of restricted use pesticides in the State.

(2) The State certification plan must specify which of the certification categories listed in § 171.101 will be included in the plan.

(i) A State certification plan may omit any unneeded certification categories.

(ii) A State certification plan may designate subcategories within the categories described in §§ 171.101 and 171.105(b) through (f) as it deems necessary.

(iii) A State certification plan may include additional certification categories not covered by the existing Federal categories described in §§ 171.101 and 171.105(b)–(f).

(iv) A State certification plan may combine the categories described in § 171.101(m) through (n) into a single general fumigation category for commercial applicators.

(v) A State certification plan may combine the categories described in § 171.105(d) through (e) into a single general fumigation category for private applicators.

(3) For each of the categories adopted pursuant to paragraph (b)(1) of this section, the State certification plan must include standards for the certification of applicators of restricted use pesticides that meet or exceed those standards prescribed by the Agency under §§ 171.101 through 171.105, except as provided in paragraph (a)(4) of this section.

(4) A State may adopt a limited use category for commercial applicators. A limited use category covers a small number of commercial applicators engaged in a use that does not clearly fit within any of the commercial applicator categories specified pursuant to paragraph (b)(2) of this section, and allows only the use of a limited set of restricted use pesticides by specific application methods. A State adopting a limited use category must include all of the following in its certification plan:

(i) A definition of the limited use category, specifying the restricted use pesticide(s), use sites, and specific application methods permitted.

(ii) An explanation of why it is not practical to include the limited use within any of the commercial applicator categories specified pursuant to paragraph (b)(2) of this section.

(iii) A requirement that candidates for certification in a limited use category pass the written examination covering the core standards at § 171.103(c) and demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticide(s) covered by the limited use category.

(iv) Specific competency standards for the limited use category.

(v) The process by which applicators must demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of the restricted use pesticides authorized under the limited use category based on the competency standards identified in paragraph (a)(4)(iv) of this section. This does not have to be accomplished by a written examination.

(vi) A description of the recertification standards for the limited use category and how those standards meet or exceed the standards prescribed by the Agency under § 171.107.

(vii) A description of the limited use certification credential. The credential must clearly state that the applicator is only authorized to purchase and use the specific restricted use pesticide(s) identified in that credential.

(5) The State certification plan must include standards for certification examinations that meet or exceed the standards prescribed by the Agency under § 171.103(a)(2), including a description of any alternative identification that a State will authorize in addition to a valid, government-issued photo identification.

(6) The State certification plan must include standards for the recertification of applicators of restricted use pesticides that meet or exceed those standards prescribed by the Agency under § 171.107.

(7) The State certification plan must include standards for the direct supervision of noncertified applicators by certified private and commercial applicators of restricted use pesticides that meet or exceed those standards prescribed by the Agency under § 171.201, or must state that use by noncertified applicators is not permitted.

(8) The State certification plan must describe the credentials or documents the State certifying authority will issue to each certified applicator verifying certification.

(9) A State may waive any or all of the procedures specified in § 171.103, § 171.105, and § 171.107 of this part when certifying applicators in reliance on valid current certifications issued by another State, Tribal, or Federal agency under an EPA-approved certification plan. The State certification plan must explain whether, and if so, under what circumstances, the State will certify applicators based in whole or in part on their holding a valid current certification issued by another State, Tribe or Federal agency. Such certifications are subject to all of the following conditions:

(i) A State may rely only on valid current certifications that are issued under an approved State, Tribal or Federal agency certification plan.

(ii) The State has examined the standards of competency used by the State, Tribe, or Federal agency that originally certified the applicator and has determined that, for each category of certification that will be accepted, they are comparable to its own standards.

(iii) Any State that chooses to certify applicators based, in whole or in part, on the applicator having been certified by another State, Tribe, or Federal agency, must include in its plan a mechanism that allows the State to terminate an applicator's certification upon notification that the applicator's original certification terminates because the certificate holder has been convicted under section 14(b) of FIFRA or has been subject to a final order imposing a civil penalty under section 14(a) of FIFRA.

(iv) The State issuing a certification based in whole or in part on the applicator holding a valid current certification issued by another State, Tribe or Federal agency must issue an appropriate State credential or document to the applicator.

(b) *Contents of an application for EPA approval of a State plan for certification of applicators of restricted use pesticides.*

(1) The application for Agency approval of a State certification plan must list and describe the categories of certification.

(2) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the certification of commercial applicators meet or exceed those standards prescribed by the Agency under §§ 171.101 and 171.103. Such documentation must include one of the following:

(i) A statement that the State has adopted the same standards for certification of commercial applicators prescribed by the Agency under §§ 171.101 and 171.103 and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such standards.

(ii) A statement that the State has adopted its own standards that meet or exceed the standards for certification of commercial applicators prescribed by the Agency under §§ 171.101 and 171.103. If the State selects this option, the application for Agency approval of a State certification plan must include all of the following:

(A) A list and detailed description of all the categories and subcategories to be used for certification of commercial applicators in the State and a citation to the specific State laws and/or regulations demonstrating that the State has adopted such categories and subcategories.

(B) A list and detailed description of all of the standards for certification of commercial applicators adopted by the State and a citation to the specific State laws and/or regulations demonstrating that the State has adopted such standards. Any additional categories or subcategories established by a State must be included in the application for Agency approval of a State plan and must clearly describe the standards the State will use to determine if the applicator has the necessary competency.

(C) A description of the State's commercial applicator certification examination standards and an explanation of how they meet or exceed the standards prescribed by the Agency under § 171.103(a)(2).

(3) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the certification of private applicators meet or exceed those standards prescribed by the Agency under § 171.105. Such documentation must include a statement that the State has adopted its own standards that meet or exceed the standards for certification of private applicators of restricted use pesticides prescribed by the Agency under § 171.105. The application for Agency approval of a State certification plan must include all of the following:

(i) A list and detailed description of all the categories and subcategories to be used for certification of private applicators in the State and a citation to the specific State laws and/or regulations demonstrating that the State has adopted such categories and subcategories.

(ii) A list and detailed description of all of the standards for certification of private applicators adopted by the State and a citation to the specific State laws and/or regulations demonstrating that the State has adopted such standards. Any additional categories or subcategories established by a State must be identified in the application for Agency approval of a State plan and the application must clearly describe the standards the State will use to determine if the applicator has the necessary competency.

(iii) If private applicator certification is based upon written examination, a description of the State's private applicator certification examination standards and an explanation of how those meet or exceed the standards prescribed by the Agency under § 171.103(a)(2).

(iv) If private applicator certification is based upon training, an explanation of how the quantity, content, and quality of the State's training program ensure that a private applicator demonstrates the level of competency required § 171.105 for private applicators, addressing, at the minimum, all of the following factors:

(A) The quantity of training required to become certified as a private applicator.

(B) The content that is covered by the training and how the State ensures that required content is covered.

(C) The process the State uses to approve training programs for private applicator certification.

(D) How the State ensures the ongoing quality of the training program for private applicator certification.

(4) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the recertification of applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under § 171.107. Such

documentation must include a statement that the State has adopted its own standards that meet or exceed the standards for recertification prescribed by the Agency under § 171.107. The application for Agency approval of a State certification plan must include all of the following:

(i) A list and detailed description of all of the State standards for recertification of private and commercial applicators, including the elements described in § 171.303(b)(4)(ii) through (iv), and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such standards.

(ii) The certification period, which may not exceed five years.

(iii) If recertification is based upon written examination, a description of the State's process for reviewing, and updating as necessary, the written examination(s) to ensure that the written examination(s) evaluates whether a certified applicator demonstrates the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators.

(iv) If recertification is based upon continuing education, an explanation of how the quantity, content, and quality of the State's continuing education program ensures that a certified applicator continues to demonstrate the level of competency required by § 171.103 for commercial applicators or § 171.105 for private applicators, including but not limited to:

(A) The quantity of continuing education required to maintain certification.

(B) The content that is covered by the continuing education program and how the State ensures the required content is covered.

(C) The process the State uses to approve continuing education courses or events, including information about how the State ensures that any continuing education courses or events verify the applicator's successful completion of the course or event.

(D) How the State ensures the ongoing quality of the continuing education program.

(5) The application for Agency approval of a State certification plan must contain satisfactory documentation that the State standards for the direct supervision of noncertified applicators by certified private and commercial applicators of restricted use pesticides meet or exceed those standards prescribed by the Agency under § 171.201. Such documentation may include one or more of the following as applicable:

(i) A statement that the State has adopted the standards for direct supervision of noncertified applicators by certified private and/or commercial applicators prescribed by the Agency under § 171.201 and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such standards.

(ii) A statement that the State prohibits noncertified applicators from using restricted use pesticides under the direct supervision of certified private and/or commercial applicators, and a citation of the specific State laws and/or regulations demonstrating that the State has adopted such a prohibition.

(iii) A statement that the State has adopted standards for direct supervision of noncertified applicators by certified private and/or commercial applicators that meet or exceed the standards prescribed by the Agency under § 171.201, a citation of the specific State laws and/or regulations demonstrating that the State has adopted such standards, and an explanation of how the State standards meet or exceed the standards prescribed by the Agency under § 171.201.

(6) The application for Agency approval of a State certification plan must include all of the following:

(i) A written statement by the Governor of the State designating a lead agency responsible for administering the State certification plan. The lead agency will serve as the central contact point for the Agency. The State certification plan must identify the primary point of contact at the lead agency responsible for administering the State certification plan and serving as the central contact for the Agency on any issues related to the State certification plan. In the event that more than one agency or organization will be responsible for performing functions under the State certification plan, the application for Agency approval of a State plan must identify all such agencies and organizations and list the functions to be performed by each, including compliance monitoring and enforcement responsibilities. The application for Agency approval of a State plan must indicate how these functions will be coordinated by the lead agency to ensure consistency of the administration of the State certification plan.

(ii) A written opinion from the State attorney general or from the legal counsel of the State lead agency that states that the lead agency and other cooperating agencies have the legal authority necessary to carry out the State certification plan.

(iii) A listing of the qualified personnel that the lead agency and any cooperating agencies or organizations have to carry out the State certification plan. The list must include the number of staff, job titles, and job functions of such personnel of the lead agency and any cooperating organizations.

(iv) A commitment by the State that the lead agency and any cooperators will ensure sufficient resources are available to carry out the applicator certification program as detailed in the State certification plan.

(v) A document outlining the State's proposed approach and anticipated timeframe for implementing the State certification plan after EPA approves the State certification plan.

(7) The application for Agency approval of a State certification plan must include a complete copy of all State laws and regulations relevant to the State certification plan. In addition, the application for Agency approval of a State plan must include citations to the specific State laws and regulations that demonstrate specific legal authority for each of the following:

(i) Provisions for and listing of the acts which would constitute grounds for denying, suspending, and revoking certification of applicators. Such grounds must include, at a minimum, misuse of a pesticide, falsification of any records required to be maintained by the certified applicator, a criminal conviction under section 14(b) of FIFRA, a final order imposing civil penalty under section 14(a) of FIFRA, and conclusion of a State enforcement action for violations of State laws or regulations relevant to the State certification plan.

(ii) Provisions for reviewing, and where appropriate, suspending or revoking an applicator's certification based on any of the grounds listed in the plan pursuant to paragraph (b)(7)(i) of this section, or a criminal conviction under section 14(b) of FIFRA, a final order imposing civil penalty under section 14(a) of FIFRA, or conclusion of a State enforcement action for violations of State laws or regulations relevant to the State certification plan.

(iii) Provisions for assessing criminal and civil penalties for violations of State laws or regulations relevant to the State certification plan.

(iv) Provisions for right of entry by consent or warrant by State officials at reasonable times for sampling, inspection, and observation purposes.

(v) Provisions making it unlawful for persons other than certified applicators or noncertified applicators working under a certified applicator's direct

supervision to use restricted use pesticides.

(vi) Provisions requiring certified commercial applicators to record and maintain for the period of at least two years routine operational records containing information on types, amounts, uses, dates, and places of application of restricted use pesticides and for ensuring that such records will be available to appropriate State officials. Such provisions must require commercial applicators to record and maintain, at a minimum, all of the following:

(A) The name and address of the person for whom the restricted use pesticide was applied.

(B) The location of the restricted use pesticide application.

(C) The size of the area treated.

(D) The crop, commodity, stored product, or site to which the restricted use pesticide was applied.

(E) The time and date of the restricted use pesticide application.

(F) The brand or product name of the restricted use pesticide applied.

(G) The EPA registration number of the restricted use pesticide applied.

(H) The total amount of the restricted use pesticide applied per location per application.

(I) The name and certification number of the certified applicator that made or supervised the application, and, if applicable, the name of any noncertified applicator(s) that made the application under the direct supervision of the certified applicator.

(J) Records required under § 171.201(e).

(vii) Provisions requiring restricted use pesticide retail dealers to record and maintain at each individual dealership, for the period of at least two years, records of each transaction where a restricted use pesticide is distributed or sold to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities. Records of each such transaction must include all of the following information:

(A) Name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold for application by a certified applicator.

(B) The certification number on the certification document presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the State, Tribe or Federal agency that issued the certification document, the expiration date of the certified applicator's certification, and the category(ies) in which the applicator is certified relevant to the pesticide(s) sold.

(C) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction, including any applicable emergency exemption or State special local need registration number.

(D) The quantity of the restricted use pesticide(s) distributed or sold in the transaction.

(E) The date of the transaction.

(c) *Requirement to submit reports to the Agency.* The State must agree to submit the following reports to the Agency in a manner and containing the information that the Agency requires:

(1) An annual report to be submitted by the State lead agency to the Agency by the date established by the Agency that includes all of the following information:

(i) The number of new general private applicator certifications and recertifications issued during the last 12 month reporting period, and total number of applicators holding a valid general private applicator certification at the end of the last 12 month reporting period.

(ii) For each private applicator category specified in the certification plan, the numbers of new certifications and recertifications issued during the last 12 month reporting period, and the total number holding valid certifications in each category at the end of the last 12 month reporting period.

(iii) The numbers of new commercial applicator certifications and recertifications issued during the last 12 month reporting period, and the total number of applicators certified in at least one commercial applicator certification category at the end of the last 12 month reporting period.

(iv) For each commercial applicator certification category or subcategory specified in the certification plan, the numbers of new certifications and recertifications issued during the last 12 month reporting period, and the total number of commercial applicators holding a valid certification in each category or subcategory at the end of the last 12 month reporting period.

(v) A description of any modifications made to the approved certification plan during the last 12 month reporting period that have not been previously evaluated by the Agency under § 171.309(a)(3).

(vi) A description of any proposed changes to the certification plan that the State anticipates making during the next reporting period that may affect the certification program.

(vii) A summary of enforcement activities related to the use of restricted use pesticides during the last 12 month reporting period.

(2) Any other reports reasonably required by the Agency in its oversight of restricted use pesticides.

§ 171.305 Requirements for Federal agency certification plans.

(a) A Federal agency may certify applicators of restricted use pesticides only in accordance with a Federal agency certification plan approved by the Agency. Certification must be limited to the employees of the Federal agency covered by the certification plan and will be valid only for those uses of restricted use pesticides conducted in the performance of the employees' official duties.

(1) The Federal agency certification plan must include a full description of the proposed process the Federal agency will use to assess applicator competency to use or supervise the use of restricted use pesticides.

(2) Employees certified by the Federal agency must meet the standards for commercial applicators.

(3) The Federal agency certification plan must list and describe the categories of certification from the certification categories listed in § 171.101 that will be included in the plan except that:

(i) A Federal agency certification plan may omit any unneeded certification categories.

(ii) A Federal agency certification plan may designate subcategories within the categories described in § 171.101 as it deems necessary.

(iii) A Federal agency certification plan may include additional certification categories not covered by the existing Federal categories described in § 171.101.

(iv) A Federal agency certification plan may combine the categories described in § 171.101(m) through (n) into a single general fumigation category for commercial applicators.

(4) For each of the categories adopted pursuant to paragraph (b)(1) of this section, the Federal agency plan must include standards for the certification of applicators of restricted use pesticides that meet or exceed those standards prescribed by the Agency under §§ 171.101 through 171.103, except as provided at paragraph (a)(5) of this section.

(5) A Federal agency may adopt a limited use category for commercial

applicators. A limited use category covers a small number of applicators engaged in a use that does not clearly fit within any of the categories in § 171.101, and allows only the use of a limited set of restricted use pesticides by specific application methods. A Federal agency adopting a limited use category must include all of the following in its certification plan:

(i) A definition of the limited use category, specifying the restricted use pesticide(s), use sites, and specific application methods permitted.

(ii) An explanation of why it is not practical to include the limited use category in any of the categories in § 171.101.

(iii) A requirement that candidates for certification in a limited use category pass the written examination covering the core standards at § 171.103(c) and demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticide(s) covered by the limited use category.

(iv) Specific competency standards for the limited use category.

(v) The process by which applicators must demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides covered by the limited use category based on the competency standards identified in paragraph (a)(5)(iv) of this section. This does not have to be accomplished by a written examination.

(vi) A description of the recertification standards for the limited use category and how those standards meet or exceed the standards prescribed by the Agency under § 171.107.

(vii) A description of the limited use certification credential. The credential must clearly state that the applicator is only authorized to purchase and use the specific restricted use pesticide(s) identified in that credential.

(6) The Federal agency standards for certification examinations must meet or exceed the standards prescribed by the Agency under § 171.103(a)(2), including a description of any alternative identification that the Federal agency will authorize in addition to a valid, government-issued photo identification.

(7) The Federal agency standards for the recertification of applicators of restricted use pesticides must meet or exceed those standards prescribed by the Agency under § 171.107.

(8) The Federal agency standards for the direct supervision of noncertified applicators by certified private and commercial applicators of restricted use pesticides must meet or exceed those standards prescribed by the Agency under § 171.201.

(9) The Federal agency certification plan must describe the credentials or documents the Federal agency will issue to each certified applicator verifying certification of applicators.

(10) A Federal agency may waive any or all of the procedures specified in § 171.103, § 171.105, and § 171.107 of this part when certifying applicators in reliance on valid current certifications issued by another State, Tribal, or Federal agency under an EPA-approved certification plan. The Federal agency certification plan must explain whether, and if so, under what circumstances, the Federal agency will certify applicators based in whole or in part on their holding a valid current certification issued by another State, Tribe or Federal agency. Such certifications are subject to all of the conditions listed at § 171.303(a)(9).

(b) *Contents of an application for EPA approval of a Federal agency plan for certification of applicators of restricted use pesticides.*

(1) The application for Agency approval of a Federal agency certification plan must list and describe the categories of certification.

(2) The application for Agency approval of a Federal agency certification plan must contain satisfactory documentation that the Federal agency standards for certification of commercial applicators meet or exceed those standards prescribed by the Agency under §§ 171.101 and 171.103. Such a statement must include one of the following:

(i) A statement that the Federal agency has adopted the same standards for certification prescribed by the Agency under §§ 171.101 through 171.103.

(ii) A statement that the Federal agency has adopted its own standards that meet or exceed the standards for certification prescribed by the Agency under §§ 171.101 through 171.103. If the Federal agency selects this option, the application for Agency approval of a Federal agency certification plan must include all of the following:

(A) A list and detailed description of all the categories and subcategories to be used for certification of commercial applicators.

(B) A list and detailed description of all of the standards for certification of commercial applicators adopted by the Federal agency. Any additional categories or subcategories established by a Federal agency must be included in the application for Agency approval of a Federal agency plan and must clearly describe the standards the Federal agency will use to determine if the applicator has the necessary competency.

(C) A description of the Federal agency's certification examination standards and an explanation of how those meet or exceed the standards prescribed by the Agency under § 171.103(a)(2).

(3) The application for Agency approval of a Federal agency plan must contain satisfactory documentation that the Federal agency standards for recertification of commercial applicators of restricted use pesticides meet or exceed the standards for recertification prescribed by the Agency under § 171.107. Such documentation must include a statement that the Federal agency has adopted its own standards that meet or exceed the standards for recertification prescribed by the Agency under § 171.107. The application for Agency approval of a Federal agency certification plan must include all of the following:

(i) A list and detailed description of all the standards for recertification adopted by the Federal agency.

(ii) The certification period, which may not exceed five years.

(iii) If recertification is based upon written examination, a description of the Federal agency's process for reviewing, and updating as necessary, the written examination(s) and to ensure that the written examination(s) evaluate whether a commercial applicator demonstrates the level of competency required by § 171.103.

(iv) If recertification is based upon continuing education, an explanation of how the quantity, content and quality of the Federal agency's continuing education program ensure that a commercial applicator continues to demonstrate the level of competency required by § 171.103 for commercial applicators, including but not limited to, all of the following:

(A) The quantity of continuing education required to maintain certification.

(B) The content that is covered by the continuing education program and how the Federal agency ensures the relevant content is covered.

(C) The process the Federal agency uses to approve continuing education training courses or events, including information about how the Federal agency ensures that any continuing education courses or events verify the commercial applicator's successful completion of the course or event.

(D) How the Federal agency ensures the ongoing quality of the continuing education program.

(4) The application for Agency approval of a Federal agency certification plan must contain satisfactory documentation that the Federal agency standards for direct supervision of noncertified applicators by commercial applicators meet or exceed those standards prescribed by the Agency under § 171.201. Such documentation may include one or more of the following as applicable:

(i) A statement that the Federal agency has adopted the standards for direct supervision of noncertified applicators by commercial applicators prescribed by the Agency under § 171.201.

(ii) A statement that the Federal agency prohibits noncertified applicators from using restricted use pesticides under the direct supervision of commercial applicators.

(iii) A statement that the Federal agency has adopted standards for direct supervision of noncertified applicators by commercial applicators that meet or exceed the standards prescribed by the Agency under § 171.201 and an explanation of how the Federal agency standards meet or exceed the standards prescribed by the Agency under § 171.201.

(5) The application for Agency approval of a Federal agency certification plan must meet or exceed all of the applicable requirements in § 171.303. However, in place of the legal authorities required in § 171.303(b)(7), the Federal agency may use administrative controls inherent in the employer-employee relationship to accomplish the objectives of § 171.303(b)(7). The application for Agency approval of a Federal agency certification plan must include a detailed description of how the Federal agency will exercise its administrative authority, where appropriate to deny, suspend or revoke certificates of employees who misuse pesticides, falsify records, or violate relevant provisions of FIFRA. Similarly, the application for Agency approval of a Federal agency certification plan must include a commitment that the Federal agency will record and maintain for the period of at least two years routine operational records containing information on types, amounts, uses, dates, and places of application of restricted use pesticides and that such records will be available to State and Federal officials. Such recordkeeping requirements must require Federal agency employees certified as commercial applicators to record and maintain, at a minimum, all of the records specified in § 171.303(b)(7)(vi).

(c) The application for Agency approval of a Federal agency certification plan must include a commitment by the Federal agency to submit an annual report to the Agency in a manner that the Agency requires that includes all of the following information:

(1) The numbers of new, recertified, and total commercial applicators certified in at least one certification category at the end of the last 12 month reporting period.

(2) For each commercial applicator certification category specified in § 171.101 or subcategory specified in the Federal agency certification plan, the numbers of new, recertified and total commercial applicators holding a valid certification in each of those categories at the end of the last 12 month reporting period.

(3) A description of any modifications made to the approved certification plan during the last 12 month reporting period that have not been previously evaluated under § 171.309(a)(3).

(4) A description of any proposed changes to the certification plan that may affect the certification program that the Federal agency anticipates making during the next reporting period.

(5) A summary of enforcement activities related to use of restricted use pesticides by applicators certified by the Federal agency during the last 12 month reporting period.

(d) The application for Agency approval of a Federal agency certification plan must include a commitment by the Federal agency to submit any other reports reasonably required by the Agency in its oversight of the use of restricted use pesticides.

(e) If applicators certified under the Federal agency plan will make any applications of restricted use pesticides in areas that are not subject to exclusive federal jurisdiction, the application for Agency approval of a Federal agency certification plan must meet all of the following additional requirements:

(1) The Federal agency plan must have a provision that affirms Federal agency certified applicators will comply with all applicable State and Tribal pesticide laws and regulations of the jurisdiction in which the restricted pesticide is being used when using restricted use pesticides areas that are not subject to exclusive federal jurisdiction, including any substantive State or Tribal standards in regard to qualifications for commercial applicator certification that exceed the Federal agency's standards.

(2) The Federal agency plan must have a provision for the Federal agency to notify the appropriate EPA Regional office and State or Tribal pesticide authority in the event of misuse or suspected misuse of a restricted use pesticide by a Federal agency employee and any pesticide exposure incident involving human or environmental harm that may have been caused by an application of a restricted use pesticide made by a Federal agency employee in an area not subject to exclusive federal jurisdiction.

(3) The Federal agency plan must have a provision for the Federal agency to cooperate with the Agency and the State or Tribal pesticide authority in any investigation or enforcement action undertaken in connection with an application of a restricted use pesticide made by a Federal agency employee in an area not subject to exclusive federal jurisdiction.

§ 171.307 Certification of applicators in Indian country.

All applicators of restricted use pesticides in Indian country must hold a certification valid in that area of Indian country, or be working under the direct supervision of a certified applicator whose certification is valid in that area of Indian country. An Indian Tribe may certify applicators of restricted use pesticides in Indian country only pursuant to a certification plan approved by the Agency that meets the requirements of paragraph (a) or (b) of this section. The Agency may implement a Federal certification plan, pursuant to paragraph (c) of this section and § 171.311, for an area of Indian country not covered by an approved plan.

(a) An Indian Tribe may choose to allow persons holding currently valid certifications issued under one or more specified State, Tribal, or Federal agency certification plans to use restricted use pesticides within the Tribe's Indian country.

(1) A certification plan under paragraph (a) of this section must consist of a written agreement between the Tribe and the relevant EPA Region(s) that contains all of the following information:

(i) A detailed map or legal description of the area(s) of Indian country covered by the plan.

(ii) A listing of the State(s), Tribe(s) or Federal agency(ies) upon whose certifications the Tribe will rely.

(iii) A description of any Tribal law, regulation, or code relating to application of restricted use pesticides in the covered area of Indian country, including a citation to each applicable Tribal law, regulation, or code.

(iv) A description of the procedures and relevant authorities for carrying out

compliance monitoring under and enforcement of the plan, including all of the following:

(A) A description of the Agency and Tribal roles and procedures for conducting inspections.

(B) A description of the Agency and Tribal roles and procedures for handling case development and enforcement actions and actions on certifications, including procedures for exchange of information.

(C) A description of the Agency and Tribal roles and procedures for handling complaint referrals.

(v) A description and copy of any separate agreements relevant to administering the certification plan and carrying out related compliance monitoring and enforcement activities. The description shall include a listing of all parties involved in each separate agreement and the respective roles, responsibilities, and relevant authorities of those parties.

(2) To the extent that an Indian Tribe is precluded from exercising criminal enforcement authority, the Federal government will exercise primary criminal enforcement authority in regard to a certification plan under paragraph (a) of this section. The Tribe and the relevant EPA Region(s) shall develop a procedure whereby the Tribe will provide potential investigative leads to EPA and/or other appropriate Federal agencies in an appropriate and timely manner. This procedure shall encompass, at a minimum, all circumstances in which the Tribe is precluded from exercising relevant criminal enforcement authority. This procedure shall be included as part of the agreement between the Tribe and relevant EPA Region(s) described in paragraph (a)(1) of this section.

(3) A plan for the certification of applicators under paragraph (a) of this section shall not be effective until the agreement between the Tribe and the relevant EPA Region(s) has been signed by the Tribe and the appropriate EPA Regional Administrator(s).

(b) An Indian Tribe may choose to develop its own certification plan for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) A certification plan under paragraph (b) of this section shall consist of a written plan submitted by the Tribe to the Agency for approval that includes all of the following information:

(i) A detailed map or legal description of the area(s) of Indian country covered by the plan.

(ii) A demonstration that the plan meets all requirements of § 171.303 applicable to State plans, except that the Tribe's plan will not be required to meet the requirements of § 171.303(b)(6)(iii) with respect to provisions for criminal penalties, or any other requirement for assessing criminal penalties.

(2) To the extent that an Indian Tribe is precluded from exercising criminal enforcement authority, the Federal government will exercise primary criminal enforcement authority in regard to a certification plan under paragraph (b) of this section. The Tribe and the relevant EPA Region(s) shall develop a procedure whereby the Tribe will provide potential investigative leads to EPA and/or other appropriate Federal agencies in an appropriate and timely manner. This procedure shall encompass, at a minimum, all circumstances in which the Tribe is precluded from exercising relevant criminal enforcement authority and shall be described in a memorandum of agreement signed by the Tribe and the relevant EPA Regional Administrator(s).

(3) A plan for the certification of applicators under paragraph (b) of this section shall not be effective until the memorandum of agreement required under paragraph (b)(2) of this section has been signed by the Tribe and the relevant EPA Region(s) and the plan has been approved by the Agency.

(c) In any area of Indian country not covered by an approved certification plan, the Agency may, in consultation with the Tribe(s) affected, implement an EPA-administered certification plan under § 171.311 for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) Prior to publishing a notice of a proposed EPA-administered certification plan for an area of Indian country in the **Federal Register** for review and comment under § 171.311(d)(3), the Agency shall notify the relevant Indian Tribe(s) of EPA's intent to propose the plan.

(2) The Agency will not implement an EPA-administered certification plan for any area of Indian country where, prior to the expiration of the notice and comment period provided under § 171.311(d)(3), the chairperson or equivalent elected leader of the relevant Tribe provides the Agency with a written statement of the Tribe's position that the plan should not be implemented.

§ 171.309 Modification and withdrawal of approval of certification plans.

(a) *Modifications to approved certification plans.* A State, Tribe, or Federal agency may make modifications to its approved certification plan, provided that all of the following conditions are met:

(1) *Determination of plan compliance.* Before modifying an approved certification plan, the State, Tribe, or Federal agency must determine that the proposed modifications will not impair the certification plan's compliance with the requirements of this part or any other Federal laws or regulations.

(2) *Requirement for Agency notification.* The State, Tribe, or Federal agency must notify the Agency of any plan modifications within 90 days after the final State, Tribal, or Federal agency plan modifications become effective or when it submits its required annual report to the Agency, whichever occurs first.

(3) *Additional requirements for substantial modifications to approved certification plans.* Before making any substantial modifications to an approved certification plan, the State, Tribe or Federal agency must consult with the Agency and obtain Agency approval of the proposed modifications. Substantial modifications include the following:

(i) Addition or deletion of a mechanism for certification and/or recertification.

(ii) Establishment of a new private applicator category, private applicator subcategory, commercial applicator category, or commercial applicator subcategory.

(iii) Any other changes that the Agency has notified the State, Tribal or Federal agency that the Agency considers to be substantial modifications.

(4) *Agency decision.* The Agency shall make a written determination regarding the modified certification plan's compliance with the requirements of this part. The Agency shall give the certifying authority submitting a certification plan notice and opportunity for an informal hearing before rejecting the plan. The Agency's approval may be subject to reasonable terms and conditions. If the Agency approves modifications to a certification plan, that approval shall specify a schedule for implementation of the modified certification plan.

(b) *Withdrawal of approval.* If at any time the Agency determines that a State, Tribal, or Federal agency certification plan does not comply with the requirements of this part or any other Federal laws or regulations, or that a State, Tribal, or Federal agency is not administering the certification plan as approved under this part, or that a State is not carrying out a program adequate to ensure compliance with FIFRA section 19(f), the Agency may withdraw

approval of the certification plan. Before withdrawing approval of a certification plan, the Agency will notify the State, Tribal, or Federal agency and provide the opportunity for an informal hearing. If appropriate, the Agency may allow the State, Tribe, or Federal agency a reasonable time, not to exceed 90 days, to take corrective action.

§ 171.311 EPA-administered applicator certification programs.

(a) *Applicability.* This section applies in any State or area of Indian country where there is no approved State or Tribal certification plan in effect.

(b) *Certification requirement.* In any State or area of Indian country where EPA administers a certification plan, any person who uses or supervises the use of any restricted use pesticide must meet one of the following criteria:

(1) A commercial applicator must be certified in each category and subcategory, if any, as described in the EPA-administered plan, for which the applicator is applying or supervising the application of restricted use pesticides.

(2) A private applicator must be certified in each category and subcategory, if any, as described in the EPA-administered plan, for which the applicator is applying or supervising the application of restricted use pesticides.

(3) A noncertified applicator may only use a restricted use pesticide under the direct supervision of an applicator certified under the EPA-administered plan, in accordance with the requirements in § 171.201, and only for uses in categories authorized by that certified applicator's certification.

(c) *Implementation of EPA-administered plans in States.*

(1) In any State where this section is applicable, the Agency, in consultation with the Governor, may implement an EPA-administered plan for the certification of applicators of restricted use pesticides.

(2) Such a plan will meet the applicable requirements of § 171.303. Prior to the implementation of the plan, the Agency will publish in the **Federal Register** for review and comment a summary of the proposed EPA-administered plan for the certification of applicators and will generally make available copies of the proposed plan within the State. The summary will include all of the following:

(i) An outline of the proposed procedures and requirements for private and commercial applicator certification and recertification.

(ii) A description of the proposed categories and subcategories for certification.

(iii) A description of any proposed conditions for the recognition of State, Tribal, or Federal agency certifications.

(iv) An outline of the proposed arrangements for coordination and communication between the Agency and the State regarding applicator certifications and pesticide compliance monitoring and enforcement.

(d) *Implementation of EPA-administered plans in Indian country.*

(1) In any area of Indian country where this section is applicable and consistent with the provisions of § 171.307(c), the Agency, in consultation with the appropriate Indian Tribe(s), may implement a plan for the certification of applicators of restricted use pesticides.

(2) An EPA-administered plan may be implemented in the Indian country of an individual Tribe or multiple Tribes located within a specified geographic area.

(3) Such a plan will meet the applicable requirements of § 171.303 and § 171.307(c). Prior to the implementation of the plan, the Agency will publish in the **Federal Register** for review and comment a summary of the proposed EPA-administered plan for the certification of applicators and will generally make available copies of the proposed plan within the area(s) of Indian country to be covered by the proposed plan. The summary will include all of the following:

(i) A description of the area(s) of Indian country to be covered by the proposed plan.

(ii) An outline of the proposed procedures and requirements for private and commercial applicator certification and recertification.

(iii) A description of the proposed categories and subcategories for certification.

(iv) A description of any proposed conditions for the recognition of State, Tribal, or Federal agency certifications.

(v) An outline of the proposed arrangements for coordination and communication between the Agency and the relevant Tribe(s) regarding applicator certifications and pesticide compliance monitoring and enforcement.

(e) *Denial, suspension, modification, or revocation of a certification.*

(1) The Agency may suspend all or part of a certified applicator's certification issued under an EPA-administered plan or, after opportunity for a hearing, may deny issuance of, or revoke or modify, an applicator's certification issued under an EPA-administered plan, if the Agency finds that the applicator has been convicted under FIFRA section 14(b), has been subject to a final order imposing a civil penalty under FIFRA section 14(a), or has committed any of the following acts:

(i) Used any registered pesticide in a manner inconsistent with its labeling.

(ii) Made available for use, or used, any registered pesticide classified for restricted use other than in accordance with FIFRA section 3(d) and any regulations promulgated thereunder.

(iii) Refused to keep and maintain any records required pursuant to this section.

(iv) Made false or fraudulent records, invoices or reports.

(v) Failed to comply with any limitations or restrictions on a valid current certificate.

(vi) Violated any other provision of FIFRA and the regulations promulgated thereunder.

(vii) Allowed a noncertified applicator to use a restricted use pesticide in a manner inconsistent with the requirements in § 171.201.

(viii) Violated any provision of a State, Tribal or Federal agency certification plan or its associated laws or regulations.

(2) If the Agency intends to deny, revoke, or modify an applicator's certification, the Agency will:

(i) Notify the applicator of all of the following:

(A) The legal and factual ground(s) upon which the denial, revocation, or modification is based.

(B) The time period during which the denial, revocation or modification is effective, whether permanent or otherwise.

(C) The conditions, if any, under which the applicator may become certified or recertified.

(D) Any additional conditions the Agency may impose.

(ii) Provide the applicator an opportunity to request an informal hearing prior to final Agency action to deny, revoke or modify the certification, and the opportunity to offer written statements of facts, explanations, comments, and arguments relevant to the proposed action.

(3) If a hearing is requested by an applicator pursuant to paragraph (e)(2)(ii) of this section, the Agency will appoint an attorney in the Agency as Presiding Officer to conduct an informal hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific case.

(4) The Presiding Officer appointed pursuant to paragraph (e)(3) of this section shall do all of the following:

(i) Conduct a fair, orderly and impartial hearing, without unnecessary delay.

(ii) Provide such procedural opportunities as the Presiding Officer may deem necessary to a fair and impartial hearing.

(iii) Consider all relevant evidence, explanation, comment and argument properly submitted.

(iii) Promptly notify the parties of the final decision and order. Such an order is a final Agency action subject to judicial review in accordance with FIFRA section 16.

(5) If the Agency determines that the public health, interest or welfare warrants immediate action to suspend the certified applicator's certification during the course of the procedures specified in paragraphs (e)(2) through (e)(4) of this section, the Agency will do all of the following:

(i) Notify the certified applicator of the ground(s) upon which the suspension action is based.

(ii) Notify the certified applicator of the time period during which the suspension is effective.

(iii) Notify the certified applicator of the Agency's intent to revoke or modify the certification, as appropriate, in accord with paragraph (e)(2) of this section. If such revocation or modification notice has not previously been issued, it must be issued at the same time the suspension notice is issued.

(6) In cases where the act constituting grounds for suspension of a certification is neither willful nor contrary to the public interest, health, or safety, the certified applicator may have additional procedural rights under 5 U.S.C. 558(c).

(7) Any notice, decision or order issued by the Agency under paragraph (e) of this section, and any documents and information considered by the Presiding Officer in issuing an order under paragraph (e)(4)(iv) of this section, shall be available to the public except as otherwise provided by FIFRA section 10 or by 40 CFR part 2. Any hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information that may be entitled to confidentiality under FIFRA section 10 or under 40 CFR part 2.

(f) *Restricted use pesticide retail dealer reporting and recordkeeping requirements, availability of records, and failure to comply.*

(1) *Reporting requirements.* Each restricted use pesticide retail dealer in a State or area of Indian country where the Agency implements an EPA-administered plan must do both of the following:

(i) Report to the Agency the business name by which the restricted use pesticide retail dealer operates and the name and business address of each of his or her dealerships. This report must be submitted to the appropriate EPA Regional office no later than 60 days after the EPA-administered plan becomes effective or 60 days after the date the person becomes a restricted use pesticide retail dealer in an area where an EPA-administered plan is in effect, whichever occurs later.

(ii) Submit revisions to the initial report to the appropriate EPA Regional office reflecting any name changes, additions or deletions of dealerships. Revisions must be submitted to the appropriate EPA Regional office within 10 days of the occurrence of such change, addition or deletion.

(2) *Recordkeeping requirement.* A restricted use pesticide retail dealer is required to create and maintain records of each sale of restricted use pesticides to any person, excluding transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities. Each restricted use pesticide retail dealer must maintain at each individual dealership records of each transaction where a restricted use pesticide is distributed or sold by that dealership to any person. Records of each such transaction must be maintained for a period of two years after the date of the transaction and must include all of the following information:

(i) Name and address of the residence or principal place of business of each certified applicator to whom the restricted use pesticide was distributed or sold, or if applicable, the name and address of the residence or principal place of business of each noncertified person to whom the restricted use pesticide was distributed or sold, for application by a certified applicator.

(ii) The certification number on the certification document presented to the seller evidencing the valid certification of the certified applicator authorized to purchase the restricted use pesticide, the State, Tribe or Federal agency that issued the certification document, the expiration date of the certified applicator's certification, and the category(ies) in which the certified applicator is certified relevant to the pesticide(s) sold.

(iii) The product name and EPA registration number of the restricted use pesticide(s) distributed or sold in the transaction, including any emergency exemption or State special local need registration number, if applicable.

(iv) The quantity of the restricted use pesticide(s) distributed or sold in the transaction.

(v) The date of the transaction.

(3) *Availability of required records.* Each restricted use pesticide retail dealer must, upon request of any authorized officer or employee of the Agency, or other authorized agent or person duly designated by the Agency, furnish or permit such person at all reasonable times to have access to and copy all records required to be maintained under this section.

(4) *Failure to comply.* Any person who fails to comply with the provisions of this section may be subject to civil or criminal sanctions, under FIFRA section 14, or 18 U.S.C. 1001.

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Part IV

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for Compressors; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2014–BT–TP–0054]

RIN 1904–AD43

Energy Conservation Program: Test Procedures for Compressors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: On May 5, 2016, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) to establish new test procedures for certain varieties of compressors. That proposed rulemaking serves as the basis for the final rule. This final rule establishes definitions, materials incorporated by reference, sampling plans, representations requirements, enforcement provisions, and test procedures for certain varieties of compressors. Specifically, this final rule establishes full-load package isentropic efficiency as the applicable energy metric for certain fixed-speed compressors and part-load package isentropic efficiency as the applicable energy metric for certain variable-speed compressors. Finally, this final rule incorporates by reference certain sections of the ISO Standard 1217:2009(E), (ISO 1217:2009(E)), ''Displacement compressors—Acceptance tests,'' as amended through Amendment 1:2016, as the basis for a test method for determining compressor efficiency. ISO 1217:2009(E) includes a test method for measuring compressor inlet and discharge pressures, actual volume flow rate, electrical input power, package isentropic efficiency, and other compressor performance metrics. This final rule also adopts certain modifications and additions to ISO 1217:2009(E) to increase the specificity of certain testing methods established in ISO 1217:2009(E) and improve the repeatability of tested and measured values.

DATES: The effective date of this rule is February 3, 2017. The final rule changes will be mandatory for representations starting July 3, 2017. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register February 3, 2017.

ADDRESSES: The docket, which includes **Federal Register**, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/78.* The docket Web page contains simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into 10 CFR part 431 the testing methods contained in the following commercial standards:

ISO 1217:2009(E), ''Displacement compressors—Acceptance tests,'' July 1, 2009, sections 2, 3, and 4; sections 5.2, 5.3, 5.4, 5.6, 5.9; paragraphs 6.2(g), and 6.2(h) including Table 1; Annex C (excluding C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1, and C.4.5). ISO 1217:2009/Amd.1:2016(E), Displacement compressors—Acceptance tests (Fourth edition); Amendment 1: ''Calculation of isentropic efficiency and relationship with specific energy,'' April 15, 2016, sections 3.5.1 and 3.6.1; sections H.2 and H.3 of Annex H.

Copies of ISO 1217:2009(E) and of ISO 1217:2009/Amendment 1:2016(E) may be purchased from ISO at Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland +41 22 749 01 11, or by going to *www.iso.org.*

See section IV.N for additional information about ISO 1217:2009(E) and ISO 1217:2009/Amendment 1:2016(E).

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I. Authority and Background

A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended, (42 U.S.C. 6291, *et seq.*; ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency.[1] Part C of Title III, which for editorial reasons was codified as Part A–1 upon incorporation into the U.S. Code (42 U.S.C. 6311–6317), establishes the Energy Conservation Program for Certain Industrial Equipment. Under EPCA, DOE may include a type of industrial equipment, including compressors, as covered equipment if it determines that to do so is necessary to carry out the purposes of Part A–1. (42 U.S. 6311(1)(L), 6311(2)(B)(i), and 6312(b)). The purpose of Part A–1 is to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation. (42 U.S.C. 6312(a))

Pursuant to EPCA, DOE's energy conservation program for covered equipment consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. Specifically, subject to certain criteria and conditions, EPCA requires DOE to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each type of covered equipment. (42 U.S.C. 6314(a)) Manufacturers of covered equipment must use the prescribed DOE test procedures: (1) As the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s) and 6316(a)) and (2) when making representations to the public regarding the energy use or efficiency of those equipment. (42 U.S.C. 6314(d))

B. Regulatory History for Compressors

Currently, no Federal energy conservation standards for compressors exist. Before today, no Federal test procedures for compressors existed.

On December 31, 2012, DOE published a Proposed Determination of Coverage (2012 NOPD) proposing to determine that compressors qualify as covered equipment under part A–1 of Title III of EPCA, as amended (42 U.S.C. 6311 *et seq.*). DOE proposed that coverage was necessary for the purposes of Part A–1 on the basis that (1) DOE may prescribe energy conservation standards only for covered equipment; and (2) energy conservation standards for compressors would improve the efficiency of such equipment more than would be likely to occur in the absence of standards.77 FR 76972 (Dec. 31, 2012). On February 7, 2013, DOE published a notice reopening the comment period on the 2012 NOPD. 78 FR 8998.

On November 15, 2016, DOE published a final rule, which determined that coverage for compressors is necessary to carry out the purposes of Part A–1 of Title III of EPCA (herein referred to as ''notice of final determination''). 81 FR 79991.

On February 5, 2014, DOE published in the **Federal Register** a notice of public meeting, and provided a framework document that addressed potential standards and test procedures rulemakings for these products. 79 FR 6839. DOE held a public meeting to discuss the framework document on April 1, 2014. At this meeting, DOE discussed and received comments on the framework document, which covered the analytical framework, models, and tools that DOE used to evaluate potential standards; and all other issues raised relevant to the development of energy conservation standards for the different categories of compressors. On March 18, 2014, DOE extended the comment period. 79 FR 15061.

On May 5, 2016, DOE published a NOPR, to propose test procedures for certain compressors (''May 2016 test procedure NOPR'' or ''test procedure NOPR''). 87 FR 27220. The test procedure NOPR proposed establishing a new subpart T of title 10 of the Code of Federal Regulations, part 431 (10 CFR part 431), which would contain definitions, materials incorporated by reference, and test procedures for determining the energy efficiency of certain varieties of compressors. The test procedure NOPR would also amend title 10 CFR part 429 to establish sampling plans, representations requirements, and enforcement provisions for certain compressors. On June 20, 2016, DOE held a public meeting to discuss the test procedure NOPR and receive comments from interested parties.

Finally, in this final rule, DOE responds to comments received from interested parties in response to the proposals presented in the May 2016 test procedure NOPR, either during the June 2016 NOPR public meeting or in subsequent written comments.[2] In response to the May 2016 test procedure NOPR, DOE received 17 written comments in addition to the verbal comments made by interested parties during the June 2016 NOPR public meeting. The commenters included: the Appliance Standards Awareness Project (ASAP); Atlas Copco AB (Atlas Copco); CASTAIR; the Compressed Air & Gas Institute (CAGI); Compressed Air Systems; Ingersoll Rand; Jenny Products; Kaeser Compressors; the Northwest Energy Efficiency Alliance (NEEA); the Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), Southern California Edison (SCE), and Southern California Gas Company (SCGC), collectively referred to as the California Investor Owned Utilities (CA IOUs); the People's Republic of China (P. R. China); Scales Industrial Technologies; Sullair; Saylor-Beall Manufacturing Company and Sullivan-Palatek, collectively referred to as Sullivan-Palatek. DOE identifies comments received in response to the May 2016 test procedure NOPR by the commenter, the number of document as listed in the docket maintained at *www.regulations.gov* (Docket No. EERE–2014–BT–TP–0054), and the page number of that document where the comment appears (for example: CAGI, No. 10 at p. 4). If a comment was made verbally during the NOPR public meeting, DOE also specifically identifies those as being located in the NOPR public meeting transcript (for example: CAGI, public meeting transcript, No. 16 at p. 100). This final rule also contains certain relevant comments that were submitted in response to the compressors energy conservation standards rulemaking and the 2012 NOPD, but pertain to the topics discussed in the test procedure rulemaking. Those comments are identified with the appropriate docket numbers, EERE–2013–BT–STD–0040 and EERE–2012–BT–DET–0033, respectively.

II. Synopsis of the Final Rule

In this final rule, DOE amends subpart T of title 10 of the Code of Federal Regulations, part 431 (10 CFR part 431), which contains definitions, materials incorporated by reference, and test procedures for determining the energy efficiency of certain varieties of compressors.

While the range of equipment included in DOE's definition of compressor is broad, the test procedures established by this rulemaking are limited to only a specific subset of

[1] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[2] DOE notes that certain comments pertaining to the definition of ''compressors'' were addressed in the November 2016 notice of final determination. 81 FR 79991, 79992–4 (Nov. 15, 2016).

compressors. Specifically, this final rule applies only to a subset of rotary compressors, as defined in section III.B of this final rule. DOE intends this test procedure final rule to apply to similar equipment for which DOE is considering adopting energy conservation standards (Docket No. EERE–2014–BT–TP–0054). However, the scope of any energy conservation standards would be established in that rulemaking.

This final rule establishes package isentropic efficiency as the applicable energy metric for compressors within the scope of the final rule. Package isentropic efficiency describes the ratio of the ideal isentropic power required for compression to the actual packaged compressor power input used for the same compression process. Specifically, this final rule establishes two varieties of package isentropic efficiency, depending on equipment configuration: (1) Full-load package isentropic efficiency for certain fixed-speed compressors, and (2) part-load package isentropic efficiency for certain variable-speed compressors. In this final rule, DOE concludes these metrics provide a representative measurement of the energy performance of the rated compressor under an average cycle of use.

In this final rule, DOE establishes test methods to measure the inlet and discharge pressures, actual volume flow rate, and packaged compressor power input, as well as calculations of the theoretical power necessary for compression—all of which are required to calculate full- or part-load package isentropic efficiency. For reproducible and uniform measurement of these values, DOE incorporates by reference the test methods established in certain applicable sections of ISO 1217:2009(E), ''Displacement compressors—Acceptance tests,'' as amended through ISO 1217:2009(E)/Amd.1:2016.[3] Specifically, the test procedure codified by this final rule references the following parts of ISO 1217 as amended by Amendment 1:2016: sections 2, 3, and 4; subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), and 6.2(h); Annex C subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2 and C.4.4; Annex H subsections H.2 and H.3; and Table 1 of subsection 6.2. See section III.D and section IV.N of this final rule for additional information about ISO 1217:2009(E) and ISO 1217:2009(E)/Amd.1:2016. Members of the compressor industry developed ISO 1217:2009(E), which contains methods for determining inlet and discharge pressures, actual volume flow rate, packaged compressor power input, and package isentropic efficiency for electrically driven packaged displacement compressors. DOE has reviewed the relevant sections of ISO 1217:2009(E), as amended, and has determined that ISO 1217:2009(E), as amended, in conjunction with the additional clarifications and test methods and calculations established in this final rule (see section III.E), produces test results that reflect the energy efficiency of a compressor during a representative average use cycle. (42 U.S.C. 6314(a)(2)) DOE has also reviewed the burdens associated with conducting the test procedure established in this final rule, including ISO 1217:2009(E), as amended, and, based on the results of such analysis, has found that the test procedure would not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) DOE presents the analysis of the burdens associated with the test procedure in section IV.B.

In this final rule, DOE also establishes, in subpart B of part 429 of title 10 of the Code of Federal Regulations (10 CFR part 429), sampling plan requirements, representations requirements, and enforcement provisions for the compressors within the scope of this final rule. The sampling plan requirements established in this final rule are similar to other types of commercial equipment (*e.g.,* pumps) and are appropriate for compressors based on the expected range of measurement uncertainty and manufacturing tolerances for this equipment. The sampling plan is intended to give DOE reasonable assurance that any individual unit distributed in commerce is at least as efficient as its basic model rating. The representations requirements established in this final rule specify the energy consumption or energy efficiency representations that, in addition to the regulated metric (part- or full-load package isentropic efficiency), may be made by compressor manufacturers, distributors, retailers, or private labelers. DOE notes that any representations of the energy efficiency or energy use of compressors to which an adopted test procedure applies must be made based on the adopted compressor test procedure beginning 180 days after the publication date of any test procedure final rule establishing such procedures. (42 U.S.C. 6314(d)) Finally, the enforcement provisions established in this final rule govern the process DOE follows when performing its own assessment of basic model compliance with any future energy conservation standards.

III. Discussion

A. Definitions

1. Definition of Covered Equipment

Although EPCA lists compressors as a type of industrial equipment, the term is not defined. (42 U.S.C. 6311(2)(B)(i)) In the May 5, 2016 test procedure NOPR, DOE proposed to define a ''compressor'' as a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure and has a pressure ratio[4] greater than 1.3. 81 FR 27220, 27223–27224. Further, DOE noted that with its proposal of a pressure ratio of greater than 1.3, it intended to align the minimum pressure ratio for compressors with the maximum ratio proposed in the fans and blowers rule and to create a continuous spectrum of coverage between the two equipment types. *Ibid.*

To determine objectively and unambiguously whether equipment meets the definition of compressor, in the test procedure NOPR, DOE also proposed to define the term ''pressure ratio'' as the ratio of discharge pressure to inlet pressure, as determined at full-load operating pressure. Such a definition enables DOE to establish quantitatively which compressors meet the pressure ratio requirement proposed in the definition of the term compressor. 81 FR 27220, 27224 (May 5, 2016).

In the notice of final determination, DOE addressed all comments related to the definition of compressor, and ultimately adopted the following definition:

Compressor means a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3. 81 FR 79991, 79998 (Nov. 15, 2016).

DOE notes that in the notice of final determination, for the definition of compressor, the term pressure ratio (which was proposed in the TP NOPR), was replaced with the term ''pressure ratio at full load operating pressure.'' DOE stated that the definition of the new term, as well as methods of testing,

[3] ISO 1217:2009(E)/Amd.1:2016 is titled ''Calculation of isentropic efficiency and relationship with specific energy.''

[4] For the final rule, the term ''pressure ratio'' has been revised to ''pressure ratio at full-load operating pressure,'' as explained later in this section.

would be established in the test procedure final rule. 81 FR 79991, 79995 (Nov. 15, 2016). In this final rule, DOE addresses all comments related to the definition of the term pressure ratio. CAGI did not provide any direct comments, but commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1)

Jenny Products and Scales Industrial Technologies commented that they would prefer to use the more common term, ''compression ratio,'' in place of pressure ratio. Scales Industrial Technologies also indicated that DOE's proposed definition of pressure ratio was not sufficiently clear, and could be interpreted in multiple ways. (Scales Industrial Technologies, No. 0013, at p. 1; Jenny Products, No. 0020 at p. 2)

In response to Scales Industrial Technologies' concerns about clarity, in this final rule, DOE is clarifying its NOPR proposal and modifying the term pressure ratio to pressure ratio at full-load operating pressure. This clarification better aligns the name of this metric with its definition, which states, as proposed, that pressure ratio means the ratio of discharge pressure to inlet pressure, determined at full-load operating pressure in accordance with the test procedures prescribed in § 431.344. 81 FR 27220, 27224 (May 5, 2016). DOE is making this clarification because it understands that the ratio between the inlet pressure and the discharge pressure, measured at the discharge pipe, can vary based on the pressure of the system that the compressor is supplying. As a result, DOE concludes that the use of the general term pressure ratio to describe a pressure ratio at a specific load point (*i.e.,* full-load operating pressure), is not appropriate. Additionally, based on the general support of CAGI, Sullivan-Palatek, Ingersoll Rand, and Sullair, and the above clarification to the term pressure ratio, DOE concludes that the use of the term pressure ratio at full-load operating pressure is sufficiently clear, and DOE does not adopt the term compression ratio in its place.

Ultimately, for the reasons discussed in this section and established in the test procedure NOPR, DOE is adopting the following definition for pressure ratio at full-load operating pressure. Beyond the previously discussed terminology change from pressure ratio to pressure ratio at full-load operating pressure, this definition is unchanged from the test procedure NOPR proposal.

Pressure ratio at full-load operating pressure means the ratio of discharge pressure to inlet pressure, determined at full-load operating pressure in accordance with the test procedures prescribed in § 431.344.

2. Air Compressor

In the test procedure NOPR, DOE proposed to define the term ''air compressor'' as a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment. 81 FR 27220, 27226 (May 5, 2016).

In response to the proposed definitions, DOE received comment from CAGI indicating its support of the definitions as proposed for the test procedure. (CAGI, Public Meeting Transcript, No. 0016 at p. 20) Sullivan-Palatek, Ingersoll Rand, and Sullair supported CAGI's comments. (Sullivan-Palatek, No. 0007 at p. 1; Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1)

Consequently, for the reasons established in the test procedure NOPR, DOE is adopting the definition for air compressor as proposed in the test procedure NOPR.

3. Air Compressor Components

a. Bare Compressor, Driver, and Mechanical Equipment

In the test procedure NOPR, DOE proposed to define ''bare compressor'' [5] as the compression element and auxiliary devices (*e.g.,* inlet and outlet valves, seals, lubrication system, and gas flow paths) required for performing the gas compression process. The definition does not include the driver; speed-adjusting gear(s); gas processing apparatuses and piping; or compressor equipment packaging and mounting facilities and enclosures. 81 FR 27220, 27227 (May 5, 2016).

Further, in the test procedure NOPR, DOE proposed to define ''driver'' and ''mechanical equipment'' as the machine providing mechanical input to drive a bare compressor directly or through the use of mechanical equipment, and any component of an air compressor that transfers energy from the driver to the bare compressor, respectively. 81 FR 27220, 27227 (May 5, 2016).

In response to the proposed definitions, CAGI did not provide any direct comments, but CAGI commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Scales Industrial Technologies commented that the 'bare' compressor often includes speed-increasing gears. (Scales Industrial Technologies, no. 0013 at p. 2) In response, DOE clarifies that while the definition of bare compressor does not include mention of gears, the definition of mechanical equipment does include mention of gears. Moreover, the definition of air compressor, which is the overarching term dictating the scope of applicability of equipment in this final rule, includes mechanical equipment. Consequently, for the reasons established in the test procedure NOPR, DOE is adopting the definitions for bare compressor, driver, and mechanical equipment as proposed in the test procedure NOPR.

b. Ancillary Equipment

In the test procedure NOPR, the proposed definition of air compressor included the term ''ancillary equipment.'' DOE proposed to define ancillary equipment as any equipment distributed in commerce with an air compressor that is not a bare compressor, driver, or mechanical equipment. 81 FR 27220, 27227 (May 5, 2016). Ancillary equipment would be considered to be part of a given air compressor model regardless of whether the ancillary equipment is physically attached to the bare compressor, driver, or mechanical equipment at the time when the air compressor is distributed in commerce. *Ibid.* DOE also requested comment on if a list of ancillary equipment was more appropriate than the definition. *Ibid.*

Many commenters suggested that the definition of ancillary equipment proposed in the test procedure NOPR lacked specificity. Scales Industrial Technologies, Kaeser Compressors, and Jenny Products commented that standard, but not application-specific or optional, ancillary equipment should be used as required for the safe operation of the bare compressor. Kaeser Compressors noted that the metric of isentropic efficiency is expressed relative to the theoretical power required to compress air, and thus the specified test configuration should

[5] The compressors industry frequently uses the term ''airend'' or ''air end'' to refer to the bare compressor. DOE uses ''bare compressor'' in the regulatory text of this rule, and, for the purposes of this rulemaking, it considers the terms to be synonymous.

logically reflect the equipment required to compress air, without the effect of any additional components. Scales Industrial Technologies stated that standard compressors should not include accessories beyond an aftercooler, a moisture separator, and an automatic drain cap. (Jenny Products, No. 0020 at pp. 2–3; Scales Industrial Technologies, No. 0013 at p. 2; Kaeser Compressors, Public Meeting Transcript, No. 0016 at pp. 31, 37)

ASAP commented that the definition of ancillary equipment should be clear and include equipment that is normally included with a majority of applications. (ASAP, Public Meeting Transcript, No. 0016 at pp. 25, 30) Similarly, Compressed Air Systems commented that the list of ancillary equipment should be defined, noting that safety equipment should be included as part of the list to ensure safe operation of compressors. (Compressed Air Systems, No. 0008 at p. 1) Atlas Copco agreed that the proposed definition of ancillary equipment was not appropriate, and commented that DOE should consider a definition similar to the one used in the EU Lot 31 draft standard. Atlas Copco argues that following the EU Lot 31 standard would allow for accurate comparisons of the energy consumption of similar basic models of compressors and would not penalize manufacturers who efficiently integrate optional ancillary equipment into the compressor design. (Atlas Copco, No. 0009 at pp. 10–11; Atlas Copco, Public Meeting Transcript, No. 0016 at pp. 34–35) CAGI and Ingersoll Rand also supported a clearer definition and suggested the use of a list of equipment to define the term ancillary equipment, with Ingersoll Rand further commenting that optional equipment such as ancillary air treatment equipment should be excluded from the test procedures. (CAGI, Public Meeting Transcript, No. 0016 at pp. 27–28; Ingersoll Rand, Public Meeting Transcript, No. 0016 at pp. 29, 33) CAGI provided a list that is slightly modified from the one used by the EU Lot 31 draft standard; this list is reproduced in Table III.1. (CAGI, No. 0010 at p. 3; CAGI, Public Meeting Transcript, No. 0016 at p. 37) CAGI stated that this list is limited to equipment that is required for safety or basic compressor functionality. (CAGI, No. 0010 at p. 3) CAGI further indicated that all other equipment is optional and should not be included for testing. (CAGI, No. 0010 at pp. 4–5; CAGI, Public Meeting Transcript, No. 0016 at p. 37)

TABLE III.1—CAGI-SUGGESTED LIST OF ANCILLARY EQUIPMENT TO BE INCLUDED FOR TESTING

Configuration of basic compressor	Fixed-speed rotary	Variable-speed rotary
Speed	Fixed	Variable.
Cooling	Air-cooled/Water-cooled	Air-cooled/Water-cooled.
Electric motor (driver)	Yes	Yes.
Cooling fan(s) and motors	Yes	Yes.
Compression element (bare compressor)	Yes	Yes.
Transmission (belt, gear, coupling, etc.) (mechanical equipment)	Yes (if applicable) **	Yes (if applicable) **.
Inlet filter	Yes	Yes.
Inlet valve	Yes	Yes.
Minimum pressure check valve/backflow check valve	Yes	Yes.
Oil separator	Yes	Yes.
Air piping	Yes	Yes.
Oil piping	Yes	Yes.
Oil pump	Yes (if applicable) **	Yes (if applicable) **.
Oil filter	Yes	Yes.
Oil cooler	Yes	Yes.
Thermostatic valve	Yes	Yes.
Electrical switchgear	Yes *	No *.
Frequency converter	No *	Yes *.
Compressed air cooler(s)	Yes	Yes.
Compressor control device (pressure switch, pressure transducer, electronic or electrical controls, etc.).	Yes	Yes.
Protective devices	Yes	Yes.
Moisture separator and drain	Yes	Yes.

* Electrical switchgear and frequency converter only concern the main electric drive motor, other motors (*e.g.,* fans, pumps) may still be driven by a variable-speed drive and/or include electrical switchgear and/or frequency converter.

** The term ''if applicable'' means that if the functionality of the basic package is achieved without the component, then it does not need to be included.

Sullair and Sullivan-Palatek expressed support of the CAGI position and the list defined by CAGI in Table III.1; Sullivan-Palatek further argued that a consistent list of installed equipment, rather than what is included in commerce, is important such that compressors can be compared to each other consistently. (Sullair, No. 0006 at p. 7; Sullivan-Palatek, No. 0007 at pp. 3, 4; Sullivan-Palatek, Public Meeting Transcript, No. 0016 at p. 28) Ingersoll Rand expanded on the importance of using a list to define ancillary equipment, noting that manufacturers independently have been self-declaring a basic compressor when representing unit efficiency, which in turn has been used by DOE to analyze standards for compressors. (Ingersoll Rand, Public Meeting Transcript, No. 0016 at p. 36) Sullair supported comments from Kaeser Compressors and CAGI, elaborating that items not included in the list of ancillary equipment developed by CAGI are customer-driven additional equipment and out of the control of a manufacturer. (Sullair, Public Meeting Transcript, No. 0016 at pp. 33–34) NEEA commented that a filter should be included as part of the definition of ancillary equipment, but would consider dropping the suggestion of adding a filter to the list of ancillary equipment if the draft EU compressor standard also does not require a filter. (NEEA, Public Meeting Transcript, No. 0016 at p. 35)

Further, CAGI commented that if a unit is offered for sale without a piece of equipment on its recommended list, the manufacturer must provide an appropriate component, and the selection and responsibility of providing and installing this component for testing

shall be the responsibility of the manufacturer. (CAGI, No. 0010 at p. 5)

In response to these comments, DOE agrees with CAGI and other commenters that DOE should develop a list of equipment that must be present for testing. Further, DOE generally agrees with the list provided by CAGI. However, instead of including a specific list as part of the definition of ancillary equipment, DOE is maintaining a broad definition of ancillary equipment and adopting a list of equipment that must be present for testing in the equipment configuration section of the test method (see section III.E.3 for complete details). This approach helps avoid loopholes, as it ensures that compressors distributed in commerce with additional equipment outside this list are still within the scope of the test procedure, but such equipment is tested only with the equipment on the list. Further, this approach helps ensure that all compressors within the scope of this rulemaking are rated fairly and equitably with a consistent set of equipment present, addressing the concerns of Sullivan-Palatek. DOE concludes that this approach is consistent with CAGI's comments, which made clear that its list was the required subset of all potential equipment that it believed should be present for testing. As a result, DOE is adopting the definition of ancillary equipment proposed in the test procedure NOPR. Please see section III.E.3 for a complete discussion of specific equipment that is required for testing.

4. Rotary and Reciprocating Compressors

In the test procedure NOPR, DOE proposed the following definitions for rotary and reciprocating compressors:

Rotary compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes or its forced discharge are performed cyclically by rotation of one or several rotors in a compressor casing. 81 FR 27220, 27228 (May 5, 2016).

Reciprocating compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes are performed cyclically by straight-line alternating movements of a moving member(s) in a compression chamber(s). 81 FR 27220, 27228 (May 5, 2016).

To support these definitions, DOE also proposed ''positive-displacement compressor'' to mean a compressor in which the admission and diminution of successive volumes of the gaseous medium are performed periodically by forced expansion and diminution of a closed space(s) in a working chamber(s) by means of displacement of a moving member(s) or by displacement and forced discharge of the gaseous medium into the high-pressure area.

In response to the proposed definitions, CAGI agreed with the proposed compressor definitions, but stated that defining ''rotor'' would characterize the equipment more accurately, and suggested the following definition: A compression element that rotates continually in a single direction [around] a single shaft or axis. (CAGI, No. 0010 at p. 5) CAGI further commented that, beyond rotary screw compressors, other types of rotary compressors, such as rotary vane and scroll, would be covered under the definition. (CAGI, Public Meeting Transcript, No. 0016 at p. 22) However, CAGI did not specifically recommend whether these other rotary compressors should, or should not, be included within the scope of the test procedure. Sullair added that DOE should clarify which compressor technologies, such as scroll and vane, met the proposed definition. (Sullair, Public Meeting Transcript, No. 0016 at p. 23) Sullivan-Palatek, Ingersoll Rand, and Sullair supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullivan-Palatek, No. 0007 at p. 1; Sullair, No. 0006 at p. 1)

DOE agrees with CAGI and Sullair's comments that a definition of rotor and examples of rotary compressors would improve the accuracy of the rotary compressor definition. Further, DOE agrees with CAGI's recommended definition and finds it to be technically accurate. For this reason, in this final rule, DOE is adopting the definition of rotor, as recommended by CAGI. In response to Sullair's request for examples, DOE notes that rotary compressors include, but are not limited to, rotary screw, sliding vane, rotary lobe, and liquid ring. However, DOE does not believe that scroll compressors meet the definition of rotary compressors, as scroll compressors nutate (or orbit) rather than rotate continually in a single direction around a single shaft or axis.

Beyond these clarifications, DOE is making no changes to the remaining definitions discussed in this subsection, and for the reasons established in the test procedure NOPR, DOE is adopting in this final rule the definitions for rotary compressor, reciprocating compressor, and positive-displacement compressor, as proposed in the test procedure NOPR.

5. Brushless Electric Motor

In the test procedure NOPR, DOE proposed to define a ''brushless electric motor'' as a machine that converts electrical power into rotational mechanical power without use of sliding electrical contacts. Further, DOE considered brushless motors to include, but not be limited to, what are commonly known as induction, brushless direct current, permanent magnet, electrically commutated, and reluctance motors. 81 FR 27220, 27229 (May 5, 2016).

In response to the proposed definitions, CAGI did not provide any direct comments, but commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR, DOE is adopting the definition for brushless motor as proposed in the test procedure NOPR.

6. Compressor Motor Nominal Horsepower

In the test procedure NOPR, DOE proposed ''compressor motor nominal horsepower'' (''hp'') to mean the motor horsepower of the electric motor with which the rated air compressor is distributed in commerce, as determined in accordance with the applicable procedures in subparts B and X of 10 CFR part 431. 81 FR 27220, 27229 (May 5, 2016).

In response to the proposed definitions, CAGI did not provide any direct comments, but commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR, DOE is adopting in this final rule the definition for compressor motor nominal horsepower as proposed in the test procedure NOPR.

7. Volume Flow Rates

In the test procedure NOPR, DOE proposed that ''actual volume flow rate'' mean the volume flow rate of air, compressed and delivered at the standard discharge point, referred to conditions of total temperature, total pressure, and composition prevailing at the standard inlet point, and as

determined in accordance with the test procedures proposed for 10 CFR 431.344. Further, DOE also proposed that full-load actual volume flow rate mean the actual volume flow rate of the compressor at the full-load operating pressure. 81 FR 27220, 27231 (May 5, 2016).

In response to the proposed definitions, CAGI did not provide any direct comments, but CAGI commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR, DOE is adopting in this final rule the definitions for actual volume flow rate and full-load actual volume flow rate as proposed in the test procedure NOPR.

8. Maximum Full-Flow Operating Pressure

In the test procedure NOPR, DOE proposed ''maximum full-flow operating pressure'' to mean the maximum discharge pressure at which the compressor is capable of operating, as determined in accordance with the test procedures proposed for 10 CFR 431.344.[6] 81 FR 27220, 27231 (May 5, 2016).

In response to the proposed definition, CAGI did not provide any direct comments, but CAGI commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR, in this final rule DOE is adopting the definition for maximum full-flow operating pressure proposed in the test procedure NOPR.

9. Lubricated Compressor

In the energy conservation standards NOPR, DOE proposed ''lubricated compressor'' to mean a compressor that introduces an auxiliary substance into the compression chamber during compression. 81 FR 31680, 31698 (May 19, 2016). Analogously, DOE proposed ''lubricant-free compressor'' to mean a compressor that does not introduce any auxiliary substance into the compression chamber at any time during operation. 81 FR 31680, 31698 (May 19, 2016). To support these definitions, DOE proposed ''auxiliary substance'' to mean any substance deliberately introduced into a compression process to aid in compression of a gas by any of the following: Lubricating, sealing mechanical clearances, and/or absorbing heat. 81 FR 31680, 31698 (May 19, 2016).

In the energy conservation standards NOPR, DOE discussed ISO Standard 8573–1:2010, ''Compressed air—Part 1: Contaminants and purity classes,'' (hereinafter referred to as ''ISO 8573–1:2010'') which is used by industry to measure and describe the purity of air.[7] DOE did not propose to use ISO 8573–1:2010, but requested comment on the suitability of using this standard to characterize compressors based on the presence of lubricant in the compression chamber. 81 FR 31680, 31698 (May 19, 2016).

In response, CAGI commented that ISO 8573–1:2010 is a standard for measuring the quality of air and, as such, is not suitable for determining the presence of lubricant in the compression chamber. (EERE–2013–BT–STD–0040, CAGI, No. 0052 at p. 10) Ingersoll Rand, Mattei Compressors, Sullair, and Sullivan-Palatek commented in support of CAGI's recommendations. (Ingersoll Rand, No. 0055 at p. 1; Mattei Compressors, No. 0063 at p. 2; Sullair, No. 0056 at p. 1; Sullivan-Palatek, No. 0051 at p. 1) Beyond this commentary, CAGI provided no comments or recommendations regarding the definitions of lubricated compressor and lubricant-free compressor, as proposed in the energy conservation standard NOPR. Kaeser Compressors commented that ISO 8573–1:2010 is not suitable for defining a lubricated compressor and agreed with DOE's approach in the NOPR regarding the definition of an auxiliary substance without reference to ISO 8573–1:2010. (Kaeser Compressors, Public Meeting Transcript, No. 0044 at p. 21)

DOE agrees with the comments made by CAGI, Ingersoll Rand, Mattei Compressors, Sullair, Sullivan-Palatek, and Kaeser Compressors, and does not use ISO 8573–1:2010 in the definition of lubricated compressor in this final rule. Additionally, due to the reasons established in the test procedure NOPR, and due to support from Kaeser Compressors, in this final rule DOE is adopting the definitions for lubricated compressor, lubricant-free compressor, and auxiliary substance as proposed in the energy conservation standards NOPR.

B. Scope of Applicability of the Test Procedure

In the test procedure NOPR, DOE proposed to limit the scope of applicability of the compressors test procedures to compressors that meet the following criteria:

- Are air compressors;
- are rotary or reciprocating compressors;
- are driven by a brushless electric motor;
- are distributed in commerce with a compressor motor nominal horsepower greater than or equal to 1 hp and less than or equal to 500 hp; and
- operate at a full-load operating pressure of greater than or equal to 31 pounds per square inch, gauge (''psig'') and less than or equal to 225 psig;

The proposed test procedure NOPR scope directly aligned with the scope of compressor equipment that DOE analyzed for the May 5, 2016 energy conservation standards NOPR for compressors. 81 FR 27220, 27224–5. Similarly, in this final rule, DOE intends to directly align the scope of the compressors test procedures with the scope of the forthcoming energy conservation standards final rule. However, while DOE intends the scope of the test procedures adopted in this final rule to be consistent with that of any energy conservation standard that may eventually be established for compressors, DOE notes that the scope of any energy conservation standards will be established as part of a separate rulemaking.

As such, based on comments received in response to both the test procedure and energy conservation standards NOPR, the scope of this test procedure final rule is limited to compressors that meet the following criteria:

- Are air compressors;
- are rotary compressors;
- are not liquid ring compressors;
- are driven by a brushless electric motor;
- are lubricated compressors;
- have a full-load operating pressure of 75–200 psig;
- are not designed and tested to the requirements of The American Petroleum Institute standard 619, ''Rotary-Type Positive-Displacement Compressors for Petroleum, Petrochemical, and Natural Gas Industries;'' and
- have a capacity that is either:

o 10–200 compressor motor nominal horsepower (hp), or

[6] A discussion of the test procedure to determine the maximum full-flow operating pressure can be found in section III.E.9.

[7] Available at: *http://www.iso.org/iso/catalogue_detail.htm?csnumber=46418*.

o 35–1,250 full-load actual volume flow rate (cfm).

Detailed discussion of each of the scope limitations, associated benefits and burdens, and interested party comments, are in the subsections that follow.

1. Air Compressor Limitation

In the test procedure NOPR, DOE proposed to limit the scope of the compressors test procedure to air compressors, as defined in section III.A.2.

In response to the 2012 NOPD, Ingersoll Rand commented that losses in efficiency are often attributable to system-level losses as opposed to package-level losses. Ingersoll Rand stated that, therefore, little benefit would be achieved by regulating the compressor package alone without providing guidance for the overall compressed air system. (Docket No. EERE–2012–BT–DET–0033, Ingersoll Rand, No. 0004 at p. 2) CAGI argued that estimating compressor energy consumption, alone, is difficult because it is often operated in an ensemble of accompanying equipment, including other compressors. (Docket No. EERE–2012–BT–DET–0033, CAGI, No. 0003, at pp. 5–6)

In response to the more recent 2016 test procedure NOPR, CAGI and Ingersoll Rand provided updated positions on the subject, and agreed with DOE's proposal for items on which they did not directly comment. (CAGI, No. 0010 at p. 3; Ingersoll Rand, No. 0011 at p. 1) Sullivan-Palatek and Sullair supported CAGI's comments. (Sullivan-Palatek, No. 0007 at p. 1; Sullair, No. 0006 at p. 1) CASTAIR disagreed with the notion of efficiency standards for air compressors, arguing that DOE should only regulate the manufacturers of bare compressors, as air compressor assemblers have very little control over efficiency. (CASTAIR, No. 0018 at p. 1)

In response to CASTAIR, the efficiency of an air compressor is not solely a function of the bare compressor. As DOE discussed in the test procedure NOPR, opportunities exist to select high efficiency motors, drives (if applicable), mechanical equipment, and ancillary equipment that affect efficiency. Further, proper sizing and integration of this equipment also influences efficiency. In the test procedure NOPR, DOE specifically evaluated the option of regulating at the bare compressor and packaged compressor level. For the reasons just mentioned, DOE concluded that regulating a bare compressor would result in significantly lower energy savings opportunity compared to the packaged compressors. Further, DOE concluded that determining the energy performance of the bare compressor alone would not be representative of the energy consumption of the equipment under typical use conditions. 81 FR 27220, 27225 (May 5, 2016).

Based on these reasons and the support of many interested parties, DOE maintains its NOPR proposal, and is limiting the scope of the compressors test procedure final rule to air compressors as defined in section III.A.2 of this final rule.

2. Rotary and Reciprocating Compressors

In the test procedure NOPR, DOE proposed to include only rotary and reciprocating compressors within the scope of the test procedure, and not to include dynamic compressors. 81 FR 27220, 27228 (May 5, 2016).

In response to the test procedure NOPR, the CA IOUs supported the inclusion of reciprocating compressors in the scope of the test procedure and recommended that DOE require testing and performance data reporting for reciprocating compressors, noting that making their performance data publicly available would be helpful for future rulemakings and utility incentive programs. The CA IOUs recommended a phased approach for reciprocating compressors to reduce the burden on manufacturers, in which testing and reporting of performance data would be required over a long period of time. (CA IOUs, No. 0012 at p. 4)

Sullair commented that any equipment covered by the test procedure and not the standard presents a significant burden to the manufacturer and a competitive advantage to competing unregulated technologies without a resulting improvement in unit efficiency. (Sullair, No. 0006 at p. 3)

DOE agrees with the CA IOUs that establishing test procedures and public reporting requirements for reciprocating compressors could be helpful in future rulemakings and utility incentive programs. However, in the energy conservation standards NOPR, DOE concluded that energy conservation standards for reciprocating compressors are not economically justified at this time; as such, DOE did not propose energy conservation standards for reciprocating compressors. 81 FR 31680 (May 19, 2016). As discussed previously, and in agreement with Sullair's comments, DOE concludes that in the absence of existing or proposed energy conservation standards for reciprocating equipment, establishing a test procedure to measure performance of such equipment is not warranted at this time. Further, DOE concludes that the burdens associated with such a test procedure, as discussed by Sullair, outweigh any potential benefits at this time. Consequently, in this final rule, DOE is adopting test methods applicable only to certain rotary compressors and is not adopting any testing requirements for reciprocating compressors at this time.

In response to the concurrent energy conservation standards rulemaking, ASAP, NEEA, NWPCC, CA IOUs, and Sullivan-Palatek suggested that DOE's consideration of reciprocating compressors as one, monolithic category may be inappropriate, as reciprocating compressors are built to a wide range of efficiencies, intended duty cycles, and configurations based on capacity. Further, Sullivan-Palatek suggested that a fraction of compressors in the reciprocating market are likely to be used in industrial settings and may be worth considering separately from the rest. (EERE–2013–BT–STD–0040, NEEA and NWPCC, No. 0057 at pp. 1–2; Docket No. EERE–2013–BT–STD–0040, ASAP, Public Meeting Transcript, No. 0044 at pp. 151–152; Docket No. EERE–2013–BT–STD–0040, CA IOUs, No. 0059 at p. 3; Docket No. EERE–2013–BT–STD–0040, Sullivan-Palatek, Public Meeting Transcript, No. 0044 at pp. 67–68, 84–85, 87, 112–113, 114, 115–116) DOE acknowledges these suggestions and concludes that separately reassessing certain segments of the reciprocating marketing may lead DOE to a better informed assessment of the burdens and benefits of test procedures and energy conservation standards for reciprocating compressors. However, at this time, insufficient data exists to perform such a specific characterization of the reciprocating market, as noted by NEEA. (Docket No. EERE–2013–BT–STD–0040, NEEA, Public Meeting Transcript, No. 0044 at pp. 123–124) Consequently, DOE concludes the most suitable path forward is to explore the appropriateness of test procedures and energy conservation standards for reciprocating compressors in a future, separate rulemaking.

As a point of clarification, DOE notes that compressors that combine more than one type of compression principle (*e.g.,* rotary and reciprocating elements within a single compressor package) do not meet DOE's adopted definition of rotary compressor, and, therefore, are subject to the test procedures adopted in this final rule.

As noted in section III.A.4, liquid ring compressors meet the definition of a rotary compressor. Specifically, ISO

1217:2009(E), as amended,[8] defines ''liquid ring compressor'' as a machine with a rotating impeller with protruding blades eccentrically mounted in a stationary round housing or centrally mounted in a stationary elliptical housing.

In this final rule, DOE is explicitly excluding liquid ring compressors from the scope of applicability of this test procedure. Although liquid ring compressors are rotary compressors, they provide a unique utility for applications that require a durable compressor tolerant of dirty input air and ingested liquid. Due to this utility and construction, liquid ring compressors require test methods different from those proposed in the test procedure NOPR. Specifically, ISO 1217:2009(E), as amended,[9] specifies that due to their configuration, liquid ring compressors should be tested to Annex A, which provides testing methods and accuracy tolerances that differ from those contained in the sections that DOE proposed to incorporate by reference in the test procedure NOPR. As a result, DOE concludes that it is not appropriate to include liquid ring compressors in the scope of this test procedure final rule. However, DOE retains the authority to evaluate and propose appropriate test methods for liquid ring compressors in future rulemakings.

3. Driver Style

a. Electric Motor- and Engine-Driven Compressors

In the test procedure NOPR, DOE proposed to limit the scope of the compressors test procedure to only compressors driven by electric motors. In response, EEI expressed disappointment that the scope of the proposed energy conservation standard for compressors and, by extension, the test procedure was not fuel-neutral, noting that there are compressors driven by natural gas. (Docket No. EERE–2013–BT–STD–0040, EEI, Public Meeting Transcript, No. 0044 at p. 5)

In response to EEI's comment, DOE considered engine-driven compressors in the February 5, 2014 Framework document for compressors and discussed these extensively in the May 5, 2016 test procedure NOPR. 79 FR 6839 and 81 FR 27220. Specifically, in the test procedure NOPR, DOE concluded that the inclusion of engine-driven compressors was not appropriate for various reasons, including their differing utility as compared to electric compressors, their existing coverage under the U.S. Environmental Protection Agency's Tier 4 emissions regulations, and the limited test data available under Annex D of ISO 1217:2009(E) to verify suitability as a DOE test procedure. For these reasons, DOE noted that engine-driven compressors would more appropriately be considered as part of a future rulemaking. 81 FR 27220, 27229 (May 5, 2016). DOE continues to conclude that engine-driven compressors are unique equipment with different performance, applications, and test requirements from air compressors driven by electric motors. However, as noted in the test procedure NOPR, DOE currently lacks the performance data and product information to develop and validate such procedures. Therefore, DOE continues to conclude engine-driven compressors would be more appropriately addressed as part of a separate rulemaking specifically considering such equipment. As such, DOE is limiting the scope of this compressors test procedure final rule to only compressors driven by electric motors.

b. Electric Motor Varieties

In the test procedure NOPR, DOE proposed limiting the scope of the compressors test procedures to only compressors driven by brushless electric motors, as defined in section III.A.5. Further, DOE discussed the differences between brushed and brushless motors and noted that brushed motors are uncommon in compressors with significant operating hours due to higher maintenance requirements, lower efficiency, acoustic noise, and electrical arcing. However, DOE noted that compressors with brushed motors could be considered in the future as part of a separate rulemaking. 81 FR 27220, 27229 (May 5, 2016).

In response to DOE's test procedure NOPR, NEEA stated that manufacturers may avoid regulation by changing the motor technology. (NEEA, Public Meeting Transcript, No. 0016 at p. 56) In response, DOE reiterates that brushed motors are uncommon in compressors with significant potential energy savings (*i.e.,* high operating hours) due to higher maintenance costs, short operating lives, significant acoustic noise, and electrical arcing. For these reasons, DOE concludes that brushed motors are not a viable substitution risk for compressors within the scope of the compressor test procedures.

In a joint comment, ASAP and NEEA recommended that DOE expand the scope of the test procedures so that it includes all kinds of electric motors, rather than exclusively covering brushless motors. ASAP and NEEA reasoned that the test procedures should be broad so that they could be applicable to possible future energy conservation standards and could be used to collect a wide range of compressor performance data. (ASAP and NEEA, No. 0015 at p. 1)

In response, DOE acknowledges the potential benefits of standardized test procedures and reporting requirements in making available consistent performance information for utility programs and consumers. However, with these potential benefits come potential burdens. If DOE were to include this equipment in the scope of the test procedures and require reporting of performance data, the burden would be significant, as most brushed motor compressors are not currently tested for efficiency. Consequently, manufacturers of this equipment, many of which are small, would face significant third-party testing costs or test lab development costs. Alternatively, DOE could adopt *optional* testing and certification requirements for brushed motor compressors. However, doing so may not have the desired effect of making more certified performance data available, as this equipment is not currently tested and energy performance is not currently represented. Therefore, based on this discussion, at this time, the burden associated with establishing testing requirements for brushed motor compressors outweigh the associated benefits.

4. Compressor Capacity

In the test procedure NOPR, DOE proposed to limit the scope of the test procedures to compressors that met the following capacity criteria:

- Compressor motor nominal horsepower of 1–500 hp.
- full-load operating pressure 31–225 psig.

81 FR 27220, 27230 (May 5, 2016).

In the test procedure NOPR, DOE did not propose scope restrictions based on the actual volume flow rate (expressed in cfm).

As noted in the test procedure NOPR, the intent of the compressor capacity criteria used to establish the scope of the test procedures was to encompass the majority of the rotary and reciprocating compressor market

[8] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic. For details on ISO 1217:2009(E) and Amendment 1:2016, see III.D and IV.N.

[9] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic.

intended for use in non-specialty applications. 81 FR 27220, 27224–27230 (May 5, 2016). However, in the test procedure NOPR, DOE noted that most equipment operating at an output pressure of greater than 215 psig is highly engineered equipment, primarily used in specialty applications. DOE also recognized that there are relatively few compressed air applications in the 31 to 79 psig range. 81 FR 27220, 27230 (May 5, 2016).

a. Compressor Motor Nominal Horsepower Limitations

In response to the proposed compressor motor nominal horsepower scope of 1–500 hp, CAGI recommended limiting the scope of the test procedures to compressors with compressor nominal motor horsepower of 10–200 hp. CAGI suggested that the inclusion of larger compressors (*i.e.,* greater than 200 hp) would be burdensome and cause problems with certification and enforcement as they are infrequently built and often customized. Further, CAGI noted that while the test procedures are technically appropriate for 1–500 hp compressors, the data upon which the energy conservation standard regression curves were developed is not readily available for smaller and larger compressors. (CAGI, No. 0010, p. 6) Kaeser Compressors, Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's scope suggestion, while Scales Industrial Technologies suggested a horsepower scope of 15–200 or 250 hp. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at pp. 1–8; Sullivan-Palatek, No. 0007 at pp. 1, 3; Scales Industrial Technologies, No. 0013 at pp. 3, 7; Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 46; Sullair, Public Meeting Transcript, No. 0016 at pp. 40–41, 47; Sullivan-Palatek, Public Meeting Transcript, No. 0016 at p. 56; Ingersoll Rand, Public Meeting Transcript, No. 0016 at p. 53)

Compressed Air Systems commented that there are few 1-hp rotary compressors manufactured and suggested that the test procedures burden would outweigh the energy savings potential. (Compressed Air Systems, No. 0008 at p. 1) Sullair agrees that the test procedure for low horsepower compressors would be burdensome, but commented that the volume of compressors manufactured in the low horsepower range are high. (Sullair, No. 0006 at pp. 5–6) P. R. China also commented that the DOE did not provide adequate justification to include low horsepower compressors in the scope of the test procedure. (P. R. China, No. 0019 at p. 3) P. R. China further stated that, in accordance with Article 2.5 of the TBT Agreement, they are entitled to an explanation for the justification for a technical regulation that may impact the trade opportunities of those in the agreement. (P. R. China, No. 0019 at p. 3) DOE interprets P. R. China's comments as challenging the rationale of including small capacity compressors with small nominal horsepower motors in the scope of the test procedure NOPR.

Sullair suggested that the testing burden associated with including rotary compressors less than 10 hp and greater than 200 hp in scope would create an unfair competitive advantage for non-regulated competing equipment; specifically, reciprocating or scroll compressors on the low end and centrifugal compressors on the high end. Sullair indicated that such burden may completely eliminate the larger rotary screw compressors from the market and significantly hurt the sales of the smaller ones. (Sullair, No. 0006 at pp. 2–3, 5–6) Kaeser Compressors indicated similar concerns of product substitution, citing 350 hp, rather than 200 hp. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 51) Beyond the financial burden, CAGI and Sullair commented about the difficulty of testing large compressors over 200 horsepower. Specifically, Sullair stated that the test equipment and environmental chamber required for compressors above 200 horsepower are unreasonably costly. (Sullair, No. 0006 at p. 4; CAGI, Public Meeting Transcript, No. 0016 at p. 50)

Kaeser Compressors further stated that compressor customization, such as customer-driven motor substitutions or modifications due to unique environments, are more common on units above 300 hp. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 46) CAGI, Sullair, and Sullivan-Palatek made similar comments, noting that large horsepower compressors are more frequently customized. Sullair and Sullivan-Palatek defined large horsepower compressors as compressors with greater than 200 horsepower. (CAGI, No. 0010 at p. 6; Sullair, No. 0006 at p. 4; Sullair, No. 0006 at pp. 7–8; Sullivan-Palatek, No. 0007 at p. 3)

Additionally, CAGI cited that its current Performance Verification Program covers compressors with motor power of 5–200 hp. CAGI clarified that manufacturers may publicly rate equipment beyond 200 hp with the CAGI performance data sheet; however, this equipment is not subject to the CAGI Performance Verification Program. (CAGI, Public Meeting Transcript, No. 0016 at pp. 50, 54–55) Conversely, Atlas Copco and the CA IOUs recommended that DOE expand the scope of the test procedures to equipment with compressor motor horsepower greater than 500 hp, with Atlas Copco citing harmonization with the draft EU standard for compressors and noting that the ISO 1217:2009(E) standard is applicable to compressors above 500 horsepower. (Atlas Copco, No. 0009 at p. 11; CA IOUs, No. 0012 at p. 4)

In response to the 2012 NOPD, EEI argued that large electric motors (*i.e.,* of greater than 500 horsepower), relative to other sizes, carried the greatest per-unit energy consumption and tended to be operated at high duty cycles. EEI noted that this tendency to operate at high duty cycles may simplify development of a test procedure and that, on the account of both test procedure simplicity and large unit energy consumption, DOE should prioritize large compressors and common gases. (Docket No. EERE–2012–BT–DET–0033, EEI, No. 0009, at p. 8)

In summary, one group of commenters (CAGI, Compressed Air Systems, Kaeser Compressors, Ingersoll Rand, P. R. China, Scales Industrial Technologies, Sullair, and Sullivan-Palatek) favors a significant reduction in compressor motor nominal horsepower scope (to approximately 10–200 hp, depending on commenter). This group suggests that significant test burden would be incurred if the smaller and larger horsepower range were to be kept in scope, and this burden could lead to competitive advantage for unregulated compressors. This group also cites weakness in the data used to evaluate less than 10 hp compressors in the energy conservation standards NOPR as a reason to limit the lower horsepower range. Another group (Atlas Copco, CA IOUs, and EEI) favors expansion of scope to all equipment for which the test method is technically applicable. EEI, while not outright calling to exclude lower horsepower ratings, implies that DOE's first attention should go to larger compressors.

In general, DOE agrees with the concerns that the representations, sampling, and enforcement provisions proposed in the test procedure NOPR may cause significant burden for compressors greater than 200 hp, as many of the larger horsepower models are custom or infrequently built and typically not available for testing. Additionally, DOE agrees with Kaeser Compressors and Sullair that DOE's proposed inclusion of small (less than 10 hp) and larger (greater than 200 hp) rotary compressors, could create a competitive disadvantage for

manufacturers of these compressors, as centrifugal, reciprocating, and scroll compressors of the same horsepower do not have the same testing and representations requirements. Furthermore, DOE concludes that this competitive advantage may incentivize end users to switch from a regulated (rotary) to an unregulated (centrifugal and reciprocating) compressor, thus creating an unfair and undue burden on certain manufacturers.

In response to Atlas Copco and the CA IOUs suggestions to expand scope, DOE acknowledges the potential benefits of standardized test procedures and reporting requirements in making available consistent performance information for utility programs and consumers. However, DOE also recognizes that with these potential benefits come potential burdens. Based on the comments received and the discussion in this section, DOE concludes that the burden of testing requirements on compressors certain smaller and larger compressors outweigh the benefits. DOE acknowledges that multiple recommendations for horsepower limitations were put forward. Of the commenters supporting a reduction in horsepower cost, the overwhelming majority recommended the 10–200 hp range. For these reasons, DOE is limiting the scope of the test procedures to only compressors with 10–200 compressor nominal motor horsepower. DOE notes that this limitation on compressor nominal motor horsepower is coupled with a limit of compressor full-load actual volume flow rate, as discussed in section III.B.4.b.

b. Full-Load Actual Volume Flow Rate Limitations

CAGI and Sullair commented that the absence of a maximum airflow limit may encourage manufacturers of compressors to equip units with higher horsepower motors than the unit requires to avoid regulatory coverage. CAGI and Sullair then suggested that DOE adopt a hybrid scope limitation. Specifically, CAGI proposed a horsepower range of 10–200 hp or an actual volume flow rate range of 35–1,250 cfm. Sullair proposed a horsepower range of 10–200 hp or, an actual volume flow rate of 30–1,250 cfm (whichever is less). (Docket No. EERE–2013–BT–STD–0040, CAGI, No. 0052 at p. 9; Sullair, No. 0006 at pp. 2, 4–5; Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at pp. 9–10; Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at p. 11; Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at pp. 11–12; Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at p. 13) CAGI's position is supported by Ingersoll Rand, Kaeser Compressors, Sullair, and Sullivan-Palatek. (Docket No. EERE–2013–BT–STD–0040, Ingersoll Rand, No. 0055 at p. 1; Docket No. EERE–2013–BT–STD–0040, Kaeser Compressors, No. 0053 at p. 1; Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at p. 1; Docket No. EERE–2013–BT–STD–0040, Sullivan-Palatek, No. 0051 at p. 1)

DOE agrees with CAGI and Sullair that, by not limiting flow rate, manufacturers could conceivably circumvent the intent of compressor regulations by using a motor of horsepower slightly greater than 200 hp. For example, two similar compressors, one with a 200 hp motor and one with a 225 hp motor, would supply nearly identical flow rates and pressure (*i.e.,* utility) to the end user, however the compressor equipped with the 225 hp motor would not be subject to the test procedure, as proposed in the NOPR. In DOE's view, any alteration in flow rate directly impacts consumer utility. Additionally, a flow limitation is consistent with the EU Lot 31 draft standard, which proposes to regulate compressors with airflow of between 5 and 1,280 liters per second (l/s) (approximately 10.6–2,712 cfm).

A review of all available CAGI performance data sheets indicates that the flow rate ranges recommended by CAGI and Sullair are reasonable. The full-load actual volume flow rate range of 35–1,250 cfm is slightly broader than the compressor motor nominal horsepower range of 10–200 hp; *i.e.,* the flow range encompasses slightly more compressor models. This aligns with the intent of the recommendations put forth by CAGI and Sullair. Specifically, the full-load actual volume flow rate range of 35–1,250 cfm incorporates 9.2 percent more fixed-speed compressors and 2.9 percent more variable-speed compressors as subject to the test procedure than would otherwise be included with the compressor motor nominal horsepower range of 10–200 hp alone. For the reasons outlined in this section, in this final rule, DOE adopts a coupled airflow and horsepower limit, as recommended by Sullair and CAGI. DOE notes that the recommendations from Sullair and CAGI are not completely aligned, with Sullair recommending a lower limit of 30 cfm and CAGI recommending a lower limit of 35 cfm. Given general support by Ingersoll Rand, Kaeser Compressors, Sullair, and Sullivan-Palatek for CAGI's recommendations, DOE is adopting the lower limit of 35 cfm. Specifically, the test procedure applies to compressors with either a nominal horsepower of 10–200 horsepower or a full-load actual volume flow rate between 35–1,250 cubic feet per minute.

c. Full-Load Operating Pressure Limitations

In response to the operating pressure range proposed in the test procedure NOPR, CAGI suggested reducing the range to compressors with a full-load operating pressure of 75–200 psig, noting that outside this range, the package isentropic efficiency of a compressor is no longer independent of pressure. (CAGI, No. 0010 at p. 6) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's position. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1; Sullivan-Palatek, No. 0007 at p. 3; Sullivan-Palatek, Public Meeting Transcript, No. 0016 at p. 40) CAGI further stated that their recommended pressure range of 75–200 psig covers the primary market for rotary compressors, which the DOE defines as 80–139 psig according to the NOPR. (CAGI, Public Meeting Transcript, No. 0016 at p. 40) Jenny Products also recommended a range of 75–200 psig and stated that nearly all of the compressors sold in commerce would be covered under this range. (Jenny Products, No. 0020 at p. 3)

Atlas Copco asserted that it is incorrect for DOE to state that isentropic efficiency is independent of pressure. Instead, Atlas Copco commented that the correct statement is that isentropic efficiency is less dependent on pressure than specific energy is dependent on pressure. To support this assertion, Atlas Copco provided a chart of pressure versus isentropic efficiency, for what DOE infers to be a single compressor. Atlas Copco further stated that the chart shows the relative independence of isentropic efficiency with respect to outlet pressure between 80–170 psig (7–15 bar),[10] which was the motivation for the air compressor industry to use isentropic efficiency in Lot 31. (Atlas Copco, No. 0009 at pp. 16–17) DOE notes that Atlas Copco's unit conversions are incorrect; 80 to 170 psig does not convert to 7 to 15 bar (g), rather this range converts to 5.5 to 11.7 bar (g) (or 6.5 to 12.7 bar absolute), which is inconsistent with the scope proposed in the EU Lot 31 draft standard.[11] In the EU draft standard, the

[10] The commenter did not specify whether it meant absolute or gauge pressure. DOE's response in the following sentence addresses both possibilities.

[11] Available at: *http://www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-*

European Commission proposed to establish a scope of 7 to 14 bar (g), which converts to 101.5 to 203.1 psig.

In response, DOE acknowledges the commenters concerns that package isentropic efficiency may not be pressure independent at the lower and upper regions of the 31 to 225 psig full-load operating pressure scope, as DOE had originally assumed in the test procedure and energy conservation standards NOPR. As discussed previously, CAGI, Ingersoll Rand, Sullivan-Palatek, and Sullair suggested 75 to 200 psig as the range over which package isentropic efficiency can be considered relatively independent of pressure. Alternatively, Atlas Copco suggested that 80 to 170 psig (7 to 15 bar) [sic] as the range over which the dependence of isentropic efficiency on outlet pressure is limited. However, as discussed previously, Atlas Copco's unit conversions were inaccurate and their suggested range does not align with the scope proposed in the EU Lot 31 draft standard. Based these ambiguities, DOE cannot directly consider Atlas Copco's recommendation when considering the range for which package isentropic efficiency can be considered independent of full-load operating pressure. As such, DOE defers to the recommendation of CAGI, Ingersoll Rand, Sullivan-Palatek, and Sullair, and concludes that package isentropic efficiency can be considered independent of full-load operating pressure at full-load operating pressures between 75 and 200 psig. DOE notes that the EU draft standard proposed to establish a scope of 101.5 to 203.1 psig,[12] and concluded that isentropic efficiency is independent of pressure within this range of full-load operating pressure. Part of DOE's rationale for selecting package isentropic efficiency as a test metric for compressors, as explained in the test procedure NOPR, was that package isentropic efficiency was believed to be pressure independent—meaning that attainable package isentropic efficiency varies as function of flow, but not pressure. 81 FR 27220, 27232 (May 5, 2016) and 81 FR 31680, 31705 (May 19, 2016). DOE values dependence on one parameter (flow) rather than two (flow and pressure), as it reduces the complexity (and ultimately the burden) of the related energy conservation standards and analyses. DOE's intent in the test procedure NOPR was to limit the scope to those compressors for which package isentropic efficiency and pressure are independent. However, given the new information (*i.e.,* pressure dependence at certain full-load operating pressures), DOE acknowledges that package isentropic efficiency may not be the most appropriate metric to describe the energy performance of such equipment, and further investigation is necessary. Therefore, in this final rule, DOE is limiting the scope of the test procedures to compressors within a full-load operating pressure range of 75–200 psig. However, in the future DOE may further investigate package isentropic efficiency and other metrics to determine if they are appropriate for compressors outside this range. Further discussion related to DOE's selection of package isentropic efficiency as a metric can be found in section III.C.1.

DOE notes that Scales Industrial Technologies commented that the scope should be limited to a narrower range of 80–125 psig, commenting that a narrower range may provide more meaningful results and have less effect on isentropic efficiency. (Scales Industrial Technologies, No. 0013, p. 4) While Scales Industrial Technologies may be correct that a narrower range would have less effect on isentropic efficiency, DOE concludes, based on the input of CAGI, Ingersoll Rand, Sullivan-Palatek, Sullair, and Atlas Copco, as well as the precedent established by the draft EU Lot 31 regulation, that isentropic efficiency can be considered comparable and meaningful beyond the 80 to 125 psig range.

5. Lubricant Presence

As discussed in section III.A.9, in this final rule DOE adopts the definition proposed in the energy conservation standards NOPR for lubricated compressor as one that introduces an auxiliary substance into the compression chamber during compression. In this final rule, DOE also defines lubricant-free compressor and auxiliary substance. In the test procedure NOPR, DOE did not propose limiting scope based on lubrication; as such, the proposed scope implicitly included both lubricated and lubricant-free compressors. 81 FR 27220 (May 5, 2016).

In response to DOE's proposal, Atlas Copco, CAGI, and Kaeser Compressors noted that other technology options that are outside the scope of the test procedure, such as turbo compressors, centrifugal compressors, and other styles of dynamic compressors, will present themselves as viable alternatives to lubricant-free compressors and are risks for unregulated product substitution. (EERE–2013–BT–STD–0040, Atlas Copco, Public Meeting Transcript, No. 0044 at p. 58) Furthermore, Kaeser Compressors noted that the draft EU standard for compressors excluded lubricant-free compressors due to the risk of product substitution and lack of available data. CAGI and Kaeser recommended that DOE exclude lubricant-free compressors so that the DOE can harmonize with the draft EU compressor standard's approach for lubricant-free compressors. (EERE–2013–BT–STD–0040, CAGI, No. 0052 at p. 12; EERE–2013–BT–STD–0040, Kaeser Compressors, No. 0053 at p. 1)

DOE agrees with comments made by Atlas Copco, CAGI, and Kaeser that there is a risk of product substitution to unregulated technologies, which do not have the burden of representing efficiency in accordance to the proposed test procedure. DOE acknowledges that, in effect, the inclusion of lubricant-free rotary compressors gives unregulated technologies a competitive advantage in the marketplace in that they are free to represent efficiency in a less burdensome fashion. DOE also acknowledges an argument made by CAGI, which point out that the shipments volume of lubricant-free rotary compressors and dynamic compressors are approximately equal, yet DOE excluded centrifugal compressors from the scope of the test procedure on the basis of low shipment volume. (EERE–2013–BT–STD–0040, CAGI, No. 0052 at p. 12) 81 FR 27220, 27228 (May 5, 2016).

DOE also received many comments related to the appropriateness and applicability of the variable-speed compressors test method and metric (part-load package isentropic efficiency) to lubricant-free compressors. In general, commenters expressed concern that many lubricant-free compressors are unable to operate at the 40 percent flow load point, and as such, suggested that the test procedure, as proposed in the test procedure NOPR is not appropriate or applicable to lubricant-free compressors. A full discussion of these comments and their relationship to scope is found in section III.C.1, which discusses, in the depth, the metric and load points proposed in the test procedure NOPR. As a result of the discussions provided in section III.C.1, DOE is limiting the scope of the test procedure final rule to lubricated compressors only.

6. Specialty-Purpose Compressors

In the test procedure NOPR, DOE made no specific scope exclusion for

0040-0031&disposition=attachment&contentType=pdf.

[12] For copies of the EU Lot 31 draft regulation: *www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0040-0031&disposition=attachment&contentType=pdf.*

what the compressor industry refers to as ''customized'' or ''specialty-purpose'' compressors. In response, DOE received many comments recommending that it expressly exclude specialty-purpose compressors from the scope of the test procedure. Additionally, many commenters suggested that DOE establish criteria to exclude customized compressors that are created by modifying a standard compressor.

Sullivan-Palatek commented that compressor products usually start with the basic package, but often substitute non-standard electric motors, controls or coolers and add numerous other options and features specified by the customer or required by the location in which the compressor is installed. (Sullivan-Palatek, No. 0007 at p. 22)

Sullair provided examples of custom requirements, such as sump heating, extra fans, and special marine applications for which motors have to be built (American Bureau of Shipping), and noted that these frequently increase package energy consumption. (Sullair, Public Meeting Transcript, No. 0016 at p. 113)

Atlas Copco commented that the test procedures proposed in the NOPR applied to both standard compressor packages and custom compressor packages, and the latter often have unusual combinations of ancillary equipment. Atlas Copco provided examples of custom equipment, including customized liquid cooling systems, drive systems, safety systems, filtration systems, dryers, heaters, and air receiver/surge tanks. Atlas Copco also noted that each type of customization can have a significant impact on the energy efficiency of the total compressor system. Ultimately, Atlas Copco suggested that applying the proposed test procedure to custom orders for compressor packages was unduly burdensome to conduct and inappropriate under section 343(a)(2) of EPCA. (Atlas Copco, No. 0009 at pp. 4–7)

To address the industry concerns over the testing of customized and specialty-purpose compressors, CAGI recommended that the list of ancillary equipment they provided (see section III.A.3.b and Table III.1) should exclude all options or modifications required to meet specific customer requirements or other codified standards where these options or modifications are made to an existing tested model and do not create in and of themselves a new model. Examples may include options or modifications required to meet hazardous locations, breathing air, marine environments, ambient conditions above 45 °C or below 0 °C, weather protection, etc. (CAGI, No. 0010, p. 4)

Sullair agreed with CAGI's recommendation and provided additional examples of custom requirements, including hazardous locations or corrosive environments (as specified by the standard known as Atmosphères Explosibles, or ''ATEX'') [13] or issued by the American Petroleum Institute (''API''), the Mine Safety and Health Administration (''MSHA''), etc.), marine environments, alternate cooling methods (remote coolers, water cooled, closed loop cooling, etc.), ambient conditions exceeding 45 °C, ambient conditions below 5 °C, energy or heat recovery options, environmental protections (NEMA 4, IEC 65, etc.), and dimensional changes or enclosure modifications. (Sullair, No. 0006 at p. 8)

In its comments, Sullivan-Palatek strongly urged the DOE to limit testing and sampling to the basic package as defined by CAGI. It also recommended that DOE permit add-ons and alterations to basic packages so that specialty products offered to the end-user customer base in the past can continue in the future. (Sullivan-Palatek, No. 0007 at p. 4)

As discussed in sections III.A.3.b and III.E.3, DOE is incorporating CAGI's recommended list of equipment (with certain modifications) to define the minimum testing configuration for a compressor basic model. DOE believes that the incorporation of this recommendation effectively excludes, from the scope of the test procedure, customized or specialty-purpose equipment that is created by adding additional equipment to what the industry refers to as a standard or basic package compressor.

Based on DOE's interpretation of the comments described above, two additional concerns remain: (1) Specialty-purpose equipment that is created by modifying or replacing equipment on a standard package compressor, and (2) specialty-purpose equipment that is not a derivative of other standard equipment. However, DOE notes that the commenters provided no specific examples of specialty-purpose compressors that have been distributed in commerce, nor did they provide any direct or quantitative evidence that such compressors consume more energy and are more burdensome to test than their ''general-purpose'' counterparts (beyond noting that more models may need to be certified). Regardless, given the commenters' concerns, DOE performed research (using interested party comments as a starting point) to determine if any additional scope exclusions are warranted. Specifically, DOE was able to identify 10 applications and feature categories that could possibly be used to characterize specialty-purpose compressors in the compressor industry:

(1) Corrosive Environments
(2) Hazardous Environments (combustion and/or explosion risk)
(3) Extreme Temperatures
(4) Marine Environments
(5) Weather-protected
(6) Mining Environments
(7) Military Applications
(8) Food Service Applications
(9) Medical Air Applications
(10) Petroleum, Gas, and Chemical Applications

Given the concerns raised by commenters, DOE established three specific criteria to help determine if test procedure exclusions are warranted for each of the aforementioned applications and feature categories. A compressor category must meet all criteria to be considered for exclusion.

The first criterion, distinguishability, is that compressors under consideration must be able to be distinguished from general-purpose compressors. In this case, to be distinguishable extends beyond being able to identify any difference whatsoever. Specifically, distinguishability is determined in the context of the test procedure. DOE's test procedure final rule contains instructions regarding compressor configuration during testing. During a test, only specific components are required to be connected; manufacturers may remove non-required components at their option. If the specialized nature of a compressor arises from a non-required component, manufacturers have the option to remove its influence on compressor performance. In that scenario, the specialty compressor, from the perspective of the test procedure, has collapsed to a general-purpose unit with no remaining distinction. In considering whether a compressor meets the distinguishability criterion, DOE will assess whether the specialized nature of the compressor arises from components or configurations that are removable or reconfigurable under the specific provisions of DOE's test.

As stated previously, DOE is incorporating CAGI's recommended list of equipment (with certain modifications), so the only specialty-

[13] ATEX is the common industry phrasing for European Parliament and Council Directive 2014/34/EU of 26 February 2014, which governs equipment and protective systems intended for use in potentially explosive atmospheres. The term ''ATEX'' is a portmanteau of ''atmosphères explosibles'', French for ''explosive atmospheres.''

purpose compressors that could warrant exclusion are those that are created by modifying or replacing equipment on a standard package compressor, and specialty-purpose equipment that is not derivative of other standard equipment.

Under the second criterion, manufacturers must currently make public representations for the specific category of compressors using test procedure metrics. This criterion establishes the need to use the test procedure for the specific category. Absent an energy conservation standard, the test procedure is needed only to measure metrics used in representations of compressor performance. If manufacturers make no representations for a specific category of compressors, the existence of a test procedure has no impact on them. Sullivan-Palatek commented that manufacturers typically do not publish CAGI datasheets for models that are variations of a basic package. (Sullivan-Palatek, No. 0007 at p.4) This suggests that it is rare for manufacturers to make public representations of the performance for specialty-purpose compressors.

The third criterion is that it must be impractical to apply the test procedure to compressors in the specific category, because an attribute of the compressor renders testing technically impossible or possible only with major modification, or because the test procedure produces non-representative results for the specific category of compressor. This criterion establishes that there is a technical impediment to using the test procedure with the specific category of compressors.

DOE performed research, using publicly available data, on each of the categories to determine if exclusions are warranted. In the following paragraphs, DOE discusses findings for each of the aforementioned ten specialty applications.

Corrosive Environments

Corrosive environments can be damaging to both the external components of a compressor and the internal components, if corrosive agents are ingested with the air. DOE's research indicated that corrosive agents are found in a wide range of varieties and severities. Certain corrosive agents may harm some materials but not others.

Compressors may be adapted to corrosive environments by using special materials, having special coatings, using additional intake air filtration, or using special or remote enclosures to isolate the compressor from the corrosive environment. However, most requirements for corrosive environments are customer-specific, making it difficult to create a generalized scope exclusion. Some end users also use general-purpose compressors in a corrosive environment, opting to replace the compressor at an earlier interval instead of purchasing a more expensive compressor that can last longer in the corrosive environment.

Based on this information, DOE does not believe that all corrosive environment compressors meet the first criterion of distinguishability; however certain corrosive environment compressors utilizing special materials and/or coatings may be distinguishable.

DOE did not find any public representations of the performance for compressors designed for corrosive environments, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for corrosive environments, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because manufacturers do not appear to make representations of performance for these compressors and there is no technical impediment to testing these compressors with the test procedure, DOE finds no cause to exclude compressors adapted to corrosive environments from the scope of this final rule.

Hazardous Environments

Hazardous environments include those in which there is the possibility of combustion or explosion. Compressors may be adapted to hazardous environments through modified electrical components and enclosures that protect against sparks and high temperatures. At least some of these components need to be included as part of the basic package during testing. Several standards specify the type and level of precautions required for these environments, so certification with one or more of these could be a method for defining the scope of exclusion.

For these reasons, DOE finds that hazardous environment compressors meet the first criterion of distinguishability. Hazardous environment compressors are designated as such by independent agencies such as UL, and given a rating that corresponds to the specific attributes of the hazardous environment for which the unit is being certified.

DOE did not find any public representations of the performance for compressors designed for hazardous environments, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for hazardous environments, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because manufacturers do not appear to make representations of performance for these compressors and there is no technical impediment to testing these compressors with the test procedure, DOE finds no cause to exclude compressors adapted to operate in hazardous environments from the scope of this final rule.

Extreme Temperatures

CAGI and Sullair identified the need to exclude compressors used in extreme temperatures. (CAGI, No. 0010, p. 4; Sullair, No. 0006 at p. 8) For high-temperature extremes, both commenters identified temperatures above 45 °C. For low-temperature extremes, Sullair indicated temperatures below 5 °C, while CAGI indicated temperatures below 0 °C. DOE notes that CAGI and Sullair did not present any standardized tests or inspections that might be used to uniformly classify a non-extreme temperature range for compressors.

In the absence of that information, DOE performed research and found neither industry-accepted, standardized test methods to determine allowable operating temperature, nor any industry-accepted certification programs to classify compressors for extreme temperatures. DOE also researched what types of modification and components might be employed to adapt compressors for extremely high- and low-temperature environments. For lower temperatures, a variety of heating devices may be used to heat the compressor package in various ways—such equipment is not required as a part of test procedure testing configuration and is, therefore, not a distinguishing feature.

In hotter environments, compressors may employ larger output air heat exchangers and associated fans. Unlike package heating and cooling, heat exchangers and fans are part of the test configuration. However, manufacturers may employ larger heat exchangers and fans for a variety of reasons, *e.g.* recovering waste heat for use in space heating. Furthermore, heat exchanger and fan size (as compared to compressor capacity) is not a standardized feature across the compressor industry, with different manufacturers choosing different-sized components to meet their specific design goals. Consequently, DOE is unable to establish a clear threshold to delineate larger heat exchangers and fans employed for high

temperature applications. Furthermore, doing so opens a significant circumvention risk, as manufacturers could purposely substitute larger heat exchangers and fans in order to exclude compressors from regulation. For these reasons, DOE concludes that compressors designed for extreme temperature operation are not clearly distinguishable from general-purpose compressors.

DOE also did not find any public representations of the performance for compressors designed for extreme temperatures, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for extreme temperatures, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because (a) it is difficult to clearly identify compressors for extreme temperatures; (b) manufacturers do not appear to make representations of performance for these compressors; and (c) there is no technical impediment to testing these compressors with the test procedure, DOE does not find cause to exclude compressors adapted to extreme temperatures from the scope of this final rule.

Marine Environments

Marine air compressors are intended for use aboard ships, offshore platforms, and similar environments. In general, DOE found this to be a very broad category of compressors. There are a wide variety of standards for these applications, but many of the requirements are customer-specific, making it difficult to clearly identify the scope for exclusion. Marine compressors may be space constrained if installed on ships. However, this may not always be the case, and some marine environments may be able to utilize general-purpose compressors. Further, DOE found no way to clearly distinguish, from general-purpose compressors, those that are specifically developed for constrained spaces. DOE's research found that other items, such as saltwater coolers, may be employed on marine air compressors, however, this equipment does not need to be included for testing. For these reasons, DOE does not find marine environment compressors to meet the first criterion of distinguishability.

DOE did not find any public representations of the performance for compressors designed for marine environments, suggesting that representations are not commonly made.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for marine environments, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because (a) it is difficult to clearly identify compressors for marine environments; (b) manufacturers do not appear to make representations of performance for these compressors; and (c) there is no technical impediment to testing these compressors with the test procedure, DOE does not find cause to exclude compressors adapted to marine environments from the scope of this final rule.

Weather-Protected

Weather-protected compressors require features to prevent the ingress of water and debris, as well as accommodation for extreme temperatures in some cases. DOE found that third-party standards exist for ingress protection of the electrical components. However, DOE did not find an indication of a standard or certification for other aspects of weather protection, making it difficult to clearly identify a general scope for exclusion for all weather-protected equipment. However, DOE believes that certain weather-protected compressors (*i.e.,* those with electrical components rated for ingress protection) meet the first criterion of distinguishability.

DOE did not find any public representations of the performance for weather-protected compressors, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for weather-protected compressors, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because manufacturers do not appear to make representations of performance for these compressors and there is no technical impediment to testing these compressors with the test procedure, DOE finds no cause to exclude compressors adapted to corrosive environments from the scope of this final rule.

Mining Environments

Mining environments can include both surface and subsurface mine compressor applications. There are some standards for these applications, but many of the requirements are customer-specific, making it difficult to clearly identify the scope for exclusion. Some mining applications also use general-purpose compressors. For this reason, DOE does not find mining environment compressors to meet the first criterion of distinguishability.

DOE did not find any public representations of the performance for compressors designed for mining environments, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for mining environments, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because (a) it is difficult to clearly identify compressors designed for mining environments; (b) manufacturers do not appear to make representations of performance for these compressors; and (c) there is no technical impediment to testing these compressors with the test procedure, DOE does not find cause to exclude compressors designed for mining environments from the scope of this final rule.

Military Applications

Compressors used in military applications have a wide range of applications. Many military applications use common commercial or industrial compressors. Other military applications, however, must meet extensive customer-specific requirements. These requirements can vary greatly with the customer, and there are no commonly used standards for compressors in military applications. This makes it difficult to clearly identify the scope for exclusion. For this reason, DOE does not find military compressors to meet the first criterion of distinguishability.

DOE did not find any public representations of the performance for compressors designed for military applications, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for military applications, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because (a) it is difficult to clearly identify compressors designed for military applications; (b) manufacturers do not appear to make representations of performance for these compressors; and (c) there is no technical impediment to testing these compressors with the test procedure, DOE does not find cause to exclude compressors designed for military applications from the scope of this final rule.

Food Service Applications

Food service applications can have requirements for air purity and to use food-grade lubricants. Food grade lubricants need to be included for testing, so at least some compressors designed for food service applications meet the first criterion of distinguishability.

DOE did not find any public representations of the performance for compressors designed for food service applications, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for food service applications, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because manufacturers do not appear to make representations of performance for these compressors and there is no technical impediment to testing these compressors with the test procedure, DOE finds no cause to exclude compressors adapted to corrosive environments from the scope of this final rule.

Medical Air Applications

Medical air applications can have requirements for air purity, which is both rated according to ISO 8573–1 and included in the National Fire Protection Association Standard for Health Care Facilities (NFPA 99). DOE notes that most medical air compressors are lubricant-free and, as such, are already excluded from this final rule. In lubricated compressors, high air purity is attained using a combination of filters and dryers added to the system downstream of the compressor discharge. These items are outside the basic compressor package, so a medical air compressor collapses to a standard basic package for testing. For this reason, DOE does not find medical air application compressors to meet the first criterion of distinguishability.

DOE did not find any public representations of the performance for compressors designed for medical air applications, suggesting that representations are not commonly posted.

Finally, DOE found no evidence that testing with the test procedure is impractical for compressors designed for medical air applications, because these compressors operate in the same manner as general-purpose compressors.

Therefore, because (a) manufacturers do not appear to make representations of performance for compressors designed for medical air applications; (b) these compressors collapses to the basic package for testing; and (c) there is no technical impediment to testing these compressors with the test procedure, DOE does not find cause to exclude compressors designed for medical air applications from the scope of this final rule.

Petroleum, Gas, and Chemical Applications

The American Petroleum Institute standard 619, ''Rotary-Type Positive-Displacement Compressors for Petroleum, Petrochemical, and Natural Gas Industries,'' (API 619), specifies certain minimum requirements for compressors used in the petroleum, gas, and chemical industry. While API 619 contains many specific design requirements, it also indicates that customers must specify many design requirements themselves. As a result, compressors designed to meet API 619 requirements are not uniform; rather, they are, by definition, customized compressors. In addition to the design requirements, API 619 imposes rigorous testing, data reporting, and data retention requirements on manufacturers. For example, manufacturers are required to perform specific hydrostatic and operational mechanical vibration testing on each individual unit distributed in commerce. Furthermore, manufacturers must retain certain data for at least 20 years, such as certification of materials, test data and results, records of all heat treatment, results of quality control tests and inspections, and details of all repairs. Based on these testing, data reporting, and data retention requirements, DOE concludes that compressors designed and tested to the requirements of API 619 meet the first criterion of distinguishability.

Based on DOE's assessment of API 619, DOE believes that the minimum design and testing requirements specified in API 619 are created to achieve, among other goals, safety and reliability in the petroleum, gas, and chemical industry. These requirements ensure that the compressor can be operated and maintained safely, in the safety-critical petroleum, gas, and chemical industry. Thus, there is not a current industry test procedure that would apply and it is unclear if the methodology being adopted in this final rule would be representative of their actual use. Thus, DOE is declining to adopt a test procedure for compressors designed for petroleum, chemical and gas applications.

C. Metrics

1. Package Isentropic Efficiency

In the test procedure NOPR, DOE proposed ''package isentropic efficiency'' to be the energy metric for compressors, and defined package isentropic efficiency to mean the ratio of power required for an ideal isentropic compression process to the actual packaged compressor power input used at a given load point, as determined in accordance with the test procedures included in 10 CFR 431.344.[14] 81 FR 27220, 27232 (May 5, 2016). Because package isentropic efficiency is expressed relative to an ideal isentropic process between the same input and output pressures, it could therefore be used to compare units across a wide range of pressures. DOE presented this applicability across a wide range of pressures as an advantage of package isentropic efficiency over specific input power. *Ibid.*

Specifically, DOE proposed to establish two versions of package isentropic efficiency: Full-load package isentropic efficiency and part-load package isentropic efficiency. DOE proposed that full-load package isentropic efficiency would apply only to fixed-speed compressors, whereas part-load package isentropic efficiency would apply only to variable-speed compressors. Full-load package isentropic efficiency is evaluated at a single load point, while part-load package isentropic efficiency is a weighted composite of performance at multiple load points (or rating points). Equation 1 and Equation 2 describe the full- and part-load package isentropic efficiency, as proposed in the test procedure NOPR.

$$\eta_{isen,FL} = \frac{P_{isen,100\%}}{P_{real,100\%}} \qquad \textbf{Equation 1}$$

[14] Test methods are discussed specifically in section III.E.

Where:

$\eta_{isen,FL}$ = package isentropic efficiency at full-load operating pressure,

$P_{isen,100\neq}$ = isentropic power required for compression at full-load operating pressure, and

$P_{real,100\neq}$ = packaged compressor power input at full-load operating pressure.

$$\eta_{isen,PL} = \sum_{i} \omega_i \frac{P_{isen,i}}{P_{real,i}} \qquad \textbf{Equation 2}$$

Where:

$\eta_{isen,PL}$ = part-load package isentropic efficiency,

ω_i = weighting factor for rating point i,

$P_{isen,i}$ = isentropic power required for compression at rating point i,

$P_{real,i}$ = packaged compressor power input at rating point i, and

i = load points at 100, 70, and 40 percent of full-load actual volume flow rate.

To clearly separate the two varieties of compressors, in the test procedure NOPR, DOE proposed the following definitions for fixed-speed and variable-speed compressors:

Fixed-speed compressor means an air compressor that is not capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor flow rate.

Variable-speed compressor means an air compressor that is capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor actual volume flow rate.

DOE received a significant volume of comments regarding these metrics, associated load points and weights, and the applicability of each version of package isentropic efficiency. The following subsections discuss these issues and relevant comments in detail.

a. Use of Full-Load and Part-Load Package Isentropic Efficiency as Regulatory Metrics

In response to DOE's proposal to use package isentropic efficiency as a metric, CASTAIR disagreed, stating that air compressors consume electricity (in kW, using electric motors that are already regulated) and produce flow (in cfm). CASTAIR further stated that power (in kW) and flow (in cfm) are very easy things to test and record, and suggested that DOE should then regulate, if it must, the efficiency between the two (*i.e.,* kW and cfm) for air ends. (CASTAIR, No. 0018 at p. 1) Based on this comment, DOE interprets that CASTAIR is suggesting that the efficiency of the compressor should be a simple calculation based on the regulated representation of efficiency for the electric motor and the airflow produced by the air compressor. In response to this suggestion, DOE clarifies that the efficiency and energy consumption of an air compressor is not solely a function of the motor. As DOE discussed in the energy conservation standards NOPR, opportunities exist to select or design higher efficiency motors, drives (if applicable), bare compressors (including multi-staging), mechanical equipment, and ancillary equipment. 81 FR 31680, 31701–2 (May 19, 2016). For this reason, DOE concludes that the efficiency of the motor alone, even when coupled with the output airflow of the compressor, is not an appropriate metric to represent to energy efficiency or consumption of an air compressor.

Alternatively, DOE recognizes that CASTAIR may have been recommending a metric of the form of power (in kW) per unit flow (in cfm). DOE acknowledges that this general metric could properly characterize the typical energy use of an air compressor, if coupled with an appropriate test method. However, this ratio has a significant shortcoming as a regulatory metric. Specifically, achievable kW/cfm is a function of both pressure and flow, which means an energy conservation standard would need to be a function of both pressure and flow—a more complex determination as compared to package isentropic efficiency.[15] Thus, in this final rule, DOE concludes that a metric of the form kW/cfm introduces unnecessary complexity into any energy conservation standards that would rely on such a metric (*i.e.,* adding pressure as a second dependent characteristic).

With respect to metric selection, Atlas Copco asserted that DOE's method of calculating compressor energy use is flawed because, as a steady-state metric, it lacks a means to compare in-operation energy savings of compressors with different operating profiles. Atlas Copco further asserted that DOE failed to use a methodology to calculate the performance of an air compressor at part-load, and failed to take into account energy losses due to the cyclic operations. Cyclic operations, commented Atlas Copco, are responsible for an additional vast amount of energy required without delivering any useful air and should be accounted for to understand cyclic demands required for certain applications. (Docket No. EERE–2013–BT–STD–0040, Atlas Copco, No. 0054 at p. 9; Atlas Copco, No. 0009 at pp. 13–14)

Atlas Copco suggested an alternative metric that considers energy consumption during loaded operation, unloaded operation, and the transient in-between. Specifically, Atlas Copco suggested a metric that calculates the energy consumption for one running hour and the accumulated useful volume of air which is delivered to the customer. Based on these values, the corresponding overall Specific Energy Requirement (SER) can be calculated, which can be converted to the isentropic efficiency. Atlas Copco went on to specifically define SER as the energy consumed during one hour of operation, divided by the useful volume of air produced during this time period, and provided an equation to convert SER to isentropic efficiency. Atlas Copco stated that these metrics reflect the true energy consumption and would allow customers to compare all compressor technologies on an apples-to-apples basis. It also stated that such metrics would provide a method to assess the part-load performance of variable-speed machines that cannot reach the 40-percent load point rather than allowing the compressor to test at the minimum achievable flow point, which unfairly penalizes large turndown variable-speed compressors. (Atlas Copco, No. 0009 at p. 12–13; Atlas Copco, No. 0009 at p. 15; Docket No. EERE–2013–BT–STD–0040, Atlas Copco, No. 0054 at pp. 9–11)

In its comments, Atlas Copco suggests that the energy consumption during one hour of operation can be calculated as the sum of the energy consumed during loaded and unloaded operation (which can be measured using ISO 1217:2009(E)), as well as the ''cycle energy requirement.'' Atlas Copco

[15] For example, higher flow machines can naturally achieve a better kW/cfm score as maximum achievable motor and bare compressor efficiency increase with size and flow. Alternatively, lower pressure machines can naturally achieve a better kW/cfm score as less power is required to compress the same volume of air to a lower pressure.

defines the cycle energy requirement as the total energy required for fully pressurizing the internals of the compressor package starting from idle regime until useful air delivery, summed with the full venting of the same internals starting from the end of useful air delivery until idle regime; *i.e.,* the energy consumed during transient operation between the loaded and unloaded state. Atlas Copco goes on to provide a suggested measurement procedure for the determination of cycle energy losses. (Atlas Copco, No. 0009 at pp. 13–14; Atlas Copco, Annex A, No. 0009 at pp. 3–13; Docket No. EERE–2013–BT–STD–0040, Atlas Copco, No. 0054 at p. 9–11) Further, Atlas Copco suggested that DOE establish separate regulations for the fixed flow profile and the variable flow profile, but to also have all machines list values for both. (Atlas Copco, No. 0009 at p. 11; Atlas Copco, No. 0009 at p. 15) Given Atlas Copco's suggestion to use a new metric, DOE is unclear what values Atlas Copco is referring to when it suggests that DOE list ''both.'' DOE is unclear whether Atlas Copco supports the use of its new metrics (SER and its associated isentropic efficiency) as the exclusive metrics for compressors, or if Atlas Copco is suggesting that the new metrics be used in addition to the DOE-proposed part-load and full-load package isentropic efficiency.

Sullair agreed that although measurements and efficiency standards for part-load operation of fixed-speed compressors may be useful, no standard has been established, tested, or proven to measure compressor performance across all fixed-speed control methods (modulation, load-unload, variable displacement, etc.) employed by various manufacturers. As a result, Sullair commented that it did not support a part-load test procedure for fixed-speed compressors at this time. Sullair noted that preliminary work is being done by CAGI to measure one of these control methods (variable displacement) and supported further development of a test procedure or metric across multiple manufacturers and control types prior to adoption by DOE. (Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at pp. 16–17)

Sullair cited that the variable-speed, part-load performance data used to develop both the EU Lot 31 draft standard and the proposed DOE standard came from CAGI's Performance Verification Program, which was gathered over the span of nearly 10 years. In contrast, Sullair argued that to rush development of a new test method and metric for part-load measurement of fixed-speed compressors, without support from the industry or verified supporting data from multiple manufacturers and units, would be rash and inappropriate. Sullair anticipated that such a development risks unintended consequences that may negatively impact the compressor industry, compressor consumers, and U.S. industry at-large. (Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at pp. 16–17)

Sullair concluded that, primarily because of a lack of verified data and an agreed upon industry test standard for all fixed-speed control types, DOE should proceed with its proposal to classify compressors as fixed-speed or variable-speed, and limit part-load testing to variable-speed compressors. (Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at pp. 16–17)

In agreement with Sullair, DOE acknowledges that a package isentropic efficiency metric that includes cycle losses (as recommended by Atlas Copco) could acceptably represent the typical energy use of compressors. However, as discussed in Sullair's comment, the use of cycle losses and the test and calculation methods recommended by Atlas Copco represent the opinions and findings of one industry participant, and do not represent an industry accepted metric or test method. Atlas Copco has not presented evidence that these methods and accompanying results have been validated or peer reviewed outside of Atlas Copco's organization. Further, DOE believes that the use of Atlas Copco's suggested metric and cycle loss test method is likely to increase the burden on manufacturers as it appears to require additional testing beyond what was proposed in the test procedure NOPR. Furthermore, the industry (outside of Atlas Copco) is unfamiliar with the additional testing that would be required. Finally, no historical performance data exists for the metric proposed by Atlas Copco, which makes it a poor choice for a regulatory metric at this time. Without historical performance data for the Atlas Copco metric, DOE would be unable to establish baseline and maximum technologically feasible efficiency levels, and would be unable to complete any of the analyses required to assess and establish energy conservation standards.

Alternatively, given the general support of CAGI, Sullivan-Palatek, Ingersoll Rand, and Sullair for items on which they did not directly comment on, DOE believes that full-load package isentropic efficiency represents an industry-accepted metric, which is backed by an industry-accepted test method (ISO 1217:2009(E), as amended), and has a large cache of reliable industry test data. (CAGI, No. 0010 at p. 3, Sullivan-Palatek, No. 0007 at p. 1; Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1) The use of full-load package isentropic efficiency in the EU Lot 31 draft standard further indicates that this metric is an appropriate and industry-accepted metric for the assessment of fixed-speed compressors. In summary, DOE again acknowledges that Atlas Copco's suggested metric, which incorporates part-load cycle losses, may acceptably represent the typical energy use of compressors, however for the reasons discussed in this section, DOE concludes that, at this time, it is not an appropriate metric to adopt. If this metric gains acceptance in the industry and the test method can be formalized and validated beyond a case study, DOE may consider incorporating such a method in future rulemakings.

With respect to Atlas Copco's suggestion that each compressor be labeled with scores from two metrics, DOE notes the core purpose of a Federal test procedure is to establish test methods to evaluate equipment against the applicable energy conservation standards. If DOE were to require the listing of two metrics on each compressor, DOE must require that each compressor test to two test methods. Requiring such testing and reporting would represent an incremental burden beyond what DOE proposed in the test procedure NOPR. In general, DOE strives to minimize the incremental burden of any test procedures rulemaking. Therefore, in this test procedure final rule, DOE does not adopt any mandatory testing or reporting beyond the metrics proposed in the test procedure NOPR.

Similarly to Atlas Copco, the CA IOUs suggested that, for fixed-speed compressors with either ''start/stop,'' or ''load/unload'' controls, the air flow and power consumption should be tested to capture energy consumption at full-load and fully unloaded. They also suggested that fixed-speed compressors with ''load/unload'' controls be tested to measure the duration of the purge cycle (time it takes to achieve fully unloaded power—also known as blowdown time), as this data can be mathematically combined with the airflow and power consumption data at full-load and fully unloaded to estimate the compressor's efficiency at various points between full-load and fully unloaded. (CA IOUs, No. 0012 at p. 1–2) Unlike Atlas Copco, the CA IOUs suggest that this data be measured and reported as supplemental information, rather than incorporated into a new metric.

While DOE agrees that information describing unloaded and transition states of operation could be useful to the end user, the CA IOUs' recommendation represents testing and reporting that is not essential to the output of the test procedures; requiring such testing and reporting would represent an incremental burden beyond what DOE proposed in the test procedure NOPR. In general, DOE strives to minimize the incremental burden of any test procedures rulemaking. Therefore, in this test procedure final rule, DOE is not adopting any mandatory testing or reporting of no-load power. Manufacturers may measure and advertise no-load power and blowdown time, and DOE may further explore no-load power measurement and reporting requirements in a future rulemaking.

CAGI also argued for the importance of considering operating conditions in determining efficiency. CAGI commented that, because field variables were a large determinant of system efficiency, any value assigned to package efficiency may be misleading to consumers. (Docket No. EERE–2012–BT–DET–0033, CAGI, No. 0003 at p. 8)

In response to CAGI's comment, DOE is not representing package isentropic efficiency as a substitute for consideration of site-specific operating factors. Rather, it is intended to serve as a common basis for comparison between compressors.

Atlas Copco suggested that low-pressure air and lubricant-free compressors have their package isentropic efficiencies expressed as a function of discharge pressure in addition to flow rate, noting that full-load operating pressure is a significant variable that affects package isentropic efficiency for those compressor configurations. (Atlas Copco, No. 0009 at p. 15; Atlas Copco, Public Meeting Transcript, No. 0016 at pp. 41–42; EERE–2013–BT–STD–0040, Atlas Copco, No. 0054 at pp. 19–20) As discussed in sections III.B, DOE is narrowing the scope of this test procedure final rule to a smaller pressure range, which only includes lubricated compressors. This revised scope matches the range over which the dependency of isentropic efficiency on discharge pressure is described by CAGI as limited. Therefore, DOE concludes that the changes to the proposed metric, recommended by Atlas Copco, are not necessary. However, DOE may consider adding a pressure-dependent term, should it choose to pursue to test procedures or energy conservation standards for lubricant-free equipment or equipment outside of the 75–200 psig range in future rulemakings.

Scales Industrial Technologies agreed that the package isentropic efficiency metric is a good measurement, but commented that the metric is not common in industry. Scales Industrial Technologies suggested instead to use specific power, as it has been the industry-accepted expression of compressor efficiency. (Scales Industrial Technologies, No. 0013 at p. 4)

In response, DOE acknowledges that package isentropic efficiency is not as commonly used as specific power. However, based on the general support of other commenters for package isentropic efficiency, its use in the analogous EU Lot 31 draft standard, and its pressure independence over the scope being established in this final rule, DOE concludes that package isentropic efficiency is the most appropriate metric for describing the energy performance of compressors within the scope of this test procedure.

b. Load Points Selection and Applicability

As shown in Equation 1 and Equation 2 in the test procedure NOPR, DOE proposed that fixed-speed units be tested at a single load point, the full-load actual volume flow rate; and that variable-speed units be tested at three load points: 100, 70, and 40 percent of full-load actual volume flow rate. 81 FR 27220, 27232–4 (May 5, 2016).

In response, ASAP and NEEA generally supported DOE's proposed load points for full-load and part-load package isentropic efficiency. (ASAP and NEEA, No. 0015 at p. 2) Kaeser Compressors also supported the selection of load points that harmonized with the EU Lot 31 draft standard. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 63) Alternatively, the CA IOUs suggested that variable-speed compressors be tested at a minimum of six test points (excluding a no load power test point), in alignment with the CAGI Performance Verification Program test procedure, and also use a minimum volume flow rate no higher than 40 percent of the maximum volume flow rate to avoid possible loopholes. (CA IOUs, No. 0012 at p. 3)

With respect to the smallest flow rate load point for variable-speed compressors, CAGI noted that not all variable-speed compressors can reach a speed that achieves 40 percent of full-load actual volume flow rate, as minimum speeds can be limited by technical considerations such as bearing speeds, overheating, motor current, etc. (CAGI, Public Meeting Transcript, No. 0016 at p. 60) Kaeser Compressors and Sullair supported CAGI's remark, while Sullair continued to state that this is especially important for lubricant-free compressors due to technical limitations that keep them from running at speeds as low as 40 percent of [full] flow. (Sullair, Public Meeting Transcript, No. 0016 at p. 64) Kaeser Compressors added that, among other reasons, EU Lot 31 draft standard can set a 40-percent load point because it does not include lubricant-free compressors. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at pp. 64–5) In response to this concern, CAGI suggested that the lower load point should be at 40 percent flow or the manufacturer's minimum stated capacity, if greater. (CAGI, No. 0010 at p. 6) Sullair supported CAGI's comments. (Sullair, Public Meeting Transcript, No. 0016 at p. 64)

Atlas Copco commented that a provision that permits manufacturers to test at the manufacturer's stated minimum speed if a compressor cannot achieve the 40-percent load point would penalize compressor packages with large turndown ratios. (Atlas Copco, No. 0009 at p. 12–13) Atlas Copco further clarified that the disadvantage to larger turndown machines results from the higher average efficiency achieved by testing at a load point greater than 40 percent, which results in a higher average weighted isentropic efficiency. (Atlas Copco, Public Meeting Transcript, No. 0016 at p. 60) DOE notes in this statement that Atlas Copco has incorrectly quoted the test procedure NOPR, in which DOE made no mention of how to test a variable-speed compressor for which the 40-percent load point is unachievable due to technical limitations. Atlas Copco went on to suggest that compressors that cannot reach the 40-percent load point should instead be allowed to use the SER metric, which is discussed in section III.C.1.a. (Atlas Copco, No. 0009 at p. 11) Atlas Copco further commented that the draft EU compressor standard included no load power as a reported metric, allowing for a more complete picture of efficiency when a variable-speed compressor is used at flow rates below the manufacturer's minimum flow rate. (Atlas Copco, Public Meeting Transcript, No. 0016 at pp. 69–70)

Similar to Atlas Copco, Kaeser Compressors noted that there would be efficiency gains in testing at flow rates greater than 40 percent, but that there would also be market disadvantages because the unit would seem less flexible, and so there would be little incentive for manufacturers to declare relatively high flow rates. For that reason, Kaeser therefore suggested that main issue with the 40-percent load

point was not the possibility of manufacturers artificially increasing efficiency ratings, but instead the fact that lubricant-free compressors may not be able to reach that flow rate. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at pp. 65–6) Sullair stated that manufacturers would lose marketability if they rated the unit at a greater minimum flow rate to gain efficiency, because the primary benefit of variable-speed compressors is to allow control over a wide range of flow rates. (Sullair, Public Meeting Transcript, No. 0016 at p. 66) Likewise, ASAP, ACEEE, NEEA, NRDC, NEEP, and ASE did not support the CAGI proposal of using a lower load point of 40 percent or manufacturer minimum as it inflates efficiency ratings for compressors that cannot reach 40 percent and suggested that DOE work with CAGI to develop an alternative minimum test for compressors. (EERE–2013–BT–STD–0040, ASAP, ACEEE, NEEA, NRDC, NEEP, ASE, No. 0060 at p. 4)

In response to comments on the 40-percent load point, DOE reviewed all available CAGI Performance Verification Program data sheets for lubricant-free variable-speed compressors, and concurs with the concerns raised by industry that not all lubricant-free variable-speed compressors can achieve the 40-percent load point. Specifically, DOE found that 65 percent of CAGI data sheets for lubricant-free compressors were rated with a minimum flow greater than 40 percent of maximum flow.

DOE considers this data, in conjunction with the previously referenced comments, as clear evidence that the proposed test procedure load points do not apply to variable-speed lubricant-free compressors due to the technical limitations in the turndown ratio of such equipment. Further, DOE concludes that because of these technical limitations and other significant technological differences between lubricated and lubricant-free compressors, separate test methods and metrics may be required for each. In addition, the European Commission is exploring specific standards and test methods for lubricant-free compressors, but has not released a draft proposal of its standard. Based on the comments discussed in this section, DOE concludes that significant work is required to establish an acceptable test method specific to lubricant-free compressors, and that the most efficient path to establishing an acceptable test method for lubricant-free compressors is to monitor and, possibly, collaborate with the European Commission as its own work progresses. DOE may pursue a test procedure for lubricant-free equipment in a separate rulemaking, but is not including lubricant-free compressors in the scope of this test procedure final rule.

For lubricated compressors, DOE found that 16 percent of CAGI data sheets were rated with a minimum flow greater than 40 percent of maximum flow. These results indicate that 84 percent of lubricated variable-speed compressors are able to achieve the 40-percent load point.

DOE agrees with Atlas Copco that allowing those few lubricated variable-speed compressors that cannot achieve 40 percent flow to test using the minimum achievable flow as an alternative to the 40-percent load point would penalize high-turndown machines. Such penalization would occur because the package isentropic efficiency of a variable-speed compressor typically decreases as flow (*i.e.,* load) decreases. To confirm this, DOE reviewed available CAGI Performance Verification Program data sheets and found that for 82 percent of the rotary lubricated variable-speed models, the package isentropic efficiency at 40 percent of full-load actual volume flow rate was lower than the package isentropic efficiency at 70 percent of full-load actual volume flow rate.[16] Given this relationship between package isentropic efficiency and flow rate, a compressor's package isentropic efficiency (as proposed in the test procedure NOPR) would typically increase by replacing the 40-percent load point with a load point at a higher flow.

Given this information, DOE has two major concerns with CAGI's recommendation. First, CAGI's recommended method would not result in a fair and equitable efficiency metric. For example, given two compressors with the same full-load actual volume flow rate and full-load package isentropic efficiency, one with a manufacturer-specified minimum flow rate of 40 percent of full-load actual volume flow rate and one with a manufacturer-specified minimum flow rate of 70 percent of full-load actual volume flow rate, the latter would usually test at a better part-load package isentropic efficiency, even though the former provides more utility to the end user and has the potential to use less energy.

Second, CAGI's recommended method relies on a ''manufacturer's minimum stated capacity,'' and creates a significant opportunity for loopholes. For example, if a given variable-speed compressor does not meet the established energy conservation standard, a manufacturer may be able to restate its minimum capacity at a larger value and retest the model. Because package isentropic efficiency is typically greater at the rerated higher capacity, the manufacturer may be able to pass the standard with the rerated value. The result of this example directly conflicts with the intent of an energy conservation standard, because the resulting compressor offers reduced utility to the end user and may even consume more energy than it would with a lower stated minimum capacity.

Consequently, in this final rule, DOE rejects CAGI's recommendation to use the manufacturer's minimum stated capacity for variable-speed compressors if the compressor cannot achieve the 40-percent load point.

DOE concludes that the amount to which a variable-speed lubricated compressor can turn down is a distinct end user utility. Both Sullair and Kaeser Compressors clearly noted similar assertions that the speed and flow to which a variable-speed compressor can turn down is a distinct utility to the end user. (Sullair, Public Meeting Transcript, No. 0016 at p. 66; Kaeser Compressors, Public Meeting Transcript, No. 0016 at pp. 65–6)

DOE also concludes, based on previously mentioned data analysis as well as comments from Kaeser Compressors and Sullair (Sullair, Public Meeting Transcript, No. 0016 at p. 67; Kaeser Compressors, Public Meeting Transcript, No. 0016 at pp. 67–8), that for lubricated variable-speed compressors within the scope of this final rule, the majority of lubricated compressors are able to reach the 40-percent load point; *i.e.,* turning down to 40 percent of flow is technologically feasible for all pressures, flows, and horsepower of compressors within the scope of this final rule.

Consequently, DOE concludes that it is appropriate that the test method for variable-speed lubricated compressors require that a tested compressor reach each flow point because the part-load package isentropic efficiency metric is designed to align with the utility of the variable-speed compressors and must accurately represent their operation. For these reasons, DOE is adopting the methodology as proposed in the NOPR, which requires testing at the 40-percent load point. If a manufacturer has a basic model which is incapable of operating at the 40-percent load point, the manufacturer must seek a waiver from

[16] Not all units reported performance at 40 percent and 70 percent of full-load actual volume flow rate. In those cases, DOE generated estimates for those points using interpolation from surrounding data points.

the test procedure to obtain an alternative method of test from the Department pursuant to 10 CFR 431.401. As part of the test procedure waiver application, DOE would examine the details of the variable-speed compressor's performance curve (*e.g.,* the package isentropic efficiency over the range of available driver speeds for which the compressor is capable of operating) in order to determine the correct testing points and weightings for regulatory purposes. Since these could be different for each basic model, DOE believes it is best to determine the details on a basic model basis, rather than adopting a blanket approach of the manufacturer's specified minimum as suggested by CAGI. This would allow DOE to ensure fair and equitable ratings and not disadvantage those compressors that operate at lower speeds. This approach ensures that all compressors rated with the part-load package isentropic efficiency metric provide comparable utility to the end user, and that any compressors requiring a waiver would use a modified metric that reflects the reduction in utility resulting from their restricted range of flow rates.

DOE's regulations set forth at 10 CFR 431.401 contain provisions that permit a person to seek a waiver from the test procedure requirements for covered equipment if at least one of the following conditions is met: (1) The basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1) A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii) DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2)

For the case of variable-speed compressors that cannot reduce flow to the 40-percent load point, DOE may grant a waiver using a modified test procedure that reflects the reduction in utility resulting from the compressor's restricted range of flow rates. The modified test procedure may calculate part-load package isentropic efficiency using a weighted average of the performance at full-load, the performance at the 70-percent load point (if the compressor can reach this load point), and the performance at the compressor's lowest load point. The weighted average may include modifications to reflect the reduction in utility resulting from the compressor's restricted range of flow rates. For example, the weighting may consider the typical change of efficiency with flow rate and may account for the increased energy required for the compressor to achieve the 70-percent and 40-percent load points by loading and unloading. DOE may determine the modified test procedure on a case-by-case basis, depending on the specific nature of the waiver request and the equipment construction.

Based on the preceding discussion, DOE concludes that no changes are needed in DOE's proposed definitions of fixed-speed compressor and variable-speed compressor. As a result, DOE is adopting the definitions of fixed-speed compressor and variable-speed compressor that it proposed in the test procedure NOPR.

With respect to the remaining load points (*i.e.,* 100 and 70 percent for variable-speed and 100 percent for fixed-speed), DOE reiterates that Kaeser Compressors, ASAP, and NEEA supported DOE's test procedure NOPR. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 63; ASAP and NEEA, No. 0015 at p. 2) However, the CA IOUs disagreed and suggested that variable-speed compressors be tested at a minimum of six test points while utilizing a minimum volume flow rate no higher than 40 percent of the maximum volume flow rate to avoid possible loopholes. In response, DOE recognizes that the CA IOUs' recommendation aligns with the current CAGI Performance Verification Program testing method; however, DOE has two major concerns with CA IOUs' recommendation. First, the CA IOUs' recommended method would not result in a repeatable, fair, and equitable efficiency metric. For example, given two compressors with the same full-load actual volume flow rate and full-load package isentropic efficiency, one could be tested at six points (40, 50, 60, 70, 80, and 100 percent of full-load actual volume flow rate) and one could be tested at 10 points (40, 50, 60, 70, 80, 90, 92.5, 95, 97.5, and 100 percent of full-load actual volume flow rate). As previously discussed, due to the fact that package isentropic efficiency varies as a function of actual volume flow rate, the latter compressor, tested at 10 load points would likely achieve a different part-load package isentropic efficiency score (as in the test procedure NOPR) than the former compressor.

Similarly, the lack of firmly specified load points creates a significant opportunity for loopholes. For example, if a given variable-speed compressor does not meet the established energy conservation standard, a manufacturer may be able to retest with additional load points that are biased to the compressor's most efficient flow range and ultimately pass the standard with this rerated value. This directly conflicts with the intent of an energy conservation standard, as the resulting compressor still consumes the same amount of energy as it did before the retesting and rerating.

Due to these concerns with the CA IOUs' suggestion, the general support provided by CAGI, ASAP, and NEEA, and the reasons established in the test procedure NOPR, DOE is adopting the load points of 100, 70, and 40 percent of full-load actual volume flow rate for the part-load package isentropic efficiency metric, and 100 percent of full-load actual volume flow rate for the full-load package isentropic efficiency metric.

c. Metric Applicability

In response to the test procedure NOPR, the CA IOUs suggested that fixed-speed ''inlet modulating'' [17] and ''variable displacement'' [18] compressors (herein referred to as ''fixed-speed variable-flow compressors'') should be tested at full-load and multiple part-loads in alignment with the CAGI Performance Verification Program test procedures for variable-speed compressors. According to the CA IOUs, this would provide valuable efficiency information for part-load conditions, which are common for fixed-speed compressors. (CA IOUs, No. 0012 at pp. 2) Similarly, ASAP and NEEA suggested that DOE require that fixed-speed compressors with controls that allow for variable airflows be tested in the same way as variable-speed compressors. ASAP and NEEA stated that this would facilitate the comparison between fixed-speed and variable-speed compressors

[17] Inlet modulating compressors adjust the capacity of the compressor to the demand required by the system with a regulating valve on the inlet. The control system closes the inlet valve in response to a reduction in system demand, effectively throttling the compressor by reducing the inlet pressure and, consequently, the mass flow of air entering the compressor. (*http://www.cagi.org/requestinator_dl.aspx?txdata=L3BkZnMvQ0FHSV9FbGVjdEhCX2NoMi5wZGY=,* page 88).

[18] Variable displacement compressors use a valve to divert a fraction of the inlet mass flow from the start of the rotor to an intermediate position of the compression system, reducing the effective length of the rotor but maintaining the inlet pressure and compression ratio. The valve is adjustable and responds to changes in discharge pressure. (*http://www.cagi.org/requestinator_dl.aspx?txdata=L3BkZnMvQ0FHSV9FbGVjdEhCX2NoMi5wZGY=,* page 88).

under part-load conditions. (ASAP and NEEA, No. 0015 at p. 2)

NEEA further commented that the efficiency metrics are appropriate for comparing variable-speed compressors amongst themselves, but made it hard to compare variable-speed compressors to fixed-speed compressors. (NEEA, Public Meeting Transcript, No. 0016 at p. 60–62) Conversely, Sullivan-Palatek commented that fixed-speed and variable-speed compressors are different products with different applications, which shouldn't be compared with each other. (Sullivan-Palatek, Public Meeting Transcript, No. 0016 at pp. 61–62)

Kaeser Compressors commented that the efficiency and utility of a variable-speed compressor relative to a fixed-speed compressor is promoted by utilities to consumers and stressed that the primary goal of the metric should be consistent assessment of variable-speed compressor efficiency. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at pp. 71–72) Sullair echoed this sentiment, stating that the industrial customers that purchase the equipment understand the energy efficiency associated with variable-speed compressors and purchase variable-speed compressors based on the best overall fit for the application. (Sullair, Public Meeting Transcript, No. 0016 at p. 72)

Sullair agreed that although measurements and efficiency standards for part-load operation of fixed-speed compressors may be useful, no standard has been established, tested or proven to measure compressor performance across all fixed-speed control methods (modulation, load-unload, variable displacement, etc.) employed by various manufacturers. As a result, Sullair commented that it did not support a part-load test procedure for fixed-speed compressors at this time. Sullair noted that preliminary work is being done by CAGI to measure one of these control methods (variable displacement) and supported further development of a test procedure or metric across multiple manufacturers and control types prior to adoption by DOE. (Docket No. EERE–2013–BT–STD–0040, Sullair, No. 0056 at pp. 16–17)

In agreement with the CA IOUs, ASAP, NEEA, and Sullair, DOE acknowledges that a part-load package isentropic efficiency metric for fixed-speed variable airflow compressors could acceptably represent the typical energy use of these compressors. DOE reviewed the scope and applicability of relevant, comparable testing and rating programs, namely, the CAGI Performance Verification Program and the EU Lot 31 draft standard for compressors. The CAGI Performance Verification Program separates rotary compressors into only two groupings: (1) ''rotary compressors,'' and (2) ''rotary variable frequency drive compressors.'' [19] The former rates compressors at only full-load operating pressure, while the latter allows for multiple ratings at reduced flows. However, as indicated by the name of the latter grouping, it encompasses only compressors driven by variable-frequency drives. Consequently, fixed-speed variable airflow compressors are considered ''rotary compressors'' by the CAGI Performance Verification Program, and rated at only full-load operating pressure.

In addition, the EU Lot 31 draft standard defines a ''fixed-speed rotary standard air compressor'' to mean a rotary standard air compressor that is not equipped with a variable-speed drive when placed on the market; and defines a ''variable-speed rotary standard air compressor'' to mean a rotary standard air compressor that is equipped with a variable-speed drive when placed on the market. Consequently, similar to the CAGI program, the EU Lot 31 draft standard considers a fixed-speed variable airflow compressor to be a fixed-speed rotary standard air compressor, which is rated at only full-load operating pressure.

As a result of the research into relevant, comparable testing and rating programs for compressors, DOE agrees with Sullair that test methods for variable airflow fixed-speed compressors are still in the development stage and the limited available data is not yet fully verified. In other words, test methods are still a work in progress for this variety of fixed-speed compressors. Additionally, with no historical part-load performance data available for variable-flow fixed-speed compressors, DOE would be unable to establish baseline and maximum technologically feasible efficiency levels, and would be unable to complete any of the analyses required to assess and establish energy conservation standards. Alternatively, historical full-load isentropic efficiency currently exists for this equipment and was considered in the energy conservation standards NOPR.

In light of the precedent established by CAGI and the EU, the lack of a verified test method, and the lack of verified historical performance data, DOE concludes that it is not appropriate to establish part-load package isentropic efficiency as the rating metric for non-speed-varying varieties of variable airflow compressors at this time. Consequently, in this final rule, DOE reaffirms and establishes its NOPR test procedure that when rating a compressor for compliance purposes, full-load package isentropic efficiency applies to fixed-speed compressors, and part-load package isentropic efficiency applies to variable-speed compressors.

Although part-load package isentropic efficiency is not currently suitable as a regulatory metric for fixed-speed variable flow compressors, part-load performance information for these varieties of compressors can provide valuable information for the end user. Consequently, in this final rule DOE clarifies that manufacturers of fixed- and variable-speed compressors may continue making graphical or numerical representations of package isentropic efficiency and package specific power as functions of flow rate or rotational speed. In the test procedure NOPR, DOE proposed a similar allowance, applicable only to variable-speed compressors. 81 FR 27220, 27244 (May 5, 2016). DOE is opening this allowance to fixed-speed compressors to account for non-speed-varying varieties of variable airflow compressors and fixed-speed compressors that can vary speed continuously to adjust output flow, but cannot reach 40 percent of full-load actual volume flow rate.

DOE notes that graphical or numerical representations of package isentropic efficiency or package specific power at 40, 70, and 100 percent of the full-load actual volume flow rate must represent values measured in accordance with the DOE test procedure. DOE also notes that graphical or numerical representations of these metrics at any other load points must be generated using methods consistent with the DOE test procedure.

d. Metric Weights

In the test procedure NOPR, DOE proposed a part-load package isentropic efficiency metric that was a weighted composite of performance at multiple load points, following the structure of the EU Lot 31 draft standard. 81 FR 27220, 27233 (May 5, 2016). DOE further proposed weighting factors of 25, 50, and 25 percent for load points of 40, 70, and 100 percent of maximum flow, respectively. DOE cited alignment with the EU Lot 31 draft standard and a lack of industry weighting factors or real-world load profile data as rationale for the proposed weights. 81 FR 27220, 27234–5 (May 5, 2016).

In response to the proposed weights, P.R. China commented that there was no selection criteria provided to justify the weighting coefficients for the 40

[19] For more information see: *http://www.cagi.org/performance-verification/data-sheets.aspx.*

percent, 70 percent, and 100 percent package isentropic efficiency values. (P.R. China, No. 0049 at p. 3) CAGI did not provide any direct comments, but CAGI commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1)

In response to comments made by P.R. China regarding the justification of selected load weights, the part-load package isentropic efficiency metric is a benchmark for all variable-speed compressors. The benchmark's intent is not to mirror energy consumption for all consumers (which is calculated in the energy conversation standard), but to provide a consistent and repeatable measure of efficiency for variable-speed compressors. In this case, half of the weighting represents operating extremes (40 percent and 100 percent) for variable-speed compressors, and half characterizes the midpoint of those values (*i.e.,* 70 percent). Furthermore, DOE did not receive any data providing real-world representative load profile data. However, even in the presence of such data any given weighting would only reflect energy consumption for units that happened to be operated at that particular load profile. Additionally, the selected weights are in alignment with the EU Lot 31 draft standard, which carries the benefits of familiarity for consumers and reduced compliance burden for manufacturers who do business in both the US and EU markets. For these reasons, as well as those discussed in the test procedure NOPR, DOE is adopting the metric weights, as proposed.

2. Package Specific Power

In the May 5, 2016 test procedure NOPR, DOE defined ''package specific power'' to mean the compressor power input at a given load point, divided by the actual volume flow rate at the same load point, as determined in accordance with the test procedures proposed for 10 CFR 431.344. 81 FR 27220, 27256 (May 5, 2016). DOE noted that package specific power provides users with a direct way to calculate the power required to deliver a particular flow rate of air. The CAGI Performance Verification Program currently uses this metric to characterize compressor performance.[20] Given the prevalence of this metric in the industry, DOE deems it appropriate to provide a clear and uniform method to test and calculate this value. However, given the reasons noted in the test procedure NOPR, DOE selected package isentropic efficiency, rather than package specific power, as the rating metric for the compressors within the scope of this rulemaking.

For the reasons established in the test procedure NOPR, DOE is adopting the definition for package specific power, as proposed in the test procedure NOPR.

The specific methods and calculations used to find package specific power for a given compressor are discussed in section III.E.7.

3. Power Factor

In the test procedure NOPR, DOE did not explicitly propose measurement and reporting of power factor. In response, the CA IOUs commented that the test procedure NOPR proposed measurement of real power (*e.g.,* kW), cannot accurately reflect power generation needs. The CA IOUs added that measurement and reporting of power factor should be mandatory at all tested points so that power generation needs can be accurately estimated. (CA IOUs, No. 0012 at p. 3)

DOE agrees with the CA IOUs that power factor is a useful metric for estimating power generation needs. ISO 1217:2009(E), as amended,[21] allows two methods to determine packaged compressor power input, as discussed in section III.E.1.a. One of the allowable methods requires measurement of power factor as an intermediary to calculate packaged compressor power input. Because only one of the two allowable methods requires measurement of power factor, a mandatory reporting requirement for power factor would represent an incremental testing burden, beyond what DOE proposed in the test procedure NOPR, for some manufacturers. As such, there is not enough benefit to the end user to justify adopting mandatory measurement and reporting of power factor in this final rule. DOE may further explore power factor measurement and reporting requirements in future rulemakings.

D. Incorporation by Reference of Industry Standard(s)

In the test procedure NOPR, DOE stated that ISO 1217:2009(E) is an appropriate industry testing standard for evaluating the performance of applicable compressors, but noted that some sections of that standard were not applicable to the DOE test procedures. DOE further noted that additions and modifications to the test method described in ISO 1217:2009(E) would be necessary in order to determine the package isentropic efficiency of applicable compressors and improve repeatability and reproducibility of the ratings. Consequently, in the test procedure NOPR DOE proposed to incorporate by reference ISO 1217:2009(E) with a number of modifications. 81 FR 27220, 27236–27243 (May 5, 2016).

Specifically, DOE proposed to incorporate by reference the following sections and subsections of ISO 1217:2009(E):

- Sections 2, 3, and 4;
- Subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), 6.2(h); and
- Subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C. 81 FR 27220, 27238 (May 5, 2016).

Conversely, in the test procedure NOPR, DOE proposed not to incorporate by reference the following sections, subsections and annexes of ISO 1217:2009(E) because they are not applicable to DOE's regulatory framework:

- Sections 1, 7, 8 and 9, in their entirety;
- Section 6, (except subsections 6.2(g), and 6.2(h), which would be incorporated by reference);
- Subsections 5.1, 5.5, 5.7, and 5.8;
- Annexes A, B, D, E, F, and G in their entirety; and
- Sections C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1 and C.4.5 of Annex C. 81 FR 27220, 27237 (May 5, 2016).

1. ISO 1217:2009(E)/Amd.1:2016

On April 15, 2016, ISO published an amendment to ISO 1217:2009(E) (ISO 1217:2009(E)/Amd.1:2016). In general, amendments to ISO standards play the role of materially altering and/or adding content to the source document; in this case, ISO 1217:2009(E). ISO 1217:2009(E)/Amd.1:2016 modifies the definitions of isentropic power and isentropic efficiency contained in sections 3.5.1 and 3.6.1 of ISO 1217:2009(E) to provide more detail, and provides equations to calculate those performance metrics in a new Annex H to ISO 1217:2009(E). ISO 1217:2009(E)/Amd.1:2016 makes no other changes to ISO 1217:2009(E). In this final rule, the combined result of the pre-amendment ISO 1217:2009(E) and ISO 1217:2009(E)/Amd.1:2016 is referred to as ''ISO 1217:2009(E), as amended.'' Where the pre-amendment

[20] *http://cagi.org/performance-verification/overview.aspx.*

[21] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic.

version is being referenced, it is referred to simply as ''ISO 1217:2009(E).''

Generally, DOE prefers to incorporate the most recent versions of industry standards, when such versions remain applicable to its test procedures. DOE reiterates that ISO 1217:2009(E)/Amd.1:2016 makes no other changes to ISO 1217:2009(E), beyond amending sections 3.5.1 and 3.6.1 and adding Annex H. Thus, for administrative consistency, in this final rule, any sections incorporated by reference in this final rule refer to the ISO 1217:2009(E) as amended, rather than the original ISO 1217:2009(E), as proposed in the test procedure NOPR. The following paragraphs discuss rationale for incorporating the amended sections 3.5.1 and 3.6.1, as well as certain sections of the new Annex H of ISO 1217:2009(E), as amended.

In the test procedure NOPR, DOE provided equations to calculate isentropic power and package isentropic efficiency, as these equations were not present in ISO 1217:2009(E). The equations proposed in the test procedure NOPR are mathematically equivalent to those provided in the amended version of ISO 1217:2009(E) and could be used in the DOE test procedure with no impact on the calculated results. Thus, in this final rule, DOE is revising its proposed test procedure to incorporate by reference sections 3.5.1 and 3.6.1, as well as sections H.2 and H.3 of Annex H of ISO 1217:2009(E), as amended. These sections provide the symbols, subscripts, and equations needed to calculate isentropic power (and ultimately, package isentropic efficiency). Given that the equations found in ISO 1217:2009(E), as amended, are mathematically equivalent to those proposed by DOE in the test procedure NOPR, DOE concludes that this change is administrative in nature. An in-depth discussion of the calculations contained in these sections can be found in section III.E.5.

DOE is not incorporating the new sections H.1, H.4, and H.5 of Annex H to ISO 1214:2009, as amended, as these sections are not applicable to test method in the test procedure NOPR. Specifically, subsection H.1 provides a general introduction to Annex H, which is not necessary for the application of the symbols, subscripts, and equations in subsections H.2 and H.3 for the purposes of the calculation of isentropic power. Subsection H.4 provides a derivation of the relationship between isentropic efficiency and specific energy requirement. While the DOE test procedure adopted today requires the calculation of package isentropic efficiency and specific energy (also referred to as specific power), it does not require derivation of the relationship between these two metrics.[22] Subsection H.5 provides the relationship between customer acceptance tolerances for specific energy and isentropic efficiency. Customer acceptance tolerances are not directly applicable to, or necessary for DOE's test methods, as DOE is establishing its own sampling, representations, and enforcement provisions, as discussed in sections III.G and III.H.

2. Comments Related to the Incorporation of ISO 1217:2009(E)

In response to DOE's proposal to incorporate specific sections of ISO 1217:2009(E), commenters generally supported incorporating the test methods established in ISO 1217:2009(E). ASAP and NEEA commented that they support DOE's use of ISO 1217, with the modifications described in the test procedure NOPR, as the basis for the compressors test procedure. (ASAP and NEEA, No. 0015 at p. 2) Sullair strongly supported the use of ISO 1217:2009(E) as the basis for the DOE test procedure. (Sullair, No. 0006 at p. 1) Sullivan-Palatek advised against material deviations from the test procedure in ISO 1217:2009(E), so as to not invalidate previous performance data. (Sullivan-Palatek, No. 0007 at p. 3) CAGI urged DOE to formalize the incorporation of the ISO 1217:2009(E) test method so that the historical performance data obtained with that test method is compliant with the DOE test procedure. (CAGI, No. 0010 at p. 15)

Compressed Air Systems and Jenny Products dissented from the other commenters. Jenny Products objected to incorporating standards by reference and advocated for including the referenced sections directly in the text of the test procedure to avoid confusion. (Jenny Products, No. 0020 at p. 2) Compressed Air Systems suggested caution when adopting ISO standards, stating that standards adopted in the United States should favor U.S. manufacturing. (Compressed Air Systems, No. 0008 at p. 2) In response to Compressed Air Systems, DOE clarifies that any test procedures adopted by DOE must be fair and equitable to all industry participants, regardless of the location that equipment is manufactured.

In response to comments from Compressed Air Systems and Jenny Products about incorporating standards directly into the test procedure text, DOE is not allowed, due to copyright law, to print any material incorporated by reference into the **Federal Register** or Code of Federal Regulations. As a result, when DOE adopts portions of a test procedure from ISO, it must incorporate those sections by reference and refer to them appropriately in the test procedure. Once the regulation publishes, any standard incorporated by reference is incorporated based on the date of its publication and is not subject to change. In other words, if the external standard is revised in the future, DOE will continue to incorporate the prior version in this final rule.

In addition to general comments, DOE received comments pertinent to the specific sections of ISO 1217:2009(E) that DOE proposed to exclude or incorporate by reference in the test procedure NOPR. The following paragraphs summarize the sections of ISO 1217:2009(E) on which DOE received comment, summarize DOE's conclusions, and provide reference to the appropriate subsections of section III.E (test method), where these comments are addressed in detail.

DOE received specific comments regarding subsection 5.2 of ISO 1217:2009(E); these comments are presented and discussed in detail in section III.E.1.b. In response, DOE is adopting its proposal to incorporate all of subsection 5.2 of ISO 1217:2009(E), as amended, in this final rule.

DOE received comments suggesting that it reconsider subsections 6.2(i), 6.2(j) and 6.2(k) of ISO 1217:2009(E), with regard to the data acquisition requirements. DOE also received suggestions to incorporate requirements from Table 1 of ISO 1217:2009(E). (CAGI, No. 0010 at pp. 6–8, 10; CAGI, Public Meeting Transcript, No. 0016 at pp. 74, 83) (See also section III.E.4). In response, DOE decided to incorporate Table 1 by reference but not to incorporate sections 6.2(i), 6.2(j) and 6.2(k) by reference, as discussed in section III.E.4.

DOE received no specific comment on the other sections of ISO 1217:2009(E), other than the previously referenced comments expressing general support for the use of ISO 1217:2009(E). Thus, for the reasons discussed in this document and the test procedure NOPR, DOE incorporates the following sections of ISO 1217:2009(E), as amended, by reference, in this final rule:

- Sections 2, 3, and 4;
- Subsections 5.2, 5.3, 5.4, 5.6, 5.9, 6.2(g), 6.2(h); and

[22] For details on the calculation of package isentropic efficiency and specific power, see sections III.E.5 and III.E.7, respectively.

- Subsections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C.
- Subsections H.2 and H.3 of Annex H.
- Table 1 of subsection 6.2.

Conversely, in this final rule DOE does not incorporate by reference the following sections of ISO 1217:2009(E), as amended:

- Sections 1, 7, 8 and 9, in their entirety;
- Section 6, (except subsections 6.2(g), and 6.2(h), which would be incorporated by reference);
- Subsections 5.1, 5.5, 5.7, and 5.8;
- Annexes A, B, D, E, F, and G in their entirety; and
- Sections C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1 and C.4.5 of Annex C.
- Subsections H.1, H.4 and H.5 of Annex H.

E. Test Method

In the test procedure NOPR, DOE proposed specific test methods to measure inlet pressure, discharge pressure, actual volume flow rate, and electrical input power. DOE also proposed specific methods to calculate package isentropic efficiency, package specific power, pressure ratio, full-load actual volume flow rate, full-load operating pressure, and maximum full-flow operating pressure. Many of the test methods and calculations proposed in the test procedure NOPR were incorporated by reference from ISO 1217:2009(E). However, DOE proposed several modifications and additions to the methods specified by ISO 1217:2009(E), as these are required to provide the necessary specificity and repeatability. Even with the proposed modifications and additions, DOE stated in the test procedure NOPR that its intent was to propose a test procedure that would remain closely aligned with existing and widely used industry procedures to limit testing burden on manufacturers.

DOE received many specific comments in response to the testing and calculation methods proposed in the test procedure NOPR, and one general comment from Jenny Products. The following sections walk through the methods in the test procedure NOPR, the interested party comments as they pertain to the section, and the methods DOE ultimately is adopting in this final rule.

Jenny Products made a general comment that the proposed test procedure had measurement equipment and test condition tolerances that were too tight for an initial DOE test procedure. Jenny Products suggested that relaxing the tolerances initially would reduce the burden of the test procedure from a compliance and financial standpoint, and that DOE could tighten the tolerances after manufacturers are comfortable with the test procedure. (Jenny Products, No. 0020 at p. 2)

DOE acknowledges the comment made by Jenny Products; however, DOE reiterates that the goal of the proposed test procedure was to align with ISO 1217:2009(E), as amended,[23] to reduce the burden and cost to manufacturers. Most manufacturers currently use ISO 1217:2009(E), and many of the testing- and calculation-related comments that DOE received suggested that DOE align its test procedure as closely as possible with ISO 1217:2009(E). As discussed in the following sections, in this final rule, DOE is modifying certain methods proposed in the test procedure NOPR, including the tolerances, in order to align as closely as possible to ISO 1217:2009(E), as amended.[24] With these modifications, the test methods established in this final rule are intended to produce results equivalent to those produced historically under ISO 1217:2009(E). Consequently, if historical test data meets the requirements of the test methods established in this final rule, then manufacturers may use this data for the purposes of representing any metrics subject to representations requirements. Therefore, because the industry-standard test method is ISO 1217:2009(E), DOE is using the tolerances specified in ISO 1217:2009(E), and DOE is not relaxing the tolerances as suggested by Jenny Products. DOE is also adopting additional tolerances that are not specified in ISO 1217:2009(E), and the reasoning for each of these tolerances is explained in the following sections.

1. Measurement Equipment

In the test procedure NOPR, DOE proposed that for the purposes of measuring air compressor performance, the equipment necessary to measure flow rate, inlet and discharge pressure, temperature, condensate, and energy must comply with the equipment and accuracy requirements specified in ISO 1217:2009(E) sections 5.2, 5.3, 5.4, 5.6, 5.9, C.2.3, and C.2.4 of Annex C. 81 FR 27220, 27237–8 (May 5, 2016). DOE also proposed the following specific additions:

- Electrical measurement equipment must be capable of measuring true root mean square (RMS) current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency. 81 FR 27220, 27240 (May 5, 2016).
- Any instruments used to measure a particular parameter must have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the sum of the individual accuracies in quadrature. 81 FR 27220, 27240 (May 5, 2016).
- Any instruments used to measure the density of air must have an accuracy of ±1.0 percent of the measured value. 81 FR 27220, 27241 (May 5, 2016).
- Any pressure measurement equipment used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.2 of ISO 1217:2009(E). 81 FR 27220, 27241 (May 5, 2016).
- Any temperature measurement equipment used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.3 of ISO 1217:2009(E). 81 FR 27220, 27241 (May 5, 2016).
- Where ISO 1217:2009(E) refers to ''corrected volume flow rate,'' the term is deemed synonymous with the term ''actual volume flow rate,'' as defined in section 3.4.1 of ISO 1217:2009(E). 81 FR 27220, 27238 (May 5, 2016).
- The piping connected to the discharge orifice of the compressor must be of a diameter at least equal to that of the compressor discharge orifice to which it is connected. The piping must be straight with a length of at least 15 times the diameter of the discharge piping. 81 FR 27220, 27241 (May 5, 2016).
- The pressure tap must be located on the discharge piping between 2 inches and 6 inches, inclusive, from the discharge orifice of the compressor at the higher point of the cross-section of the pipe. 81 FR 27220, 27241 (May 5, 2016).

DOE received specific comments related to the proposed requirements for equipment used to measure input power, air density, and pressure as well as requirements regarding their installation location. These comments are discussed in detail in the sections that follow.

[23] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic, so aligning with ISO 1217:2009(E), as amended, is equivalent to aligning with ISO 1217:2009(E) prior to Amendment 1:2016.

[24] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic, so aligning with ISO 1217:2009(E), as amended, is equivalent to aligning with ISO 1217:2009(E) prior to Amendment 1:2016.

Aside from the input power, pressure, and air density measurement equipment, DOE received no specific comments related to the remainder of this proposal. CAGI commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR, DOE is adopting the measurement equipment requirements (excluding input power, pressure, and air density measurement equipment) as proposed in the test procedure NOPR in this final rule.

a. Input Power Measurement

In the test procedure NOPR, DOE proposed that measurement equipment used for packaged compressor power input must comply with the equipment and accuracy requirements in section C.2.4 of Annex C of ISO 1217:2009(E). 81 FR 27220, 27257 (May 5, 2016). Section C.2.4 of Annex C of ISO 1217:2009(E) permits two methods to determine packaged compressor power input; (1) the double element wattmeter method, which gives a direct indication of the electrical kilowatt/input; and (2) a computation based on the separate measurements of voltage, current and power factor of the electrical supply.

DOE proposed requiring electrical measurement equipment to be capable of measuring true RMS current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency. It also proposed requiring this equipment to have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the square root of the sum of the squares of individual instrument accuracies. 81 FR 27220, 27240 (May 5, 2016).

In response to DOE's proposal, Scales Industrial Technologies recommended that power measurements should use the two- or three-wattmeter method, and not individual measurements of voltage, current, and power factor. (Scales Industrial Technologies, No. 0013 at p. 5) In response to Scales Industrial Technologies comment, DOE concludes that power measurements should not be restricted to the double element wattmeter method, because ISO 1217:2009(E), as amended,[25] allows power to be calculated from individual measurements, and these measurements would need to meet the additional accuracy and measurement requirements DOE proposed in the test procedure NOPR. So long as these requirements are met, DOE concludes that either method in section C.2.4 of Annex C of ISO 1217:2009(E), as amended, will produce valid and repeatable results. DOE notes that some manufacturers and customers may value measurement of power factor, and wishes to preserve their current ability to use it.

CAGI did not directly comment on this item, but CAGI commented that it was in agreement with DOE's proposal for items on which it did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) ASAP and NEEA also supported the proposed electrical measurement requirements. (ASAP and NEEA, No. 0015 at p. 3) However, Sullair also commented that for large air compressors above 200 hp, many units come with high-voltage equipment in the range of 2,300 or 4,160 volts, which makes the proposed limits for harmonics, THD, and voltage accuracy difficult to guarantee. (Sullair, No. 0006 at p. 4) DOE acknowledges Sullair's concern regarding compressors above 200 hp, however, in this final rule DOE is restricting to the scope of the test procedure to compressors with less than or equal to 200 compressors motor nominal horsepower. As such, the concerns raised by Sullair are no longer applicable.

Conversely, Jenny Products commented that power measuring devices are already regulated by the Air Conditioning, Heating, and Refrigeration Institute (AHRI) and the Canadian Standards Association (CSA). As a result, Jenny Products commented that any accuracy beyond that required by AHRI and CSA increases the cost of the equipment, increases the cost of certifying the equipment, reduces the reliability of the equipment, and imposes an additional financial burden to small manufacturers. (Jenny Products, No. 0020 at p. 4) DOE acknowledges comments made by Jenny Products and wishes to clarify that the CSA and AHRI do not certify or regulate the accuracy of power measurement equipment. The CSA product design and testing guidelines are intended to ensure the safe operation of products. AHRI provides standard test procedures for rating the performance of air conditioning, heating, and refrigeration equipment. As a result, DOE proposed requirements for the power measurement equipment in the absence of a standard accuracy requirement that ensures an equitable test for compressors regardless of testing location.

In summary, based on the general support provided by ASAP, NEEA, CAGI, Sullivan-Palatek, Ingersoll Rand, and Sullair, and for the reasons discussed in this section and the test procedure NOPR, DOE is adopting power measurement requirements, as proposed in the test procedure NOPR.

b. Pressure Measurement

In the test procedure NOPR, DOE proposed that equipment used for pressure measurement must comply with the requirements in section 5.2 of ISO 1217:2009(E). DOE also proposed additional requirements to remedy what it believed to be certain ambiguities in section 5.2 of ISO 1217:2009(E). Specifically, DOE proposed that discharge piping be at least equal in diameter to the discharge port and of at least 15 times that diameter in length. DOE also proposed that the pressure transducers be placed on the discharge piping between 2 inches and 6 inches from the discharge orifice of the compressor. Finally, DOE requested clarifications, but did not propose any itself, for a number of other ambiguities in section 5.2. 81 FR 27220, 27240–1 (May 5, 2016).

DOE received several comments on its proposals for discharge piping. CAGI agreed that the discharge pipe should be equal to, or greater than, the discharge orifice in diameter, and that the pressure tap should be located 2 to 6 inches from the compressor discharge. (CAGI, No. 0010 at p. 10; CAGI, Public Meeting Transcript, No. 0016 at pp. 89–90) Jenny Products made similar comments to CAGI's regarding the discharge pipe diameter, but suggested that the pressure tap be located on a receiver. (Jenny Products, No. 0020 at p. 4) However, CAGI did not see a need for a discharge pipe with a length of 15 times the diameter of the compressor discharge; instead, CAGI recommended a 6-inch minimum discharge pipe. (CAGI, No. 0010 at p. 10; CAGI, Public Meeting Transcript, No. 0016 at pp. 89–90) CAGI indicated that the use of an insertion-type mass flowmeter is the only possible reason to require a discharge pipe with the length proposed by DOE. CAGI indicated that ISO 1217 specifies that nozzles should be used for measuring flow and insertion-type

[25] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic.

flowmeters should not be used. (CAGI, No. 0010 at p. 10; CAGI, Public Meeting Transcript, No. 0016 at pp. 89–90) Sullair and Kaeser Compressors supported CAGI's opinions on the length of the discharge pipe. (Sullair, Public Meeting Transcript, No. 0016 at p. 91; Kaeser Compressors, Public Meeting Transcript, No. 0016 at pp. 92–93) Atlas Copco commented that it is possible for the test procedure to specify only the accuracy required, and not require a specific length of discharge pipe similar to the approach of ISO 1217:2009(E). (Atlas Copco, Public Meeting Transcript, No. 0016 at p. 94) Scales Industrial Technologies stated that the length of pipe varies with the type of meter, but that 15 times the diameter is acceptable in most cases. Scales Industrial Technologies also stated that, in many cases, it is also important to specify a required length of piping for the outlet of the flow measurement device. (Scales Industrial Technologies, No. 0013 at p. 6) Compressed Air Systems commented that the distance requirement had no merit and would add unnecessary cost to the test equipment required. (Compressed Air Systems, No. 0008 at p. 2)

In response to comments, DOE clarifies that it did not specify a discharge pipe length equal to 15 times the diameter of the outlet in order to accommodate insertion-type flowmeters. DOE specified this length to avoid oscillations in outlet pressure that can occur when an elbow or bend is placed a short distance from the compressor outlet. Kaeser Compressors acknowledged this need to ensure an adequate distance of discharge pipe before an elbow. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 93)

In response to commenters' concerns, DOE is adopting changes to its proposals for discharge piping in this final rule. Specifically, DOE is adopting the requirement that discharge pipe be a minimum of 6 inches long while also adopting tolerance for oscillations in outlet pressure as part of its stability criteria, as outlined in section III.E.4. This change aligns with recommendations of CAGI, Sullair, Kaeser Compressors, and Atlas Copco, and allows test labs to determine the length of discharge pipe that is required to ensure that outlet pressure oscillations remain within the stability criteria.

Further, based on the support received from CAGI, and for the reasons outlined in the test procedure NOPR, DOE is adopting its proposals that discharge piping be at least equal in diameter to the discharge port and that the pressure transducers be placed on the discharge piping between 2 inches and 6 inches from the discharge port.

DOE is also clarifying in this final rule that the pressure tap for the discharge pressure transducers is to be located at the highest point of the discharge pipe's cross section. In the test procedure NOPR, DOE stated that the discharge pressure transducers must be mounted on the discharge piping. As a result, DOE is revising the phrasing in this final rule to make clear the required location of the pressure tap for the discharge pressure transducers.

DOE also received comments on its request for clarifications of the ambiguities in section 5.2 of ISO 1217:2009(E). CAGI indicated that much of the content that DOE found ambiguous is intended as guidance for testers to eliminate leaks and ensure good data. (CAGI, No. 0010 at p. 10; CAGI, Public Meeting Transcript, No. 0016 at p. 89–90) Atlas Copco requested clarification of the ambiguities in section 5.2.1 of ISO 1217:2009(E), especially on the elimination of leaks. (Atlas Copco, No. 0009 at p. 17–18) Scales Industrial Technologies noted that some of the ambiguities appear to be applicable to larger reciprocating compressors and not for rotary screw models. (Scales Industrial Technologies, No. 0013 at p. 6) Jenny Products advised that leak detection can be conducted with soapy water and a paint brush, stated that pipes should be tight enough such that they don't leak, and suggested that a flexible hose be used to reduce vibration. (Jenny Products, No. 0020 at p. 4)

Upon review, DOE agrees with CAGI that most of the material in section 5.2 of ISO 1217:2009(E) is guidance for testers and is not required to perform a repeatable and accurate test. DOE believes that the accuracy requirements in section 5.2 are required, but that testers can consider the other materials as guidance. DOE also does not believe that the guidance materials prevent the performance of a repeatable and accurate test. Some of the guidance material might also help testers to avoid leaks in the system. As a result, in this final rule, DOE is adopting its proposal to incorporate by reference all of section 5.2 in ISO 1217:2009(E), as amended.[26]

c. Air Density Measurement

In the test procedure NOPR, DOE proposed that any measurement of air density have an accuracy of ± 1.0 percent of the measured value. 81 FR 27220, 27241 (May 5, 2016). In response to DOE's proposal, Kaeser Compressors commented at the public meeting that they agreed with the proposed accuracy requirement on the measurement of air density and clarified that manufacturers calculate density using other measured parameters in accordance with the test procedure. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 87–88) CAGI did not directly comment on this item, but CAGI commented that it was in agreement with DOE's proposals of items on which CAGI did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1)

In response to Kaeser Compressors, DOE clarifies that the intent of its test procedure NOPR proposal was that any *direct* measurement of density must have an accuracy of ± 1.0 percent of the measured value. Consequently, for the reasons established in the test procedure NOPR DOE is adopting the accuracy requirements for air density measure, as proposed in the test procedure NOPR, with the minor clarification that such requirements only apply to *directly* measured values.

2. Test Conditions

In the test procedure NOPR, DOE proposed that for both fixed-speed and variable-speed compressors, testing be conducted in accordance with the test conditions, unit configuration, and specifications of subsections 6.2(g), 6.2(h), of ISO 1217:2009(E) and C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, and C.4.4 of Annex C to ISO 1217:2009(E), Annex C. 81 FR 27220, 27238 (May 5, 2016). In response to the test procedure NOPR, CAGI commented that it was in agreement with DOE's proposals of items on which CAGI did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR DOE is adopting the requirements as proposed in the test procedure NOPR.

In addition, DOE proposed specific requirements for the power supply and ambient conditions. These proposals and related comments are discussed in the following sections.

[26] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic.

a. Power Supply

In the test procedure NOPR, DOE noted that ISO 1217:2009(E) does not specify the power supply characteristics required for testing. As such, DOE proposed a set of requirements based on those adopted for similar equipment (*i.e.,* pumps); specifically these requirements were: (a) Input voltage at ±5 percent of the rated value of the motor; (b) input frequency at ±1 percent of the rated value of the motor; (c) input voltage unbalance at ±3 percent of the rated value of the motor; and d) total harmonic distortion at less than or equal to 12 percent. 81 FR 27220, 27238–9 (May 5, 2016).

Jenny Products commented that the power supplied to their facility, as well as other companies, do not meet the requirements proposed in the test procedure NOPR. (Jenny Products, No. 0020 at p. 3) Similarly, Compressed Air Systems argued that the electrical conditions should be recorded at the time of the test, but that creating a nearly static electrical condition is unnecessary because those conditions would rarely be seen in field applications. According to Compressed Air Systems, this approach would enable manufacturers to use existing equipment for the test. Compressed Air Systems further stated that the tolerances proposed in the test procedure NOPR would create undue compliance expense. (Compressed Air Systems, No. 0008 at p. 2) In response to Compressed Air Systems, DOE clarifies that it did not propose nearly static electrical conditions. Rather, DOE proposed tolerance ranges that define the acceptable condition of the power inputted to a compressor under test. The purpose of power supply and other testing tolerances is to ensure that all compressors are tested under similar conditions that result in fair and equitable ratings. Omitting or relaxing power supply tolerances, as implied by Compressed Air Systems and Jenny Products, respectively, and just requiring conditions to be recorded would not result in an equitable test, as large variations in power supply conditions can have a significant impact on the energy efficiency of a compressor under test and affect the repeatability of the test procedure.

Scales Industrial Technologies agreed with DOE's proposed voltage and frequency tolerance requirements, and stated that they should be less than 5 percent because many motors have efficiency reductions beyond 10 percent. Scales Industrial Technologies also stated that a voltage unbalance greater than 1 percent is not acceptable and can lead to significant increases in motor electric current. (Scales Industrial Technologies, No. 0013 at p. 5) Scales Industrial Technologies noted that the motor amps may increase by two times the square of the voltage unbalance and included a representation that shows the effect of voltage variation on ''T'' frame motor performance. (Scales Industrial Technologies, No. 0017.1 at p. 1; Scales Industrial Technologies, No. 0017.2 at p. 1)

CAGI suggested that the voltage tolerance range should be from 5 percent below to 10 percent above the nameplate voltage, and claimed that the range proposed by DOE would require significant and costly adaptations by the labs with negligible impact on test results. CAGI also suggested that the frequency tolerance should be ±5 percent and that the voltage imbalance should be ±3 percent. CAGI further suggested that DOE consider input provided by manufacturers regarding the total harmonic distortion tolerance, but had internal feedback that the range should be somewhere between ±12 and ±36 percent. (CAGI, No. 0010 at p. 8–9) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1)

CAGI's written comment, which were supported by other commenters, differs slightly from its original voltage tolerance proposal during the June 2016 public meeting. At the public meeting, CAGI suggested a ±10 percent voltage tolerance. (CAGI, Public Meeting Transcript, No. 0016 at pp. 96–7) This is slightly wider than its written proposal of 5 percent below to 10 percent above the nameplate voltage. (CAGI, No. 0010 at p. 8–9) Sullivan-Palatek, Kaeser Compressors, and Sullair supported CAGI's proposal at the public meeting. (Sullivan-Palatek, Public Meeting Transcript, No. 0016 at p. 97; Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 98; Sullair, Public Meeting Transcript, No. 0016 at p. 98) Compressed Air Systems expressed a preference for testing at the nameplate voltage. (Compressed Air Systems, Public Meeting Transcript, No. 0016 at p. 99) Sullair reiterated that they believed 10 percent was a tolerance that manufacturers could work with. (Sullair, Public Meeting Transcript, No. 0016 at p. 100) Sullivan-Palatek stated that manufacturers often do not have controlled voltage at its facilities, but the test labs generally do. (Sullivan-Palatek, Public Meeting Transcript, No. 0016 at pp. 102–3)

DOE agrees with Scales Industrial Technologies that a narrow voltage, frequency, and voltage unbalance tolerance may improve accuracy and repeatability. However, DOE also agrees with CAGI, Ingersoll Rand, Kaeser Compressors, Sullair, and Sullivan-Palatek that there may be significant test burden associated with narrower voltage, frequency, and voltage unbalance tolerance ranges, and that this burden may not be justified by a minor increase in accuracy and repeatability. Therefore, in response to commenters concern of testing burden, in this final rule DOE adopts the broader voltage and frequency range proposed by CAGI in its written comment, *i.e.,* − 5 to +10 percent, and ±5 percent, respectively. DOE also adopts the voltage unbalance tolerance of ±3 percent, unchanged, as proposed in the test procedure NOPR.

With regard to total harmonic distortion, CAGI suggested that a range of ±12 to ±36 percent seemed appropriate, but commented that individual manufacturers would make recommendations as well. (CAGI, No. 0010 at pp. 8–9) DOE did not receive input from any of the other commenters with regard to total harmonic distortion. DOE adopts the test procedure NOPR proposal for total harmonic distortion tolerances without change. These changes pertain only to the power supply, fall within the range suggested by CAGI, and do not translate into a wider tolerance on the reported results.

b. Ambient Conditions

In the test procedure NOPR, DOE specifically proposed ambient test conditions. In addition to incorporating sections 6.2 g and 6.2 h of ISO 1217:2009(E), DOE proposed that testing should occur with an ambient air temperature of 80–90 °F, because this is the range that the CAGI Performance Verification Program uses. DOE proposed no requirements for inlet pressure or relative humidity. 81 FR 27220, 27238 (May 5, 2016).

DOE received several comments on these proposals. CAGI agreed with the proposed ambient conditions in principle, but stated that the proposed range would be overly burdensome for manufacturers and that ambient temperature does not affect test results. (CAGI, No. 0010 at p. 8; CAGI, Public Meeting Transcript, No. 0016 at pp. 76–77) CAGI proposed, instead, an ambient air temperature range of 68–90 °F. (CAGI, No. 0010, p. 8; CAGI, Public Meeting Transcript, No. 0016 at pp. 76–77) Several manufacturers supported and echoed CAGI's statements. (Sullivan-Palatek, No. 0007 at p. 3; Sullivan-Palatek, Public Meeting Transcript, No. 0016 at pp. 77–78;

Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 79; Compressed Air Systems, No. 0008 at p. 2; Jenny Products, No. 0020 at p. 3) Scales Industrial Technologies stated that the temperature range should be resolved between the manufacturers and the testing companies, and that the proposed 80–90 °F temperature range may be hard to maintain for some compressors. (Scales Industrial Technologies, No. 0013 at p. 4) Sullivan-Palatek further stated that the measured efficiency of an air compressor is not affected when narrowing the temperature range from 68–90 °F to 80–90 °F according to testimony from industry engineers. (Sullivan-Palatek, No. 0007 at p. 3)

In response to ambient temperature concerns at the June 17, 2016, public meeting DOE stated that it was willing to consider CAGI's proposed temperature range. DOE also requested data to substantiate manufacturer claims that ambient temperature does not affect measured efficiency. (DOE, Public Meeting Transcript, No. 0016 at pp. 78–9). Kaeser Compressors responded by stating that Sullivan-Palatek compressors are tested at ambient temperatures below 80 °F, and their performance is verified at 80–90 °F, indicating that temperature does not affect compressor efficiency. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 79) Test data was not made available to DOE to support or refute the claims made by CAGI. Conversely, in written comments, Jenny Products stated that ambient temperature needs to be corrected for because it will affect test results. Further, Jenny suggested that the ''reference ranges and their subsequent correction factors'' be examined to avoid adding undue financial burden to small manufacturers, which DOE interpreted as comments being directed to the ambient conditions and applicable correction factors that have been defined as part of this test procedure. (Jenny Products, No. 0020 at p. 3) However, Jenny provided no quantitative or qualitative data or information to support the claim that the ambient temperature in the test location that a compressor is tested in impacts test results. Further, DOE notes that ISO 1217:2009, which is the industry accepted test method, does not specify a required ambient temperature range for testing.

Additionally, Sullivan-Palatek stated that many small businesses may not control the ambient temperature at which they test their compressors. (Sullivan-Palatek, No. 0007 at p. 3) Jenny Products commented that they do not have a climate-controlled room to test compressors, which would be problematic for winter testing as they are located in a cold climate. (Jenny Products, No. 0020 at p. 3) Compressed Air Systems also made comments that suggested that it does not control the ambient temperature of testing facilities. (Compressed Air Systems, No. 0008 at p. 2)

DOE acknowledges comments made by Compressed Air Systems and Jenny Products and agrees that the need to create a climate-controlled space for testing compressors could be a significant burden on these small businesses. Therefore, in this final rule, DOE is relaxing the proposal in the test procedure NOPR to limit ambient temperature to 68–90 °F, as suggested by CAGI. DOE concludes this temperature range provides representative measurements without imposing undue test burden on manufacturers.

DOE received no comments directly regarding the remaining test condition requirements proposed in the test procedure NOPR. Consequently, for the reasons established in the test procedure NOPR, DOE is adopting its proposal not to establish requirements for inlet pressure and relative humidity.

3. Equipment Configuration

In the test procedure NOPR, DOE proposed the following requirements related to equipment configuration for test:

- All ancillary equipment that is distributed in commerce with the compressor under test must be present and installed for all tests specified in this appendix. 81 FR 27220, 27239 (May 5, 2016).
- The inlet of the compressor under test must be open to the atmosphere and take in ambient air for all tests specified in this appendix. 81 FR 27220, 27239 (May 5, 2016).
- The compressor under test must be set up according to all manufacturer instructions for normal operation (*e.g.,* verify oil-level, connect all loose electrical connections, close-off bottom of unit to floor, cover forklift holes). 81 FR 27220, 27239 (May 5, 2016).

As discussed in section III.A.3.b, CAGI provided a list of equipment that it believed should be included for testing. CAGI also suggested that if a unit is offered for sale without a piece of equipment on its recommended list, the manufacturer must provide an appropriate component, and the selection and responsibility of providing and installing this component for testing shall be the responsibility of the manufacturer. (CAGI, No. 0010 at pp. 3–5)

As discussed in section III.A.3.b, DOE is adopting in this final rule a required minimum equipment configuration for compressor testing. This configuration is based on the list provided by CAGI, with some modifications. CAGI's list included many caveats and footnotes related to applicability of certain equipment to certain compressors, which DOE found to be ambiguous. In the interest of clarity, DOE is splitting CAGI's list into two separate lists, as shown in Table III.2 and Table III.3, and adopting these lists to describe the minimum equipment configuration for compressor testing. The first list contains equipment that must be included on a unit when testing, regardless of whether it is distributed in commerce with the basic model under test. This table aligns with many of the items that CAGI specified as ''yes.'' The second list contains equipment that is only required if it is distributed in commerce with the basic model under test. This represents much of the equipment that CAGI specified as ''if applicable.'' DOE believes that it is impossible to *require* the equipment on Table III.3 for testing, as many basic models do not require some of this equipment to achieve their basic functionality and adding such equipment is impossible or impractical.

Further, DOE agrees with CAGI and is adopting the provision that if a unit is offered for sale without a piece of equipment listed in Table III.2, the manufacturer must provide an appropriate component, and the selection and responsibility of providing and installing this component for testing shall be the responsibility of the manufacturer. The only alternative option under this testing structure would be for the testing laboratory to determine the needed specifications of the missing component and furnish that item. Based on discussion with industry testing experts, DOE concludes that this is not a reasonable alternative. A testing laboratory does not have the expertise to determine the needed specifications of the component, so the laboratory cannot reliably choose the component. In addition, due to the large number of ancillary components and the wide range of compressor sizes, it is impractical for DOE to specify the characteristics of these components as part of the test procedure. DOE is also adopting the requirement that DOE install any additional ancillary equipment provided by the manufacturer prior to performing enforcement testing of a compressor.

Additionally, DOE is specifying that additional ancillary equipment may be installed for testing, if distributed in

commerce with a compressor, but this additional ancillary equipment is not required. This approach is consistent with the approach taken in the EU Lot 31 draft standard. DOE notes that it will not install any non-required ancillary equipment during any DOE-run assessment or enforcement testing. The list that CAGI provided is slightly modified from the list used by the EU Lot 31 draft standard, and the EU Lot 31 draft standard specifies the list as a minimum configuration.

TABLE III.2—LIST OF EQUIPMENT REQUIRED DURING TEST

Equipment	Fixed-speed rotary air compressors	Variable-speed rotary air compressors
Driver	Yes	Yes.
Bare compressors	Yes	Yes.
Inlet filter	Yes	Yes.
Inlet valve	Yes	Yes.
Minimum pressure check valve/backflow check valve	Yes	Yes.
Lubricant separator	Yes	Yes.
Air piping	Yes	Yes.
Lubricant piping	Yes	Yes.
Lubricant filter	Yes	Yes.
Lubricant cooler	Yes	Yes.
Thermostatic valve	Yes	Yes.
Electrical switchgear or frequency converter for the driver	Yes	Not applicable *.
Device to control the speed of the driver (e.g., variable speed drive)	Not applicable **	Yes.
Compressed air cooler(s)	Yes	Yes.
Pressure switch, pressure transducer, or similar pressure control device	Yes	Yes.
Moisture separator and drain	Yes	Yes.

* This category is not applicable to variable-speed rotary air compressors.
** This category is not applicable to fixed-speed rotary air compressors.

TABLE III.3—LIST OF EQUIPMENT REQUIRED DURING TEST, IF DISTRIBUTED IN COMMERCE WITH THE BASIC MODEL

Equipment	Fixed-speed rotary air compressors	Variable-speed rotary air compressors
Cooling fan(s) and motors	Yes	Yes.
Mechanical equipment	Yes	Yes.
Lubricant pump	Yes	Yes.
Interstage cooler	Yes	Yes.
Electronic or electrical controls and user interface	Yes	Yes.
All protective and safety devices	Yes	Yes.

DOE is also adopting some changes to the individual items included in the list from CAGI. DOE has changed any mention of ''oil'' in the list to ''lubricant,'' in order to be consistent with the terminology throughout the test procedure. DOE has added interstage cooler to the list of items that must be included if they are distributed in commerce with the compressor, to ensure that interstage coolers are not removed from a compressor for testing.

DOE is revising and clarifying the ''compressor control device'' item from CAGI's list. DOE is including ''pressure switch, pressure transducer, or similar pressure control device'' in the list of equipment that is required during a test, because all compressors must have the ability to load and unload in response to changes in outlet pressure. DOE is also including ''electronic or electrical controls and user interface'' in the list of equipment required during a test, if distributed in commerce with the basic model. Many compressors include controls that perform other tasks beyond controlling pressure, such as cycling the intercoolers or fans on and off depending upon temperature. In addition, many compressors include an interface panel through which a user can get information and control the compressor. This equipment, if present, impacts the energy consumption of the packaged compressor, and should be accounted for. As such, electronic or electrical controls and user interfaces must be included if they are distributed in commerce with the compressor.

DOE is adopting modifications to the electrical switchgear and frequency converters included in CAGI's list. DOE is specifying that that electrical switchgear or a frequency converter must be included for fixed-speed compressors, to ensure that there is a method to turn the driver on and off. For variable-speed compressors, DOE is adopting the requirement that they include a device to control the speed of the driver. CAGI had specified that a frequency converter be required for variable-speed compressors (CAGI, No. 0010 at pp. 4) A frequency converter is a common device for controlling the speed of an electric motor, but there may be other devices that can also control the driver speed. Therefore, DOE is only specifying that a piece of equipment capable of controlling driver speed is required. DOE is doing this to ensure that the requirement is only for the performance of the device, and is not a prescriptive requirement for a particular technology to control motor speed.

DOE is also aware that certain rotary compressors are distributed in commerce with storage tanks. CAGI commented that for reciprocating compressors, storage tanks should be included in the test when they are part of the package offered by manufacturers, because their inclusion will not affect performance. (CAGI, No. 0010 at p. 5) DOE reviewed this issue with an industry testing expert and concluded

that CAGI's comment is also relevant to rotary compressors distributed in commerce with tanks; *i.e.,* tanks on rotary compressors will not affect rotary compressor performance either. Consequently, DOE concludes that tanks may be included during testing, if distributed in commerce with a compressor, but tanks are not required during testing.

Defining the list of equipment that must be installed as part of the test procedure addresses comments made by Jenny Products that identified a loophole, which would allow a manufacturer to remove ancillary equipment from the basic compressor package to improve the efficiency of the unit and sell the ancillary equipment as an optional package separate from the compressor. (Jenny Products, No. 0020 at p. 3)

DOE received no comments directly regarding the remaining equipment configuration requirements proposed in the test procedure NOPR. Consequently, for the reasons established in the test procedure NOPR, DOE is adopting its proposal that the compressor inlet be open to ambient conditions and intake ambient air during testing and the compressor under test must be set up according to all manufacturer instructions for normal operation.

4. Data Collection and Analysis

a. Stabilization and Data Sampling and Frequency

In the test procedure NOPR, DOE proposed several requirements for data collection and sampling. DOE proposed to require that measurements be taken at steady-state conditions, which are achieved when the difference between two consecutive, unique, power measurements, taken at least 10 seconds apart and no more than 60 seconds apart and measured per section C.2.4 of Annex C to ISO 1217:2009(E), is less than or equal to 300 watts. 81 FR 27220, 27239 (May 5, 2016).

DOE also proposed that at each load point, a minimum of 16 unique measurements must be recorded over a minimum time of 15 minutes. Each consecutive measurement must be no more than 60 seconds apart, no less than 10 seconds apart, and the difference in packaged compressor power input between the maximum and minimum measurement must be equal to or less than 300 watts, as measured per section C.2.4 of Annex C to ISO 1217:2009(E). Each measurement within the data recording must meet these requirements. If one or more measurements do not meet the requirements, the tester must take a new data recording of at least 16 new unique measurements collected over a minimum period of 15 minutes. 81 FR 27220, 27239 (May 5, 2016).

DOE received a number of comments in response to data collection and sampling requirements proposed in the test procedure NOPR. Jenny Products commented that the frequency of data sampling seems too high, noting that their process of manually recording readings takes more than 10 seconds to complete. (Jenny Products, No. 0020 at p. 4) DOE wishes to clarify that data samples must be taken between 10 and 60 seconds apart; DOE believes that 60 seconds provides enough time to manually record measurements. CAGI commented that it agrees with the proposed data sampling frequency requirements. (CAGI, No. 0010 at p. 10) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Based on the general support of commenters and the reasons established in the test procedure NOPR, DOE is adopting the requirements that at each load point, a minimum of 16 unique measurements must be recorded over a minimum time of 15 minutes and each consecutive measurement must be no more than 60 seconds apart, and not less than 10 seconds apart.

However, CAGI commented that it does not agree with the requirements of stability. CAGI recommended that DOE adopt Table 1 from Section 6.2 of ISO 1217:2009(E), to quantify the maximum permissible fluctuation from average during steady-state operation for discharge pressure, temperature at the nozzle or orifice plate, and differential pressure over the nozzle or orifice plate. CAGI also recommended that DOE incorporate by reference sections 6.2(i), 6.2(j), and 6.2(k) to help clarify stability. (CAGI, No. 0010 at pp. 6–8, 10; CAGI, Public Meeting Transcript, No. 0016 at pp. 74, 83) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Atlas Copco supports comments made by CAGI with regard to adopting the cited sections of ISO 1217:2009(E). (Atlas Copco, No. 0009 at pp. 17–18) CAGI and Kaeser Compressors commented that the power restriction of 300 W, likely taken from the CAGI Performance Verification Program, is inappropriate and not followed by some members as it is not a realistic stability requirement for larger horsepower compressors and that a more appropriate threshold is a percentage of full-load power. (CAGI, No. 0010 at p. 10; Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 82–83) CAGI and Kaeser Compressors further argue that the power is the measured result of the test, but the stability criteria should be strictly based on measured temperatures and pressures. (CAGI, No. 0010 at p. 10; Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 84)

In response to commenters' concerns over the 300 watt stability requirement, DOE agrees with the CAGI recommendation that stability should be determined using the maximum permissible fluctuation from average for discharge pressure, temperature at the nozzle or orifice plate, and differential pressure over nozzle or orifice plate from Table 1 in ISO 1217:2009(E). Therefore, in this final rule, DOE adopts revised requirements stating that steady-state is achieved when the difference between two consecutive, unique, measurements taken at least 10 seconds apart and no more than 60 seconds apart meet all of the following requirements from Table 1 of ISO 1217:2009(E), as amended: (1) Discharge pressure varies less than or equal to 1 percent from the average reading; (2) temperature at the nozzle or orifice plate, measured per section 5.3 of ISO 1217:2009(E), as amended, varies less than or equal to 2 K from the average reading; and (3) differential pressure over nozzle or orifice plate, measured per section 5.2 of ISO 1217:2009(E), as amended, varies less than or equal to 2 percent from the average reading.[27]

In response to CAGI's additional recommendation that DOE incorporate by reference sections 6.2(i), 6.2(j), and 6.2(k) of ISO 1217:2009(E), DOE reviewed these sections and concluded that these sections contain general qualitative guidance for testing, and that the same issues are already addressed in various other sections of the test procedure being established in this final rule. Therefore, DOE is not incorporating these sections in the test procedure.

Specifically, section 6.2(i) of ISO 1217:2009(E), as amended,[28] states that before readings are taken, the compressor shall be run long enough to ensure that steady-state conditions are reached so that no systematic changes

[27] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic.

[28] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic.

occur in the instrument readings during the test. In response, DOE clarifies that in this document DOE is adopting the specific requirement that steady-state is achieved when the difference between two consecutive, unique, measurements taken at least 10 seconds apart and no more than 60 seconds apart meet certain requirements from Table 1 of ISO 1217:2009(E), as amended. As such, DOE concludes that it is unnecessary to incorporate by reference the qualitative guidance provided section 6.2(i) of ISO 1217:2009(E), as amended.

Section 6.2(j) of ISO 1217:2009(E), as amended,[29] states that, should the test conditions be such that systematic changes cannot be avoided, or if individual readings are subject to great variations, then the number of readings shall be increased. In response, DOE clarifies that in this document DOE is adopting the requirement that if measurements do not meet stability requirements then a new data recording of at least 16 new unique measurements must be taken. As such, DOE does not incorporate by reference the qualitative guidance provided section 6.2(j) of ISO 1217:2009(E), as amended.

Section 6.2(k) of ISO 1217:2009(E), as amended,[30] states that for each load, a sufficient number of readings shall be taken to indicate that steady-state conditions have been reached. The number of readings and the intervals shall be chosen to obtain the required accuracy. In response, DOE clarifies that in this document DOE is adopting specific requirements that at each load point, a minimum of 16 unique measurements must be recorded over a minimum time of 15 minutes and each consecutive measurement must be no more than 60 seconds apart, and not less than 10 seconds apart. As such, DOE does not incorporate by reference the qualitative guidance provided in section 6.2(k) of ISO 1217:2009(E), as amended.

b. Calculations and Rounding

In the test procedure NOPR, DOE recognized that the order and manner in which values are rounded can affect the final represented values produced by the test procedure. DOE noted that ISO 1217:2009(E) does not specify rounding requirements. Consequently, DOE proposed its own rounding requirements for the calculations and representations required by the DOE test procedure. DOE proposed that package isentropic efficiency be rounded and represented to the nearest 0.001, specific power to the nearest 0.01 kW/100 cfm, pressure ratio to the nearest 0.1, actual volume flow rate to the nearest 0.1 cubic feet per minute (''cfm''), and full-load operating pressure to the nearest 1 psig. DOE further proposed to require that all calculations be performed with the raw measured data in order to ensure accuracy. 81 FR 27220, 27240 (May 5, 2016).

CAGI and Atlas Copco suggested that the full-load operating pressure should be expressed to the nearest 0.1 psig to ensure that the pressure ratio is not distorted. (CAGI, No. 0010 at p. 10; Atlas Copco, No. 0009 at p. 18) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1)

In response to CAGI and Atlas Copco's concerns that pressure ratio not be distorted, DOE first notes that, as discussed in sections III.A.8 and III.E.8, the term referred to as pressure ratio in the test procedure NOPR is now referred to as pressure ratio at full-load operating pressure in this final rule. Further, in this final rule, DOE specifies that all calculations for pressure ratio at full-load operating pressure be carried out with the raw measured data. As such, the rounding requirement for representations of full-load operating pressure does not affect the calculation of the pressure ratio at full-load operating pressure. Additionally, DOE is not specifying a method for calculating pressure ratio at any load point other than full-load operating pressure. Therefore, manufacturers are not restricted by any specific rounding or representations requirement for such information.

Based on this consideration, DOE does not believe that stricter rounding requirements are necessary in representations of the full-load operating pressure. Therefore, in this final rule DOE adopts the test procedure NOPR proposal for rounding and calculations requirements.

5. Determination of Full-Load and Part-Load Package Isentropic Efficiency

In the test procedure NOPR, DOE proposed to rate fixed-speed compressors with the full-load package isentropic efficiency metric. For variable-speed compressors, DOE proposed the use of the part-load package isentropic efficiency. 81 FR 27220, 27232–3 (May 5, 2016).

According to Equation 3 in the proposal, the full-load package isentropic efficiency is calculated at the full-load operating pressure. 81 FR 27220, 27234 (May 5, 2016).

$$\eta_{isen,FL} = \eta_{isen,100\%} = \frac{P_{isen,100\%}}{P_{real,100\%}} \qquad \textbf{Equation 3}$$

Where:

$\eta_{isen,FL} = \eta_{isen,100\%}$ = package isentropic efficiency at full-load operating pressure and 100 percent of full-load actual volume flow rate,

$P_{real,100\%}$ = packaged compressor power input at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined from Equation 4,[31] and

$P_{isen,100\%}$ = isentropic power required for compression at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined from Equation 5.

As referenced in Equation 3, the packaged compressor power input at full-load operating pressure and 100 percent of full-load actual volume flow rate was proposed to be determined in accordance with Equation 4. 81 FR 27220, 27234 (May 5, 2016).

$$P_{real,100\%} = K_5 \cdot P_{PR,100\%} \qquad \textbf{Equation 4}$$

[29] *Ibid.*

[30] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic.

[31] The correction factor for the shaft speed (K_4) in section C.4.3.1 of Annex C in ISO 1217:2009(E) is not applicable to this test procedure because the electric motor drive is included in the package, and it is therefore omitted from this equation.

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E) at a contractual inlet pressure of 100 kPa,[32] and

$P_{PR,100\%}$ = packaged compressor power input reading at full-load operating pressure and 100 percent of full-load actual volume flow rate (W), as determined in section C.2.4 of Annex C to ISO 1217:2009(E).

The isentropic power required for compression at full-load operating pressure and 100 percent of full-load actual volume flow rate ($P_{isen,100\%}$), shown in equation 5, was proposed to be evaluated using measurements taken while the unit is operating at full-load operating pressure. 81 FR 27220, 27234–5 (May 5, 2016).

$$P_{isen,100\%} = \dot{V}_{1_m3/s} \cdot p_1 \frac{\kappa}{(\kappa - 1)} \cdot \left[\left(\frac{p_2}{p_1} \right)^{\frac{\kappa - 1}{\kappa}} - 1 \right] \qquad \textbf{Equation 5}$$

Where:

$\dot{V}_{1_m3/s}$ = corrected volume flow rate at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section C.4.2.1 of Annex C of ISO 1217:2009(E) (cubic meters per second) with no corrections made for shaft speed,

p_1 = atmospheric pressure, as determined in section 5.2.2 of ISO 1217:2009(E) (Pa),

p_2 = discharge pressure at full-load operating pressure and 100 percent of full-load actual volume flow rate, determined in accordance with section 5.2 of ISO 1217:2009(E) (Pa), and

κ = isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.[33]

Also according to the test procedure NOPR proposal, the part-load efficiency is calculated using Equation 6. 81 FR 27220, 27235–27236 (May 5, 2016).

$$\eta_{isen,PL} = \omega_{40\%} \times \eta_{isen,40\%} + \omega_{70\%} \times \eta_{isen,70\%} + \omega_{100\%} \times \eta_{isen,100\%} \qquad \textbf{Equation 6}$$

Where:

$\eta_{isen,PL}$ = part-load package isentropic efficiency for a variable-speed compressor,

$\eta_{isen,100\%}$ = package isentropic efficiency at full-load operating pressure, as determined in Equation 3,

$\eta_{isen,70\%}$ = package isentropic efficiency at 70 percent of full-load actual volume flow rate,

$\eta_{isen,40\%}$ = package isentropic efficiency at 40 percent of full-load actual volume flow rate,

$\omega_{40\%}$ = weighting at 40 percent of full-load actual volume flow rate (0.25),

$\omega_{70\%}$ = weighting at 70 percent of full-load actual volume flow rate (0.5), and

$\omega_{100\%}$ = weighting at 100 percent of full-load actual volume flow rate (0.25).

Package isentropic efficiencies at 70 percent and 40 percent of full-load actual volume flow rate were proposed to be calculated using equations of the same form as equations 3, 4 and 5, but with the necessary modification of the inputs. Thus, for the 70 percent case, the packaged compressor power input and the package isentropic efficiency are evaluated at 70 percent of the full-load actual volume flow rate, and those values are used to calculate the package isentropic efficiency at 70 percent. Analogously, for the 40 percent case the package compressor power input and the package isentropic efficiency are evaluated at 40 percent of the full-load actual volume flow rate, and those values are used to calculate the package isentropic efficiency at 40 percent.

In response to the test procedure NOPR, DOE did not receive any direct comments on this item. CAGI commented that it was in agreement with DOE's proposals of items on which CAGI did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR DOE is adopting the calculation methods for full-load and part-load package isentropic efficiency, as proposed in the test procedure NOPR.

However, as previously discussed in section III.D, ISO recently published an amendment to ISO 1217:2009(E), ISO 1217:2009(E)/Amd.1,[34] which includes formulas for isentropic efficiency and isentropic power. DOE reviewed the amendment and notes that the equations provided are equivalent to the equations DOE provided in the test procedure NOPR. Therefore, in this final rule DOE is amending its proposed test method to incorporate ISO 1217:2009(E), as amended, and referencing it for the calculation of package isentropic efficiency, rather than directly providing all the equations. DOE considers this to be an administrative change, as it has no impact on the ultimate result of the test procedure.

In this test procedure final rule, DOE is also establishing certain clarifying language that it concludes is required to clearly and unambiguously interpret the methods proposed in the test procedure NOPR. In the test procedure NOPR, DOE did not specify an operating pressure for the points at 70 and 40 percent of full-load actual volume flow rate. DOE is specifying in this final rule that these points be tested at full-load operating pressure. This is the same pressure used for the point at 100 percent of full-load actual volume flow rate.

DOE is also revising the pressure values used in the calculation of isentropic power. In the test procedure NOPR, DOE proposed to correct the measured real power to a standard atmospheric pressure of 100 kPa. For isentropic power, DOE proposed to use the atmospheric and discharge pressure values measured at each load point, without correction for atmospheric pressure. This creates an inconsistency, because real power is corrected to atmospheric pressure and isentropic power is not. Therefore, DOE is adopting a method that calculates the isentropic power at a standard atmospheric pressure of 100 kPa. The method specifies a discharge pressure that is equal to the sum of 100 kPa and

[32] The correction factor for inlet pressure uses contractual values for inlet pressure. Since a contractual value is not applicable to this test procedure, DOE proposed to use a value of 100 kPa from Annex F in ISO 1217:2009(E).

[33] The isentropic exponent of air has some limited variability with atmospheric conditions. DOE chose a fixed value of 1.400 to align with the EU Lot 31 draft standard's metric calculations.

[34] ISO 1217:2009(E) and ISO 1217:2009(E)/Amd.1 create one amended document, which is referred to in this final rule as ''ISO 1217:2009(E), as amended.''

the discharge gauge pressure measured during the test.

6. Allowable Deviation From Specified Load Points

In the test procedure NOPR, DOE proposed to explicitly limit the maximum allowable deviation from specified load points when testing to find part-load and full-load package isentropic efficiency and pressure ratio. Specifically, DOE proposed that maximum allowable deviations from the specified discharge pressure and volume flow rate in Tables C.1 and C.2 of Annex C of ISO 1217:2009(E) apply. 81 FR 27220, 27239–27240 (May 5, 2016). DOE also clarified that the term ''volume flow rate'' in Table C.2 of Annex C of ISO 1217:2009(E) refers to the actual volume flow rate of the compressor under test. 81 FR 27220, 27259 (May 5, 2016).

DOE received no comments directly regarding this proposed requirement, but notes that CAGI stated that it was in agreement with DOE's proposals of items on which CAGI did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Consequently, for the reasons established in the test procedure NOPR, DOE is adopting this proposal.

7. Determination of Package Specific Power

In the test procedure NOPR, DOE proposed that package specific power can be determined for both fixed and variable-speed air compressors at any load point using the equation for specific energy consumption in section C.4.4 of Annex C of ISO 1217:2009(E). 81 FR 27220, 27259 (May 5, 2016). DOE received no comments directly regarding this proposed requirement, but notes that CAGI stated that it was in agreement with DOE's proposals of items on which CAGI did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1)

In this final rule, DOE is adopting a clarification of the method for calculating corrected package power input for specific power. The clarification ensures that this value is calculated in the same way as it is calculated for isentropic efficiency. In the test procedure NOPR, DOE did not incorporate by reference the subsection in Annex C of ISO 1217:2009(E) in which the corrected package power input (P_{Pcorr}) is calculated. DOE has resolved this ambiguity by adopting an equation in this final rule for calculating P_{Pcorr}.

DOE is also adopting the clarification that correction for shaft speed shall not be performed when calculating package specific power. In the NOPR and this final rule, DOE does not allow for shaft speed correction when calculating package isentropic efficiency. Therefore, DOE believes it is most consistent and clear to require the same standards for determining package specific power.

8. Determination of Pressure Ratio at Full-Load Operating Pressure

In the test procedure NOPR, DOE proposed a method to determine pressure ratio. Specifically DOE proposed that pressure ratio be defined by the following equation:

$$PR = \frac{p_2}{p_1}$$

Where:

PR = pressure ratio

P_1 = atmosphere pressure as determined in section 5.2.2 of ISO 1217:2009(E) (Pa), and

P_2 = discharge pressure at full-load operating pressure, determined in accordance with section 5.2 of ISO 1217: 2009 (Pa). 81 FR 27220, 27260 (May 5, 2016).

CAGI did not directly comment on pressure ratio, but CAGI stated that it was in agreement with DOE's proposals of items on which CAGI did not directly comment. (CAGI, No. 0010, p. 3) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1)

As discussed in section III.A.1, Scales Industrial Technologies indicated that DOE's proposed definition of pressure ratio was not sufficiently clear, and could be interpreted in multiple ways. (Scales Industrial Technologies, No. 0013, at p. 1) Jenny Products commented that ambient temperature, barometric pressure, humidity, and altitude must be corrected for because they will all affect test results. (Jenny Products, No. 0020 at p. 3)

As discussed in section III.A.1, in an effort to add clarity, the term referred to as pressure ratio in the test procedure NOPR is now referred to as pressure ratio at full-load operating pressure in this final rule. Additionally, in this final rule, DOE is incorporating clarifying changes to the test method and calculations for pressure ratio at full-load isentropic efficiency. Specifically, DOE reviewed the test method proposed in the test procedure NOPR and agrees with Scales Industrial Technologies that the method was ambiguous and would create results that vary with atmospheric pressure. Further, DOE agrees with Jenny Products that it is important to account for ambient barometric pressure.

Specifically, compressors within the scope of this rulemaking all use control devices. As a result, the full-load operating pressure is a characteristic of each model and remains constant under varying atmospheric pressure. This means that the method proposed by DOE would result in a pressure ratio that is dependent on the atmospheric pressure at which the test is performed. This dependence on atmospheric pressure reduces the repeatability of the method.

To remove the dependence on atmospheric pressure, DOE is adopting a revised method for measuring pressure ratio at full-load operating pressure in this final rule. This method uses a standard atmospheric pressure, 100 kPa, and uses the full-load operating pressure declared for the compressor. As a result, this method creates results that are independent of the atmospheric pressure at which testing is performed.

9. Maximum Full-Flow Operating Pressure, Full-Load Operating Pressure, and Full-Load Actual Volume Flow Rate

In the test procedure NOPR, DOE proposed a detailed method to determine maximum full-flow operating pressure, full-load operating pressure, and full-load actual volume flow rate. Specifically, DOE proposed that the full-load operating pressure would be a manufacturer-declared value based on the measured maximum full-flow operating pressure. In its proposal, DOE allowed manufacturers to declare a full-load operating pressure of between 90 percent and 100 percent of the maximum full-flow operating pressure. The full-load operating pressure would then be used for subsequent testing in order to determine the full-load actual volume flow rate, specific power and package isentropic efficiency. 81 FR 27220, 27241–27243 (May 5, 2016).

DOE received many comments related to its proposal that full-load operating pressure would be a manufacturer-declared value based on the measured maximum full-flow operating pressure, as well as comments related to the procedure to determine maximum full-flow operating pressure. These comments are discussed in the paragraphs that follow. However, DOE received no comments regarding the proposed method to determine full-load actual volume flow rate. Consequently,

for the reasons established in the test procedure NOPR, DOE is adopting this method as proposed in the test procedure NOPR.

Jenny Products commented that the procedure to determine maximum full-flow operating pressure was confusing, but did not offer specific guidance as to how it could be simplified. (Jenny Products, No. 0020 at p. 4) Further, Jenny Products stated that ISO allowed for a tolerance of ±2 psig for pressure variation vs. the ±1 psig variation proposed by DOE when determining the maximum full-flow operating pressure. DOE would like to clarify that the discharge pressure variation tolerance in ISO 1217:2009(E) is ±1 percent from average as specified in 6.2 Table 1. With respect to Jenny Products comments regarding the detail of the procedure to determine maximum full-flow operating pressure, DOE recognizes that the procedure is nuanced, but believes that the detail is necessary to ensure a repeatable and reproducible test across all compressors included in the scope of this final rule. DOE also notes that the accuracy requirement of ±1 psig is necessary due to the discrete increments of pressure required as discussed in the test procedure NOPR. 81 FR 27220, 27242 (May 5, 2016). Consequently, DOE adopts the method to determine maximum full-flow operating pressure as proposed in the test procedure NOPR in this final rule.

Compressed Air Systems commented that the operating pressure is a range, not a static number, and can vary between load and unload pressure. (Compressed Air Systems, No. 0008 at p. 2) In response to Compressed Air Systems' concern, DOE agrees that compressors may output air at a range of pressures. However, DOE must select a specific pressure value for manufacturers to use, in order to fairly and equitably measure compressor performance.

In response to DOE's proposal, Atlas Copco objected to manufacturers self-declaring full-load operating pressure of between 90 and 100 percent of maximum full-flow operating pressure, claiming that this creates a loophole where fixed-speed machines can select the optimal pressure for maximum efficiency (between 90–100 percent), but variable-speed units are penalized because all points have to achieve efficiencies greater than required by the standard. (Atlas Copco, No. 0009 at p. 15) In response to Atlas Copco's concern, DOE clarifies that manufacturers currently self-declare full-load operating pressure and the provision proposed by DOE in the test procedure NOPR allows manufacturers to continue this practice. Further, any potential benefit to fixed-speed compressors from this self-declaration could be realized equally by all fixed-speed compressors and thus not be considered a loophole. Additionally, in the energy conservation standards NOPR, DOE proposed fixed-speed and variable-speed compressors to be considered in separate equipment classes with separate proposed standards. As such, any benefits provided to fixed-speed compressors would have no bearing on the performance or relative ranking of variable compressors, which would be assessed using a completely separate metric and proposed standard.

Atlas Copco also claimed there could be a loophole whereby a manufacturer represents the full-load operating pressure at which the compressor achieves its optimum efficiency (*e.g.,* 125 psig), but markets the product at a different pressure (*e.g.,* 90 psig). To remedy these concerns, Atlas Copco suggested any declared full-load operating pressure must have an associated efficiency that is above the standard. (Atlas Copco, No. 0009 at pp. 15–16) DOE agrees with Atlas Copco that rating a compressor at one pressure and marketing a compressor at a different pressure is undesirable and believes the provisions of the test procedure NOPR are in agreement with Atlas Copco's suggestion. Specifically, in the test procedure NOPR, DOE clearly proposed that any representation of full-load actual volume flow rate, full-load operating pressure, full-load package isentropic efficiency, and part-load package isentropic efficiency must be made according to the DOE test procedure. Given this provision, manufacturers can only self-declare one full-load operating pressure, and the package isentropic efficiency associated with this operating pressure must be represented in accordance with the DOE test procedure.

Scales Industrial Technologies indicated a preference for the manufacturer's maximum design pressure at full capacity in response to a request for comment regarding the full-load operating pressure. (Scales Industrial Technologies, No. 0013 at pp. 7) DOE is unclear as to the exact meaning of maximum design pressure at full capacity. However, requiring use of an objective maximum pressure (*i.e.,* maximum full-flow operating pressure) would force a manufacturer to rate a compressor in a manner unfamiliar to customers and, possibly, in a way that does not characterize the way the compressor is likely to be operated in practice. The 10-percent psig limit proposed in the test procedure NOPR balances DOE's need to create a fair and equitable rating point while maintaining the flexibility needed for compressor manufacturers to continue to meet the needs of their end users.

CAGI agreed that manufacturers should be allowed to self-declare a full-load operating pressure, but suggested a tolerance of either 10 percent or 10 psi,[35] whichever is greater. CAGI added that a 10-percent range would not be practical for lower-pressure equipment. (CAGI, No. 0010 at p. 11) DOE interpreted this comment to translate to the following requirement:

If measured maximum full-flow operating pressure is greater than 100 psig, manufacturers would be allowed to declare a full-load operating pressure of between 90 percent and 100 percent of the measured maximum full-flow operating pressure. If measured maximum full-flow operating pressure is less than or equal to 100 psig, manufacturers would be allowed to declare a full-load operating pressure as a value that is up to 10 psi[36] less than the measured maximum full-flow operating pressure.

CAGI suggested that this is a better approach because the 10 percent range proposed by DOE would not be practical for low-pressure equipment. (CAGI, No. 0010 at p. 11) Sullair and CAGI had previously suggested this approach in the June 2016 public meeting. (Sullair, Public Meeting Transcript, No. 0016 at p. 105; CAGI, Public Meeting Transcript, No. 0016 at p. 105–6)

The CAGI suggestion would only affect units whose maximum full-flow operating pressures are less than 100 psig. For those units, 10 percent of the full-operating pressure would be 10 psi[37] or less. DOE concludes that CAGI's recommendation is reasonable, and aligns with DOE's intent to create a fair and equitable rating point while maintaining the flexibility needed for compressor manufacturers to continue to meet the needs of their end users.

Thus, in this final rule DOE adopts CAGI's suggestion that if measured maximum full-flow operating pressure is greater than 100 psig, manufacturers are allowed to declare a full-load operating pressure of between 90 percent and 100 percent of the measured maximum full-flow operating pressure; and if measured maximum full-flow operating pressure is less than or equal to 100 psig, manufacturers are

[35] Here, there is no difference between absolute and gauge pressure.

[36] Here, there is no difference between absolute and gauge pressure.

[37] Here, there is no difference between absolute and gauge pressure.

allowed to declare a full-load operating pressure as a value that is up to 10 psi [38] less than the measured maximum full-flow operating pressure.

In this test procedure final rule, DOE is adopting a minor modification to the starting pressure used in the maximum full-flow operating pressure test method. In the test procedure NOPR, DOE proposed to start the test by adjusting the backpressure of the system so the measured discharge pressure is 90 percent of the expected maximum full-flow operating pressure, rounded to the nearest integer, in psig. If the expected maximum full-flow operating pressure is not known, DOE proposed to adjust the backpressure of the system so that the measured discharge pressure is 75 psig. The intent of this provision is to ensure that all compressors within the scope of this rulemaking can be tested to find maximum full-flow operating pressure, even when no expected value is known. As discussed in section III.B, the scope of this test procedure is now restricted to compressors with full-load operating pressure greater than or equal to 75 psig. To achieve the original intent of this provision, the starting discharge pressure for this test must be slightly lower than that 90 percent of the lowest possible maximum full-flow operating pressure (*i.e.,* 75 psig). Consequently, it is appropriate to revise the default starting discharge pressure to 65 psig.

F. Definition of Basic Model

In the course of regulating products and equipment, DOE has developed the concept of using a ''basic model'' for testing to allow manufacturers to group similar equipment to minimize testing burden, provided all representations regarding the energy use of compressors within that basic model are identical and based on the most consumptive, least efficient unit. 76 FR 12422, 12423 (Mar. 7, 2011).[39] In that rulemaking, DOE established that manufacturers may elect to group similar individual models within the same equipment class into the same basic model to reduce testing burden, provided all representations regarding the energy use of individual models within that basic model are identical and based on the most consumptive unit. 76 FR 12422, 12423 (Mar. 7, 2011). However, manufacturers group models with the understanding that there is increased risk associated with such model consolidation, due to the potential for an expanded impact from a finding of noncompliance. Consolidation of models within a single basic model results in such increased risk because DOE determines compliance on a basic model basis. *Ibid.*

In keeping with this practice, in the test procedure NOPR, DOE proposed a definition of basic model for compressors that defines the compressor models on which manufacturers must conduct testing to demonstrate compliance with any energy conservation standard for compressors, while still enabling manufacturers to group individual models to reduce the burden of testing. DOE proposed to establish a definition of basic model that is similar to other commercial and industrial equipment. Specifically, DOE proposed to define a compressor basic model to include all units of a class of compressors manufactured by one manufacturer, having the same primary energy source, and having essentially identical electrical, physical, and functional (or pneumatic) characteristics that affect energy consumption and energy efficiency. The requirement of ''essentially identical electrical . . . characteristics'' means that models with different compressor motor nominal horsepower ratings must be classified as separate basic models. 81 FR 27220, 27243 (May 5, 2016).

In response to the test procedure NOPR, DOE received comments expressing concern that under the definition of the basic model, small changes to certified compressors may require manufacturers to retest or perform an AEDM in order to recertify the equipment. Specifically, Sullivan-Palatek commented that the substitution of non-standard electric motors, controls, or coolers would be a significant burden due to the testing that would be required for that compressor. Sullivan-Palatek further commented that DOE should consider the definition of basic model that CAGI currently uses, which permits add-ons and alterations to basic packages. Sullivan-Palatek indicated that this definition of basic model would allow manufacturers to offer specialty products without the burden of certifying each customized compressor as a new basic model. (Sullivan-Palatek, No. 0007 at pp. 1, 4; Sullivan-Palatek, Public Meeting Transcript, No. 0016 at p. 44) Kaeser Compressors and Sullair also commented that customers often request small changes, particularly at higher compressor capacities, and used motor substitutions as the primary example of what may constitute additional basic models. (Kaeser Compressors, Public Meeting Transcript, No. 0016 at p. 46; Sullair, Public Meeting Transcript, No. 0016 at p. 131) CAGI stated that the DOE definition of a basic model differed from the industry definition of a standard model, which the industry uses to represent efficiency. CAGI implied that the difference in the interpretation of what constitutes a basic model would cause many more compressor models to be tested in order to represent their efficiency, which is burdensome to manufacturers. (CAGI, Public Meeting Transcript, No. 0016 at p. 125–8) Sullair commented that many non-standard compressor models exist which include modifications that increase the energy consumed by the compressor compared to its basic model. (Sullair, Public Meeting Transcript, No. 0016 at p. 113)

DOE clarifies that changes, such as the use of alternate brand components (*e.g.,* motors, filters, drives) trigger the need for a new basic model only if the variant no longer has essentially identical electrical, physical, and functional (or pneumatic) characteristics that affect energy consumption and energy efficiency. In response to CAGI's concerns that a greater number of basic models may need to represent efficiency in comparison to the industry practice of a standard model, DOE believes that changes made to the test configuration (see section III.E.3) that are adopted in this final rule result in a DOE basic model that more closely aligns with the industry's concept of a standard model. However, based on Sullair's comment, DOE concludes that some additional basic models (as compared to the industry's ''standard models'') are justified, as some models exhibit unique efficiency characteristics, and accurate representation of equipment efficiency is critical to setting an equitable test procedure. Finally, DOE notes that in this final rule it is also adopting a provision to allow for the use of an AEDM to alleviate the burden of representing the efficiency of basic models that are similar in design to a standard compressor, but with modifications to suit an application or customer request.

[38] Here, there is no difference between absolute and gauge pressure.

[39] These provisions allow manufacturers to group individual models with essentially identical, but not exactly the same, electrical, physical, and functional characteristics that affect energy performance characteristics into a basic model to reduce testing burden. Under DOE's certification requirements, all the individual models within a basic model identified in a certification report as being the same basic model must have the same certified efficiency rating and use the same test data underlying the certified rating. The Compliance Certification and Enforcement final rule also establishes that the efficiency rating of a basic model must be based on the least efficient or most energy consuming individual model (*i.e.,* put another way, all individual models within a basic model must be at least as energy efficient as the certified rating). 76 FR 12422, 12428–12429 (March 7, 2011).

Consequently, DOE is adopting in this final rule the definition for basic model as proposed in the test procedure NOPR.

G. Sampling Plan for Testing and Alternative Efficiency Determination Methods

DOE must provide test procedures that produce results that reflect energy efficiency, energy use, and estimated operating cost of industrial equipment during a representative average use cycle. (42 U.S.C. 6314(a)(2)) These representative values are used when making public representations and when determining compliance with prescribed energy conservation standards. In the test procedure NOPR, DOE proposed two uniform methods for manufacturers to determine representative values of energy and cost-related metrics: A statistical sampling plan or an alternative efficiency determination method. 81 FR 27220, 27244 (May 5, 2016). The following sections discuss comments received in response to DOE's test procedure NOPR regarding statistical sampling and AEDMs.

1. Sampling Plan and Representations

a. Minimum Sample Size

In the test procedure NOPR, DOE proposed a statistical sampling plan that requires a minimum of two units be tested to ensure a basic model's compliance. 81 FR 27220, 27244–5 (May 5, 2016). In response to the proposed sampling plan, CAGI, Compressed Air Systems, Sullair, and Sullivan-Palatek commented that, due to low production volume of some compressors models, a minimum of two samples would be impractical to test as there is not adequate inventory to meet the sampling requirements. (CAGI, No. 0010 at p. 11, Compressed Air Systems, No. 0008 at p. 2, Sullair, No. 0006 at p. 9; Sullair, Public Meeting Transcript, No. 0016 at p. 124; Sullivan-Palatek, Public Meeting Transcript, No. 0016 at p. 56) Ingersoll Rand, Sullair, and Sullivan-Palatek supported CAGI's comments. (Ingersoll Rand, No. 0011 at p. 1; Sullair, No. 0006 at p. 1; Sullivan-Palatek, No. 0007 at p. 1) Sullair and Sullivan-Palatek further commented that, for customized low volume units, they use a mixture of customer acceptance test data and estimation rather than testing per the CAGI Performance Verification Program. (Sullair, Public Meeting Transcript, No. 0016 at pp. 43; Sullivan-Palatek, Public Meeting Transcript, No. 0016 at p. 44) Ingersoll Rand commented that testing is performed on every compressor package that it produces, but some units are unique and driven by customer-specific application requirements. (Ingersoll Rand, Public Meeting Transcript, No. 0016 at pp. 44–45)

In response to the concerns regarding low-volume units, DOE understands that within the scope in the test procedure NOPR, certain basic models may be produced in low volume and a minimum of two samples are impractical to test for these low volume basic models due to inadequate inventory availability. However, DOE believes that the majority of these low volume units are larger capacity models (*i.e.,* models with compressor motor nominal horsepower greater than 200 hp and full-load operating pressures greater than 200 psig). As noted in section III.B, DOE is limiting the applicability of the test procedure established in this final rule to only lubricated compressors with compressor nominal motor horsepower of 10 to 200 hp (inclusive) and full-load operating pressures of 75 to 200 psig (inclusive). This revised scope aligns with the scope recommended by CAGI and other manufacturers. Further, the 10 to 200 hp scope established in this final rule aligns directly with the scope of the CAGI Performance Verification Program for rotary compressors. Manufacturers who participate in this program [40] are required to test multiple basic models per year as a part of the program's compliances and certification requirements. Basic models are selected at the discretion of the CAGI program manager, with the intent of testing through the range of eligible products over a period of several years. For each basic model selected, manufacturers must make available two individual units that are randomly selected from available manufacturer and/or distributor stock. Consequently, DOE concludes that the majority of the basic models within the scope of the test procedure established by this final rule are commonly available (*i.e.,* not low production volume) and are typically produced in quantities of at least two units per year.

However, even with the reduced scope established in this test procedure final rule, a small number of basic models may still be produced in very limited quantities. This limited subset of models may be produced in low quantities for a variety of reasons; for example, specific customer requirements may lead manufacturers to customize existing basic models or produce new, custom compressors, with unique performance characteristics. To address the industry's concern regarding the testing of low-volume production compressors, DOE specifically proposed, in the test procedure NOPR, to allow manufacturers to certify the energy efficiency of basic models through the use of an AEDM in lieu of physical testing. In such cases, no physical testing is required and, therefore, the sample size provisions are not applicable. Complete discussion of AEDM is provided in section III.G.2, where DOE discusses its rationale for adopting certain AEDM provisions in this final rule.

In summary, DOE concludes that the reduced scope has significantly reduced the number of low-production-volume basic models that are subject to this test procedure. Further, DOE concludes that the allowance of an AEDM in the place of testing sufficiently addresses the industry's concern regarding testing the limited number of low-shipments-volume compressor basic models that remain in scope. DOE also notes that relying on a sample size of at least two units is important to account for manufacturing variability and test uncertainty. Using a sample size of at least two units and the associated statistics provides consumers and DOE with reasonable assurance that any representative value of package isentropic efficiency or other values associated with a given basic model is, in fact, representative of the population of units to which that basic model rating applies. For these reasons, in this final rule, DOE is adopting a minimum sample size of two units, as proposed in the test procedure NOPR.

b. Sampling Statistics

In the test procedure NOPR, DOE proposed that package isentropic efficiency be represented as the lower of (1) the mean of the test sample, and (2) the lower 95 percent confidence limit (LCL) divided by 0.95. 81 FR 27220, 27244–27245 (May 5, 2016). DOE also proposed that package specific power, full-load actual volume flow rate, full-load operating pressure, and pressure ratio be represented as the mean of the test sample. 81 FR 27220, 27244 (May 5, 2016).

In response to DOE's proposal, CAGI, Ingersoll Rand, and Sullivan-Palatek commented that the 95 percent lower confidence limit as part of the sampling plan results in a more conservative rating than the current industry standard. (CAGI, No. 0010 at p. 14; Ingersoll Rand, Public Meeting

[40] The following manufacturers participate in the CAGI Rotary Compressor Performance Verification Program according to the participant directory: Atlas Copco, Boge, Chicago Pneumatic, CompAir, FS Curtis, Gardner Denver, Ingersoll Rand, Kaeser Compressors, Mattei, Quincy, Sullair and Sullivan-Palatek. The participant directory is available at *http://www.cagi.org/performance-verification/.*

Transcript, No. 0016 at pp. 121–2; Sullivan-Palatek, No. 0007 at pp. 2, 4) CAGI's comments regarding sampling were supported by Sullair. (Sullair, No. 0006 at p. 1) CAGI, Ingersoll Rand, and Sullivan-Palatek further stated that data published under the CAGI Performance Verification Program was not collected using the sampling method proposed in the test procedure NOPR (*i.e.,* the lower of the sample mean or the 95 percent confidence limit divided by 0.95). They further argued that adjustments may be needed to the minimum standard levels proposed in the compressors energy conservation standard NOPR, which was made with unaltered CAGI Performance Verification Program data, to account for the proposed sampling plan. (CAGI, No. 0010 at pp. 15–16; Ingersoll Rand, No. 0011 at pp. 1–2; Sullivan-Palatek, No. 0007 at p. 4) Sullivan-Palatek further commented that the proposed standards, if left without adjustment, represented an extra level of performance above and beyond the TSL2 standard. (Sullivan-Palatek, No. 0007 at p. 4)

In response to commenters' concerns, DOE acknowledges that the proposed sampling plan may result in a more conservative rating than the current industry standard, as the proposed sampling statistics for package isentropic efficiency are designed to account for variability in testing and manufacture (as is done with most other covered products and equipment). Requiring the use of sampling statistics, rather than the sample mean, provides end-users and DOE with reasonable assurance that any individual unit distributed in commerce is as efficient, or better, than its basic model rating. DOE believes that this assurance is beneficial to the end user, and as such rejects the use of the sample mean for representations of package isentropic efficiency.

In the absence of a specific alternative recommendation for package isentropic efficiency sampling statistics, DOE adopts the sampling statistics plan, as proposed in the test procedure NOPR, in this final rule. Specifically, package isentropic efficiency shall be represented as the lower of (1) the mean of the test sample, and (2) the lower 95 percent confidence limit (LCL) divided by 0.95.

DOE received no comments disagreeing with the test procedure NOPR proposal that package specific power, full-load actual volume flow rate, full-load operating pressure, and pressure ratio shall be represented as the mean of the test sample. Consequently, in this final rule, DOE adopts this requirement, as proposed in the test procedure NOPR. However, DOE acknowledges that the sampling plan proposed in the test procedure NOPR may result in package isentropic efficiency ratings that differ from those used in the energy conservation standards NOPR analysis. This is because the energy conservation standards analysis assumed mean package isentropic efficiency values for each basic model, while in practice some basic models may be rated using the lower 95 percent LCL divided by 0.95. Consequently, in the concurrent energy conservation standards final rule, DOE will account for the effect of rating using the lower 95 percent LCL divided by 0.95, and adjust the analysis and efficiency levels, where applicable.

c. 180-Day Representations Requirement

EPCA prescribes that all representation of the metrics discussed in section III.G.1.b must be made in accordance with DOE test procedures and representations requirements, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1))

In response to DOE's test procedure NOPR, CAGI commented that the adoption of the 180-day effective date is a significant burden that DOE did not consider. (CAGI, No. 0010 at pp. 11, 14) These comments were echoed by Ingersoll Rand. (Ingersoll Rand, No. 0011 at p. 2; Ingersoll Rand, Public Meeting Transcript, No. 0016 at p. 14) Atlas Copco raised similar concerns in its comments. (Atlas Copco, No. 0009 at p. 7–10) Likewise, Jenny Products commented that it will not be able to comply within 180 days and noted that it would need to order test equipment, construct an environmental testing room, train employees to conduct testing, build compressors, and test compressors. Jenny Products indicated that they have over 110,880 different basic models that would need to be certified. (Jenny Products, No. 0020 at pp. 4–5) CAGI noted that while the proposed full- and part-load package isentropic efficiency metric isn't used by the industry nor represented in literature, four other metrics (package specific power, full-load actual volume flow rate, full-load operating pressure, and pressure ratio) are. CAGI further stated that the requirement to review literature and verify compliance with the test procedure within 180 days of publication for these four metrics is unreasonable. (CAGI, No 0010 at p. 14) Ingersoll Rand, Sullair, and Sullivan-Palatek made similar comments as CAGI, with Ingersoll Rand stating that its existing compressor data would likely be rendered invalid due to changes in the test procedure, and the proposed test procedure would impose significant burden to re-evaluate its existing portfolio of products. (Ingersoll Rand, No. 0011 at p. 2; Ingersoll Rand, Public Meeting Transcript, No. 0016 at pp. 131, 133; Sullair, No. 0006 at pp. 1, 9; Sullivan-Palatek, No. 0007 at p. 5) CAGI requested that DOE delay the compliance date of the test procedures to coincide with the compliance date of any energy conservation standards. CAGI further stated that there is ample precedent to support such a delay.[41] (CAGI, No 0010 at p. 15; CAGI, No 0010 at p. 11) Ingersoll Rand and Sullair made similar comments with respect to delaying the compliance date of the test procedure; Ingersoll Rand specifically commented that the compliance date should be delayed to coincide with the energy conservation standard. (Ingersoll Rand, No. 0011 at p. 2; Sullair, No. 0006 at p. 9)

CAGI also commented that aligning the test methods and tolerances with current practice would significantly minimize the 180-day burden of the sampling plan. (CAGI, No. 0010 at p. 11) Ingersoll Rand and Sullair had similar comments to CAGI. Specifically, Sullair stated that if the scope of the test procedure was limited to commonly commercial units with test procedures that had better alignment with ISO 1217:2009(E), the burden [of representing efficiency per the proposed test procedure within 180 days] would be reduced. (Ingersoll Rand, Public Meeting Transcript, No. 0016 at pp. 131, 133; Sullair, Public Meeting Transcript, No. 0016 at p. 134)

Similarly, Atlas Copco stated that the DOE's proposed test procedure omits or changes key elements from ISO 1217:2009(E), ultimately requiring every manufacturer to retest (or perform an AEDM) and rerate every compressor within 180 days, if manufacturers were to continue making representations. Atlas Copco also stated that this scenario would be unduly burdensome, and recommended that DOE adopt a three-year transition rule allowing manufacturers to meet testing and modeling requirements with valid data generated under ISO 1217:2009(E). Atlas Copco cited case law supporting its recommendation of adoption of a three-year transition period, specifically, *Center for Biological Diversity* v. *National Highway Traffic Safety Administration,*[42] 538 F.3d 1172, 1206

[41] DOE notes that under EPCA, it does not have the authority to implement such a delay.

[42] DOE notes that this case is not pertinent to the regulation of industrial equipment under EPCA.

(9th Cir. 2008). (Atlas Copco, No. 0009 at pp. 7–10)

DOE acknowledges Atlas Copco's concerns that its test method, as proposed in the test procedure NOPR differed from ISO 1217:2009(E). However, as discussed in sections III.B and III.E, in this final rule DOE is modifying its NOPR proposal to reduce scope and better align with ISO 1217:2009(E). As stated by CAGI, Ingersoll Rand, and Sullair, DOE believes that increased alignment with ISO 1217:2009(E) will reduce the burden of making representation per the test procedure within 180 days.

Regarding comments requesting that DOE extend the 180-day representations requirement, DOE reiterates that EPCA prescribes the effective date for test procedure representations in 42 U.S.C. 6314(d)(1) and does not provide DOE with discretion to delay the effective date for covered equipment. However, EPCA does provide an allowance for individual manufacturers to petition DOE for an extension of the 180-day effective date if the manufacturer may experience undue hardship as a result of 180-day timeframe provided under 42 U.S.C. 6314(d)(1). To receive such an extension, petitions must be filed with DOE not later than 60 days before the representations are required to reflect the DOE test procedure and must detail how the manufacturer will experience undue hardship. (42 U.S.C. 6314 (d)(2)) Beyond this extension, as noted above, DOE lacks authority to extend the date for adjust representations to reflect the DOE test procedure.

In response to these concerns, DOE notes that EPCA prescribes the effective date for test procedure representations in 42 U.S.C. 6314(d)(1) and does not provide DOE with discretion as to the effective date for different equipment. However, to reduce, to the extent possible, the potential burden cited by manufacturers, in this final rule, DOE is establishing test procedures that are intended to produce results equivalent to those produced under ISO 1217:2009(E), as amended.[43] As discussed in section III.E, in this final rule DOE is making many modifications to the methods proposed in the test procedure NOPR proposal to align as closely as possible to ISO 1217:2009(E), as amended. In addition, as discussed in section III.B, DOE is limiting the scope of the adopted test procedures to be consistent with compressors that currently participate in the CAGI program. As noted by CAGI and Sullair, these modifications to align the scope and test methods of the test procedures adopted in this final rule with ISO 1217:2009(E), as amended, mitigate the majority of the commenters' concerns. DOE understands that manufacturers of compressors may have historical test data that were developed based on ISO 1217:2009(E). If historical test data is based on the same methodology being adopted in this final rule, then manufacturers may use this data for the purposes of representing any metrics subject to the representations requirements. Additionally, DOE concludes that Atlas Copco's request for a three-year transition rule is no longer pertinent, as the request is predicated on the assumption that historical data tested to ISO 1217:2009(E) does not meet the requirements of the DOE test procedure.

[43] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic, so aligning with ISO 1217:2009(E), as amended, is equivalent to aligning with ISO 1217:2009(E) prior to Amendment 1:2016.

2. Alternative Efficiency Determination Method

An AEDM is a mathematical model that a manufacturer may validate and use to predict the energy efficiency or energy consumption characteristics of a basic model. In the test procedure NOPR, DOE proposed the use of a validated AEDM as an alternative to testing to reduce testing burden. DOE laid out the basic criteria an AEDM must satisfy, as well as validation, records retention, enforcement, and representations requirements related to AEDMs. 81 FR 27220, 27245–6 (May 5, 2016).

Specifically, the test procedure NOPR contained four AEDM validation classes, applicable to four varieties of compressor: (1) Rotary, fixed-speed; (2) rotary, variable-speed; (3) reciprocating, fixed-speed; and (4) reciprocating, variable-speed. DOE also proposed that two basic models be tested to validate the AEDM for each validation class for which it is intended to be applied. Validation is achieved by demonstrating that the results from the mathematical model are in agreement with the results obtained from actual testing of the requisite number of basic models in accordance with the applicable DOE test procedures. In the test procedure NOPR, DOE proposed that the AEDM-predicted results for a basic model must be (for energy consumption metrics) equal to or greater than 95-percent or (for energy efficiency metrics) less than or equal to 105-percent of the tested results for that same model for the AEDM results to be valid. 81 FR 27220, 27245–27246 (May 5, 2016).

In response to the test procedure NOPR, CAGI commented that the representative values for a number of basic models can be predicted using computer modeling and prediction techniques based on a single common basic package compressor model. As such, CAGI suggested that DOE relax the AEDM definition so that testing does not need to be carried out on every basic model. (CAGI, No. 0010 at p. 15) Compressed Air Systems commented that the use of AEDMs could translate to large expenses for small air compressor packagers, as they often do not have the necessary staff and software. Compressed Air Systems also stated that the specialized nature of small packagers means that most products are low-volume and customized, and that the cost to develop an AEDM for those products would make it impossible to maintain a competitive price. (Compressed Air Systems, No. 0008 at p. 2) CASTAIR commented that AEDM modeling would be too large an expense for small air compressor assemblers due to the cost in staffing, equipment, and facilities. (CASTAIR, No. 0018 at p. 1)

In response to CAGI's comment, DOE clarifies that the proposed AEDM requirements are that a minimum of two basic models be tested for each validation class; there is no requirement that all basic models for which the AEDM is applicable be tested. That is, while an AEDM may be validated for a large number of basic models within a given validation class, only two of those basic models need to be tested in accordance with the test procedure and related sampling plans to validate the AEDM for all basic models in that validation class. DOE believes, therefore, that the AEDM requirements, as proposed in the test procedure NOPR, already align with CAGI's suggestions and no modification is necessary. DOE believes that at least two unique models for each validation class must be tested to ensure the broad applicability and accuracy of the validated AEDM across the range of basic models to which it may be applied.

With respect to Compressed Air Systems and CASTAIR's comments, DOE also notes that AEDMs were proposed as an optional strategy to evaluate equipment at a lower cost than physical testing. Under the test procedure NOPR proposal, manufacturers may continue to conduct physical testing according to the proposed test procedure and sampling plan instead of choosing to rate equipment using an AEDM, or both. Thus, given the optional nature of the AEDM, DOE does not expect the

inclusion of AEDMs to result in additional burden to manufacturers. In fact, in many cases, use of an AEDM dramatically reduces the cost of rating compressor models, as once the AEDM is developed and validated, it can be used on any basic model for which it is validated.

The use of an AEDM may be particularly helpful for customized and/or low-volume basic models that are rarely manufactured and sold. As noted in section III.G.1.a, commenters expressed concern that some units are not produced in enough quantity to meet the minimum sample size of two units, which makes the application of the test procedures impractical. In those cases, use of an AEDM may be a less burdensome way to determine the performance data required for representation and compliance with any energy conservation standard. With AEDMs, several similar models can be accurately evaluated based on test data for only a few models, which can greatly reduce the costs associated with determining the performance of customized models. Furthermore, AEDMs can be validated using test data from commonly available basic models and then used to estimate the performance of low-volume units, which reduces the cost of testing per unit for low-volume basic models. Thus, AEDMs are a convenient option to reduce the testing burden on customized equipment and/or equipment with low sales volume.

Additionally, in response to Compressed Air Systems and CASTAIR's specific comments on the burden of test procedures or an AEDM, any test procedures or energy conservation standards DOE promulgates must be equitable to all industry participants, meaning that all participants, regardless of size, must be held to the same testing and energy conservation standard criteria. As discussed further in section IV.B, DOE analyzed the costs of conducting testing and rating of compressors in accordance with the test procedures adopted in this final rule and accounted for the costs of such testing on manufacturers, including small manufacturers, in its energy conservation standards NOPR analysis. 81 FR 31680, 31761 (May 19, 2016). However, as noted in the energy conservation standards NOPR, additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition DOE for a waiver of the applicable test procedures. In addition, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8,000,000 may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. *Ibid.*

DOE did not receive any specific comments regarding the applicability of the AEDM validation tolerances or other AEDM requirements proposed in the test procedure NOPR. Accordingly, DOE is adopting the AEDM validation requirements proposed in the test procedure NOPR. However, due the revised scope of the test procedures adopted in this final rule (discussed in section III.B), DOE is reducing the number of validation classes from four to two. Specifically, DOE is adopting AEDM provisions for rotary fixed-speed and rotary variable-speed compressors and removing the validation classes of reciprocating fixed-speed and reciprocating variable-speed compressors, as the latter are no longer within the scope of applicability of this final rule.

H. Enforcement Provisions

Enforcement provisions govern the process DOE follows when performing its own assessment of basic model compliance with standards, as described under 10 CFR 429.110. In the test procedure NOPR, DOE proposed requirements related to the variability of the enforcement sample, as well as the methods it would use to determine full-load operating pressure and full-load actual volume flow rate when determining compliance for enforcement purposes. 81 FR 27220, 27246–27247 (May 5, 2016). The following sections discuss interested party comments related to the enforcement sampling plan for package isentropic efficiency and enforcement testing procedures for full-load operating pressure and full-load actual volume flow rate, respectively.

1. Sample Variability for Package Isentropic Efficiency

In the test procedure NOPR, DOE proposed an enforcement procedure in which DOE would evaluate compliance based on the arithmetic mean of a sample not to exceed four units. 81 FR 27220, 27246 (May 5, 2016). This proposal mirrors the enforcement provisions adopted in the test procedure final rule for commercial and industrial pumps. 81 FR 4086 (Jan. 25, 2016).

In response to DOE's proposal, CAGI commented that using the sample mean for enforcement without considering the standard deviation of the sample increases the risk of a finding of noncompliance. (CAGI, No. 0010 at pp. 12–13) CAGI and Ingersoll Rand also noted that the sampling plans in appendices A, B, and C to subpart C of 10 CFR part 429 do account for product variability when evaluating compliance for other covered products and equipment. (CAGI, No. 0010 at pp. 12–13; Ingersoll Rand, Public Meeting Transcript, No. 0016 at p. 140) CAGI recommended that DOE not use the arithmetic mean when evaluating compliance during an enforcement test, and instead account for product variability in a manner similar to appendices A, B, and C to subpart C of 10 CFR part 429 and in alignment with ISO 1217:2009(E). (CAGI, No. 0010 at p. 13) Ingersoll Rand commented that the enforcement procedure should allow for a 5-percent tolerance and not use the sample mean, and noted that certain other covered products and equipment allow for a tolerance on top of the sample mean. (Ingersoll Rand, Public Meeting Transcript, No. 0016 at pp. 140–141) Sullair and Sullivan-Palatek stated that they support CAGI's position relative to sampling and enforcement. (Sullair, No. 0006 at p. 9; Sullivan-Palatek, No. 0007 at pp. 1)

CAGI and Sullair commented that, for low-volume compressors, manufacturers may not be able to produce 4 units for the DOE to conduct enforcement testing on, because manufacturers may not manufacture four units of a given model within a year. (CAGI, No. 0010 at p. 13; Sullair, Public Meeting Transcript, No. 0016 at p. 141)

In response to these comments, DOE is not finalizing an enforcement sampling plan in this rule. Because compliance with any standards will not be required for 5 years, DOE will engage in a separate rulemaking to allow for further comments and input on how DOE should evaluate compliance.

2. Full-Load Operating Pressure and Actual Volume Flow Rate

In the test procedure NOPR, DOE proposed to adopt provisions that specify how DOE would determine the full-load operating pressure for the purposes of measuring the full-load actual volume flow rate, package isentropic efficiency, specific power, and pressure ratio for any equipment tested for enforcement purposes. In addition, DOE proposed a method for determining the appropriate standard level for any tested equipment based on the tested full-load actual volume flow rate. Specifically, to verify the full-load operating pressure certified by the manufacturer, DOE proposed to perform the same procedure proposed for determining the maximum full-flow operating pressure of each unit tested,

except that DOE would begin searching for maximum full-flow operating pressure at the manufacturer's certified value of full-load operating pressure prior to increasing discharge pressure. As DOE has proposed to allow manufacturers to self-declare a full-load operating pressure value of between 90 and 100 percent (inclusive) of the measured maximum full-flow operating pressure, DOE proposed to compare the measured value(s) of maximum full-flow operating pressure from a sample of one or more units to the certified value of full-load operating pressure. If a sample of more than one units is used, DOE proposed to calculate the mean of the measurements. If the certified value of full-load operating pressure is greater than or equal to 90 and less than or equal to 100 percent of the maximum full-flow operating pressure determined through DOE's testing (*i.e.,* within the tolerance allowed by DOE in the test procedures), then DOE proposed it would use the certified value of full-load operating pressure certified by the manufacturer as the basis for determining full-load actual volume flow rate, package isentropic efficiency, and other applicable values. Otherwise, DOE proposed it would use the maximum full-flow operating pressure as the basis for determining the full-load actual volume flow rate, package isentropic efficiency, and other applicable values. That is, if the certified value of full-load operating pressure is found to be valid, DOE proposed it would set the compressor under test to that operating pressure to determine the full-load actual volume flow rate, package isentropic efficiency, specific power, and pressure ratio in accordance with the DOE test procedures. If the certified full-load operating pressure is found to be invalid, DOE proposed it would use the measured maximum full-flow operating pressure resulting from DOE's testing as the basis for determining the full-load actual volume flow rate, package isentropic efficiency, specific power, and pressure ratio for any tested equipment.

Similarly, DOE proposed a procedure to verify the full-load actual volume flow rate of any certified equipment and determine the applicable full-load actual volume flow rate DOE would use when determining the standard level for any tested equipment. Specifically, DOE proposed to use the full-load actual volume flow rate determined based on verification of full-load operating pressure and compare such value to the certified value of full-load actual volume flow rate certified by the manufacturer. If DOE found the full-load operating pressure to be valid, DOE proposed it would use the full-load actual volume flow rate determined at the full-load operating pressure certified by the manufacturer. If the full-load operating pressure was found to be invalid, DOE proposed it would use the actual volume flow rate measured at the maximum full-flow operating pressure as the full-load actual volume flow rate. DOE proposed it would compare the measured full-load actual volume flow rate (determined at the applicable operating pressure) from an appropriately sized sample to the certified value of full-load actual volume flow rate. If the full-load actual volume flow rate measured by DOE is within the allowances of the certified full-load actual volume flow rate specified in Table III.4, then DOE proposed it would use the manufacturer-certified value of full-load actual volume flow rate as the basis for determining the standard level for tested equipment. Otherwise, DOE proposed it would use the measured actual volume flow rate resulting from DOE's testing when determining the standard level for tested equipment. 81 FR 27220, 27247 (May 5, 2016).

TABLE III.4—ENFORCEMENT ALLOWANCES FOR FULL-LOAD ACTUAL VOLUME FLOW RATE

Manufacturer certified full-load actual volume flow rate (m^3/s) $\times 10^{-3}$	Allowable percent of the certified full-load actual volume flow rate (%)
0 < and ≤ 8.3	±7
8.3 < and ≤ 25	±6
25 < and ≤ 250	±5
> 250	±4

In response, CAGI commented that it agreed with the tolerances DOE proposed in Table III.4. However, CAGI disagreed with DOE's proposal to continue an enforcement test when a compressor under test is determined not to deliver the full-load actual volume flow rate certified by the manufacturer (accounting for allowable enforcement deviations). CAGI stated that the proposed methodology could, in some cases, allow DOE to evaluate compliance of a compressor based on a lower than certified full-load actual volume flow rate, and, therefore, a correspondingly lower package isentropic efficiency standard level. CAGI stated that this is because compressors that do not provide the full-load actual volume flow rate certified by the manufacturer may still be deemed compliant provided the compressor was compliant with the standard determined based on the tested (*i.e.,* lower that the manufacturer-rated) full-load actual volume flow rate. CAGI suggested this scenario is not fair to the users of industry products and recommend that a manufacturer that fails to provide the flow that is claimed and certified by the manufacturer after taking allowable deviations into account be deemed to have failed. (CAGI, No. 0010 at p. 11; CAGI, Public Meeting Transcript, No. 0016 at p. 106) Atlas Copco made similar comments with respect to testing at a lower volume flow rate and the equity of doing so. (Atlas Copco, No. 0009 at p. 18) CAGI's position regarding the tolerances and enforcement of full-load actual volume flow rate is supported by Sullair, Sullivan-Palatek, and Ingersoll Rand. (Sullair, No. 0006 at p. 9; Sullivan-Palatek, No. 0007 at p. 1; Ingersoll Rand, No. 0011 at p. 1) DOE received no comments disagreeing with the proposed method for determining maximum and full-load operating pressure.

DOE acknowledges the concerns of commenters that allowing compressor equipment to be deemed compliant with any applicable standards for compressors when the full-load actual volume flow rate is below the certified and represented value is unfair to compressor end users. DOE typically designs the enforcement provisions to minimize risk for manufacturers such that equipment with capacities (*i.e.,* full-load actual volume flow rates) that differ from the certified values may still be deemed compliant based on the tested energy performance and a unit is not be deemed non-compliant on the grounds of the tested capacity alone. However, given the broad manufacturer support for modified enforcement provisions in this case, in this final rule, DOE is adopting CAGI and Atlas Copco's recommendation to declare compressors with tested full-load actual volume flow rates below the certified value non-compliant. Specifically, the certified full-load actual volume flow rate will be considered valid only if all measurement(s) (either the measured full-load actual volume flow rate for a single unit sample or the measured values for each unit in a multiple unit sample) are within the percentage of the certified full-load actual volume flow rate specified in Table III.4. If the representative value of full-load actual volume flow rate as tested is outside of the allowable tolerances specified in Table III.4, DOE will make a

determination that the basic model is not in compliance with the applicable regulations for that model. Specifically, DOE will fail such models on the basis of making representations that are not in accordance with the test procedure, which is consistent with DOE's authority under 42 U.S.C. 6316(a) and 6314(d).

DOE is also adopting a small modification in the starting pressure used when determining maximum full-flow operating pressure during enforcement testing. In the test procedure NOPR, DOE stated that testing would start at the certified value for full-load operating pressure. This starting value, however, creates the possibility that units could unload on the first test point, requiring testers to start the test again. There are many compressors that have a full-load operating pressure equal to their maximum full-flow operating pressure. DOE has also been told by an industry testing expert that the cut-out controls on compressors can vary by 1 or more psig between units. Therefore, starting the test at the certified full-load operating pressure creates the potential that the unit under test could unload at the starting discharge pressure. To prevent this possibility, DOE is adopting a starting point for this method equal to 90 percent of the certified full-load operating pressure. This allows the unit to be tested at several discharge pressures prior to reaching the range of pressures at which it is likely to unload.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemakings,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site at: *http://energy.gov/gc/office-general-counsel.* As part of the test procedure NOPR published on May 5, 2016 (81 FR 27220), DOE concluded that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE reviewed this rule, which establishes a new test procedure for compressors, under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

DOE certifies that the adopted rule does not have a significant impact on a substantial number of small entities. DOE notes that certification of compressor models is not currently required because energy conservation standards do not currently exist for compressors. That is, any burden associated with testing compressors in accordance with the requirements for this test procedure will not be required until the promulgation of any energy conservation standards for compressors. On this basis, DOE maintains that the test procedure final rule has no incremental burden associated with it and a FRFA is not required.

1. Description and Estimate of the Number of Small Entities Affected

For the compressors manufacturing industry, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as small businesses for the purpose of the statute. DOE used the SBA's size standards to determine whether any small entities are be required to comply with the rule. The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at: *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Compressor manufacturers are classified under NAICS 333912, ''Air and Gas Compressor Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

To estimate the number of small business manufacturers of equipment applicable to this rulemaking, DOE conducted a market survey using available public information. DOE's research involved industry trade association membership directories (including CAGI), individual company and online retailer Web sites, and market research tools (*e.g.,* Hoovers reports) to create a list of companies that manufacture products applicable to this rulemaking. DOE presented its list to manufacturers in MIA interviews and asked industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer. DOE screened out companies that do not offer products applicable to this rulemaking, do not meet the definition of a small business, or are foreign-owned and operated.

DOE identified a total of 40 manufacturers of applicable air compressor products sold in the United States. Nineteen of these manufacturers met the 1,000-employee threshold defined by the SBA to qualify as a small business, but only 15 were domestic companies. Seven domestic small businesses manufacture rotary air compressors.

Within the air compressor industry, manufacturers can be classified into two categories; original equipment manufacturers (OEMs) and compressor packagers. OEMs manufacture their own air-ends and assemble them with other components to create complete package air compressors. Packagers assemble motors and other accessories with air-ends purchased from other companies, resulting in a complete air compressor.

Within the rotary air compressor industry, DOE identified 22 manufacturers; 16 are OEMs and seven are packagers of compressors. Of the 22 total manufacturers, seven large OEMs supply approximately 80 percent of shipments and revenues. Of the seven domestic small rotary air compressor

businesses identified, DOE's research indicates that two are OEMs and five are packagers.

2. Discussion of Testing Burden and Comments

a. Burden Related to Test Method and Retesting Equipment for Representations

In the test procedure NOPR, DOE stated that ISO 1217:2009(E) is an appropriate industry testing standard for evaluating compressor performance, with the caveat that ISO 1217:2009(E) is written as a customer acceptance test, and as such it required several modifications and additions in order to provide the specificity and repeatability required by DOE. Consequently, DOE proposed several modifications and additions to ISO 1217:2009(E) and proposed to incorporate by reference only the sections of ISO 1217:2009(E) that are relevant to the equipment within the scope of applicability of DOE's proposed test procedures. DOE stated that by proposing to incorporate by reference much of ISO 1217:2009(E) into the proposed DOE test procedures, DOE believed that the resulting DOE test procedures would remain closely aligned with existing and widely used industry procedures and limit the testing burden on manufacturers. 81 FR 27220, 27236–27237 (May 5, 2016).

DOE received many comments regarding the burden imposed by DOE's proposed test procedures. Many of these comments argued that DOE's proposed modifications and additions to ISO 1217:2009(E) were materially significant, such that historical test data obtained under ISO 1217:2009(E) could no longer be used for representation purposes. As a result, the comments stated that manufacturers would be required to retest all equipment if they wanted to continue making public representations of package specific power, full-load actual volume flow rate, full-load operating pressure and pressure ratio.

Specifically, CAGI, Atlas Copco, Ingersoll Rand, Sullair, and Sullivan-Palatek commented that the proposed rule includes modifications to the CAGI Performance Verification Program which, coupled with the 180-day effective compliance date of the proposed test procedures, presents a significant burden for manufacturers to verify compliance in their efficiency and non-efficiency representations. (CAGI, No 0010 at pp. 11, 14; Ingersoll Rand, No. 0011 at p. 2; Atlas Copco, No. 0009 at pp. 7–10; Sullair, No. 0006 at pp. 1, 9; Sullivan-Palatek, No. 0007 at pp. 5)

In response to the 2012 NOPD, CAGI commented that ''test procedures for measuring the energy efficiency, energy use, or estimated annual operating cost of compressors during a representative average use cycle or period of use would be unduly burdensome or impossible to conduct,'' and that ''there would also be a cost impact to the users for this, which would place heavier financial burdens, especially on small business users.'' (Docket No. EERE–2012–BT–DET–0033, CAGI, No. 0003 at p. 6)

However, in response to the more recent 2016 test procedure NOPR, CAGI commented that if the test methods and tolerances are aligned with current practice, the burden of the sampling plan will be significantly minimized. (CAGI, No. 0010 at p. 11)

CASTAIR and Compressed Air Systems commented that the proposed regulations will force CASTAIR and other small businesses out of the rotary screw market. (CASTAIR, No. 0018 at p. 1; Compressed Air Systems, No. 0008 at p. 2) Compressed Air Systems stated that the test method would require large investments, which would be in excess of their annual sales volume, represent a higher per-unit cost due to their low volume of shipments compared to large manufacturers, and take a longer time to recover the cost of investing test equipment, placing small businesses at a competitive disadvantage relative to large manufacturers. (Compressed Air Systems, No. 0008 at pp. 2, 4–5; Compressed Air Systems, Public Meeting Transcript, No. 0016 at p. 143) Similarly, Jenny Products commented that the cost of compliance, including test facilities or the cost of independent lab testing, would bankrupt their small business and is unduly burdensome. (Jenny Products, No. 0020 at pp. 1, 3) Further, Jenny Products asserted that the test procedure is complicated and primarily developed by CAGI members, which unfairly burdens non-CAGI members and small businesses that can't afford to test their equipment. (Jenny Products, No. 0020 at pp. 2, 4–5)

DOE acknowledges the commenters' general concerns that the test procedures, as proposed in the test procedure NOPR, differed enough from ISO 1217:2009(E) that, if adopted, manufacturers may need to retest all units in order to continue making representations. However, DOE reiterates that, as stated in the test procedure NOPR, DOE's intent is to propose test procedures that remain closely aligned with existing and widely used industry procedures and limit testing burden on manufacturers.

In response to the commenters' concerns, in this final rule, DOE is making many modifications to the methods proposed in the test procedure NOPR, in order to align as closely as possible to ISO 1217:2009(E), as amended.[44] A complete discussion of these modifications is found in section III.E of this final rule. With these modifications, the test methods established in the final rule are intended to produce results equivalent to those produced historically under ISO 1217:2009(E). Consequently, if historical test data are consistent with values that are generated when testing with the test methods established in this final rule, then manufacturers may use this data for the purposes of representing any metrics subject to representations requirements. (DOE, Public Meeting Transcript, No. 0016 at p. 136)

However, DOE acknowledges that current representations for some models may not be based on test data or may be based on test data that is not in alignment with the test methods established in this final rule. DOE agrees that for those models, further testing or the application of an AEDM may be needed to continue making representations. However, DOE also notes that such representations are voluntary and if manufacturers require longer than 180 days to determine accurate represented values consistent with the adopted test procedure, the manufacturer may elect to not make public representations of standardized metrics until such testing is completed.

At this time, DOE does not have direct data regarding how many models require further testing or application of an AEDM, however, DOE estimates that this is a small percentage of total models. Specifically, DOE estimates that 90 percent of models within the scope of this test procedure final rule participate in the CAGI Performance Verification Program. All members of the CAGI Performance Verification Program must represent the performance of all of their models (within the scope of the program) based on ISO 1217:2009(E) testing. Thus, DOE believes it is fair to assume that the vast majority of models participating in the CAGI Performance Verification Program have historical ISO 1217:2009(E) test data available, which DOE believes is consistent with any values that generated by the test procedure adopted in this final rule. DOE acknowledges that the remainder of the models (*i.e.,*

[44] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic, so aligning with ISO 1217:2009(E), as amended, is equivalent to aligning with ISO 1217:2009(E) prior to Amendment 1:2016.

those not participating in the CAGI Performance Verification Program), approximately 15 percent, may not have historical test data available. However, DOE reviewed publically available marketing data from all known manufacturers that do not participate in the CAGI Performance Verification Program and found none of these manufacturers currently represent package isentropic efficiency, package specific power, full-load actual volume flow rate, full-load operating pressure, or pressure ratio at full-load operating pressure for compressors within the scope of this test procedure final rule. As such, these manufacturers incur no burden as a direct result of this test procedure final rule, as they are not required to make any representations until the effective date of any relevant future energy conservation standards.[45]

In summary, DOE concludes that the test procedures and associated representations requirements established in this test procedure final rule are not unduly burdensome, as (1) the test method follows accepted industry practice, and (2) only a limited number of models (if any) may, at the manufacturer's discretion, need to be retested in order to continue to make representations. Further DOE notes that impact to each manufacturer will be different, and manufactures may petition DOE for an extension of the 180-day representations requirement, for up to an additional 180 days, if manufacturers feel it represents an undue hardship. (42 U.S.C. 6314 (d)(2)) However, as any representations are voluntary prior to the compliance date of any energy conservations standards for compressors that may be set, there is no direct burden associated with any of the testing requirements established in this final rule. As such, specific quantification of the burden associated with testing and rating equipment to comply with any energy conservation standards is addressed in the associated compressors energy conservation standard rulemaking manufacturer impact analysis (Docket No. EERE–2013–BT–STD–0040).

b. Burdens Related to Low Shipment-Volume Equipment

In the test procedure NOPR, DOE proposed a scope of applicability of compressors that meet the following criteria:

- Are air compressors;
- are rotary or reciprocating compressors;
- are driven by a brushless electric motor;
- are distributed in commerce with a compressor motor nominal horsepower greater than or equal to 1 and less than or equal to 500 hp; and
- operate at a full-load operating pressure of greater than or equal to 31 and less than or equal to 225 pounds per square inch gauge; 81 FR 27220, 27224–27225 (May 5, 2016).

In response to the test procedure NOPR, many interested parties commented that DOE's proposed scope would capture many low-shipment volume or ''custom'' compressor models, and the requirement to test such models would cause undue burden.

Specifically, Atlas Copco stated that the test procedures would result in duplicative testing for custom units, because custom units already undergo customer acceptance tests based on ISO 1217:2009(E). Atlas Copco also commented that an AEDM would not alleviate the burden because it requires validation through testing. Atlas Copco further recommended that DOE establish a de minimis rule exempting small volume (fewer than 20 units per year), customized orders from the test requirements in order to avoid unduly burdensome testing requirements. (Atlas Copco, No. 0009 at pp. 6–7) Compressed Air Systems stated that the requirement to test two units of custom models that are only sold once 2 or 3 years will add undue cost, causing many manufacturers to stop production of low-shipment-volume models. (Compressed Air Systems, No. 0008 at p. 2) CAGI stated that manufacturers cannot build four units of all basic models for the purposes of DOE enforcement. Considering the definition of a basic model, CAGI expects that many basic models will rarely be sold, and it would be impractical to build those units only for testing purposes. (CAGI, No. 0010 at p. 13)

Sullair commented that it would be a burden to test or model all of its basic units as the company has more than 500 basic models in the range proposed by DOE for the test procedures, most of which are not high-volume products. (Sullair, No. 0006 at p. 9) Sullair elaborates that a number of those low-volume basic models are above 200 hp, which would be a significant burden to test per proposed test procedures and would likely result in Sullair ceasing to represent efficiency metrics for those units. Sullairs comment is supported by comments made by Sullivan-Palatek. (Sullair, No. 0006 at pp. 3–4; Sullivan-Palatek, No. 0007 at p. 3)

In response to these comments, DOE acknowledges the commenter's concerns that the scope of the test procedure, as defined in the test procedure NOPR includes many low-shipment volume or custom compressor models, and the requirement to test such models could cause significant burden. Therefore in this final rule, DOE is taking two key steps to address commenters' concerns and reduce the burden of testing, especially for low-volume equipment: (1) DOE is significantly limiting the scope of this final rule, as compared to the scope proposed in the test procedure NOPR, and (2) DOE is allowing the use of an AEDM, in lieu of testing. As discussed in section III.B, the scope of this test procedure final rule is limited to compressors that meet the following criteria:

- Are air compressors;
- are rotary compressors;
- are not liquid ring compressors;
- are driven by a brushless electric motor;
- are lubricated compressors;
- have a full-load operating pressure of 75–200 psig;
- are not designed and tested to the requirements of The American Petroleum Institute standard 619, ''Rotary-Type Positive-Displacement Compressors for Petroleum, Petrochemical, and Natural Gas Industries;'' and
- have a capacity that is either:
  - 10–200 compressor motor nominal horsepower (hp), or
  - 35–1,250 full-load actual volume flow rate (cfm).

This revised scope generally aligns with the scope recommended by CAGI and supported by many manufacturers. Further, the 10 to 200 hp scope established in this final rule falls within the scope of the CAGI Performance Verification Program for rotary compressors. Manufacturers who participate in this program are required to test multiple basic models per year as a part of the program's compliances and certification requirements. Basic models are selected at the discretion of the CAGI program manager, with the intent of testing the range of eligible products over a period of several years. For each basic model selected, manufacturers must make available two individual units that are randomly selected from available manufacturer and/or distributor stock. Consequently, DOE concludes that the majority of the basic models within the scope of the test procedure established by this final rule are commonly available (*i.e.,* not low production volume) and are typically

[45] DOE accounts for mandatory testing burden for compressors in the energy conservation standards analyses.

produced in quantities of at least two units per year.

However, even with the reduce scope established in this test procedure final rule, a small number of basic models may still be produced in very limited quantities. To address the industry's concern regarding the testing of low-volume production compressors, DOE specifically proposed, in the test procedure NOPR, to allow manufacturers to certify the energy efficiency of basic models through the use of an AEDM in lieu of physical testing. In such cases, no physical testing is required and, therefore, the sample size provisions are not applicable. Complete discussion of AEDM is provided in section III.G.2, where DOE discusses its rationale for adopting certain AEDM provisions in this final rule.

In summary, DOE concludes that the reduced scope has significantly reduced the number of low-production-volume basic models that are subject to this test procedure. Further DOE concludes that the allowance of an AEDM in the place of testing sufficiently addresses the industry's concern regarding testing the limited number of low-shipments-volume compressor basic models that remain in scope. For these reasons, DOE concludes that the test procedures and associated representations requirements established in this final rule are not unduly burdensome.

Further, the concerns raised by Atlas Copco, which lead them to request a de minimis rule exempting small volume custom orders, have been mitigated by the scope limitations and allowance for AEDMs discussed earlier in this section. However, DOE further clarifies that any test procedures it promulgates must be equitable to all industry participants, meaning that all participant and regulated equipment must be held to the same testing criteria, regardless of manufacturer size or physical location. However, DOE reiterates that no direct burden is associated with this test procedure final rule until the compliance date of any energy conservation standard for compressors that may be set and any direct quantification of testing burdens are calculated as part of that rulemaking. (Docket No. EERE–2013–BT–STD–0040)

Finally, regarding CAGI's comment regarding a sample size of up to four units for enforcement testing, DOE is not finalizing an enforcement sampling plan in this rule. Because compliance with any standards will not be required for 5 years, DOE will engage in a separate rulemaking to allow for further comments and input on how DOE should evaluate compliance.

c. Comments on the NOPR Regulatory Flexibility Analysis

In the test procedure NOPR, DOE preliminarily concluded that the proposed test procedures do not represent a significant incremental burden for any of the identified small entities.

In response to DOE's request for comment, Compressed Air Systems provided an additional 16 names of domestic small manufacturers producing equipment within the scope of this rulemaking. (Docket No. EERE–2013–BT–STD–0040, Compressed Air Systems, No. 0061, pp. 3–4) Upon further research, DOE concluded that one of the sixteen entities produces equipment within the scope of this rulemaking and added that entity to its list of domestic small manufacturers producing equipment within the scope of this rulemaking.

In response to DOE's conclusions, Compressed Air Systems stated that small businesses will be uniquely burdened by the test procedures because they will now have to test their products, leading to costs associated with large in-house test areas, additional employees, and electricity costs. (Compressed Air Systems, No. 0008 at p. 2; Compressed Air Systems, No. 0008, p. 3) Furthermore, it stated that the testing cost per unit would be significantly higher for smaller suppliers. CASTAIR commented that the proposed regulations will force it to abandon the market and requested that DOE exempt American air compressor assemblers from regulation. (CASTAIR, No. 0018, pp. 1–2) Both CASTAIR and Compressed Air Systems stressed that testing costs would not be alleviated through use of AEDM as such practices are not currently used. (CASTAIR, No. 0018, p. 1; Compressed Air Systems, No. 0008, p. 2)

DOE acknowledges the concerns raised by CASTAIR and Compressed Air Systems. Fundamentally, DOE reiterates, as noted in the test procedure NOPR, that the promulgation of test procedures alone, in the absence of existing energy conservation standards, does not require a manufacturer to perform any certification testing. As such, the burden associated with compliance testing will be assessed in the weighing of costs and benefits of the associated energy conservation standards rulemaking for compressors. However, DOE recognizes that an energy conservation standard rulemaking from compressors is ongoing and may result in standards and associated certification requirements for certain compressors in the near future. Therefore, DOE has considered the burden associated with the testing and rating requirements adopted in this final rule and, to the extent possible, has sought to minimize burden on manufacturers while ensuring that the test procedures adopted herein result in consistent, reliable, and repeatable values. Financial burden stemming from these DOE test procedures can be discussed in two general categories: (1) Aggregates costs of testing in order to continue representing standardized metrics that are now specified in the DOE test procedures, and (2) the per-unit cost of testing to the specified DOE test method.

Regarding the first cost category, DOE researched public literature of the identified small manufacturers and found that seven of the eight currently do not make representations of package specific power, full-load actual volume flow rate, full-load operating pressure, and pressure ratio at full-load operating pressure. None make representations of package isentropic efficiency. Those that do not make representations of these metrics are not expected to incur burden, as they can continue to not make representations of these metrics after promulgation of this test procedure final rule. As noted above, the certification burden is associated with the energy conservation standard and will be assessed as part of that rulemaking (Docket No. EERE–2013–BT–STD–0040).

Further, the one small manufacturer making representations of package specific power, full-load actual volume flow rate, full-load operating pressure, and pressure ratio at full-load operating pressure does so as a part of the CAGI Performance Verification Program, which relies on ISO 1217:2009(E) test data. As discussed previously, the test methods established in this final rule are intended to produce results equivalent to those produced historically under ISO 1217:2009(E), as amended. Consequently, if historical test data meet the requirements of the test methods established in this final rule, then manufacturers may use these data for the purposes of representing any metrics subject to representations requirements. (DOE, Public Meeting Transcript, No. 0016 at p. 136) Thus, DOE expects that this manufacturer will incur burdens no different from other manufacturers participating in the CAGI Performance Verification Program.

Regarding the second cost category, the per-unit cost of testing to the specified DOE test method, DOE reiterates that the test methods established in this final rule are based on the industry accepted test method,

ISO 1217:2009(E), as amended, and intended to produce results equivalent to those produced historically under ISO 1217:2009(E).[46] As such, DOE concludes that the method itself is not overly burdensome as it is currently employed by the many manufacturers who participate in the CAGI program.[47] However, DOE acknowledges the commenters' concerns that testing may be more costly and burdensome for small manufacturers, as they may not have in-house test facilities. In the energy conservation standards NOPR, DOE assessed the per-unit cost to test compressors for compliance, and concluded that the industry average cost was $2,400 for a fixed-speed rotary compressor, and $3,025 for a variable-speed compressor. (see chapter 12 of TSD [48]) These costs represent industry-average values (*i.e.,* a mix of in-house and third-party testing costs) and were based on data gathered during confidential manufacturer interviews. Based on these data, DOE estimates that third party testing costs approximately 50 percent more than the stated industry-average values (*i.e.,* $3,600 for fixed-speed and $4,538 for variable-speed compressors).[49] Although most small manufacturers incur testing costs in this higher range, some larger manufacturers may also incur similar third party testing costs. Given these costs, DOE again, acknowledges that that testing may be more costly small manufacturers.

Finally, in response to CASTAIR's recommendation that DOE exempt American air compressor assemblers from regulation, DOE clarifies that any test procedure it promulgates must be equitable to all industry participants, meaning that all participant and regulated equipment with in an equipment class must be held to the same testing criteria, regardless of shipments volume or the nature of a shipment order.

[46] In this final rule, DOE is incorporating by reference parts of ISO 1217:2009(E) as amended by Amendment 1:2016. Amendment 1:2016 did not introduce any changes in regards to this particular topic, so aligning with ISO 1217:2009(E), as amended, is equivalent to aligning with ISO 1217:2009(E) prior to Amendment 1:2016.

[47] The following manufacturers participate in the CAGI Rotary Compressor Performance Verification Program according to the participant directory: Atlas Copco, Boge, Chicago Pneumatic, CompAir, FS Curtis, Gardner Denver, Ingersoll Rand, Kaeser Compressors, Mattei, Quincy, Sullair and Sullivan-Palatek. The participant directory is available at *http://www.cagi.org/performance-verification/*.

[48] Available at: *https://www.regulations.gov/document?D=EERE-2013-BT-STD-0040-0037*.

[49] Third party testing is readily available in North America and one site is currently used by the CAGI Performance Verification Program.

Based on its research and discussions presented in this section, DOE concludes that the cost burdens accruing from the compressors test procedure final rule do not constitute ''significant economic impact on a substantial number of small entities.''

C. Review Under the Paperwork Reduction Act of 1995

While there are currently no energy conservation standards for compressors, DOE recently published a final determination establishing compressors as a type of covered equipment. 81 FR 79991 (Nov. 15, 2016). DOE is also considering establishing energy conservation standards for such equipment as part of a parallel rulemaking (Docket No. EERE–2013–BT–STD–0040). Manufacturers of compressors will be required to certify to DOE that their equipment complies with any applicable energy conservation standards, once established. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures for compressors and maintain records of that testing for a period of two years after discontinuing the product, consistent with the requirements of 10 CFR 429.71. As part of this test procedure final rule, DOE is establishing regulations for recordkeeping requirements for compressors. The collection-of-information requirement for the certification (to be finalized in a separate rulemaking) and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification and recordkeeping requirement is estimated to average 30 hours 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.

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.

CAGI stated that, based on its members' experience with its Performance Verification Program, the recordkeeping burden estimate (30 hours/year) is too low. CAGI also stated that complying with the recordkeeping requirements would entail significant development of procedures, recordkeeping, quality control measures, etc. (CAGI, No. 0010 at p. 13) Sullair fully supported CAGI's comments on recordkeeping. (Sullair, No. 0006 at p. 9) Ingersoll Rand stated that it would need two or three employees for a period of 12 months in order to sample, re-test and evaluate their units according to the requirements of the proposed test procedure. Ingersoll Rand also stated that additional staff would be needed indefinitely to comply with the recordkeeping requirements of the proposed rule. (Ingersoll Rand, No. 0011 at p. 2) Jenny Products commented that the recordkeeping requirements are burdensome. (Jenny Products, No. 0020 at p. 5)

DOE understands that the recordkeeping requirements may vary between manufacturers, and that in some cases the recordkeeping burden may be greater than estimated. However, DOE has not received any data to support the claim that the average recordkeeping burden is greater than it estimated. Without data to support an update to its estimate, DOE cannot review that estimate. The burden discussed in this section relates only to the development and retention of test records and development and submission of certification paperwork; it does not address the burden of conducting the test procedure, itself, which is addressed elsewhere in this rule. Therefore, in this final rule DOE does not adjust the recordkeeping burden estimate in the test procedure NOPR.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes a new test procedure that it expects will be used to develop and implement future energy conservation standards for compressors. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this final rule creates a new test procedure without affecting the amount, quality or distribution of energy usage, and, therefore, does not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D, which applies to any rulemaking that creates a new rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for a waiver of Federal preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d) 6316(a)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it does not have a significant adverse

effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the NOPR must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The test procedures for compressors adopted in this final rule incorporate testing methods contained in certain sections of the following commercial standards: ISO 1217:2009(E), as amended through ISO 1217:2009(E)/Amd.1:2016.

While this test procedure is not exclusively based on this industry testing standard, some components of the DOE test procedure adopt definitions, test parameters, measurement techniques, and additional calculations from them without amendment. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference specific sections from a method of test published by the International Organization for Standardization (ISO), titled ''Displacement compressors—Acceptance tests,'' ISO 1217:2009(E). Specifically, the test procedure codified by this final rule references the following parts of ISO 1217:2009(E): Sections 2, 3, and 4; sections 5.2, 5.3, 5.4, 5.6, 5.9; paragraphs 6.2(g), and 6.2(h) including Table 1; sections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, C.4.3.2, C.4.4 of Annex C. The test procedure also references Amendment 1 to ISO 1217:2009(E) (ISO 1217:2009(E)/Amd.1:2016), titled ''Calculation of isentropic efficiency and relationship with specific energy.'' Specifically, the test procedure codified by this final rule references the following parts of Amendment 1 to ISO 1217:2009(E): Sections 3.5.1 and 3.6.1; sections H.2 and H.3 of Annex H.

Members of the compressors industry developed ISO 1217:2009(E), which contains methods for determining inlet and discharge pressures, actual volume flow rate, packaged compressor power input, and package isentropic efficiency for electrically driven packaged displacement compressors.

Copies of ISO 1217:2009(E) and of ISO 1217:2009(E)/Amd.1:2016 may be purchased from ISO at Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland +41 22 749 01 11, or by going to *www.iso.org.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, Small businesses.

10 CFR part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

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

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429 and 431 of chapter II, subchapter D of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. In § 429.2, revise paragraph (a) to read as follows:

§ 429.2 Definitions.

(a) The definitions found in §§ 430.2, 431.2, 431.62, 431.72, 431.82, 431.92, 431.102, 431.132, 431.152, 431.192, 431.202, 431.222, 431.242, 431.262, 431.282, 431.292, 431.302, 431.322, 431.342, 431.442, and 431.462 of this chapter apply for purposes of this part.

* * * * *

■ 3. Add § 429.63 to read as follows:

§ 429.63 Compressors.

(a) *Determination of represented value.* Manufacturers must determine the represented value, which includes the certified rating, for each basic model of compressor either by testing in conjunction with the applicable sampling provisions or by applying an AEDM.

(1) *Units to be tested.* (i) If the represented value is determined through testing, the general requirements of § 429.11 apply; and

(ii) For each basic model selected for testing, a sample of sufficient size must be randomly selected and tested to ensure that—

(A) *Measures of energy efficiency.* Any represented value of the full- or part-load package isentropic efficiency or other measure of energy efficiency of a basic model for which customers would favor higher values is less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the measured value for the i^{th} sample; or,

(*2*) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent one-tailed confidence interval with $n-1$ degrees of freedom (from appendix A of this subpart); and

(B) *Package specific power.* The representative value(s) of package specific power of a basic model must be the mean of the package specific power measurement(s) for each tested unit of the basic model.

(2) *Alternative efficiency determination methods.* In lieu of testing, any represented value of efficiency, consumption, or other non-energy metrics listed in paragraph (a)(3) of this section for a basic model may be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(i) Any represented values of package isentropic efficiency or other measure of energy consumption of a basic model for which customers would favor higher values must be less than or equal to the output of the AEDM; and

(ii) Any represented values of package specific power, pressure ratio at full-load operating pressure, full-load actual volume flow rate, or full-load operating pressure must be the output of the AEDM corresponding to the represented value of package isentropic efficiency determined in paragraph (a)(2)(i) of this section.

(3) *Representations of non-energy metrics*—(i) *Full-load actual volume flow rate.* The representative value of full-load actual volume flow rate of a basic model must be either—

(A) The mean of the full-load actual volume flow rate for the units in the sample; or

(B) As determined through the application of an AEDM pursuant to the requirements of § 429.70.

(ii) *Full-load operating pressure.* The representative value of full-load operating pressure of a basic model must be less than or equal to the maximum full-flow operating pressure and greater than or equal to the lesser of—

(A) 90 percent of the maximum full-flow operating pressure; or

(B) 10 psig less than the maximum full-flow operating pressure, where the maximum full-flow operating pressure must either be determined as the mean of the maximum full-flow operating pressure values for the units in the sample or through the application of an AEDM pursuant to the requirements of § 429.70.

(iii) *Pressure ratio at full-load operating pressure.* The representative value of pressure ratio at full-load operating pressure of a basic model must be either be determined as the mean of the pressure ratio at full-load operating pressure for the units in the sample or through the application of an AEDM pursuant to the requirements of § 429.70.

(b) [Reserved]

■ 4. Section 429.70 is amended by adding paragraph (h) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(h) *Alternative efficiency determination method (AEDM) for compressors*—(1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to a basic model to determine its efficiency pursuant to this section, unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the basic model as measured by the applicable DOE test procedure;

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(iii) The manufacturer has validated the AEDM, in accordance with paragraph (h)(2) of this section.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability as follows:

(i) *AEDM overview.* The manufacturer must select at least the minimum number of basic models for each validation class specified in paragraph (h)(2)(iv) of this section to which the particular AEDM applies. Using the AEDM, calculate the energy use or energy efficiency for each of the selected basic models. Test each basic model and determine the represented value(s) in accordance with § 429.63(a). Compare the results from the testing and the AEDM output according to paragraph (h)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and repeatability of the AEDM.

(ii) *AEDM basic model tolerances.* (A) The predicted representative values for each basic model calculated by applying the AEDM may not be more than five percent greater (for measures of efficiency) or less (for measures of consumption) than the represented values determined from the corresponding test of the model.

(B) The predicted package isentropic efficiency for each basic model calculated by applying the AEDM must meet or exceed the applicable federal energy conservation standard.

(iii) *Additional test unit requirements.* (A) Each AEDM must be supported by test data obtained from physical tests of current models; and

(B) Test results used to validate the AEDM must meet or exceed current, applicable Federal standards as specified in part 431 of this chapter; and

(C) Each test must have been performed in accordance with the applicable DOE test procedure with which compliance is required at the time the basic models used for validation are distributed in commerce.

(iv) *Compressor validation classes.*

Validation class	Minimum number of distinct basic models that must be tested
Rotary, Fixed-speed	2 Basic Models.
Rotary, Variable-speed	2 Basic Models.

(3) *AEDM Records Retention Requirements.* If a manufacturer has used an AEDM to determine representative values pursuant to this section, the manufacturer must have available upon request for inspection by the Department records showing:

(i) The AEDM, including the mathematical model, the engineering or statistical analysis, and/or computer simulation or modeling that is the basis of the AEDM;

(ii) Equipment information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to paragraph (h)(2) of this section; and

(iii) Equipment information and AEDM calculations for each basic model to which the AEDM was applied.

(4) *Additional AEDM requirements.* If requested by the Department, the manufacturer must:

(i) Conduct simulations before representatives of the Department to predict the performance of particular basic models of the equipment to which the AEDM was applied;

(ii) Provide analyses of previous simulations conducted by the manufacturer; and/or

(iii) Conduct certification testing of basic models selected by the Department.

■ 5. Section 429.134 is amended by adding paragraph (p) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(p) *Compressors*—(1) *Verification of full-load operating pressure.* (i) The maximum full-flow operating pressure of each tested unit of the basic model will be measured pursuant to the test requirements of appendix A to subpart T of part 431 of this chapter, where 90 percent of the value of full-load operating pressure certified by the manufacturer will be the starting point of the test method prior to increasing discharge pressure. The measured maximum full-flow operating pressure (either the single measured value for a single unit sample or the mean of the measured maximum full-flow operating pressures for a multiple unit sample) will be compared to the certified rating for full-load operating pressure to determine if the certified rating is valid or not. The certified rating for full-load operating pressure will be considered valid only if the certified rating for full-load operating pressure is less than or equal to the measured maximum full-flow operating pressure and greater than or equal to the lesser of—

(A) 90 percent of the measured maximum full-flow operating pressure; or

(B) 10 psig less than the measured maximum full-flow operating pressure.

(ii) If the certified full-load operating pressure is found to be valid, then the certified value will be used as the full-load operating pressure and will be the basis for determination of full-load actual volume flow rate, pressure ratio at full-load operating pressure, specific power, and package isentropic efficiency.

(iii) If the certified full-load operating pressure is found to be invalid, then the measured maximum full-flow operating pressure will be used as the full-load operating pressure and will be the basis for determination of full-load actual volume flow rate, pressure ratio at full-load operating pressure, specific power, and package isentropic efficiency.

(2) *Verification of full-load actual volume flow rate.* The measured full-load actual volume flow rate will be measured, pursuant to the test requirements of appendix A to subpart T of part 431 of this chapter, at the full-load operating pressure determined in paragraph (p)(1) of this section. The certified full-load actual volume flow rate will be considered valid only if the measurement(s) (either the measured full-load actual volume flow rate for a single unit sample or the mean of the measured values for a multiple unit sample) are within the percentage of the certified full-load actual volume flow rate specified in Table 1 of this section:

TABLE 1 OF § 429.134—ALLOWABLE PERCENTAGE DEVIATION FROM THE CERTIFIED FULL-LOAD ACTUAL VOLUME FLOW RATE

Manufacturer certified full-load actual volume flow rate (m^3/s) × 10^{-3}	Allowable percent of the certified full-load actual volume flow rate (%)
0 < and ≤ 8.3	±7
8.3 < and ≤ 25	±6
25 < and ≤ 250	±5
> 250	±4

(i) If the certified value of full-load actual volume flow rate is found to be valid, the full-load actual volume flow rate certified by the manufacturer will be used as the basis for determination of the applicable standard.

(ii) If the certified value of full-load actual volume flow rate is found to be invalid, the entire sample (one or multiple units) will be considered as failing the enforcement test.

(3) *Ancillary equipment.* Prior to testing each compressor, DOE will install any required ancillary equipment specified by the manufacturer in the certification report submitted pursuant to § 429.63(b).

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 6. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 7. Section 431.342 is revised to read as follows:

§ 431.342 Definitions concerning compressors.

The following definitions are applicable to this subpart, including appendix A. In cases where there is a conflict, the language of the definitions adopted in this section take precedence over any descriptions or definitions found in any other source, including in ISO Standard 1217:2009(E), ''Displacement compressors—Acceptance tests,'' as amended through Amendment 1:2016(E), ''Calculation of isentropic efficiency and relationship with specific energy'' (incorporated by reference, see § 431.343). In cases where definitions reference design intent, DOE will consider all relevant information, including marketing materials, labels and certifications, and equipment design, to determine design intent.

Actual volume flow rate means the volume flow rate of air, compressed and delivered at the standard discharge point, referred to conditions of total temperature, total pressure and composition prevailing at the standard inlet point, and as determined in accordance with the test procedures prescribed in § 431.344.

Air compressor means a compressor designed to compress air that has an inlet open to the atmosphere or other source of air, and is made up of a compression element (bare compressor), driver(s), mechanical equipment to drive the compressor element, and any ancillary equipment.

Ancillary equipment means any equipment distributed in commerce with an air compressor but that is not a bare compressor, driver, or mechanical equipment. Ancillary equipment is considered to be part of a given air compressor, regardless of whether the ancillary equipment is physically attached to the bare compressor, driver, or mechanical equipment at the time when the air compressor is distributed in commerce.

Auxiliary substance means any substance deliberately introduced into a compression process to aid in compression of a gas by any of the following: Lubricating, sealing mechanical clearances, or absorbing heat.

Bare compressor means the compression element and auxiliary devices (*e.g.,* inlet and outlet valves, seals, lubrication system, and gas flow paths) required for performing the gas compression process, but does not include any of the following:

(1) The driver;

(2) Speed-adjusting gear(s);

(3) Gas processing apparatuses and piping; and

(4) Compressor equipment packaging and mounting facilities and enclosures.

Basic model means all units of a class of compressors manufactured by one manufacturer, having the same primary energy source, the same compressor motor nominal horsepower, and essentially identical electrical, physical, and functional (or pneumatic) characteristics that affect energy consumption and energy efficiency.

Brushless electric motor means a machine that converts electrical power into rotational mechanical power without use of sliding electrical contacts.

Compressor means a machine or apparatus that converts different types

of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher pressure values above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3.

Compressor motor nominal horsepower means the motor horsepower of the electric motor, as determined in accordance with the applicable procedures in subparts B and X of this part, with which the rated air compressor is distributed in commerce.

Driver means the machine providing mechanical input to drive a bare compressor directly or through the use of mechanical equipment.

Fixed-speed compressor means an air compressor that is not capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor flow rate.

Full-load actual volume flow rate means the actual volume flow rate of the compressor at the full-load operating pressure.

Lubricant-free compressor means a compressor that does not introduce any auxiliary substance into the compression chamber at any time during operation.

Lubricated compressor means a compressor that introduces an auxiliary substance into the compression chamber during compression.

Maximum full-flow operating pressure means the maximum discharge pressure at which the compressor is capable of operating, as determined in accordance with the test procedure prescribed in § 431.344.

Mechanical equipment means any component of an air compressor that transfers energy from the driver to the bare compressor.

Package isentropic efficiency means the ratio of power required for an ideal isentropic compression process to the actual packaged compressor power input used at a given load point, as determined in accordance with the test procedures prescribed in § 431.344.

Package specific power means the compressor power input at a given load point, divided by the actual volume flow rate at the same load point, as determined in accordance with the test procedures prescribed in § 431.344.

Positive displacement compressor means a compressor in which the admission and diminution of successive volumes of the gaseous medium are performed periodically by forced expansion and diminution of a closed space(s) in a working chamber(s) by means of displacement of a moving member(s) or by displacement and forced discharge of the gaseous medium into the high-pressure area.

Pressure ratio at full-load operating pressure means the ratio of discharge pressure to inlet pressure, determined at full-load operating pressure in accordance with the test procedures prescribed in § 431.344.

Reciprocating compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes are performed cyclically by straight-line alternating movements of a moving member(s) in a compression chamber(s).

Rotary compressor means a positive displacement compressor in which gas admission and diminution of its successive volumes or its forced discharge are performed cyclically by rotation of one or several rotors in a compressor casing.

Rotor means a compression element that rotates continually in a single direction about a single shaft or axis.

Variable-speed compressor means an air compressor that is capable of adjusting the speed of the driver continuously over the driver operating speed range in response to incremental changes in the required compressor actual volume flow rate.

■ 8. Add §§ 431.343 through 431.346 and appendix A to subpart T to read as follows:

Sec.

431.343 Materials incorporated by reference.
431.344 Test procedure for measuring and determining energy efficiency of compressors.
431.345 [Reserved]
431.346 [Reserved]

Appendix A to Subpart T of Part 431—Uniform Test Method for Certain Air Compressors

§ 431.343 Materials incorporated by reference.

(a) *General.* DOE incorporates by reference the following standards into part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 6 U.S.C. 522(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available from the sources below. It is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–6636, or go to *http://www1.eere.energy.gov/buildings/appliance_standards/.* Also, this material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) *ISO.* International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland +41 22 749 01 11, *www.iso.org.*

(1) ISO Standard 1217:2009(E), (''ISO 1217:2009(E)''), ''Displacement compressors—Acceptance tests,'' July 1, 2009, IBR approved for appendix A to this subpart:

(i) Section 2. Normative references;

(ii) Section 3. Terms and definitions;

(iii) Section 4. Symbols;

(iv) Section 5. Measuring equipment, methods and accuracy (excluding 5.1, 5.5, 5.7, and 5.8);

(v) Section 6. Test procedures, introductory text to Section 6.2, Test arrangements, and paragraphs 6.2(g) and 6.2(h) including Table 1—Maximum deviations from specified values and fluctuations from average readings;

(vi) Annex C (normative), Simplified acceptance test for electrically driven packaged displacement compressors (excluding C.1.2, C.2.1, C.3, C.4.2.2, C.4.3.1, and C.4.5).

(2) ISO 1217:2009/Amd.1:2016(E), Displacement compressors—Acceptance tests (Fourth edition); Amendment 1: ''Calculation of isentropic efficiency and relationship with specific energy,'' April 15, 2016, IBR approved for appendix A to this subpart:

(i) Section 3.5.1: isentropic power;

(ii) Section 3.6.1: isentropic efficiency;

(iii) Annex H (informative), Isentropic efficiency and its relation to specific energy requirement, sections H.2, Symbols and subscripts, and H.3, Derivation of isentropic power.

§ 431.344 Test procedure for measuring and determining energy efficiency of compressors.

(a) *Scope.* This section is a test procedure that is applicable to a compressor that meets the following criteria:

(1) Is an air compressor;

(2) Is a rotary compressor;

(3) Is not a liquid ring compressor;

(4) Is driven by a brushless electric motor;

(5) Is a lubricated compressor;

(6) Has a full-load operating pressure greater than or equal to 75 pounds per square inch gauge (psig) and less than or equal to 200 psig;

(7) Is not designed and tested to the requirements of the American Petroleum Institute Standard 619, ''Rotary-Type Positive-Displacement Compressors for Petroleum, Petrochemical, and Natural Gas Industries;''

(8) Has full-load actual volume flow rate greater than or equal to 35 cubic feet per minute (cfm), or is distributed in commerce with a compressor motor nominal horsepower greater than or equal to 10 horsepower (hp); and

(9) Has a full-load actual volume flow rate less than or equal to 1,250 cfm, or is distributed in commerce with a compressor motor nominal horsepower less than or equal to 200 hp.

(b) *Testing and calculations.* Determine the applicable full-load package isentropic efficiency ($\eta_{isen,FL}$), part-load package isentropic efficiency ($\eta_{isen,PL}$), package specific power, maximum full-flow operating pressure, full-load operating pressure, full-load actual volume flow rate, and pressure ratio at full-load operating pressure using the test procedure set forth in appendix A of this subpart.

§ 431.345 [Reserved]

§ 431.346 [Reserved]

Appendix A to Subpart T of Part 431—Uniform Test Method for Certain Air Compressors

Note: Starting on July 3, 2017, any representations made with respect to the energy use or efficiency of compressors subject to testing pursuant to 10 CFR 431.344 must be made in accordance with the results of testing pursuant to this appendix.

I. Measurements, Test Conditions, and Equipment Configuration

A. Measurement Equipment

A.1. For the purposes of measuring air compressor performance, the equipment necessary to measure volume flow rate, inlet and discharge pressure, temperature, condensate, and packaged compressor power input must comply with the equipment and accuracy requirements specified in ISO 1217:2009(E) sections 5.2, 5.3, 5.4, 5.6, 5.9, and Annex C, sections C.2.3 and C.2.4 (incorporated by reference, see § 431.343).

A.2. Electrical measurement equipment must be capable of measuring true root mean square (RMS) current, true RMS voltage, and real power up to the 40th harmonic of fundamental supply source frequency.

A.3. Any instruments used to measure a particular parameter specified in paragraph (A.1.) must have a combined accuracy of ±2.0 percent of the measured value at the fundamental supply source frequency, where combined accuracy is the square root of the sum of the squares of individual instrument accuracies.

A.4. Any instruments used to directly measure the density of air must have an accuracy of ±1.0 percent of the measured value.

A.5. Any pressure measurement equipment used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.2 of ISO 1217:2009(E) (incorporated by reference, see § 431.343).

A.6. Any temperature measurement equipment used in a calculation of another variable (*e.g.,* actual volume flow rate) must also meet all accuracy and measurement requirements of section 5.3 of ISO 1217:2009(E) (incorporated by reference, see § 431.343).

A.7. Where ISO 1217:2009(E) refers to ''corrected volume flow rate,'' the term is deemed synonymous with the term ''actual volume flow rate,'' as defined in section 3.4.1 of ISO 1217:2009(E) (incorporated by reference, see § 431.343).

B. Test Conditions and Configuration of Unit Under Test

B.1. For both fixed-speed and variable-speed compressors, conduct testing in accordance with the test conditions, unit configuration, and specifications of ISO 1217:2009(E), Section 6.2 paragraphs (g) and (h) and Annex C, sections C.1.1, C.2.2, C.2.3, C.2.4, C.4.1, C.4.2.1, C.4.2.3, and C.4.3.2 (incorporated by reference, see § 431.343).

B.2. The power supply must:

(1) Maintain the voltage greater than or equal to 95 percent and less than or equal to 110 percent of the rated value of the motor,

(2) Maintain the frequency within ±5 percent of the rated value of the motor,

(3) Maintain the voltage unbalance of the power supply within ±3 percent of the rated values of the motor, and

(4) Maintain total harmonic distortion below 12 percent throughout the test.

B.3. Ambient Conditions. The ambient air temperature must be greater than or equal to 68 °F and less than or equal to 90 °F for the duration of testing. There are no ambient condition requirements for inlet pressure or relative humidity.

B.4. All equipment indicated in Table 1 of this appendix must be present and installed for all tests specified in this appendix. If the compressor is distributed in commerce without an item from Table 1 of this appendix, the manufacturer must provide an appropriate item to be installed for the test. Additional ancillary equipment may be installed for the test, if distributed in commerce with the compressor, but this additional ancillary equipment is not required. If any of the equipment listed in Table 2 of this appendix is distributed in commerce with units of the compressor basic model, it must be present and installed for all tests specified in this appendix.

TABLE 1—EQUIPMENT REQUIRED DURING TEST

Equipment	Fixed-speed rotary air compressors	Variable-speed rotary air compressors
Driver	Yes	Yes.
Bare compressors	Yes	Yes.
Inlet filter	Yes	Yes.
Inlet valve	Yes	Yes.
Minimum pressure check valve/backflow check valve	Yes	Yes.
Lubricant separator	Yes	Yes.
Air piping	Yes	Yes.
Lubricant piping	Yes	Yes.
Lubricant filter	Yes	Yes.
Lubricant cooler	Yes	Yes.
Thermostatic valve	Yes	Yes.
Electrical switchgear or frequency converter for the driver	Yes	Not applicable.[1]
Device to control the speed of the driver (e.g., variable speed drive)	Not applicable[2]	Yes.
Compressed air cooler(s)	Yes	Yes.
Pressure switch, pressure transducer, or similar pressure control device	Yes	Yes.
Moisture separator and drain	Yes	Yes.

[1] This category is not applicable to variable-speed rotary air compressors.

[2] This category is not applicable to fixed-speed rotary air compressors.

TABLE 2—EQUIPMENT REQUIRED DURING TEST, IF DISTRIBUTED IN COMMERCE WITH THE BASIC MODEL

Equipment	Fixed-speed rotary air compressors	Variable-speed rotary air compressors
Cooling fan(s) and motors	Yes	Yes.
Mechanical equipment	Yes	Yes.
Lubricant pump	Yes	Yes.
Interstage cooler	Yes	Yes.
Electronic or electrical controls and user interface	Yes	Yes.
All protective and safety devices	Yes	Yes.

B.5. The inlet of the compressor under test must be open to the atmosphere and take in ambient air for all tests specified in this appendix.

B.6. The compressor under test must be set up according to all manufacturer instructions for normal operation (*e.g.,* verify lubricant level, connect all loose electrical connections, close off bottom of unit to floor, cover forklift holes).

B.7. The piping connected to the discharge orifice of the compressor must be of a diameter at least equal to that of the compressor discharge orifice to which it is connected. The piping must be straight with a length of at least 6 inches.

B.8. Transducers used to record compressor discharge pressure must be located on the discharge piping between 2 inches and 6 inches, inclusive, from the discharge orifice of the compressor. The pressure tap for transducers must be located at the highest point of the pipe's cross section.

II. Determination of Package Isentropic Efficiency, Package Specific Power, and Pressure Ratio at Full-Load Operating Pressure

A. Data Collection and Analysis

A.1. Stabilization. Record data at each load point under steady-state conditions. Steady-state conditions are achieved when a set of two consecutive readings taken at least 10 seconds apart and no more than 60 seconds apart are within the maximum permissible fluctuation from the average (of the two consecutive readings), as specified in Table 1 of ISO 1217:2009(E) (incorporated by reference, see § 431.343) for—

(1) Discharge pressure;

(2) Temperature at the nozzle or orifice plate, measured per section 5.3 of ISO 1217:2009(E) (incorporated by reference, see § 431.343); and

(3) Differential pressure over the nozzle or orifice plate, measured per section 5.2 of ISO 1217:2009(E) (incorporated by reference, see § 431.343).

A.2. Data Sampling and Frequency. At each load point, record a minimum set of 16 unique readings, collected over a minimum time of 15 minutes. Each consecutive reading must be no more than 60 seconds apart, and not less than 10 seconds apart. All readings at each load point must be within the maximum permissible fluctuation from average specified in Table 1 of ISO 1217:2009(E) (incorporated by reference, see § 431.343) for—

(1) Discharge pressure;

(2) Temperature at the nozzle or orifice plate, measured per section 5.3 of ISO 1217:2009(E) (incorporated by reference, see § 431.343); and

(3) Differential pressure over the nozzle or orifice plate, measured per section 5.2 of ISO 1217:2009(E) (incorporated by reference, see § 431.343).

If one or more readings do not meet the requirements, then all previous readings must be disregarded and a new set of at least 16 new unique readings must be collected over a minimum time of 15 minutes. Average the readings to determine the value of each parameter to be used in subsequent calculations.

A.3. Calculations and Rounding. Perform all calculations using raw measured values. Round the final result for package isentropic efficiency to the thousandth (*i.e.,* 0.001), for package specific power in kilowatts per 100 cubic feet per minute to the nearest hundredth (*i.e.,* 0.01), for pressure ratio at full-load operating pressure to the nearest tenth (*i.e.,* 0.1), for full-load actual volume flow rate in cubic feet per minute to the nearest tenth (*i.e.,* 0.1), and for full-load operating pressure in pounds per square inch gauge (psig) to the nearest integer (*i.e.,* 1). All terms and quantities refer to values determined in accordance with the procedures set forth in this appendix for the tested unit.

B. Full-Load Operating Pressure and Full-Load Actual Volume Flow Rate

Determine the full-load operating pressure and full-load actual volume flow rate (referenced throughout this appendix) in accordance with the procedures prescribed in section III of this appendix.

C. Full-Load Package Isentropic Efficiency for Fixed- and Variable-Speed Air Compressors

Use this test method to test fixed-speed air compressors and variable-speed air compressors.

C.1. Test unit at full-load operating pressure and full-load volume flow rate according to the requirements established in sections I, II.A, and II.B of this appendix. Measure volume flow rate and calculate actual volume flow rate in accordance with section C.4.2.1 of Annex C of ISO 1217:2009(E) (incorporated by reference, see § 431.343) with no corrections made for shaft speed. Measure discharge gauge pressure and packaged compressor power input. Measured discharge gauge pressure and calculated actual volume flow rate must be within the deviation limits for discharge pressure and volume flow rate specified in Tables C.1 and C.2 of Annex C of ISO 1217:2009(E) (incorporated by reference, see § 431.343), where full-load operating pressure and full-load actual volume flow rate (as determined in section III of this appendix) are the targeted values.

C.2. Calculate the package isentropic efficiency at full-load operating pressure and full-load actual volume flow rate (full-load package isentropic efficiency, $\eta_{isen,FL}$) using the equation for isentropic efficiency in section 3.6.1 of ISO 1217:2009(E) as modified by ISO 1217:2009/Amd.1:2016(E) (incorporated by reference, see § 431.343). For P_{isen}, use the isentropic power required for compression at full-load operating pressure and full-load actual volume flow rate, as determined in section II.C.2.1 of this appendix. For P_{real}, use the real packaged compressor power input at full-load operating pressure and full-load actual volume flow rate, as determined in section II.C.2.2 of this appendix.

C.2.1. Calculate the isentropic power required for compression at full-load operating pressure and full-load actual volume flow rate using equation (H.6) of Annex H of ISO 1217:2009/Amd.1:2016(E) (incorporated by reference, see § 431.343). For q_{v1}, use the actual volume flow rate (cubic meters per second) calculated in section II.C.1 of this appendix. For p_1, use 100 kPa. For p_2, use the sum of (a) 100 kPa, and (b) the measured discharge gauge pressure (Pa) from section II.C.1 of this appendix. For *K,* use the isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.

C.2.2. Calculate real packaged compressor power input at full-load operating pressure and full-load actual volume flow rate using the following equation:

$$P_{real,100\%} = K_5 \cdot P_{PR,100\%}$$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E) (incorporated by reference, see § 431.343). For calculations of this variable use a value of 100 kPa for contractual inlet pressure; and

$P_{PR,100\%}$ = packaged compressor power input reading at full-load operating pressure and full-load actual volume flow rate measured in section II.C.1 of this appendix (W).

D. Part-Load Package Isentropic Efficiency for Variable-Speed Air Compressors

Use this test method to test variable-speed air compressors.

D.1. Test unit at two load points: (1) Full-load operating pressure and 70 percent of full-load actual volume flow rate and (2) full-load operating pressure and 40 percent of full-load actual volume flow rate, according to the requirements established in sections I, II.A, and II.B of this appendix. To reach each specified load point, adjust the speed of the driver and the backpressure of the system. For each load point, measure volume flow rate and calculate actual volume flow rate in accordance with section C.4.2.1 of Annex C of ISO 1217:2009(E) (incorporated by reference, see § 431.343), with no corrections made for shaft speed. For each load point, measure discharge gauge pressure and packaged compressor power input. Measured discharge gauge pressure and calculated actual volume flow rate must be within the deviation limits for discharge pressure and volume flow rate specified in Tables C.1 and C.2 of Annex C of ISO 1217:2009(E), where the targeted values are as specified in the beginning of this section.

D.2. For variable-speed compressors, calculate the part-load package isentropic efficiency using the following equation:

$$\eta_{isen,PL} = \omega_{40\%} \times \eta_{isen,40\%} + \omega_{70\%} \times \eta_{isen,70\%} + \omega_{100\%} \times \eta_{isen,100\%}$$

Where:

$\eta_{isen,PL}$ = part-load package isentropic efficiency for a variable-speed compressor;

$\eta_{isen,100\%}$ = package isentropic efficiency at full-load operating pressure and 100 percent of full-load actual volume flow rate, as determined in section II.C.2 of this appendix;

$\eta_{isen,70\%}$ = package isentropic efficiency at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section II.D.3 of this appendix;

$\eta_{isen,40\%}$ = package isentropic efficiency at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section II.D.4 of this appendix;

$\omega_{40\%}$ = weighting at 40 percent of full-load actual volume flow rate and is 0.25;

$\omega_{70\%}$ = weighting at 70 percent of full-load actual volume flow rate and is 0.50; and

$\omega_{100\%}$ = weighting at 100 percent of full-load actual volume flow rate and is 0.25.

D.3. Calculate package isentropic efficiency at full-load operating pressure and 70 percent of full-load actual volume flow rate using the equation for isentropic efficiency in section 3.6.1 of ISO 1217:2009(E) as modified by ISO 1217:2009/Amd.1:2016(E) (incorporated by reference, see § 431.343). For P_{isen}, use the isentropic power required for compression at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section II.D.3.1 of this appendix. For P_{real}, use the real packaged compressor power input at full-load operating pressure and 70 percent of full-load actual volume flow rate, as determined in section II.D.3.2 of this appendix.

D.3.1. Calculate the isentropic power required for compression at full-load operating pressure and 70 percent of full-load actual volume flow rate using equation (H.6) of Annex H of ISO 1217:2009/Amd.1:2016(E) (incorporated by reference, see § 431.343). For q_{V1}, use actual volume flow rate (cubic meters per second) at full-load operating pressure and 70 percent of full-load actual volume flow rate, as calculated in section II.D.1 of this appendix. For p_1, use 100 kPa. For p_2, use the sum of (a) 100 kPa, and (b) discharge gauge pressure (Pa) at full-load operating pressure and 70 percent of full-load actual volume flow rate, as calculated in section II.D.1 of this appendix. For *K,* use the isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.

D.3.2. Calculate real packaged compressor power input at full-load operating pressure and 70 percent of full-load actual volume flow rate using the following equation:

$$P_{real,70\%} = K_5 \cdot P_{PR,70\%}$$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E) (incorporated by reference, see § 431.343). For calculations of this variable use a value of 100 kPa for contractual inlet pressure; and

$P_{PR,70\%}$ = packaged compressor power input reading at full-load operating pressure and 70 percent of full-load actual volume flow rate, as measured in section II.D.1 of this appendix (W).

D.4. Calculate package isentropic efficiency at full-load operating pressure and 40 percent of full-load actual volume flow rate using the equation for isentropic efficiency in section 3.6.1 of ISO 1217:2009(E) as modified by ISO 1217:2009/Amd.1:2016(E) (incorporated by reference, see § 431.343). For $P_{isen,}$ use the isentropic power required for compression at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section II.D.4.1 of this appendix. For $P_{real,}$ use the real packaged compressor power input at full-load operating pressure and 40 percent of full-load actual volume flow rate, as determined in section II.D.4.2 of this appendix.

D.4.1. Calculate the isentropic power required for compression at full-load operating pressure and 40 percent of full-load actual volume flow rate using equation (H.6) of Annex H of ISO 1217:2009/Amd.1:2016(E) (incorporated by reference, see § 431.343). For q_{V1}, use actual volume flow rate (cubic meters per second) at full-load operating pressure and 40 percent of full-load actual volume flow rate, as calculated in section II.D.1 of this appendix. For p_1, use 100 kPa. For p_2, use the sum of (a) 100 kPa, and (b) discharge gauge pressure (Pa) at full-load operating pressure and 40 percent of full-load actual volume flow rate, as calculated in section II.D.1 of this appendix. For *K,* use the isentropic exponent (ratio of specific heats) of air, which, for the purposes of this test procedure, is 1.400.

D.4.2. Calculate real packaged compressor power input at full-load operating pressure and 40 percent of full-load actual volume flow rate using the following equation:

$$P_{real,40\%} = K_5 \cdot P_{PR,40\%}$$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E) (incorporated by reference, see § 431.343). For calculations of this variable use a value of 100 kPa for contractual inlet pressure; and

$P_{PR,40\%}$ = packaged compressor power input reading at full-load operating pressure and 40 percent of full-load actual volume flow rate, as measured in section II.D.1 of this appendix (W).

E. Determination of Package Specific Power

For both fixed and variable-speed air compressors, determine the package specific power, at any load point, using the equation for specific energy consumption in section C.4.4 of Annex C of ISO 1217:2009(E) (incorporated by reference, see § 431.343) and other values measured pursuant to this appendix, with no correction for shaft speed. Calculate P_{Pcorr} in section C.4.4 of Annex C of ISO 1217:2009(E) (incorporated by reference, see § 431.343) using the following equation:

$$P_{Pcorr} = K_5 \cdot P_{PR}$$

Where:

K_5 = correction factor for inlet pressure, as determined in section C.4.3.2 of Annex C to ISO 1217:2009(E) (incorporated by reference, see § 431.343). For calculations of this variable use a value of 100 kPa for contractual inlet pressure; and

P_{PR} = packaged compressor power input reading (W), as determined in section C.2.4 of Annex C to ISO 1217:2009(E) (incorporated by reference, see § 431.343).

F. Determination of Pressure Ratio at Full-Load Operating Pressure

Pressure ratio at full-load operating pressure, as defined in § 431.342, is calculated using the following equation:

Where:

PR = pressure ratio at full-load operating pressure;

p_1 = 100 kPa; and

p_{FL} = full-load operating pressure, determined in section III.C.4 of this appendix (Pa gauge).

III. Method to Determine Maximum Full-Flow Operating Pressure, Full-Load Operating Pressure, and Full-Load Actual Volume Flow Rate

A. Principal Strategy

The principal strategy of this method is to incrementally increase discharge pressure by 2 psig relative to a starting point, and identify the maximum full-flow operating pressure at which the compressor is capable of operating. The maximum discharge pressure achieved is the maximum full-flow operating pressure. The full-load operating pressure and full-load actual volume flow rate are determined based on the maximum full-flow operating pressure.

B. Pre-test Instructions

B.1. Safety

For the method presented in section III.C.1 of this appendix, only test discharge pressure within the safe operating range of the compressor, as specified by the manufacturer in the installation and operation manual shipped with the unit. Make no changes to safety limits or equipment. Do not violate any manufacturer-provided motor operational guidelines for normal use, including any restriction on instantaneous and continuous input power draw and output shaft power (*e.g.,* electrical rating and service factor limits).

B.2. Adjustment of Discharge Pressure

B.2.1. If the air compressor is not equipped, as distributed in commerce by the manufacturer, with any mechanism to adjust the maximum discharge pressure output limit, proceed to section III.B.3 of this appendix.

B.2.2. If the air compressor is equipped, as distributed in commerce by the manufacturer, with any mechanism to adjust the maximum discharge pressure output limit, then adjust this mechanism to the maximum pressure allowed, according to the manufacturer's operating instructions for these mechanisms. Mechanisms to adjust discharge pressure may include, but are not limited to, onboard digital or analog controls, and user-adjustable inlet valves.

B.3. Driver speed

If the unit under test is a variable-speed compressor, maintain maximum driver speed throughout the test. If the unit under test is a fixed-speed compressor with a multi-speed driver, maintain driver speed at the maximum speed throughout the test.

B.4. Measurements and Tolerances

B.4.1. Recording

Record data by electronic means such that the requirements of section B.4.5 of section III of this appendix are met.

B.4.2. Discharge Pressure

Measure discharge pressure in accordance with section 5.2 of ISO 1217:2009(E) (incorporated by reference, see § 431.343). Express compressor discharge pressure in psig in reference to ambient conditions, and record it to the nearest integer. Specify targeted discharge pressure points in integer values only. The maximum allowable measured deviation from the targeted discharge pressure at each tested point is ±1 psig.

B.4.3. Actual Volume Flow Rate

Measure actual volume flow rate in accordance with section C.4.2.1 of Annex C of ISO 1217:2009(E) (incorporated by reference, see § 431.343) (where it is called ''corrected volume flow rate'') with no corrections made for shaft speed. Express compressor actual volume flow rate in cubic feet per minute at inlet conditions (cfm).

B.4.4. Stabilization

Record data at each tested load point under steady-state conditions, as determined in section II.A.1 of this appendix.

B.4.5. Data Sampling and Frequency

At each load point, record a set of at least of two readings, collected at a minimum of 10 seconds apart. All readings at each load point must be within the maximum permissible fluctuation from the average (of the two consecutive readings), as specified in II.A.2 of this appendix. Average the measurements to determine the value of each parameter to be used in subsequent calculations.

B.5. Adjusting System Backpressure

Set up the unit under test so that backpressure on the unit can be adjusted (*e.g.,* by valves) incrementally, causing the measured discharge pressure to change, until the compressor is in an unloaded condition.

B.6. Unloaded Condition

A unit is considered to be in an unloaded condition if capacity controls on the unit automatically reduce the actual volume flow rate from the compressor (*e.g.,* shutting the motor off, or unloading by adjusting valves).

C. Test Instructions

C.1. Adjust the backpressure of the system so the measured discharge pressure is 90 percent of the expected maximum full-flow operating pressure, rounded to the nearest integer, in psig. If the expected maximum full-flow operating pressure is not known, then adjust the backpressure of the system so that the measured discharge pressure is 65 psig. Allow the unit to remain at this setting for 15 minutes to allow the unit to thermally stabilize. Then measure and record discharge pressure and actual volume flow rate at the starting pressure.

C.2. Adjust the backpressure of the system to increase the discharge pressure by 2 psig from the previous value, allow the unit to remain at this setting for a minimum of 2 minutes, and proceed to section III.C.3 of this appendix.

C.3. If the unit is now in an unloaded condition, end the test and proceed to section III.C.4 of this appendix. If the unit is not in an unloaded condition, measure discharge pressure and actual volume flow rate, and repeat section III.C.2 of this appendix.

C.4. Of the discharge pressures recorded under stabilized conditions in sections III.C.1 through III.C.3 of this appendix, identify the largest. This is the maximum full-flow operating pressure. Determine the full-load operating pressure as a self-declared value greater than or equal to the lesser of (A) 90 percent of the maximum full-flow operating pressure, or (B) 10 psig less than the maximum full-flow operating pressure.

C.5. The full-load actual volume flow rate is the actual volume flow rate measured at the full-load operating pressure. If the self-declared full-load operating pressure falls on a previously tested value of discharge pressure, then use the previously measured actual volume flow rate as the full-load actual volume flow rate. If the self-declared full-load operating pressure does not fall on a previously tested value of discharge pressure, then adjust the backpressure of the system to the self-declared full-load operating pressure and allow the unit to remain at this setting for a minimum of 2 minutes. The measured actual volume flow rate at this setting is the full-load actual volume flow rate.

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Part V

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 18, 19, 24, et al.
Changes to Certain Alcohol-Related Regulations Governing Bond Requirements and Tax Return Filing Periods; Temporary Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 18, 19, 24, 25, 26, 27, 28, and 30

[Docket No. TTB–2016–0013; T.D. TTB–146; Re: Notice No. 167]

RIN 1513–AC30

Changes to Certain Alcohol-Related Regulations Governing Bond Requirements and Tax Return Filing Periods

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary rule; Treasury decision; cross reference to notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is amending its regulations relating to alcohol excise taxes to implement certain changes made to the Internal Revenue Code of 1986 (IRC) by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). This rulemaking implements section 332 of the PATH Act, which amends the IRC to change tax return due dates and remove bond requirements for certain eligible taxpayers. Section 332 authorizes a new annual return period for taxpayers paying taxes imposed with respect to distilled spirits, wines, and beer on a deferred basis who reasonably expect to be liable for not more than $1,000 in such taxes imposed for the calendar year and who are liable for not more than $1,000 in such taxes in the preceding calendar year. Section 332 also removes bond requirements for taxpayers who are eligible to pay excise taxes on distilled spirits, wines, and beer using quarterly or annual return periods and who pay those taxes on a deferred basis. Under section 332, such taxpayers are exempt from bond requirements with respect to distilled spirits and wine only to the extent those products are for nonindustrial use. TTB is soliciting comments from all interested parties on these amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

DATES: This rule is effective January 4, 2017.

FOR FURTHER INFORMATION CONTACT: Ben Birkhill, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–2265.

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I. The PATH Act

On December 18, 2015, the President signed into law the Consolidated Appropriations Act, 2016 (Public Law 114–113). Division Q of this Act is titled the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). Section 332 of the PATH Act amends the Internal Revenue Code of 1986 (IRC) to change tax return due dates and remove bond requirements for certain eligible taxpayers. These PATH Act amendments apply beginning January 1, 2017, to certain taxpayers who reasonably expect to be liable for not more than $50,000 in taxes imposed with respect to distilled spirits, wines, and beer for the calendar year and who were not liable for more than $50,000 in such taxes in the preceding calendar year.

Section 332 of the PATH Act amends the IRC to authorize a new annual tax return period in addition to the semimonthly and quarterly tax return periods that were authorized for excise taxpayers under the IRC prior to the enactment of the PATH Act. Under the PATH Act, taxpayers must pay taxes imposed with respect to distilled spirits, wines, and beer on a deferred basis using semimonthly periods unless they meet the tax liability limits for the use of annual or quarterly deferred payment periods. As discussed further below, deferred payment of tax refers to payment using one of the three return periods prescribed under the IRC rather than payment each time the tax becomes due. To use the new annual deferred payment period, the taxpayer must reasonably expect to be liable for not more than $1,000 in excise taxes imposed with respect to distilled spirits, wines, and beer for the calendar year and must be liable for not more than $1,000 in such taxes in the preceding calendar year. To use quarterly deferred payment periods, the taxpayer must reasonably expect to be liable for not more than $50,000 in such taxes imposed for the calendar year and must be liable for not more than $50,000 in such taxes in the preceding calendar year.

Section 332 also amends several provisions of the IRC to remove bond requirements for certain eligible taxpayers. To be exempt from bond requirements, taxpayers must be eligible to pay excise taxes imposed with respect to distilled spirits, wines, and beer using quarterly or annual return periods and must pay such taxes on a deferred basis. In addition, taxpayers are exempt from bond requirements with respect to distilled spirits and wine only to the extent those products are for nonindustrial use. These amendments are discussed further below.

II. TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers provisions in chapter 51 of the IRC pertaining to the taxation of distilled spirits, wines, and beer (see title 26 of the United States Code (U.S.C.), chapter 51 (26 U.S.C. chapter 51)). Sections 5001, 5041, and 5051 of the IRC (26 U.S.C. 5001, 5041, and 5051) impose tax on distilled spirits, wines, and beer produced in or imported into the United States. Generally, such taxes are determined (*i.e.,* become due for payment) when they are removed from qualified facilities in the United States

or imported as provided in sections 5006, 5043, and 5054 of the IRC (26 U.S.C. 5006, 5043, and 5054). In addition, section 7652 of the IRC (26 U.S.C. 7652) imposes tax upon distilled spirits, wines, and beer coming into the United States from Puerto Rico and the U.S. Virgin Islands under certain circumstances. The tax imposed on products under section 7652 is equal to the internal revenue tax imposed in the United States upon like articles of domestic manufacture.

A. Provisions Governing Tax Payment

Section 5061 of the IRC (26 U.S.C. 5061) governs the collection of excise tax on distilled spirits, wines, and beer. Section 5061(a) states that such taxes shall be collected on the basis of a return and gives the Secretary of the Treasury (the Secretary) the authority to prescribe regulations relating to such returns. Section 5061(d) prescribes the time periods and due dates for paying such taxes by return on a deferred basis. Section 5061(d)(1) provides that the last day for payment of such taxes shall be the 14th day after the last day of the semimonthly period during which the product is withdrawn for deferred payment of tax from certain qualified facilities in the United States. Sections 5061(d)(2) and 5061(d)(3) prescribe similar semimonthly periods and due dates for imported distilled spirits, wines, and beer and for such products brought into the United States from Puerto Rico.

TTB collects excise tax paid under section 5061(d)(1) and 5061(d)(3), which govern, respectively, withdrawals of distilled spirits, wines, and beer from qualified facilities in the United States and certain shipments of distilled spirits, wines, and beer into the United States from Puerto Rico. In the latter case, section 7652(a)(2) provides authority for payment of the tax before shipment to the United States from Puerto Rico. In general, U.S. Customs and Border Protection (CBP) collects taxes paid under section 5061(d)(2) on removals of imported distilled spirits, wines, and beer. These taxes include those paid on distilled spirits, wines, and beer from foreign countries or from the U.S. Virgin Islands.

Section 5061(d)(4), as amended by the PATH Act, authorizes eligible taxpayers to use annual or quarterly tax return periods instead of semimonthly periods, under certain circumstances. Section 5061(d)(4)(A)(ii) provides that, in the case of any taxpayer who reasonably expects to be liable for not more than $1,000 in excise taxes imposed for the calendar year and who was liable for not more than $1,000 in such taxes in the preceding calendar year, the last day for payment of tax is the 14th day after the last day of the calendar year. Section 5061(d)(4)(A)(i) provides that, in the case of any taxpayer who reasonably expects to be liable for not more than $50,000 in excise taxes imposed with respect to distilled spirits, wines, and beer for the calendar year and who was liable for not more than $50,000 in such taxes in the preceding calendar year, the last day for payment of tax is the 14th day after the last day of the calendar quarter. Section 5061(d)(4)(C) defines the term ''calendar quarter'' as the three-month period ending on March 31, June 30, September 30, or December 31.

Taxpayers who use annual or quarterly return periods and exceed the $1,000 or $50,000 limits described in the previous paragraph must pay such taxes more frequently, as provided in section 5061(d)(4)(B). Taxpayers using quarterly periods must use semimonthly periods for any portion of the calendar year following the first date on which the aggregate amount of such tax due during such calendar year exceeds $50,000, and taxpayers using annual periods must use quarterly periods for any portion of the calendar year following the first date on which the aggregate amount of such tax due during such calendar year exceeds $1,000. Section 5061(d)(4)(B) also provides that any tax not paid on these dates is due either on the 14th day after the last day of the semimonthly period in which such date occurs (in the case of taxpayers who exceed the $50,000 limit) or on the 14th day after the last day of the calendar quarter in which such date occurs (in the case of taxpayers who exceed the $1,000 limit).

Under some circumstances, the IRC authorizes the removal of distilled spirits, wines, and beer from facilities in the United States without paying the taxes imposed on such products. Examples of removals for which the IRC does not require payment of the tax include certain transfers of imported distilled spirits, wines, and beer to qualified facilities in the United States (see 26 U.S.C. 5232, 5364, and 5418), certain transfers between qualified facilities within the United States (see 26 U.S.C. 5212, 5362(b), and 5414), certain withdrawals for exportation from the United States (see 26 U.S.C. 5214(a)(4), 5362(c)(1), and 5053(a)), and certain withdrawals for use in the United States for other than alcohol beverage purposes (see 26 U.S.C. 5214(a)(1)–(3), 5364(d), and 5053(b)). In the last case, some IRC provisions refer to these nonbeverage purposes as the ''industrial use'' of alcohol (see, *e.g.,* subchapter D of chapter 51 of the IRC, ''Industrial Use of Distilled Spirits''). The provisions of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. chapter 8, which TTB also administers, do not apply to distilled spirits and wine for industrial use (see 27 U.S.C. 211(a)(5) and (6), which define these types of alcohol as distilled spirits and wine for ''nonindustrial use''). The industrial and nonindustrial uses of distilled spirits and wine are discussed further below.

B. Provisions Governing Bonds

The IRC also contains provisions requiring certain persons who are liable for taxes imposed with respect to distilled spirits, wines, and beer to furnish bonds, which are formal guarantees to pay tax obligations under the IRC (see, *e.g.,* 26 U.S.C. 5173, 5354, and 5401(b)). Subject to the exceptions discussed below, section 5551(a) of the IRC (26 U.S.C. 5551(a)) requires approval of such bonds for certain businesses as a condition of commencing operations. Generally, the producer or the importer of the distilled spirits, wines, and beer is liable for taxes imposed until that person either pays the tax or takes some other action for which the IRC relieves the person of the liability. In the latter case, the IRC may relieve persons from liability based on the transfer or withdrawal of the distilled spirits, wines, and beer under certain circumstances described in the preceding paragraph, such as withdrawal and exportation (see 26 U.S.C. 5005, 5043, 5054, and 5056). Bonds therefore protect the revenue by covering the excise tax liability associated with the distilled spirits, wines, and beer until that liability is relieved under the IRC.

Section 332 of the PATH Act amends several provisions of the IRC to remove bond requirements for certain eligible taxpayers. The new bond exemption is set forth in new subsection (d) of section 5551 of the IRC. The taxpayer's eligibility for the bond exemption is based on whether section 5061(d)(4)(A) applies to the taxpayer. Section 5061(d)(4)(A) authorizes the use of quarterly and annual return periods for payment of excise taxes imposed with respect to distilled spirits, wines, and beer where the tax liability does not exceed the $1,000 and $50,000 limits discussed above. However, the bond exemption is limited to bonds ''covering operations or withdrawals of distilled spirits or wines for nonindustrial use or of beer.'' Specifically, section 5551(d)(1) provides that ''[d]uring any period to which subparagraph (A) of section 5061(d)(4) applies to a taxpayer (determined after application of

subparagraph (B) thereof), such taxpayer shall not be required to furnish any bond covering operations or withdrawals of distilled spirits or wines for nonindustrial use or of beer.'' In addition, section 5551(d)(2) provides that ''any taxpayer for any period described in [section 5551(d)(1)] shall be treated as if sufficient bond has been furnished for purposes of covering operations and withdrawals of distilled spirits or wines for nonindustrial use or of beer for purposes of any requirements relating to bonds under this chapter.'' Finally, section 332 of the PATH Act also amends other provisions of the IRC to reference the bond exemption in section 5551(d). These provisions are sections 5173, 5351, and 5401 of the IRC.

C. Delegation of Authority

TTB administers the provisions of the IRC and FAA Act discussed above, and their implementing regulations, pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Department Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in administration and enforcement of these laws.

III. The TTB Regulations

The TTB regulations implementing the IRC provisions discussed above relating to tax payment and bonds are in chapter I of title 27 of the Code of Federal Regulations (27 CFR). These regulations include provisions governing certain distilled spirits, wine, and beer facilities in the United States (27 CFR parts 19, 24, and 25), the shipment of distilled spirits, wines, and beer from Puerto Rico and the U.S. Virgin Islands to the United States (27 CFR part 26), the importation of distilled spirits, wines, and beer from foreign countries into the United States (27 CFR part 27), and the exportation of distilled spirits, wines, and beer from the United States (27 CFR part 28).

The regulations in 27 CFR parts 19, 24, and 25 govern, respectively, the operations of distilled spirits plants (DSPs), certain wine premises, and breweries in the United States. Under 27 CFR part 24, bonded wine cellars (including bonded wineries) are wine premises that are authorized to engage in operations involving non-taxpaid wine. Proprietors of facilities subject to the regulations in 27 CFR parts 19, 24, and 25 must receive approval from TTB to operate (see 27 CFR 19.72, 24.105, and 25.61). Such operations may include production, receipt, and removal of distilled spirits, wines, and beer. When the proprietor of the facility removes distilled spirits, wines, or beer on which tax has been imposed but not paid, the proprietor must pay the tax unless the IRC authorizes the removal without paying the tax, as discussed above.

If the tax must be paid for the removal, the proprietor of the facility must file an Excise Tax Return, TTB Form 5000.24, for prepayment or deferred payment of tax (see 27 CFR 19.229, 24.271, 24.275, 25.164, and 25.175). The term ''prepayment'' means that the proprietor pays the tax before the removal of the distilled spirits, wines, or beer from the facility. The term ''deferred payment'' means that the proprietor uses one of the return periods prescribed under section 5061(d) of the IRC to pay tax due for removals that occur during that period. Section 24.273 of the TTB regulations (27 CFR 24.273) also authorizes a bonded wine cellar to file an excise tax return annually if the proprietor paid wine excise taxes in an amount less than $1,000 during the previous calendar year or if the proprietor of a newly established premises expects to pay less than $1,000 in wine excise taxes before the end of the calendar year. As discussed further below, this annual return period was authorized under the regulations prior to the enactment of the PATH Act and is not considered to be a deferred payment period for purposes of section 5061(d).

The TTB regulations in parts 19, 24, and 25 also prescribe requirements for bonds that DSPs, certain wine premises, and breweries must furnish to TTB. Bonds must be guaranteed by an approved corporate surety or by deposit of collateral, such as certain acceptable securities, with TTB (see, *e.g.,* 27 CFR 19.153 and 19.154). The regulations also include requirements relating to the ''penal sums'' of these bonds. The term ''penal sum'' refers to the amount of money guaranteed to be paid under the bond for tax obligations imposed by the IRC if the proprietor does not satisfy those obligations, such as the payment of tax due. The penal sum of a bond is generally based on the proprietor's liability for excise taxes imposed but not paid (see 27 CFR 19.166, 24.148, and 25.93). In some cases involving distilled spirits and wine, the regulations require proprietors to furnish bonds that specifically cover the taxes on products removed for deferred payment of tax until the time the proprietor pays the tax (see 27 CFR 19.164 and 24.146(b)).

The TTB regulations in 27 CFR part 26 pertain to shipment of distilled spirits, wines, and beer (as well as certain products manufactured using distilled spirits, wines, and beer) to the United States from Puerto Rico and the U.S. Virgin Islands. Generally, manufacturers of these products in Puerto Rico and the U.S. Virgin Islands are not required to receive approval from TTB to operate. However, if manufacturers in Puerto Rico ship the products to the United States, they must pay tax to TTB unless a specific provision authorizes the shipment without paying the tax (see discussion in the next paragraph for examples of such shipments). The regulations in 27 CFR part 26, subpart E, govern the payment of excise tax on products manufactured in Puerto Rico and shipped to the United States, and they contain bond requirements for persons who pay tax on a deferred basis using one of the tax periods prescribed under section 5061(d) the IRC. But because CBP (rather than TTB) collects taxes on products shipped to the United States from the U.S. Virgin Islands, the TTB regulations do not include provisions governing the payment of tax on products subject to 27 CFR part 26.

The regulations in 27 CFR part 26 also include provisions governing the shipment to the United States of certain distilled spirits for industrial use, as well as certain products for industrial use made using distilled spirits. Persons in Puerto Rico and the U.S. Virgin Islands who manufacture these products may ship the products to the United States without incurring tax liability under the circumstances described in 27 CFR 26.36 and 26.201. Statutory authority relating to these types of tax-exempt shipments is set forth in section 5314 of the IRC (26 U.S.C. 5314). Under § 26.36(b) and (c), distillers in Puerto Rico who ship tax-exempt distilled spirits to the United States under this authority are subject to the requirements in 27 CFR part 19 governing DSPs, including requirements relating to receiving approval to operate and furnishing bonds. Distillers in the U.S. Virgin Islands who ship tax-exempt distilled spirits under § 26.201(b) and (c) are not subject to 27 CFR part 19 (and thus do not furnish bonds to TTB under 27 CFR part 19 covering such shipments), but these distillers must qualify under regulations issued by the Governor of the U.S. Virgin Islands as provided in § 26.201(b) and (c).

The TTB regulations in 27 CFR part 27 relate to the importation of distilled spirits, wines, and beer into the United States from foreign countries. Persons who pay taxes to CBP on such imported

products under section 5061(d)(2) are not required to furnish bonds to TTB. However, qualified facilities in the United States that receive transfers of the products without payment of tax from customs custody must furnish bonds to TTB as provided in 27 CFR parts 19, 24, and 25 (see 27 CFR part 27, subpart L; see also ATF Procedures 98–2 and 98–3 issued by the Bureau of Alcohol, Tobacco and Firearms, TTB's predecessor agency).

The TTB regulations in 27 CFR part 28 govern the exportation of distilled spirits, wines, and beer from the United States, including the exportation of taxpaid and non-taxpaid distilled spirits, wines, and beer. As prescribed in 27 CFR part 28, subparts I, K, and L, distilled spirits, wines, and beer on which taxes have been paid may be exported with benefit of drawback (see also 26 U.S.C. 5055 and 5062). Exportation with benefit of drawback refers to a procedure under which a person may file a claim for a payment from TTB equal to the taxes paid on the product based on the exportation of the product in accordance with the IRC provisions and the TTB regulations cited in this paragraph.

Non-taxpaid distilled spirits, wines, and beer may also be removed for export from DSPs, bonded wine cellars (including bonded wineries), and breweries subject to certain requirements specified in 27 CFR part 28. When the DSP, bonded wine cellar, or brewer acts as the exporter of the product for purposes of the TTB regulations, the bonds required under 27 CFR parts 19, 24, and 25, respectively, cover the tax liability associated with the alcohol (see 27 CFR 28.58–28.60, 28.92, 28.122, 28.142, and 28.152). Alternatively, a person other than a DSP or bonded wine cellar may act as the exporter of the product in some circumstances if the person furnishes a bond as provided in 27 CFR 28.61–28.64 (the regulations do not authorize persons other than brewers to act as exporters of non-taxpaid beer). In any case where non-taxpaid products are removed for export, the person acting as the exporter for purposes of the TTB regulations must also complete a TTB form documenting the exportation (TTB Form 5100.11 in the case of distilled spirits and wine, and TTB Form 5130.12 in the case of beer).

IV. Overview of the Amendments to the Regulations

This document amends the TTB regulations in 27 CFR parts 19, 24, 25, 26, 27, and 28 to implement the statutory provisions of section 332 of the PATH Act. In addition, this rulemaking makes minor amendments to certain bond-related regulations in 27 CFR parts 18 and 30 relating to these statutory changes. This document also includes several technical amendments to update certain bond-related regulations. These amendments are discussed further below.

V. Major Amendments Relating to Tax Returns

A. Incorporation of Annual Return Filing Period

TTB is amending the regulations in 27 CFR parts 19, 24, 25, and 26 to incorporate the new annual tax return period provisions in section 5061(d)(4)(A)(ii) of the IRC, which provides that the last day for deferred payment of tax is the 14th day after the last day of the calendar year in the case of any taxpayer who reasonably expects to be liable for not more than $1,000 in excise taxes imposed on distilled spirits, wines, and beer for the calendar year and who was liable for not more than $1,000 in such taxes the preceding calendar year. TTB is also amending the regulations to reflect new section 5061(d)(4)(B)(ii), which provides that the annual tax return period provision does not apply to taxpayers for any portion of the calendar year following the first date on which the aggregate amount of excise tax due during such calendar year exceeds $1,000. As discussed above, the annual tax return period provision provides an exception to the general rule in section 5061(d) that requires deferred payment of such taxes using semimonthly periods. The specific regulations amended to reflect this new period are 27 CFR 19.235, 19.236, 24.271, 25.164, and 26.112. TTB is not amending any regulations in 27 CFR parts 27 and 28 to reflect this statutory change because these regulations do not contain provisions governing the deferred payment of taxes to TTB.

In general, the amendments incorporating the new annual return period are modeled on existing provisions in §§ 19.235, 19.236, 24.271, 25.164, and 26.112 governing quarterly return periods, which are used by taxpayers who reasonably expect to be liable for not more than $50,000 in taxes imposed on distilled spirits, wines, and beer for the calendar year and who were liable for not more than $50,000 in the preceding calendar year. The statutory authority for quarterly return periods in section 5061(d)(4)(A) of the IRC (now designated as section 5061(d)(4)(A)(i) under the PATH Act amendments) was originally enacted in 2005 as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144. In the 2006 temporary rule published in the **Federal Register** that originally implemented the quarterly return period procedure (T.D. TTB–41, 71 FR 5598 (2006)), TTB interpreted the statutory language in section 5061(d)(4)(A) as providing that the quarterly return period procedure was optional rather than mandatory, meaning that a taxpayer could choose to defer payment of excise tax using semimonthly return periods even if the taxpayer met the criteria for using quarterly periods. TTB noted that it was adopting this interpretation to provide flexibility for taxpayers, and TTB cited legislative history to show that the interpretation was a permissible construction of the statute. TTB subsequently finalized the regulations reflecting this interpretation (see T.D. TTB–94, 76 FR 52862 (2011)).

Because the language in section 5061(d)(4)(A)(ii) providing for the annual return period procedure is identical in relevant respects to the language in 5061(d)(4)(A)(i) relating to quarterly returns, TTB interprets this language as also providing for the optional, rather than mandatory, use of annual return periods by taxpayers who meet the relevant criteria. TTB believes that adopting this interpretation will provide flexibility for taxpayers who are eligible to use annual return periods but who wish to pay taxes more frequently. This interpretation is reflected in the amendments to §§ 19.235, 19.236, 24.271, 25.164, and 26.112, which provide that eligible taxpayers ''*may choose to use* an annual return period'' [emphasis added].

B. Elimination of Non-Statutory Annual Return Period for Certain Wine Premises

Under current 27 CFR 24.273, a wine premises proprietor is authorized to file an excise tax return annually if the proprietor paid wine excise taxes in an amount less than $1,000 during the previous calendar year or if the proprietor of a newly established premises expects to pay less than $1,000 in wine excise taxes before the end of the calendar year. An eligible proprietor must file such returns within 30 days after the end of the calendar year. Historically, the regulations had authorized a proprietor to allocate up to $1,000 of the penal sum of the proprietor's wine bond to cover taxes on wine removed but not yet paid (see 27 CFR 24.146(a)). Because such removals up to $1,000 were not required to be covered by a tax deferral bond under § 24.146(b), TTB previously took the position that the proprietor did not have

to pay taxes associated with the removals using one of the deferred payment periods (semimonthly or quarterly) authorized under section 5061(d) (see T.D. TTB–41, 71 FR 5598, 5599 (02/06/2006)).

Since the PATH Act established a new annual tax return period for proprietors who are liable for not more than $1,000 in excise taxes annually and eliminated the requirement to hold a tax deferral bond (see bond-related discussion below), TTB has determined that it is no longer necessary to retain the annual return filing provisions found in § 24.273. Accordingly, TTB is amending the regulations to remove § 24.273. Proprietors who previously filed tax returns annually under this section may instead file tax returns annually when authorized under § 24.271(b)(1)(ii). Because the PATH Act provisions do not become effective until January 1, 2017, TTB is amending § 24.271(b)(2) to clarify that a proprietor filing an annual return covering the 2016 calendar year must file the return not later than January 30, 2017, which would have been the due date under now-removed § 24.273. TTB is also amending §§ 24.271 and 24.323 to eliminate references to § 24.273, and TTB is amending § 24.300 to remove the reference to § 24.273 and replace it with a reference to the annual filing provision in § 24.271(b)(1)(ii).

VI. Bond Exemption Eligibility

TTB is amending the regulations in 27 CFR parts 19, 24, 25, 26, and 28 to implement new section 5551(d)(1) of the IRC, which provides that a taxpayer is not required to obtain certain bonds ''during any period to which [section 5061(d)(4)(A)] applies to a taxpayer (determined after application of [section 5061(d)(4)(B)] thereof)[.]'' Section 5061(d)(4)(A) contains the quarterly and annual return filing provisions for taxpayers who are liable for not more than $50,000 per year in taxes imposed on distilled spirits, wines, and beer. The bond regulations amended in this temporary rule are 27 CFR 19.151, 24.146, 25.91, 25.274, 26.66–26.68, 28.58, and 28.60–28.64. TTB is not amending the regulations in 27 CFR part 27 in this respect because those regulations do not impose bond requirements.

A. Circumstances Where Section 5061(d)(4)(A) Applies to a Taxpayer

As discussed above, taxpayers may voluntarily choose to use semimonthly return periods for deferred payment of tax on distilled spirits, wines, and beer even if they meet the criteria in section 5061(d)(4)(A) to pay taxes using quarterly or annual tax returns. These criteria are that the taxpayer must reasonably expect to be liable for not more than $1,000 in taxes (in the case of annual returns) or $50,000 in taxes (in the case of quarterly returns) for the calendar year and must have been liable for not more than these respective quantities in the preceding calendar year. Section 7701(a)(14) of the IRC (26 U.S.C. 7701(a)(14)) defines the term ''taxpayer'' as ''any person subject to an internal revenue tax.'' The term therefore includes persons who are liable for excise taxes imposed but not necessarily due for payment, as well as persons who are liable for payment of the tax. For purposes of the tax return filing provisions, the TTB regulations define the term ''taxpayer'' as an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12 (see §§ 19.235(d), 24.271(b), 25.164(c), and 26.112(b)).

Since section 5061(d)(4)(A) does not mandate that taxpayers who defer payment of excise tax must use quarterly or annual return periods if they meet the criteria to use them, section 5061(d)(4)(A) applies to those taxpayers even if they choose to use semimonthly return periods instead. Accordingly, TTB does not interpret section 5551(d)(1) as requiring that taxpayers deferring payment of tax must use quarterly or annual return periods in order to be exempt from bond requirements under that provision. Even if they choose to use semimonthly periods, the taxpayers qualify for the bond exemption if they meet the criteria to pay taxes quarterly or annually under section 5061(d)(4)(A) and if they otherwise meet the bond exemption requirements in section 5551(d) as discussed further below. This interpretation is reflected in the amended regulations, which include the requirement that the taxpayer be ''*eligible to use* an annual or quarterly return period'' to qualify for the bond exemption [emphasis added].

In addition, because section 5061(d)(4)(A) does not apply to taxpayers who pay no taxes on distilled spirits, wines, or beer on a deferred basis, TTB interprets the phrase ''applies to a taxpayer'' in section 5551(d)(1) as requiring a taxpayer to pay some tax on a deferred basis to be exempt from bond requirements. If a taxpayer prepays tax but never defers payment of tax, or if a taxpayer never removes distilled spirits, wines, or beer on which taxes must be paid, the taxpayer is not exempt from bond requirements under section 5551(d). This interpretation is also reflected in the regulations discussed above, which provide that the bond exemption only applies to a taxpayer who ''pays tax on a deferred basis[.]'' However, TTB also recognizes that taxpayers may not necessarily owe taxes during every deferred payment period that they choose to use. Therefore, the regulatory amendments also provide that a taxpayer is considered to be paying tax on a deferred basis for this purpose even if the taxpayer does not pay during every return period as long as the taxpayer intends to pay tax on a deferred basis in a future period.

TTB also notes that section 5551(d)(1) ties a taxpayer's eligibility for the bond exemption to the taxpayer's liability for payment of taxes due rather than the taxpayer's liability for taxes imposed but not necessarily due. Under section 5551(d)(1), a taxpayer is eligible for the exemption only after application of section 5061(d)(4)(B), which governs when the quarterly and annual return provisions in section 5061(d)(4)(A) no longer apply to a taxpayer. Section 5061(d)(4)(B) provides that the provisions do not apply to taxpayers ''for any portion of the calendar year following the first date on which the aggregate amount of tax due'' on distilled spirits, wines, and beer during such calendar year exceeds $50,000, in the case of quarterly returns, or $1,000, in the case of annual returns. Because the bond exemption is premised on the quantity of such taxes due for payment (rather than on the taxes imposed but not necessarily due), a taxpayer who otherwise meets the bond exemption requirements in section 5551(d)(1) is not ineligible for the exemption solely based on the fact that the taxpayer's liability for taxes imposed but not due exceeds $50,000 annually.

As discussed above, taxpayers may be liable for taxes imposed on distilled spirits, wines, and beer based on producing the products in the United States, importing the products into the United States from foreign countries, bringing the products into the United States from Puerto Rico and the U.S. Virgin Islands, or receiving certain transfers of non-taxpaid products. These taxpayers are liable for taxes imposed until they either pay the taxes due or take some other action for which the IRC relieves the taxpayer of the liability.

B. Types of Alcohol Subject to the Exemption

During any period described above for which 5061(d)(4)(A) applies to a taxpayer, section 5551(d)(1) provides that such taxpayer ''shall not be required to furnish any bond covering

operations or withdrawals of distilled spirits or wines for nonindustrial use or of beer.'' As described above, the IRC references the industrial use of certain types of alcohol. In addition, the FAA Act applies to distilled spirits and wine for nonindustrial use but does not apply to distilled spirits and wine for industrial use. The TTB regulations in 27 CFR part 1, subpart D define the nonindustrial and industrial uses of these two types of alcohol for purposes of the FAA Act. Under the regulations, the term ''nonindustrial use'' includes, but is not limited to, all uses of distilled spirits and wine for alcohol beverage purposes (see 27 CFR 1.70 and 1.71). Under § 1.70, the term ''industrial use'' includes only those uses specifically enumerated as such in the regulations. These industrial uses include the use of distilled spirits free of tax under the IRC for certain nonbeverage purposes, the use of wine without payment of tax for the production of vinegar, and the use of distilled spirits and wine for experimental purposes and in the manufacture of specified products that are unfit for beverage purposes (see 27 CFR 1.60–1.62).

TTB interprets the term ''nonindustrial use'' in section 5551(d)(1) as being synonymous with the same term in the FAA Act and the TTB regulations in 27 CFR part 1, subpart D. Therefore, a person is eligible for the bond exemption in section 5551(d)(1) with respect to distilled spirits and wine only to the extent the distilled spirits and wine are for nonindustrial use within the meaning of the FAA Act and these TTB regulations. The amendments to the bond regulations described above incorporate this interpretation by defining the terms ''nonindustrial use'' and ''industrial use'' with reference to the provisions in 27 CFR part 1, subpart D.

TTB also recognizes that some proprietors engage in operations and withdrawals of distilled spirits and wine both for nonindustrial and industrial use. Because such proprietors must obtain bonds to cover such alcohol for industrial use as otherwise provided in the IRC, even if they are exempt from bond requirements under section 5551(d) with respect to distilled spirits and wine for nonindustrial use, the regulatory amendments prescribe rules for proprietors to determine the relevant use of these types of alcohol for this purpose. In the case of proprietors of DSPs and bonded wine cellars (including bonded wineries) who conduct both types of operations, the amendments in §§ 19.151(d) and 24.146(d) provide that the alcohol is considered to be for industrial use unless the proprietor designates the alcohol as solely for nonindustrial use at a specified time after production of the alcohol or upon receiving the alcohol. TTB has not incorporated a similar rule in the regulations in 27 CFR parts 26 and 28 that impose bond requirements because those bonds apply to distilled spirits and wine shipped to the United States or removed for exportation, rather than to distilled spirits and wine produced or received at the premises. Therefore, the determination pertaining to industrial use, under 27 CFR parts 26 and 28, is made when the alcohol is shipped or removed.

C. Summary of Eligibility Criteria for the Bond Exemption

This section summarizes the discussion above regarding which taxpayers are eligible for the bond exemption under section 5551(d)(1) of the IRC. Taxpayers must meet the following requirements to be eligible for the bond exemption:

- Taxpayers must be eligible to pay taxes quarterly or annually under section 5061(d)(4)(A) of the IRC. A taxpayer is eligible to pay taxes quarterly or annually under this provision if the taxpayer reasonably expects to be liable for not more than $50,000 in excise taxes imposed with respect to distilled spirits, wines, and beer for the calendar year and was liable for not more than $50,000 in such taxes in the preceding calendar year. A taxpayer is eligible for the bond exemption if the taxpayer chooses to pay taxes using semimonthly return periods as long as the taxpayer is eligible to use quarterly or annual return periods and otherwise meets the criteria for the exemption. For purposes of this requirement, the taxpayer's liability is determined based on taxes due as a result of removals or shipments for which the IRC requires payment of the tax, rather than on taxes imposed but not necessarily due for payment.
- Taxpayers must pay tax on distilled spirits, wines, or beer on a deferred basis. A taxpayer who never pays tax on a deferred basis is not exempt from bond requirements. This category of taxpayers who are ineligible for the exemption includes taxpayers who solely prepay taxes or who never remove distilled spirits, wines, or beer on which taxes must be paid.
- Taxpayers are exempt from bond requirements with respect to distilled spirits and wine only to the extent those products are for nonindustrial use. The nonindustrial uses of distilled spirits and wine are defined in 27 CFR part 1, subpart D. The term ''nonindustrial use'' includes, but is not limited to, all uses of distilled spirits and wine for alcohol beverage purposes.

VII. Other Bond-Related Amendments

A. Retention of Bond-Related Terms in the Regulations

Section 5551(d)(2) of the IRC, as amended by the PATH Act, provides that taxpayers exempt from bond requirements under section 5551(d)(1) ''shall be treated as if sufficient bond has been furnished for purposes of covering operations and withdrawals of distilled spirits or wines for nonindustrial use or of beer for purposes of any requirements relating to bonds under [chapter 51 of the IRC].'' The PATH Act amendments did not eliminate bond-related terms in chapter 51 of the IRC. Accordingly, TTB is not removing bond-related terms from the regulations. Instead, this temporary rule amends existing definitions of these terms or adds new definitions of them to provide that the terms apply to taxpayers even if they are exempt from bond requirements under section 5551(d)(1).

First, TTB is amending definitions that identify certain premises as ''bonded'' so that the definitions include taxpayers who are exempt from bond requirements under section 5551(d)(1). These terms include the ''bonded premises'' of a distilled spirits plant, ''bonded winery,'' ''bonded wine cellar,'' and ''bonded wine warehouse.'' Therefore, these premises will still be described as ''bonded'' under the regulations even if the proprietor is not required to obtain a bond. The amended definitions are in 27 CFR 19.1, 24.10, 25.11, 26.11, 27.11, and 28.11.

Second, TTB is amending or adding bond-related definitions in the regulatory sections cited above that pertain to removals and receipts of distilled spirits, wines, and beer from certain premises subject to TTB regulation. These terms include transfers of products ''in bond,'' removals of products ''from bond,'' and returns of products ''to bond.'' As discussed above, the IRC requires certain persons who are liable for tax to provide bonds, which cover the tax liability associated with the products until that liability is relieved under the IRC. Prior to the PATH Act amendments, these types of regulatory terms described transactions where a bond covered the tax liability associated with the distilled spirits, wines, or beer removed or received. For example, transfers in bond are transfers of non-taxpaid products between certain premises (see, *e.g.,* 27 CFR 19.402 and 24.280); removals from bond are

removals of previously non-taxpaid products from certain premises, including withdrawals on determination of tax (see, *e.g.,* §§ 19.229, 24.271, and 25.164); and returns to bond include receipts of previously taxpaid products on certain premises for which the IRC authorizes the proprietor of the premises to file a claim for credit or refund of the tax (see, *e.g.,* 27 CFR 19.452). Under the amended definitions, these terms describe removals and receipts for which the proprietor is liable for the tax, even if the proprietor is not required to obtain a bond under section 5551(d)(1).

B. Incorporation of Cash Bond Requirements

The current bond regulations in 27 CFR parts 19, 24, 25, 26, and 28 provide that bonds must be guaranteed by an approved corporate surety or by deposit of collateral, such as certain acceptable securities, with TTB. Historically, TTB has also authorized proprietors to submit ''cash bonds,'' which are bonds guaranteed by the deposit of cash or its equivalent as collateral. For this purpose, cash equivalents include money orders, cashier's checks, or personal checks. TTB policy has been that the cash (or its equivalent) deposited must be no less than the penal sums of the required bonds. The current regulation at 27 CFR 24.151 includes cash bond provisions applicable to certain wine premises, but other TTB regulations do not include such provisions.

TTB believes it is appropriate to incorporate its existing cash bond policy into the regulations in 27 CFR parts 19, 25, 26, and 28. Accordingly, TTB is amending §§ 19.154, 25.98, 26.63, 26.74, 28.53, and 28.74 to reflect this policy. Consistent with the provisions in the current regulations governing collateral bonds guaranteed by the deposit of certain acceptable securities (which are also in §§ 19.154, 25.98, 26.63, 26.74, 28.53, and 28.74), the cash bond provisions provide that bonds may be released once liability under the bond is terminated.

C. Brewers Holding Bonds With Flat $1,000 Penal Sums

In 2012, TTB published a temporary rule in the **Federal Register** that authorized a flat penal sum of $1,000 for bonds held by certain brewers who reasonably expected to be liable for not more than $50,000 in excise taxes for the calendar year and who were liable for not more than $50,000 in such taxes for the preceding calendar year (T.D. TTB–109, 77 FR 72939 (12/07/2012)). Prior to the effective date of that temporary rule, the penal sums of bonds held by these brewers were based on a percentage of the brewer's expected maximum tax liability for the year, and the bond penal sums for a brewer were generally higher if the brewer paid taxes using quarterly return periods rather than semimonthly return periods. Because TTB concluded that authorizing a flat penal sum of $1,000 for these brewers did not pose a risk to the revenue, the temporary rule authorized this flat penal sum under § 25.93 if the brewers paid taxes using quarterly return periods in order to reduce their tax return filing burdens. In the same issue of the **Federal Register**, TTB published a notice of proposed rulemaking that included a proposed amendment to § 25.164 that incorporated the quarterly filing requirement for brewers holding bonds with flat $1,000 penal sums (Notice No. 131, 77 FR 72999 (2012)). TTB published a final rule in 2014 that adopted the flat $1,000 penal sum provision in § 25.93 as a permanent regulatory change and that finalized the amendment to § 25.164 that TTB proposed in the 2012 notice of proposed rulemaking.

Section 5551(d)(1) of the IRC, as amended by the PATH Act, eliminates bond requirements for brewers who reasonably expect to be liable for not more than $50,000 in excise taxes for the calendar year and who were liable for not more than $50,000 in such taxes for the preceding calendar year. Therefore, brewers who were eligible to hold bonds with flat $1,000 penal sums under the rulemakings described in the previous paragraph are now eligible for the bond exemption under section 5551(d)(1). Accordingly, TTB is amending §§ 25.93 and 25.164 to incorporate language relating to a brewer's eligibility for this bond exemption and to provide that such eligible brewers may choose to pay taxes using quarterly or annual return periods if they meet the criteria to use those periods. Since it is no longer necessary for such brewers to obtain a bond with a flat $1,000 penal sum because those brewers can instead qualify for the bond exemption, such brewers may choose to pay taxes quarterly or annually without having to obtain a bond with a higher penal sum.

D. Qualification for the Bond Exemption by Applicants

TTB is amending the regulations in 27 CFR parts 19, 24, and 25 to require that persons who apply to qualify as DSPs, bonded wine cellars (including bonded wineries), and breweries must state in their applications whether they are exempt from bond requirements under section 5551(d). TTB is not amending the regulations in 27 CFR parts 26, 27, and 28 in this respect because those regulations do not require persons to furnish bonds in order merely to qualify to operate with TTB. For example, although certain exporters who must provide bonds as provided in §§ 28.61–28.64 may be required to obtain a basic permit as a wholesaler under the FAA Act and the TTB regulations (see 27 U.S.C. 203(c) and 27 CFR part 1), such exporters are not required to furnish a bond when they apply for this type of permit.

TTB is amending 27 CFR 19.73, 24.109, and 25.62 to require a statement in each type of application whether or not the applicant is required to provide a bond. As discussed above, eligibility for the bond exemption is determined under amended §§ 19.151, 24.146, and 25.91. TTB is also modifying the relevant application forms to include a new section where applicants specify whether they are eligible for the exemption. These forms are TTB Form 5110.41 (Registration of Distilled Spirits Plant), TTB Form 5120.25 (Application to Establish and Operate Wine Premises), and TTB Form 5130.10 (Brewer's Notice). Applicants may complete these forms using TTB's Permits Online system, which is TTB's electronic permit application system available at *ttb.gov*. The new sections in these forms spell out the criteria for eligibility for the bond exemption as provided in §§ 19.151, 24.146, and 25.91.

E. Qualification for the Bond Exemption by Existing Proprietors

There are two circumstances where an existing proprietor who holds a bond required under 27 CFR parts 19, 24, and 25 may subsequently become exempt from those bond requirements under section 5551(d)(1) of the IRC. First, since the bond exemption does not apply until January 1, 2017 (see section 332(c) of the PATH Act), such proprietors who receive TTB approval to operate prior to that date will hold a bond even if the bond exemption provision applies to them starting on that date. Second, proprietors who receive TTB approval to operate no earlier than January 1, 2017 must hold a bond if they are ineligible for the bond exemption. For example, if a proprietor receives approval to operate in 2017 and reasonably expects to be liable for more than $50,000 in excise taxes for that year, the proprietor must furnish a bond. However, that proprietor may become exempt from bond requirements in the future if the proprietor meets the

requirements for the exemption under section 5551(d)(1). This may occur if the proprietor, in addition to meeting any other applicable requirements under section 5551(d)(1) (see ''Bond Exemption Eligibility'' section above), reasonably expects to be liable for not more than $50,000 in excise taxes for a calendar year and is liable for not more than $50,000 in the preceding calendar year.

TTB is amending the regulations to provide procedures for such proprietors to terminate their bonds when they become exempt from these requirements. This temporary rule adds new regulations at 27 CFR 19.136, 24.132, and 25.79 to provide that, in order to terminate their bonds, proprietors must file amendments to their TTB approvals to operate using the application forms described above (TTB Forms 5110.41, 5120.25, and 5130.10). Under the current regulations, these forms are used both for filing original applications and for filing amendments. Proprietors who apply to terminate their bonds using this process will complete the same new sections of the forms that applicants use to select whether they are eligible for the exemption when they originally seek TTB approval to operate. TTB is also amending the existing bond termination regulation at 27 CFR 19.170, and adding new regulations at 24.160 and 25.106, to provide that proprietors may apply to terminate their bonds when they become exempt under these circumstances.

F. New Bonds for Previously Exempt Proprietors

TTB is also amending the regulations to provide new procedures for certain proprietors to furnish bonds if they were previously bond-exempt but later become required to furnish a bond. New §§ 19.136, 24.132, and 25.79 (which were first discussed in the previous section) provide that existing proprietors must file amendments to their TTB approvals to operate using the aforementioned application forms if they become required to furnish a bond after having been exempt from such requirements. These procedures apply to proprietors of DSPs, bonded wine cellars (including bonded wineries), and breweries, all of whom must provide a bond to operate unless they are exempt under section 5551(d)(1).

If any such proprietor is required to furnish a bond because the proprietor becomes liable for more than $50,000 in taxes with respect to distilled spirits, wines, and beer in a calendar year, the proprietor must obtain a bond to continue operating. Under the IRC, the proprietor must furnish the bond following the first date on which the aggregate amount of excise tax due during the calendar year exceeds $50,000, which is the date identified in section 5061(d)(4)(B) on which the proprietor must begin using semimonthly return periods to defer payment of tax. As discussed above, the bond exemption is linked to this requirement to use semimonthly periods for deferred payment of tax.

In these circumstances, TTB believes it is appropriate to provide a grace period for ''operations'' bonds during which the previously bond-exempt proprietor may continue to operate until TTB takes action on the bond application. Under amended 27 CFR 19.168, 24.154, and 25.95, such proprietors will be treated as having furnished the required bond to operate if the proprietor submits the bond application to TTB no later than 30 days following the first date on which the aggregate amount of excise tax due from the proprietor during the relevant calendar year exceeds $50,000. If the proprietor submits the application for the bond no later than 30 days following the first date on which the aggregate amount of excise tax due from the proprietor during the relevant calendar year exceeds $50,000, the proprietor will be treated as having furnished the required bond until TTB approves or disapproves it.

The grace period authorized in these regulations does not apply to ''withdrawal'' bonds required under 27 CFR parts 19, 24, and 25 that cover removals of distilled spirits, wines, or beer for deferred payment of tax. If a proprietor becomes required to furnish a bond covering such removals after having been exempt from such requirements, the proprietor may remove products on prepayment (rather than on deferred payment) of tax during the time TTB considers the bond application (see §§ 19.229(b), 24.275, and 25.175). Because bonds covering tax-deferred removals are not required for such proprietors to continue operations while TTB considers the bond application, TTB believes that it is not necessary to provide a grace period under these circumstances.

In the case of a proprietor of a bonded wine cellar using the grace period under § 24.154, the proprietor may remove wine on which the tax has been determined, but not paid, to the extent that the proprietor's liability for tax on those removals does not exceed $1,000. As discussed above, TTB has historically authorized proprietors to allocate up to $1,000 of the penal sum of the proprietor's wine bond to cover taxes on wine removed but not yet paid. Since the regulations have not previously required such proprietors to pay taxes associated with these removals using one of the deferred payment periods specified in section 5061(d), TTB believes it is appropriate to extend the grace period provision to such removals if the proprietor's liability for payment does not exceed $1,000.

Finally, TTB is not amending the regulations to provide grace periods for bonds required under 27 CFR parts 26 and 28 that cover, respectively, tax-deferred shipments from Puerto Rico and non-taxpaid exportations from the United States. In the case of shipments from Puerto Rico, the proprietor may ship the distilled spirits, wines, or beer to the United States upon prepayment of the tax during the time TTB considers the bond application (see 27 CFR 26.81, 26.96, and 26.105). In the case of bonds required under part 28, the exporter's transactions will be limited to taxpaid products while TTB considers the bond application. Because these bonds are not required for such proprietors to continue operations while TTB considers the bond application, TTB believes that it is not necessary to provide a grace period under these circumstances.

VIII. Miscellaneous and Technical Amendments

A. Amendments to 27 CFR Parts 18 and 30

This temporary rule amends several provisions in 27 CFR part 18 (''Production of Volatile Fruit-Flavor Concentrate'') and 27 CFR part 30 (''Gauging Manual'') to reflect the other regulatory amendments discussed above. TTB is amending 27 CFR 18.39(c) and 18.40(c) to provide that proprietors of DSPs and bonded wine cellars are not required to file bonds covering alternation of their premises for use as volatile fruit-flavor concentrate plants if the proprietors are not required to hold bonds under 27 CFR parts 19 and 24. Since 27 CFR part 18 does not impose bond requirements, no bond is required for the alternation if the proprietor is exempt under 27 CFR parts 19 and 24.

In 27 CFR part 30, which governs the gauging of distilled spirits at DSPs, TTB is adding a definition of ''bonded premises'' in 27 CFR 30.11. Consistent with the amended definition of this term in § 19.1 as discussed above, the new definition provides that the term includes the premises of a DSP even if the proprietor has not provided a bond as authorized under the exemption set forth in § 19.151(d). Related to this amendment, TTB is also modifying the

phrase ''withdrawn from bond'' in 27 CFR 30.36 so that it instead reads ''from bonded premises'' in order to clarify that the regulation applies to distilled spirits withdrawn from the bonded premises of DSPs, including such premises of DSPs that are not required to provide a bond under § 19.151(d).

B. Technical Amendments Relating to Surety and Collateral Bonds

TTB is amending regulations in 27 CFR parts 19, 24, 25, 26, and 28 to update information relating to surety and collateral bonds. First, TTB is amending 27 CFR 19.153, 19.168, 24.149, 25.98, 26.62, and 28.52 to update information on how to obtain copies of Treasury Department Circular 570, which contains a list of approved corporate sureties. TTB is also amending these regulations to update Web site address references for obtaining copies of this circular. Second, TTB is amending 27 CFR 19.154, 19.699, 24.4, 24.151, 25.4, and 26.63 to update information about obtaining collateral bonds guaranteed by acceptable securities. These amendments update the title of the agency currently responsible for publishing this information (the Treasury Department's Bureau of the Fiscal Service (BFS)), the Web site address references for certain BFS Web sites, and the title and citation for 31 CFR part 225 (which contains regulations governing such securities).

C. Updates to Form Numbers in 27 CFR Parts 26 and 28

Certain regulations in 27 CFR parts 26 and 28 pertaining to tax payments and bonds impacted by this rulemaking contain references to outdated form numbers. TTB is amending these regulations so that they include the updated form numbers. The amended regulations are 27 CFR 24.152, 25.77, 25.92, 26.64, 26.67, 26.68, 26.68a, 26.75, 26.76, 28.54, 28.61, 28.62, 28.63, 28.64, 28.70, 28.71, 28.72, 28.73, 28.214, 28.215, 28.250, 28.303, 28.317, and 28.333. The updated form numbers are TTB Forms 5000.23 PR, 5100.12, 5000.18, 5100.21, 5100.25, 5100.30, 5110.67, 5120.20, 5120.24, 5120.25, 5120.32, 5130.6, 5130.16, 5170.7, and 5620.8.

D. Obsolete Regulations in 27 CFR Part 28 Relating to TTB Form 5110.68

Current 27 CFR 28.65 requires a drawback claimant to file a bond on TTB Form 5110.68 where the claimant desires drawback of tax paid on exported distilled spirits or wines prior to TTB's receipt of a certified copy of TTB Form 5110.30 or 5120.24. These latter two forms are drawback claim forms that include certifications that the product was exported. The statutory authority for this type of drawback is section 5062(b) of the IRC (26 U.S.C. 5062(b)). Historically, the purpose of the requirement in § 28.65 to file a bond on TTB Form 5110.68 was to protect the revenue associated with the drawback paid to the claimant until the distilled spirits or wines were certified to be exported.

TTB has determined that it is no longer necessary for revenue protection purposes to require bonds on TTB Form 5110.68 to cover drawback paid for exported distilled spirits and wine. TTB currently approves claims submitted on TTB Form 5110.30 or 5120.24 when it receives adequate evidence that the product was exported and that the industry member is otherwise entitled to drawback based on the exportation. Therefore, it is no longer necessary to require bonds on TTB Form 5110.68 to cover drawback paid prior to certification that the product was exported. For this reason, TTB no longer maintains active approval from the Office of Management and Budget under the Paperwork Reduction Act of 1995 to require the filing of bonds on TTB Form 5110.68. Accordingly, TTB is amending the regulations to remove § 28.65. TTB is also amending the regulations to remove 27 CFR 28.331 and 28.332, which apply solely to drawback claims supported by this type of bond. The regulations continue to include 27 CFR 28.333 governing such claims that are not supported by this type of bond. However, TTB is amending § 28.333 to remove outdated references to TTB Form 5110.68. Finally, TTB is also removing other references to this bond form in 27 CFR 28.71, 28.72, and 28.250.

IX. Public Participation

To submit comments on the temporary regulations contained in this document, which TTB is proposing to make permanent, please refer to the related notice of proposed rulemaking, Notice No. 167, published in the Proposed Rules section of this issue of the **Federal Register**.

X. Regulatory Analyses and Notices

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB certifies that this temporary rule will not have a significant economic impact on a substantial number of small entities. The temporary rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The temporary rule implements certain changes made to the Internal Revenue Code of 1986 by the Protecting Americans from Tax Hikes Act of 2015 (see Public Law 114–113, Division Q, section 332). These statutory changes eliminate bond requirements and reduce tax return filing frequency for certain eligible taxpayers. The regulatory amendments provide for taxpayers to use TTB's existing qualification procedures to establish that they are exempt from bond requirements, and any increased burden associated with establishing eligibility for the exemption flows directly from the statutory changes that prescribe the criteria for eligibility for the exemption. Pursuant to section 7805(f) of the IRC (26 U.S.C. 7805(f)), TTB will submit the temporary regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the temporary regulations on small businesses.

B. Executive Order 12866

Certain TTB regulations issued under the IRC, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

C. Paperwork Reduction Act

Regulations addressed in this temporary rule contain current collections of information that have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507) and assigned control numbers 1513–0005, 1513–0009, 1513–0015, 1513–0031, 1513–0037, 1513–0038, 1513–0048, 1513–0050, 1513–0083, 1513–0123, 1513–0125, and 1513–0135. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The temporary rule implements certain changes made to the Internal Revenue Code of 1986 by the Protecting Americans from Tax Hikes Act of 2015 (see Public Law 114–113, Division Q, section 332). These statutory changes eliminate bond requirements and reduce tax return filing frequency for certain eligible taxpayers. As described further below, the temporary rule alters some of these information collections.

The regulations in this temporary rule do not include any alterations to control numbers 1513–0031, 1513–0050, and

1513–0135. These information collections cover TTB Form 5100.12 (Specific Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six), TTB Form 5100.25 (Continuing Export Bond for Distilled Spirits and Wine), TTB Form 5110.50 (Tax Deferral Bond—Distilled Spirits (Puerto Rico), and TTB Form 5110.67 (Continuing Transportation Bond—Distilled Spirits and Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six). The temporary rule amends certain regulations that reference these forms (see 27 CFR 26.66, 26.80, 28.61, 28.63, 28.64, 28.70, 28.71, 28.72, and 28.73). However, TTB is not changing these bond forms as part of this regulatory action, and TTB does not estimate that this temporary rule will alter paperwork burdens associated with these forms.

This temporary rule involves a non-substantive change to control number 1513–0037, which covers TTB Form 5100.11 (Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation). The temporary rule amends regulations that reference this form (see 27 CFR 28.22, 28.70, 28.95, 28.96, 28.116, 28.117, 28.131, 28.132, and 28.250). TTB does not estimate that this temporary rule will alter the paperwork burdens associated with this form, but TTB is making a non-substantive change to the form by modifying some of the text on the form's first page. This change will provide guidance to users of the form about applicable bond requirements. TTB has submitted this change to OMB for review, and OMB has approved this non-substantive change.

The regulations in this temporary include substantive changes to control numbers 1513–0005, 1513–0009, 1513–0015, 1513–0038, 1513–0048, 1513–0083, 1513–0123, and 1513–0125. These changes are discussed further below. TTB has provided estimates to OMB regarding the burdens associated with the collections under this temporary rule, and OMB has reviewed and approved these estimates. Comments on the revisions should be sent to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 or by email to *OIRA_submissions@omb.eop.gov.* A copy should also be sent to TTB by any of the methods previously described. Comments on the information collections should be submitted no later than March 6, 2017. Comments are specifically requested concerning:

- Whether the collections of information submitted to OMB are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the collections of information submitted to OMB;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed revisions of the collections of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

1513–0005

The regulations in the temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0005 (see 27 CFR 19.143, 25.62, 25.73, 25.77, 25.79, 25.81, 25.91, 25.95, and 25.106). This control number covers TTB Form 5130.10 (Brewer's Notice). The temporary rule includes regulations requiring that brewers who wish to apply for the bond exemption must file this form. In the case of existing brewers who wish to apply for the exemption beginning in 2017, these changes will result in a one-time increase in the filing of the form. These regulations are necessary for revenue protection purposes to ensure that bond-exempt brewers meet the legal criteria for the exemption. This information collection also covers other submissions by brewers unrelated to this rulemaking. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 6,298.
- *Estimated annual frequency of responses:* 6.
- *Estimated average annual total burden hours:* 32,091.

1513–0009

The regulations in the temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0009 (see 27 CFR 18.40, 19.143, 24.105, 24.109, 24.135, 24.146, 24.154, 25.81, 28.70, and 28.73). This control number covers TTB Form 5120.25 (Application to Establish and Operate Wine Premises) and TTB Form 5120.36 (Wine Bond). The temporary rule includes regulations requiring that bonded wine cellars who wish to apply for the bond exemption must file this form to show they are eligible for the exemption. In the case of existing proprietors who wish to apply for the exemption beginning in 2017, these changes will result in a one-time increase in the filing of the form. These regulations are necessary for revenue protection purposes to ensure that bond-exempt proprietors meet the legal criteria for the exemption. TTB also estimates that submissions of TTB Form 5120.36 will decrease as a result of the new bond exemption, since proprietors who are exempt will no longer be required to file the form. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 4,495.
- *Estimated annual frequency of responses:* 1.
- *Estimated average annual total burden hours:* 3,345.

1513–0015

The regulations in the temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0015 (see 27 CFR 25.73, 25.77, 25.91, 25.95, 25.274, 28.60, and 28.141). This control number covers TTB Form 5130.22 (Brewer's Bond), TTB Form 5130.23 (Brewer's Bond Continuation Certificate), TTB Form 5130.25 (Brewer's Collateral Bond), and TTB Form 5130.27 (Brewer's Collateral Bond Continuation Certificate). TTB estimates that submissions of these forms will decrease as a result of the new bond exemption, since brewers who are exempt will no longer be required to file the forms. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 1,657.
- *Estimated annual frequency of responses:* 652.
- *Estimated average annual total burden hours:* 363.5.

1513–0038

The regulations in the temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0038 (see 27 CFR 19.403). This control number covers TTB Form 5100.16 (Application to Receive Spirits and/or Denatured

Spirits by Transfer in Bond). TTB does not estimate that this temporary rule will alter the paperwork burdens associated with this form, but TTB is amending the section of the form where the DSP proprietor describes the proprietor's bond coverage. These form amendments are necessary to reflect changes relating to the bond exemption for DSPs. TTB is also making a minor related change to one of the instructions on the form. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 250.
- *Estimated annual frequency of responses:* 6.
- *Estimated average annual total burden hours:* 228.

1513–0048

The regulations in the temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0048 (see 27 CFR 18.39, 19.73, 19.116, 19.118, 19.136, 19.143, 19.168, and 19.170). This control number covers TTB Form 5110.41 (Registration of Distilled Spirits Plant). The temporary rule includes regulations requiring that DSP proprietors who wish to apply for the bond exemption must file this form to show they are eligible for the exemption. In the case of existing proprietors who wish to apply for the exemption beginning in 2017, these changes will result in a one-time increase in the filing of the form. These regulations are necessary for revenue protection purposes to ensure that bond-exempt proprietors meet the legal criteria for the exemption. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 1,515.
- *Estimated annual frequency of responses:* 1.84.
- *Estimated average annual total burden hours:* 5,932.

1513–0083

The regulations in the temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0083. This control number covers TTB Form 5000.24 (Excise Tax Return). TTB estimates that the paperwork burden associated with this collection will decrease under the temporary rule due to the establishment of a new annual tax return period for deferred payment of taxes on distilled spirits, wines, and beer. The burden reduction will result from eligible taxpayers paying taxes annually rather than quarterly or semimonthly. TTB also expects that additional taxpayers who are eligible to use quarterly or annual return periods will begin using those periods in lieu of semimonthly or quarterly return periods, respectively, which will also result in a reduction in paperwork burden. Once these taxpayers establish their eligibility for the bond exemption, such taxpayers paying taxes less frequently will not have the disincentive of being required to hold withdrawal bonds of higher penal sums to cover tax liability associated with withdrawals of tax-determined product on which taxes have not yet been paid. This information collection also covers other submissions of TTB Form 5000.24 that are unrelated to this rulemaking. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 18,479.
- *Estimated annual frequency of responses:* 6.2.
- *Estimated average annual total burden hours:* 85,888.

1513–0123

The regulations in this temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0123 (see 27 CFR 26.80, 26.95, and 26.104). This control number covers TTB Form 5100.21 (Application, Permit, and Report—Wine and Beer (Puerto Rico)) and TTB Form 5110.51 (Application, Permit, and Report—Distilled Spirits Products (Puerto Rico)). TTB does not estimate that this temporary rule will alter the paperwork burdens associated with these forms, but TTB is amending several sections of the forms to reflect changes relating to the new bond exemption. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 35.
- *Estimated annual frequency of responses:* 1.
- *Estimated average annual total burden hours:* 35.

1513–0125

The regulations in the temporary rule contain alterations to the information collection currently approved under OMB control number 1513–0125. This control number covers TTB Form 5110.56 (Distilled Spirits Bond). TTB estimates that submissions of this form will decrease as a result of the new bond exemption, since DSP proprietors who are exempt will no longer be required to file the form. Taking into account the regulatory amendments and other existing regulatory requirements, TTB estimates the burden associated with this information collection as follows:

- *Estimated number of respondents:* 358.
- *Estimated annual frequency of responses:* 2.
- *Estimated average annual total burden hours:* 716.

D. Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

TTB is issuing this temporary final rule without prior notice and comment pursuant to authority under 5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Because this document implements provisions of a law that are effective on January 1, 2017, and because immediate guidance is necessary to implement these statutory provisions, it is found to be impracticable to issue this temporary rule with prior notice and comment. The temporary rule implements statutory changes that eliminate bond requirements and reduce tax return filing frequency for certain eligible taxpayers. These statutory changes reduce regulatory burdens on affected industry members, and the regulations in this temporary rule will allow such industry members to benefit from such changes.

Pursuant to the provisions of 5 U.S.C. 553(d)(1) and (d)(3), TTB is issuing this temporary rule without a delayed effective date. As provided for in section 553(d)(1), the regulatory amendments recognize a statutory exemption from bond requirements and authorize a new voluntary annual tax return period. TTB has also determined that good cause exists under section 553(d)(3) to provide industry members with immediate guidance on procedures to apply for and obtain the bond exemption authorized under provisions of a law that are effective on January 1, 2017.

XI. Drafting Information

Ben Birkhill of the Regulations and Rulings Division drafted this document with the assistance of other Alcohol and

Tobacco Tax and Trade Bureau personnel.

List of Subjects

27 CFR Part 18

Alcohol and alcoholic beverages, Fruits, Reporting and recordkeeping requirements, Spices and flavorings.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 30

Liquors, Scientific equipment.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR chapter I as follows:

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

■ 1. The authority citation for part 18 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5171–5173, 5178, 5179, 5203, 5351, 5354, 5356, 5511, 5552, 6065, 6109, 7805.

§ 18.39 [Amended]

■ 2. Section 18.39 is amended as follows:
■ a. In paragraph (c), by adding the words ''if the proprietor is required to hold a bond under § 19.151 of this chapter to cover the distilled spirits plant premises subject to alternation'' before the period; and
■ b. By revising the Office of Management and Budget control number reference to read ''(Approved by the Office of Management and Budget under control number 1513–0006)''.

§ 18.40 [Amended]

■ 3. Section 18.40 is amended as follows:
■ a. In paragraph (c), by adding the words ''if the proprietor is required to hold a bond under § 24.146 of this chapter to cover the bonded wine cellar premises subject to alternation'' after the words ''alternation of premises''; and
■ b. By revising the Office of Management and Budget control number reference to read ''(Approved by the Office of Management and Budget under control number 1513–0006)''.

PART 19—DISTILLED SPIRITS PLANTS

■ 4. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 5. Section 19.1 is amended as follows:
■ a. In the definition of ''Bonded premises'', by adding a second sentence;
■ b. By adding, in alphabetical order, a definition of ''From bond'';
■ c. In the definition of ''In bond'', by adding a second sentence;
■ d. By adding, in alphabetical order, a definition of ''To bond''; and
■ e. By removing the definition of ''TTB bond''.

The additions read as follows:

§ 19.1 Definitions.

* * * * *

Bonded premises. * * * This term includes premises described in the preceding sentence even if the proprietor, as authorized under the exemption set forth in § 19.151(d), has not provided a bond for the premises.

* * * * *

From bond. When used with reference to withdrawals of distilled spirits, this phrase includes withdrawals from the premises of a distilled spirits plant even if the proprietor, as authorized under the exemption set forth in § 19.151(d), has not provided a bond for the premises.

* * * * *

In bond. * * * Spirits, denatured spirits, articles, or wine are considered to be held under bond if they are held by a proprietor who is liable for the tax, even if the proprietor is not required to provide a bond under this chapter.

* * *

* * * * *

To bond. When used with reference to returns of distilled spirits, this phrase includes returns to the premises of a distilled spirits plant even if the proprietor, as authorized under the exemption set forth in § 19.151(d), has not provided a bond for the premises.

* * * * *

■ 6. Section 19.73 is amended as follows:
■ a. In paragraph (a)(14)(ii), by removing the word ''and'';
■ b. In paragraph (a)(15)(ii), by removing the period at the end of the text and adding in its place the word ''; and''; and
■ c. By adding paragraph (a)(16).

The addition reads as follows:

§ 19.73 Information required in application for registration.

(a) * * *

(16) A statement whether the applicant is required to furnish a bond under § 19.151.

* * * * *

§ 19.116 [Amended]

■ 7. In § 19.116, paragraph (a)(2)(ii) is amended by adding the words '', subject to the exemption provided in § 19.151(d)'' before the semicolon.

§ 19.118 [Amended]

■ 8. In § 19.118, paragraph (a)(2) is amended by adding the words '', subject to the exemption provided in § 19.151(d)'' after the words ''TTB F 5000.18''.

§ 19.132 [Amended]

■ 9. In § 19.132, paragraph (a)(2)(ii) is amended by adding the words '', subject to the exemption provided in § 19.151(d)'' after the words ''the required bonds''.

§ 19.134 [Amended]

■ 10. In § 19.134, paragraph (b) is amended by adding the words '', subject to the exemption provided in § 19.151(d)'' after the words ''TTB F 5000.18''.

■ 11. Section 19.136 is added immediately after § 19.135 and before the undesignated center heading to read as follows:

§ 19.136 Change in bond status.

A proprietor must file TTB F 5110.41, Registration of Distilled Spirits Plant, to amend the registration relating to the proprietor's bond status if either of the following occurs:

(a) A proprietor who has not furnished any bond becomes required to furnish a bond as provided under § 19.168(b); or

(b) A proprietor who has furnished a bond becomes exempt from bond requirements under § 19.151(d) and chooses to terminate all bond coverage as provided under § 19.170(e).

§ 19.141 [Amended]

■ 12. Section 19.141 is amended as follows:

■ a. In paragraph (d)(2), by removing the word ''Execute'' and adding, in its place, the words ''Except where no bond is required under § 19.151(d), execute''; and

■ b. In paragraph (e)(2), by removing the words ''Must execute'' and adding, in their place, the words ''Except where no bond is required under § 19.151(d), must execute''.

§ 19.142 [Amended]

■ 13. In § 19.142, paragraph (e) is amended by removing the words ''TTB bond'' and adding, in their place, the words ''bonded premises''.

■ 14. In § 19.143, paragraph (b)(3) is amended by adding a second sentence to read as follows:

§ 19.143 Alternation for other purposes.

* * * * *

(b) * * *

(3) * * * This requirement does not apply if no bond is required under this chapter to cover the proposed alternation.

* * * * *

■ 15. Section 19.151 is amended as follows:

■ a. In the first sentence of paragraph (a), by removing the words ''Any person'' and adding, in their place, ''Except as provided in paragraph (d) of this section, any person''; and

■ b. By adding paragraph (d).

The addition reads as follows:

§ 19.151 General.

* * * * *

(d) *Bonds covering distilled spirits for nonindustrial use and industrial use*—(1) *Nonindustrial use.* A proprietor who pays tax on a deferred basis under § 19.235 is not required to provide a bond or bonds to cover operations and withdrawals of distilled spirits for nonindustrial use during any portion of a calendar year for which the proprietor is eligible to use an annual or quarterly return period under § 19.235(b) or (c). For purposes of the preceding sentence, a proprietor is considered to be paying tax on a deferred basis even if the proprietor does not pay tax during every return period as long as the proprietor intends to pay tax in a future period. See §§ 19.73 and 19.136 for rules governing applying for this bond exemption. See § 19.168(b) for rules governing when an existing proprietor who has not provided a bond under this paragraph must obtain bond coverage.

(2) *Industrial use.* A proprietor is required to provide one or more bonds to cover operations and withdrawals of distilled spirits for industrial use even if the proprietor pays tax on a deferred basis under § 19.235 and is eligible to use an annual or quarterly return period under § 19.235(b) or (c). In the case of a proprietor whose operations involve distilled spirits for both nonindustrial and industrial use, distilled spirits are considered to be for industrial use for purposes of this paragraph unless the proprietor designates the spirits as being solely for nonindustrial use either upon taking the production gauge (see § 19.304) or upon receiving the spirits and, in either case, does not thereafter mix the spirits with any spirits for industrial use.

(3) *Nonindustrial use and industrial use defined.* See § 19.472 for the provisions defining the nonindustrial and industrial uses of distilled spirits.

■ 16. In § 19.153, paragraph (b) is revised to read as follows:

§ 19.153 Bonds guaranteed by a corporate surety.

* * * * *

(b) *How to find an approved surety.* The Department of the Treasury publishes a list of approved corporate surety companies in Treasury Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. Treasury Department Circular 570 is published in the **Federal Register** annually on the first business day in July, and supplemental changes are published periodically thereafter. The most recent circular and any supplemental changes to it may be viewed on the Bureau of the Fiscal Service Web site at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

* * * * *

■ 17. Section 19.154 is revised to read as follows:

§ 19.154 Bond guaranteed by deposit of securities or cash (including cash equivalents).

(a) *Bond guaranteed by deposit of securities*—(1) *General.* As an alternative to the corporate surety bond under § 19.153, a person can file a bond that guarantees payment of the liability by pledging one or more acceptable negotiable securities. These securities must have a par value (face amount) equal to or greater than the penal sums of the required bonds. The pledged securities are held in the Federal Reserve Bank in a safekeeping account with TTB as the pledgee. Should the proprietor fail to pay one or more of the guaranteed liabilities, TTB can take action to sell the deposited securities to satisfy the debt. Pledged securities will be released if there are no outstanding liabilities when the bond is terminated. (See § 19.170.)

(2) *Acceptable securities.* Only public debt obligations of the United States, the principal and interest of which are unconditionally guaranteed by the United States Government, are acceptable for the purpose described in paragraph (a)(1) of this section. The Department of the Treasury and certain other United States Government agencies issue debt instruments that are acceptable as collateral, such as Treasury notes and Treasury bills. Savings bonds, certificates of deposit and letters of credit are not acceptable. A list of securities acceptable as collateral in lieu of surety bonds is available from the Bureau of the Fiscal Service. Current information and guidance from the Bureau of the Fiscal Service Web site may be found at *https://www.fiscal.treasury.gov.*

(b) *Bond guaranteed by deposit of cash or cash equivalent.* As an

alternative to the corporate surety bond under § 19.153, a person can file a bond that guarantees payment of the liability by submitting cash or its equivalent (including a money order, cashier's check, or personal check). Cash or its equivalent must be no less than the penal sums of the required bond. Cash equivalents must be payable to the Alcohol and Tobacco Tax and Trade Bureau. A bond described in this paragraph will be released if there are no outstanding liabilities when the bond is terminated. (See § 19.170.)

(31 U.S.C. 9301, 9303; 31 CFR part 380)

§ 19.161 [Amended]

■ 18. In § 19.161, paragraph (a) is amended by removing the words ''Any person'' and adding, in their place, ''Except as provided in § 19.151(d), any person''.

■ 19. In § 19.164, the first sentence of paragraph (a) is revised to read as follows:

§ 19.164 Withdrawal bond.

(a) * * * Except as provided in § 19.151(d), a person must provide TTB with a withdrawal bond for a distilled spirits plant if the person intends to withdraw spirits from the distilled spirits plant upon determination of the taxes due on the spirits but before payment of the tax. * * *

* * * * *

■ 20. Section 19.168 is amended as follows:

■ a. By revising the section heading;

■ b. By revising paragraph (a);

■ c. By redesignating paragraphs (b), (c), and (d) as paragraphs (a)(1), (a)(2), and (a)(3);

■ d. In the first sentence of redesignated paragraph (a)(1), by removing the words ''Circular 570'' and adding, in their place, the words ''Department Circular 570 (see § 19.153)''; and

■ e. By adding a new paragraph (b).

The revisions and addition read as follows:

§ 19.168 Superseding bonds and new bonds for existing proprietors.

(a) *Superseding bonds.* A new bond that replaces another bond is called a superseding bond. The proprietor must replace an existing bond with a superseding bond in any of the following circumstances:

* * * * *

(b) *New bonds for existing proprietors*—(1) *General.* Subject to paragraph (b)(2) of this section, if an existing proprietor has not furnished a bond or bonds covering operations and withdrawals of distilled spirits for nonindustrial use because the proprietor was exempt from bond requirements under § 19.151(d), the proprietor must furnish a bond or bonds as provided in this subpart beginning in any portion of a calendar year following the first date on which the aggregate amount of tax due from the proprietor during the calendar year exceeds $50,000. When furnishing the bond or bonds, the proprietor must also file an amendment to TTB F 5110.41, Registration of Distilled Spirits Plant, as provided in § 19.136 to change the proprietor's bond status.

(2) *Grace period for bonds covering operations.* An existing proprietor who must furnish an operations bond as provided in paragraph (b)(1) of this section will be treated as having furnished the required bond if the proprietor submits the bond on TTB F 5110.56 no later than 30 days following the first date on which the aggregate amount of tax due from the proprietor during the relevant calendar year exceeds $50,000. The proprietor will be treated as having furnished the required operations bond for purposes of this paragraph until TTB approves or disapproves the bond.

(3) *Bonds covering withdrawals.* Paragraph (b)(2) of this section does not apply to withdrawal bonds. If an existing proprietor must furnish a withdrawal bond as provided in paragraph (b)(1) of this section, the proprietor may not withdraw distilled spirits from the bonded premises on a tax deferred basis until TTB approves the withdrawal bond.

* * * * *

■ 21. In § 19.169, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 19.169 Effect of failure to furnish a superseding bond or a new bond.

(a) *Operations bond.* Except as provided in § 19.151(d), a person may not operate a distilled spirits plant without an operations bond. A person who does not submit an acceptable superseding operations bond when required to do so under § 19.168(a) must immediately discontinue the activities to which the lapsed bond coverage relates upon lapse of the existing bond coverage. If a proprietor must furnish an operations bond under § 19.168(b)(1) and does not submit an operations bond within the time prescribed in § 19.168(b)(2), the proprietor must immediately discontinue the activities required to be covered by the operations bond.

(b) *Withdrawal bond.* Except as provided in § 19.151(d), a person may not defer payment of taxes on spirits withdrawn from a distilled spirits plant upon determination of tax without a withdrawal bond. If a person is required to submit a new or superseding withdrawal bond under § 19.168, the person must submit the bond in accordance with that section. A person who does not submit and receive approval of an acceptable withdrawal bond when required to do so under § 19.168 may not withdraw distilled spirits from the bonded premises on a deferred basis. Upon lapse of the existing bond coverage, or upon the date a new bond is required under § 19.168(b), the person must pay the tax at the time of withdrawal, except in the case of distilled spirits withdrawn free of tax or withdrawn without payment of tax under 26 U.S.C. 5214 or withdrawn exempt from tax under 26 U.S.C. 7510.

* * * * *

■ 22. Section 19.170 is amended as follows:

■ a. In paragraph (c), by removing the word ''or'' at the end of the text;

■ b. In paragraph (d), by removing the period at the end of the text and adding in its place the word ''; and''; and

■ c. By adding paragraph (e).

The addition reads as follows:

§ 19.170 Termination of bonds.

* * * * *

(e) *On application by an existing proprietor who becomes exempt from bond requirements.* If a proprietor has held a bond or bonds covering operations or withdrawals of distilled spirits for nonindustrial use and becomes exempt from those bond requirements as provided under § 19.151(d), the proprietor may apply to TTB to terminate the bond or bonds covering such operations or withdrawals. To apply, the proprietor must file an amendment to TTB F 5110.41, Registration of Distilled Spirits Plant, as provided in § 19.136. The proprietor must accurately state in the submission that the proprietor:

(1) Will withdraw distilled spirits for deferred payment of tax as provided in § 19.235;

(2) Reasonably expects to be liable for not more than $50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year (see definition of ''Reasonably expects'' in § 19.235(e)); and

(3) Was liable for not more than $50,000 in such taxes in the preceding calendar year.

* * * * *

§ 19.229 [Amended]

■ 23. In § 19.229, the third sentence of paragraph (a) is amended by adding

after the words ''unit bond'' the words ''unless the proprietor is exempt from furnishing such bond under § 19.151(d)''.

§ 19.230 [Amended]

■ 24. Section 19.230 is amended as follows:

■ a. Paragraph (a) is amended by adding after the words ''unit bond'' the words ''and the proprietor is not exempt from furnishing such bond under § 19.151(d)''; and

■ b. In paragraph (d), a new second sentence is added.

The addition reads as follows:

§ 19.230 Conditions requiring prepayment of taxes.

* * * * *

(d) * * * This condition does not apply to a proprietor who is exempt from furnishing a bond under § 19.151(d). * * *

* * * * *

§ 19.231 [Amended]

■ 25. In § 19.231, the first sentence is amended by removing the words ''When a proprietor furnishes'' and adding, in their place, the words ''In cases where a proprietor must furnish''.

■ 26. Section 19.235 is revised to read as follows:

§ 19.235 Deferred payment return periods—annual, quarterly, and semimonthly.

(a) *Three types of return periods.* The IRC provides for three different return periods for those taxpayers who pay their taxes on a deferred basis: Annual, quarterly, and semimonthly. Taxpayers who meet certain criteria are eligible to use annual or quarterly return periods and pay their taxes on an annual or quarterly basis as provided in paragraphs (b) and (c) of this section, respectively. Other taxpayers must use semimonthly return periods and pay their taxes on a semimonthly basis as provided in paragraph (e) of this section.

(b) *Annual return period.* Subject to paragraph (d) of this section, a taxpayer who reasonably expects to be liable for not more than $1,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year, and that was liable for not more than $1,000 in such taxes in the preceding calendar year, may choose to use an annual return period. However, the taxpayer may not use the annual return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $1,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the quarterly or semimonthly period in which that date occurs. A taxpayer may choose to use either quarterly or semimonthly return periods as authorized under paragraph (c) or (e) of this section.

(c) *Quarterly return period.* Except as provided in paragraph (b) of this section and subject to paragraph (d) of this section, a taxpayer who reasonably expects to be liable for not more than $50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year, and that was liable for not more than $50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(d) *Additional rules for annual and quarterly return periods.* The following additional rules apply to the annual and quarterly return period procedures under paragraphs (b) and (c) of this section:

(1) A taxpayer with multiple locations must combine the distilled spirits tax liability for all locations to determine eligibility for the return procedures;

(2) A taxpayer who has both domestic operations and import transactions must combine the distilled spirits tax liability on the domestic operations and the imports to determine eligibility for the return procedures;

(3) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the return procedures. However, a taxpayer who is eligible for the return procedures, and that is a member of a controlled group that owes $5 million or more in distilled spirits excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT must be transmitted in accordance with section 5061(e);

(4) A new taxpayer is eligible to use the return procedures the first year of business simply if the taxpayer reasonably expects to be liable for not more than $1,000, in the case of the annual return procedure, or $50,000, in the case of the quarterly return procedure, in distilled spirits taxes during that calendar year; and

(5) If a taxpayer becomes ineligible to use a return procedure described in paragraph (b) or (c) of this section because the taxpayer's liability exceeds $1,000 or $50,000, respectively, during a taxable year, that taxpayer may resume using that return procedure only after a full calendar year has passed during which the taxpayer's liability did not exceed $1,000 or $50,000 as the case may be. A taxpayer may not use an annual or quarterly return procedure during any calendar year in which the taxpayer reasonably expects to be liable for more than $1,000, in the case of the annual return procedure, or $50,000, in the case of the quarterly return procedure, in distilled spirits taxes.

(e) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, annual or quarterly return periods as provided in paragraphs (b) or (c) of this section, all other taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods will run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in § 19.237.

(f) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

Reasonably expects. When used with reference to a taxpayer, *reasonably expects* means that there is no existing or anticipated circumstances known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit.

Taxpayer. A *taxpayer* is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number (EIN) as defined in 26 CFR 301.7702.12.

(26 U.S.C. 5061)

■ 27. Section 19.236 is amended as follows:

■ a. In paragraph (a), by removing the words ''a quarterly return as provided in paragraph (b)'' and adding, in their place, the words ''an annual or quarterly return as provided in paragraph (b) or (c)'';

■ b. In paragraph (b), by removing the citation ''§ 19.235(b)'' and adding, in its place, the citation ''§ 19.235(c)''; and

■ c. By adding paragraph (c).

The addition reads as follows:

§ 19.236 Due dates for returns.

* * * * *

(c) *Annual returns.* Where the proprietor of bonded premises has

withdrawn spirits from such premises on determination and before payment of tax, and the proprietor uses annual return periods as provided in § 19.235(b), the proprietor must file an annual return covering such spirits on TTB F 5000.24, and remittance, as required by § 19.238, § 19.239, or § 19.240, not later than the 14th day after the last day of the annual return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance will be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

* * * * *

§ 19.263 [Amended]

■ 28. In § 19.263, paragraph (a)(4) is amended by removing the words ''TTB bond'' and adding, in their place, the words ''bonded premises''.

§ 19.269 [Amended]

■ 29. In § 19.269, paragraph (a)(1) is amended by removing the word ''TTB''.

§ 19.305 [Amended]

■ 30. In § 19.305, the second sentence is amended by removing the words ''bonded storage'' and adding, in their place, the words ''storage on bonded premises''.

§ 19.403 [Amended]

■ 31. In § 19.403, the first sentence of paragraph (b) is amended by removing words ''TTB will'' and adding, in their place, the words ''Except to the extent the proprietor is not required to provide a bond under § 19.151(d), TTB will''.

§ 19.415 [Amended]

■ 32. In § 19.415, the first sentence of paragraph (c) is amended by removing the words ''premises bonded under this part'' and adding, in their place, the words ''bonded premises''.

■ 33. Section 19.699 is amended as follows:

■ a. In the second sentence of paragraph (a), by removing the duplicate words ''fails to'' immediately after the words ''fails to'';

■ b. By revising paragraph (b); and

■ c. In paragraph (c), by revising the last two sentences.

The revisions read as follows:

§ 19.699 General bond requirements.

* * * * *

(b) *Corporate surety.* A company that issues bonds is called a ''corporate surety.'' Proprietors must obtain the surety bonds required by this subpart from a corporate surety approved by the Secretary of the Treasury. The Department of the Treasury publishes a list of approved corporate surety companies in Treasury Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies. Treasury Department Circular 570 is published in the **Federal Register** annually on the first business day in July, and supplemental changes are published periodically thereafter. The most recent circular and any supplemental changes to it may be viewed on the Bureau of the Fiscal Service Web site at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm*.

(c) * * * A list of securities acceptable as collateral in lieu of surety bonds is available from the Bureau of the Fiscal Service. Current information and guidance from the Bureau of the Fiscal Service Web site may be found at *https://www.fiscal.treasury.gov*.

* * * * *

PART 24—WINE

■ 34. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.4 [Amended]

■ 35. Section 24.4 is amended by removing the words ''31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.'' and adding, in their place, the words ''31 CFR Part 225—Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties.''.

■ 36. Section 24.10 is amended as follows:

■ a. In the definition of ''Bonded wine cellar'', by adding a third sentence;

■ b. In the definition of ''Bonded wine premises'', by adding a second sentence;

■ c. In the definition of ''Bonded wine warehouse'', by adding a second sentence;

■ d. In the definition of ''Bonded winery'', by adding a second sentence;

■ e. By adding, in alphabetical order, a definition of ''From bond'';

■ f. In the definition of ''In bond'', by adding a new second sentence; and

■ g. By adding, in alphabetical order, a definition of ''To bond''.

The additions read as follows:

§ 24.10 Meaning of terms.

* * * * *

Bonded wine cellar. * * * This term includes premises described in the preceding sentence even if the proprietor, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the premises.

Bonded wine premises. * * * This term includes premises described in the preceding sentence even if the proprietor, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the premises.

Bonded wine warehouse. * * * This term includes facilities described in the preceding sentence even if the warehouse company or other person, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the facility.

Bonded winery. * * * This term includes premises described in the preceding sentence even if the proprietor, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the premises.

* * * * *

From bond. When used with reference to withdrawals of wine, this phrase includes withdrawals from the premises established under the provisions of this part on which operations in untaxpaid wine are authorized to be conducted, even if the proprietor, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the premises.

* * * * *

In bond. * * * Wine or spirits are considered to be possessed under bond if they are possessed by a proprietor who is liable for the tax, even if the proprietor is not required to provide a bond under this chapter. * * *

* * * * *

To bond. When used with reference to returns of wine, this phrase includes returns to premises established under the provisions of this part on which operations in untaxpaid wine are authorized to be conducted, even if the proprietor, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the premises.

* * * * *

§ 24.100 [Amended]

■ 37. In § 24.100, the first sentence is amended by removing the words ''file bond'' and adding, in their place, the words ''file any required bond''.

§ 24.101 [Amended]

■ 38. In § 24.101, paragraph (a) is amended as follows:

■ a. In the first sentence, by adding the words ''any required'' before the word ''bond''; and
■ b. In the second sentence, by adding after the words ''the surety on the bond'' the words ''(if a bond is required)''.

§ 24.105 [Amended]

■ 39. In § 24.105, the fifth sentence is amended by adding after the words ''In any instance where a bond is required to be given'' the words ''under § 24.146''.
■ 40. Section 24.109 is amended as follows:
■ a. In paragraph (j), by removing the word ''and'';
■ b. In paragraph (k), by removing the period at the end of the text and adding in its place the word ''; and''; and
■ c. By adding paragraph (l).
The addition reads as follows:

§ 24.109 Data for application.

* * * * *

(l) A statement whether the applicant is required to furnish a bond under § 24.146.

* * * * *

§ 24.126 [Amended]

■ 41. Section 24.126 is amended by adding after the words ''sufficient bond coverage'' the words '', except where § 24.146(d) does not require bond coverage''.
■ 42. Section 24.132 is added immediately after § 24.131 and before the undesignated center heading to read as follows:

§ 24.132 Change in bond status.

A proprietor must file an amended application if the proprietor's bond status changes in either of the following ways:

(a) A proprietor who has not furnished any bond becomes required to furnish a bond as provided under § 24.154(b); or

(b) A proprietor who has furnished a bond becomes exempt from bond requirements under § 24.146(d) and chooses to terminate all bond coverage as provided under § 24.160.

§ 24.135 [Amended]

■ 43. In § 24.135, paragraph (b)(2) is amended by adding after the words ''covering the alternation'' the words '', except in cases where § 24.146(d) does not require a bond or bonds''.

§ 24.136 [Amended]

■ 44. In § 24.136, paragraph (c) is amended as follows:
■ a. In the first sentence, by adding after the words ''filed bond'' the words ''as required under § 24.146''; and
■ b. In the second sentence, by removing the words ''the outgoing proprietor'' and adding, in their place, the words ''an outgoing proprietor who has filed bond as required under § 24.146''.
■ 45. Section 24.146 is amended as follows:
■ a. In the first sentence of paragraph (a), by removing the words ''The proprietor shall give bond'' and adding, in their place, ''Except as provided in paragraph (d) of this section, the proprietor must give bond'';
■ b. In paragraph (b), by revising the first sentence; and
■ c. By adding paragraph (d).
The revision and addition read as follows:

§ 24.146 Bonds.

* * * * *

(b) * * * Except as provided in paragraph (d) of this section, where the proprietor removes wine from bonded wine premises for consumption or sale, after determination and before payment of tax, the proprietor must, in addition to any other bond required by this part, furnish a tax deferral bond on TTB F 5120.36, Wine Bond, to ensure payment of the tax on the wine. * * *

* * * * *

(d) *Bonds covering wine for nonindustrial use and industrial use*—(1) *Nonindustrial use.* A proprietor who pays tax on a deferred basis under § 24.271 is not required to provide a bond or bonds to cover operations and withdrawals of wine for nonindustrial use during any portion of a calendar year for which the proprietor is eligible to use an annual or quarterly return period under § 24.271(b)(1)(ii) or (b)(1)(iii). For purposes of the preceding sentence, a proprietor is considered to be paying tax on a deferred basis even if the proprietor does not pay tax during every return period as long as the proprietor intends to pay tax in a future period. See §§ 24.109 and 24.132 for rules governing applying for this bond exemption. See § 24.154(b) for rules governing when an existing proprietor who has not provided a bond under this paragraph must obtain bond coverage.

(2) *Industrial use.* A proprietor is required to provide a bond or bonds to cover operations and withdrawals of wine for industrial use even if the proprietor pays tax on a deferred basis under § 24.271 and is eligible to use an annual or quarterly return period under § 24.271(b)(1)(ii) or (b)(1)(iii). In the case of a proprietor whose operations or withdrawals involve wine for both nonindustrial and industrial use, wine is considered to be for industrial use for purposes of this paragraph unless the proprietor designates the wine as solely for nonindustrial use upon production of the wine by fermentation or upon receiving the wine and, in either case, does not thereafter mix the wine with any wine for industrial use.

(3) *Nonindustrial use and industrial use defined.* The nonindustrial and industrial uses of wine are defined in subpart D of part 1 of this chapter. Nonindustrial uses of wine include, but are not limited to, uses of wine for beverage purposes. Industrial uses of wine include the manufacture of wine or wine products not for beverage use as set forth in § 24.215.

* * * * *

■ 46. In § 24.147, a second sentence is added to read as follows:

§ 24.147 Operations bond or unit bond.

* * * See § 19.151(d) of this chapter for circumstances under which a bond is not required with respect to operations and withdrawals of distilled spirits.

* * * * *

■ 47. Section 24.149 is amended as follows:
■ a. In paragraph (a), by removing the words ''Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies)'' and adding, in their place, the words ''Treasury Department Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies''; and
■ b. By revising paragraph (b).
The revision reads as follows:

§ 24.149 Corporate surety.

* * * * *

(b) Department of the Treasury Circular 570 is published in the **Federal Register** annually on the first business day in July, and supplemental changes are published periodically thereafter. The most recent circular and any supplemental changes to it may be viewed on the Bureau of the Fiscal Service Web site at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

* * * * *

■ 48. Section 24.151 is revised to read as follows:

§ 24.151 Deposit of collateral security.

Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited as collateral security in lieu of corporate sureties in accordance with the provisions of the Treasury Department regulations in 31 CFR part 225,

Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties. Cash, postal money orders, certified checks, cashiers' checks, or treasurers' checks may also be furnished as collateral security in lieu of corporate sureties.

(July 30, 1947, Ch. 390, 61 Stat. 650 (6 U.S.C. 15); August 16, 1954, Ch. 736, 68A Stat. 847, as amended (26 U.S.C. 7101))

§ 24.152 [Amended]

■ 49. Section 24.152 is amended by removing the words ''Form 1533'' and adding, in their place, the words ''TTB Form 5000.18''.

■ 50. Section 24.154 is revised to read as follows:

§ 24.154 Superseding bonds and new bonds for existing proprietors.

(a) *Superseding bonds.* When, in the opinion of the appropriate TTB officer, the interests of the Government demand it, or in any case where the validity of the bond becomes impaired in whole or in part for any reason, the principal must give a new bond that supersedes the existing bond. A superseding bond will be required immediately in the case of the insolvency of a corporate surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, to continue or to liquidate the business of the principal, must execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds. When under the provisions of § 24.157 the surety has filed an application to be relieved of liability under any bond given under this part and the principal desires or intends to continue business or operations to which the bond relates, the principal must file a valid superseding bond to be effective on or before the date specified in the surety's notice. Superseding bonds will show the current date of execution and the effective date.

(b) *New bonds for existing proprietors*—(1) *General.* Subject to paragraph (b)(2) of this section, if an existing proprietor has not furnished a bond or bonds covering operations and withdrawals of wine for nonindustrial use because the proprietor was exempt from bond requirements under § 24.146(d), the proprietor must furnish a bond or bonds as provided in this subpart beginning in any portion of a calendar year following the first date on which the aggregate amount of tax due from the proprietor during the calendar year exceeds $50,000. When furnishing the bond or bonds, the proprietor must also file an amended application as provided in § 24.132 to change the proprietor's bond status.

(2) *Grace period for wine bonds under § 24.146(a).* An existing proprietor who must furnish a wine bond under § 24.146(a) as provided in paragraph (b)(1) of this section will be treated as having furnished the required bond if the proprietor submits the bond on TTB F 5120.36 no later than 30 days following the first date on which the aggregate amount of tax due from the proprietor during the relevant calendar year exceeds $50,000. The proprietor will be treated as having furnished the required wine bond for purposes of this paragraph until TTB approves or disapproves the bond. Until TTB takes action on a bond submission, a proprietor who complies with the requirements of this paragraph may remove wine on which the tax has been determined, but not paid, to the extent that the proprietor's liability for tax on those removals does not exceed $1,000.

(3) *Tax deferral bonds under § 24.146(b).* The grace period specified in paragraph (b)(2) of this section does not apply to tax deferral bonds under § 24.146(b). Except to the extent authorized under paragraph (b)(2) of this section, a proprietor who must furnish a tax deferral bond under paragraph (b)(1) of this section may not withdraw wine from the bonded premises on which the tax has been determined, but not paid, until TTB approves the tax deferral bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended, 1380, as amended, 1394, as amended (26 U.S.C. 5354, 5362, 5551))

(Approved by the Office of Management and Budget under control number 1513–0009)

§ 24.156 [Amended]

■ 51. Section 24.156 is amended by adding after the words ''as provided in § 24.140(b);'' the words ''pursuant to an application by an existing proprietor who becomes exempt from bond requirements as provided in § 24.160;''.

■ 52. Section 24.160 is added to subpart D to read as follows:

§ 24.160 Application to terminate bond by existing proprietor who becomes exempt from bond requirements.

If a proprietor has held a bond or bonds covering operations or withdrawals of wine for nonindustrial use and becomes exempt from those bond requirements as provided under § 24.146(d), the proprietor may apply to TTB to terminate the bond or bonds covering such operations or withdrawals. To apply, the proprietor must file an amended application as provided in § 24.132. The proprietor must accurately state in the submission that the proprietor:

(a) Will withdraw wine for deferred payment of tax under § 24.271;

(b) Reasonably expects to be liable for not more than $50,000 in taxes with respect to wine imposed by 26 U.S.C. 5041 and 7652 for the current calendar year (see definition of ''Reasonably expects'' in § 24.271(b)(1)(iv)(B)); and

(c) Was liable for not more than $50,000 in such taxes in the preceding calendar year.

■ 53. In § 24.271, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 24.271 Deferred payment return periods—annual, quarterly, and semimonthly.

(a) *General.* This section governs payment of tax on a deferred basis. The tax on wine is paid by an Excise Tax Return, TTB F 5000.24, which is filled with a remittance (check, cash, or money order) of the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form. If no tax is due for the return period, the filing of a return is not required.

(b) *Return periods and due dates*—(1) *Return periods.* (i) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, an annual or quarterly return period as provided in paragraph (b)(1)(ii) or (b)(1)(iii) of this section, all taxpayers who defer payment of taxes must use semimonthly return periods. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (c) of this section.

(ii) *Annual return period.* Subject to paragraph (b)(1)(iv) of this section, a taxpayer may choose to use an annual return period if the taxpayer was not liable for more than $1,000 in taxes with respect to wine imposed by 26 U.S.C. 5041 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $1,000 in such taxes during the current calendar year. Except as provided in paragraph (b)(2), the last day for paying the tax and filing the return will be the 14th day after the last day of the calendar year. However, the taxpayer may not use the annual return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $1,000, and any tax that

has not been paid on that date will be due on the 14th day after the last day of the quarterly or semimonthly period in which that date occurs.

(iii) *Quarterly return period.* Except as provided in paragraph (b)(1)(ii) of this section and subject to paragraph (b)(1)(iv) of this section, a taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to wine imposed by 26 U.S.C. 5041 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(iv) *Additional rules for annual and quarterly return periods.* The following additional rules apply to the annual and quarterly return period procedures under this section:

(A) A ''taxpayer'' is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(B) ''Reasonably expects'' means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(C) A taxpayer with multiple locations must combine the wine tax liability for all locations to determine eligibility for the return procedures;

(D) A taxpayer who has both domestic operations and import transactions must combine the wine tax liability on the domestic operations and the imports to determine eligibility for the return procedures;

(E) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the return procedures. However, a taxpayer who is eligible for the return procedures, and who is a member of a controlled group that owes $5 million or more in wine excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Payments via EFT must be transmitted in accordance with section 5061(e);

(F) A new taxpayer is eligible to use the return procedures the first year of business simply if the taxpayer reasonably expects to be liable for not more than $1,000 (in the case of the annual return procedure) or $50,000 (in the case of the quarterly return procedure) in wine taxes during that calendar year; and

(G) If a taxpayer becomes ineligible to use a return procedure described in paragraph (b)(1)(ii) or (iii) of this section because the taxpayer's liability exceeds $1,000 or $50,000, respectively, in tax liability during a taxable year, that taxpayer may resume using that return procedure only after a full calendar year has passed during which the taxpayer's liability did not exceed $1,000 or $50,000 as the case may be. A taxpayer may not use an annual or quarterly return procedure during any calendar year in which the taxpayer reasonably expects to be liable for more than $1,000, in the case of the annual return procedure, or $50,000, in the case of the quarterly return procedure, in wine taxes.

(2) *Semimonthly, quarterly, and annual tax return due dates.* (i) *General.* Except as provided in paragraph (b)(2)(ii), the taxpayer must file the semimonthly, quarterly, or annual return, with remittance, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (c)(3) of this section.

(ii) *Due dates for 2016 annual returns.* In the case of a taxpayer filing an annual return covering the 2016 calendar year, the taxpayer must file the return, with remittance, not later than January 30, 2017.

* * * * *

§ 24.273 [Removed and Reserved]

■ 54. Section 24.273 is removed and reserved.

■ 55. In § 24.275, paragraph (a) is revised to read as follows:

§ 24.275 Prepayment of tax.

(a) *General*—(1) *Circumstances where prepayment required.* The proprietor must, before removal of wine for consumption or sale, file Excise Tax Return, TTB F 5000.24, with remittance, where:

(i) The proprietor is required to prepay tax under § 24.276; or

(ii) The proprietor is required to obtain a tax deferral bond, the bond is not in the maximum penal sum, and the tax determined and unpaid at any one time exceeds the coverage of the wine bond.

(2) *Forwarding the return with remittance.* The proprietor must forward the return with remittance pursuant to the instructions printed on the return. For the purpose of complying with this section, the term ''forwarding'' means the deposit in the United States mail properly addressed to TTB.

* * * * *

■ 56. In § 24.283, the second sentence is revised to read as follows;

§ 24.283 Reconsignment.

* * * The proprietor to whom the wine is reconsigned will be liable for the tax on the wine while it is in transit after reconsignment. * * *

* * * * *

§ 24.300 [Amended]

■ 57. Section 24.300 is amended as follows:

■ a. In paragraph (g)(2)(ii), by removing the citation ''§ 24.271'' and adding, in its place, the citation ''§ 24.271(b)(1)(iii)''; and

■ b. In paragraph (g)(2)(iii), by removing the citation ''§ 24.273'' and adding, in its place, the citation ''§ 24.271(b)(1)(ii)''.

§ 24.323 [Amended]

■ 58. In § 24.323, the first sentence is amended by removing the words '', unless exempted under the provisions of § 24.273''.

PART 25—BEER

■ 59. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.4 [Amended]

■ 60. In § 25.4, the list of related regulations is amended by removing the entry ''31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds'' and adding, in its place, the entry ''31 CFR Part 225—Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties''.

■ 61. Section 25.11 is amended by adding, in alphabetical order, definitions of ''Bonded premises of a

distilled spirits plant'', ''Bonded wine premises'', and ''Bonded winery'' to read as follows:

§ 25.11 Meaning of terms.

* * * * *

Bonded premises of a distilled spirits plant. The bonded premises of a distilled spirits plant as described in part 19 of this chapter. This term includes premises described in the preceding sentence even if the distilled spirits plant proprietor, as authorized under the exemption set forth in § 19.151(d) of this chapter, has not provided a bond for the premises.

Bonded wine premises. Bonded wine premises established under part 24 of this chapter. This term includes premises described in the preceding sentence even if the proprietor, as authorized under the exemption set forth in § 24.146(d) of this chapter, has not provided a bond for the premises.

Bonded winery. The premises of a bonded winery as described in part 24 of this chapter. This term includes premises described in the preceding sentence even if the proprietor, as authorized under § 24.146(d) of this chapter, has not provided a bond for the premises.

* * * * *

■ 62. Section 25.62 is amended by adding paragraph (a)(13) to read as follows:

§ 25.62 Data for notice.

(a) * * *

(13) A statement whether the brewer is required to furnish a bond under § 25.91.

* * * * *

■ 63. Section 25.72 is amended as follows:

■ a. In the third sentence of paragraph (a), by adding after the words ''own name'' the words '', except that the successor brewer is not required to file a bond if the brewer is exempt from bond requirements under § 25.91(e)''; and

■ b. In paragraph (b)(1), by adding a second sentence.

The addition reads as follows:

§ 25.72 Change in proprietorship.

* * * * *

(b) * * *

(1) * * * A fiduciary is not required to furnish a consent of surety under this paragraph if the brewer is exempt from bond requirements under § 25.91(e).

* * * * *

■ 64. Section 25.73 is amended as follows:

■ a. In paragraph (b)(3), by removing the words ''A consent'' and adding, in their place, the words ''If the brewer has filed a bond, a consent''; and

■ b. By revising paragraph (c).

The revision reads as follows:

§ 25.73 Change in partnership.

* * * * *

(c) *Settlement of partnership.* If the surviving partner(s) acquires the business on completion of the settlement of the partnership, that partner(s) must qualify in his or her own name from the date of acquisition. The partner(s) must give a new brewer's notice on Form 5130.10 and a new bond on Form 5130.22, except that the partner(s) is not required to file a bond if the brewer is exempt from bond requirements under § 25.91(e).

* * * * *

■ 65. Section 25.77 is amended as follows:

■ a. In the first sentence, by removing the words ''Form 1533 (5000.18) in accordance with'' and adding, in their place, the words ''Form 5000.18, as required under''; and

■ b. By adding a new second sentence.

The addition reads as follows:

§ 25.77 Change in location.

* * * The brewer is not required to file a new bond or consent of surety if the brewer is exempt from bond requirements under § 25.91(e). * * *

* * * * *

■ 66. Section 25.79 is added immediately after § 25.78 and before the undesignated center heading to read as follows:

§ 25.79 Change in bond status.

A brewer must file an amended Brewer's Notice, Form 5130.10, if the brewer's bond status changes because either:

(a) A brewer has not furnished any bond and has become required to furnish a bond as provided under § 25.95(b); or

(b) A brewer has furnished a bond, has become exempt from bond requirements under § 25.91(e), and chooses to terminate all bond coverage as provided under § 25.106.

§ 25.81 [Amended]

■ 67. In § 25.81, paragraph (b)(3) is amended by adding after the words ''alternation of premises'' the words '', except to the extent no bond is required under § 24.146 of this chapter or § 25.91(e)''.

■ 68. Section 25.91 is amended as follows:

■ a. In the first sentence of paragraph (a), by removing the words ''Every person'' and adding, in their place, ''Except as provided in paragraph (e) of this section, every person''; and

■ b. By adding paragraph (e).

The addition reads as follows:

§ 25.91 Requirement for bond.

* * * * *

(e) *Bond exemption.* A brewer who pays tax on a deferred basis under § 25.164 is not required to provide a bond to cover operations and withdrawals of beer during any portion of a calendar year for which the brewer is eligible to use an annual or quarterly return period under § 25.164(c)(2) or (c)(3). A brewer is considered to be paying tax on a deferred basis for purposes of the preceding sentence even if the brewer does not pay tax during every return period as long as the brewer intends to pay tax in a future period. See §§ 25.62 and 25.79 for rules governing applying for this bond exemption. See § 25.95 for rules governing when an existing brewer who has not provided a bond under this paragraph must obtain bond coverage.

* * * * *

§ 25.92 [Amended]

■ 69. Section 25.92 is amended by removing the words ''Form 1533 (5000.18)'' and adding, in their place, the words ''Form 5000.18''.

■ 70. In § 25.93, paragraph (a) is revised to read as follows:

§ 25.93 Penal sum of bond.

(a) *General.* Except as provided in paragraph (a)(3) of this section, a brewer must furnish a bond of a penal sum as prescribed in this section.

(1) *Brewers who pay taxes using semimonthly periods.* In the case of a brewer who pays taxes using semimonthly return periods under § 25.164(c)(1), the penal sum of the brewers bond must be equal to 10 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

(2) *Brewers who pay taxes using quarterly or annual return periods.* In the case of a brewer who pays taxes using annual or quarterly return periods under § 25.164(c)(2) or (c)(3), the penal sum of the brewers bond is $1,000 and covers the beer described in paragraph (a)(1)(i)–(iv) of this section.

(3) *Brewers who are exempt from bond requirements.* This section does not apply to a brewer who is exempt from bond requirements under § 25.91(e).

* * * * *

■ 71. Section 25.95 is revised to read as follows:

§ 25.95 Superseding bonds and new bonds for existing brewers.

(a) *Superseding bonds.* The appropriate TTB officer may at any time, at his or her discretion, require a new bond that supersedes the existing bond. A superseding bond is required immediately in the case of insolvency of a surety. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity must execute a superseding bond or obtain a consent of surety on all bonds in effect. When the interests of the Government so demand, or in any case when the security of the bond becomes impaired for any reason, the principal will be required to give a superseding bond. When a bond is found to be not acceptable by the appropriate TTB officer, the principal will be required immediately to obtain a satisfactory superseding bond or discontinue business.

(b) *New bonds for existing brewers*—(1) *General.* Subject to paragraph (b)(2) of this section, if an existing brewer has not furnished a bond covering operations and withdrawals of beer because the brewer was exempt from bond requirements under § 25.91(e), the brewer must furnish a bond as provided in this subpart beginning in any portion of a calendar year following the first date on which the aggregate amount of tax due from the brewer during the calendar year exceeds $50,000. When furnishing the bond, the brewer must also file an amended Brewer's Notice, Form 5130.10, as provided in § 25.79 to change the brewer's bond status.

(2) *Grace period for new bonds for existing brewers*—(i) *Bonds covering operations.* Except as provided in paragraph (b)(2)(ii) of this section, an existing brewer who must furnish a bond as provided in paragraph (b)(1) of this section will be treated as having furnished the required bond if the brewer submits the bond on Form 5130.22 no later than 30 days following the first date on which the aggregate amount of tax due from the brewer during the relevant calendar year exceeds $50,000. Except as provided in paragraph (b)(2)(ii) of this section, the brewer will be treated as having furnished the required bond for the purposes of this paragraph until TTB approves or disapproves the bond.

(ii) *Bonds covering tax-deferred removals.* The grace period specified in paragraph (b)(2)(i) of this section does not apply to beer removed for consumption or sale on deferred payment of tax. A brewer that must furnish a bond under paragraph (b)(1) of this section may not remove beer for consumption or sale on deferred payment of tax until TTB approves the bond.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

■ 72. Section 25.98 is amended as follows:

■ a. In paragraph (b), by removing the words ''Circular No. 570, Companies Holding Certificates of Authority as Acceptable Reinsuring Companies'' and adding, in their place, the words ''Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies'';

■ b. By revising paragraph (c);

■ c. In paragraph (e), by removing the citation ''Part 225'' and adding, in its place, the citation ''part 225''; and

■ d. By adding paragraph (f).

The revision and addition read as follows:

§ 25.98 Surety or security.

* * * * *

(c) *Availability of Circular 570.* Department of the Treasury Circular 570 is published in the **Federal Register** annually on the first business day in July, and supplemental changes are published periodically thereafter. The most recent circular and any supplemental changes to it may be viewed on the Bureau of the Fiscal Service Web site at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

* * * * *

(f) *Bond guaranteed by deposit of cash or cash equivalent.* As an alternative to the corporate surety bond under paragraph (b) of this section, a person can file a bond that guarantees payment of the liability by submitting cash or its equivalent (including a money order, cashier's check, or personal check). Cash or its equivalent must be no less than the penal sums of the required bonds. Bonds described in this paragraph will be released if there are no outstanding liabilities when the bond is terminated. Cash equivalents must be payable to the Alcohol and Tobacco Tax and Trade Bureau.

* * * * *

■ 73. Section 25.102 is revised to read as follows:

§ 25.102 Termination of surety's liability.

The liability of a surety on a bond required by this part will be terminated only as to liability arising on or after:

(a) The effective date of a superseding bond;

(b) The date of approval of the discontinuance of business of the brewer;

(c) Following the giving of notice by the surety; or

(d) In the case of a brewer who applies to terminate a surety bond under § 25.106, the date that TTB approves the brewer's application under that section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

■ 74. Section 25.104 is revised to read as follows:

§ 25.104 Termination of bonds.

(a) *General.* Brewer's bonds may be terminated as to liability for future removals or receipts under the following circumstances:

(1) Pursuant to application of the surety as provided in § 25.103;

(2) On approval of a superseding bond as provided in § 25.95;

(3) When a brewer discontinues business as provided in § 25.85; or

(4) When an existing brewer who becomes exempt from bond requirements terminates the bond as provided in § 25.106.

(b) *Notification.* On termination of the surety's liability under a bond, the appropriate TTB officer will notify the principal and sureties.

(31 U.S.C. 9301, 9303)

§ 25.105 [Amended]

■ 75. In § 25.105, the first sentence is amended by removing the citation ''31 CFR Part 225'' and adding, in their place, the citation ''31 CFR part 225''.

■ 76. Section 25.106 is added to subpart H to read as follows:

§ 25.106 Application to terminate bond by existing brewer who becomes exempt from bond requirements.

If a brewer has held a bond and becomes exempt from bond requirements under § 24.91(e), the brewer may apply to TTB to terminate the bond. To apply, the brewer must file an amendment to the Brewer's Notice, Form 5130.10, as provided in § 25.79. The brewer must accurately state in the submission to TTB that the brewer:

(a) Will withdraw beer for deferred payment of tax under § 25.164;

(b) Reasonably expects to be liable for not more than $50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 for the current calendar year (see definition of ''Reasonably expects'' in § 25.164(c)(4)(ii)); and

(c) Was liable for not more than $50,000 in such taxes in the preceding calendar year.

■ 77. Section 25.164 is revised to read as follows:

§ 25.164 Deferred payment return periods—annual, quarterly, and semimonthly.

(a) *Requirement for filing.* This section governs payment of tax on a deferred basis. Each brewer must pay the tax on beer (unless prepaid) by return on Form 5000.24. The brewer must file Form 5000.24 as a return regardless of whether tax has been prepaid as provided in § 25.175 during the return period. The brewer must file a return on Form 5000.24 for each return period even though no beer was removed for consumption or sale.

(b) *Payment of tax.* The brewer must include for payment with the return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return.

(c) *Return periods*—(1) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for annual or quarterly return periods as provided in paragraphs (c)(2) or (c)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month, except as otherwise provided in § 25.164a.

(2) *Annual return period.* Subject to paragraph (b)(4) of this section, a taxpayer who reasonably expects to be liable for not more than $1,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 in the current calendar year, and that was liable for not more than $1,000 in such taxes in the preceding calendar year, may choose to use an annual return period. However, the taxpayer may not use the annual return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $1,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the quarterly or semimonthly period in which that date occurs.

(3) *Quarterly return period.* A taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(4) *Additional rules for annual and quarterly return periods.* The following additional rules apply to the annual and quarterly return period procedure under this section:

(i) A ''taxpayer'' is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(ii) ''Reasonably expects'' means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(iii) A taxpayer with multiple locations must combine the beer tax liability for all locations to determine eligibility for the return procedures;

(iv) A taxpayer who has both domestic operations and import transactions must combine the beer tax liability on the domestic operations and the imports to determine eligibility for the return procedures;

(v) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the return procedures. However, a taxpayer who is eligible for the return procedures, and who is a member of a controlled group that owes $5 million or more in beer excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Payments via EFT must be transmitted in accordance with section 5061(e);

(vi) A new taxpayer is eligible to use the return procedures in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $1,000 (in the case of the annual return procedure) or $50,000 (in the case of the quarterly return procedure) in beer taxes during that calendar year; and

(vii) If a taxpayer becomes ineligible to use a return procedure prescribed in paragraph (c)(2) or (c)(3) of this section because the taxpayer's liability exceeds $1,000 or $50,000, respectively, during a taxable year, that taxpayer may resume using that return procedure only after a full calendar year has passed during which the taxpayer's liability did not exceed $1,000 or $50,000, as the case may be. A taxpayer may not use an annual or quarterly return procedure during any calendar year in which the taxpayer reasonably expects to be liable for more than $1,000, in the case of the annual return procedure, or $50,000, in the case of the quarterly return procedure, in beer taxes.

(d) *Time for filing returns and paying tax.* Except as otherwise provided in § 25.164a for semimonthly tax returns, the brewer must file the tax return, TTB F 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 25.164a(c).

(e) *Timely filing.* (1) When the brewer sends the semimonthly, quarterly, or annual tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section, with remittance as provided for in this section, or without remittance as provided for in § 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly, quarterly, or annual return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail will be treated as the date of delivery of the return and of the remittance, if enclosed with the return.

(Approved by the Office of Management and Budget under control number 1513–0083)

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 25.174 [Amended]

■ 78. In § 25.174, the first sentence of paragraph (a) is amended by adding after the word ''When'' the words ''a brewer has filed a bond and''.

■ 79. In § 25.184, paragraph (a) is revised to read as follows:

§ 25.184 Losses in transit.

(a) *Liability for losses.* The brewery to which beer is transferred is liable for the tax on beer lost in transit. If beer is reconsigned while in transit or returned to the shipping brewery, the brewery to which the beer is reconsigned or returned is liable for the tax on beer lost in transit.

* * * * *

■ 80. Section 25.274 is amended as follows:

■ a. In the first sentence of paragraph (a), by removing the words ''Any person'' and adding, in their place, ''Except as provided in paragraph (d) of this section, any person''; and

■ b. By adding paragraph (d).

The addition reads as follows:

§ 25.274 Bond.

* * * * *

(d) *Bond exemption.* A person is not required to provide a bond under this section if the person is a brewer qualified under this part and if, under § 25.91(e), the person is exempt from bond requirements applicable to brewers.

* * * * *

§ 25.276 [Amended]

■ 81. In § 25.276, paragraph (a) is amended by adding the words ''any required'' before the word ''bond''.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 82. The authority citation for part 26 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 83. Section 26.11 is amended by adding, in alphabetical order, the definition of ''Bonded premises of a distilled spirits plant'' to read as follows:

§ 26.11 Meaning of terms.

* * * * *

Bonded premises of a distilled spirits plant. The bonded premises of a distilled spirits plant as described in part 19 of this chapter. This term includes premises described in the preceding sentence even if the distilled spirits plant proprietor, as authorized under the exemption set forth in § 19.151(d) of this chapter, has not provided a bond for the premises.

* * * * *

■ 84. Section 26.62 is amended as follows:

■ a. In paragraph (a), by removing the words ''Circular No. 570'' and adding, in their place, the words ''Circular 570''; and

■ b. By revising paragraph (b).

The revision reads as follows:

§ 26.62 Corporate surety.

* * * * *

(b) Department of the Treasury Circular 570 is published in the **Federal Register** annually on the first business day in July, and supplemental changes are published periodically thereafter. The most recent circular and any supplemental changes to it may be viewed on the Bureau of the Fiscal Service Web site at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

* * * * *

■ 85. Section 26.63 is amended as follows:

■ a. By revising the section heading;

■ b. By redesignating the existing text as paragraph (a) and adding a paragraph heading;

■ c. In redesignated paragraph (a), by removing the words ''Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds'' and adding, in their place, the words ''Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties''; and

■ d. By adding paragraph (b).

The revision and additions read as follows:

§ 26.63 Deposit of securities or cash (including cash equivalents) in lieu of corporate surety.

(a) *Deposit of securities.* * * *

(b) *Deposit of cash or cash equivalent.* In lieu of corporate surety, a person can file a bond that guarantees payment of the liability by submitting cash or its equivalent (including a money order, cashier's check, or personal check). Cash or its equivalent must be no less than the penal sums of the required bonds. Cash equivalents must be payable to the Alcohol and Tobacco Tax and Trade Bureau.

* * * * *

§ 26.64 [Amended]

■ 86. Section 26.64 is amended by removing the words ''Form 1533'' and adding, in their place, the words ''TTB Form 5000.18''.

■ 87. Section 26.66 is amended as follows:

■ a. By revising paragraph (a); and

■ b. By adding paragraph (c).

The revision and addition read as follows:

§ 26.66 Bond, TTB Form 5110.50—Distilled spirits.

(a) *General.* Except as provided in paragraph (c) of this section, if any person intends to ship to the United States, distilled spirits products of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by 26 U.S.C. 7652(a), equal to the tax imposed in the United States by 26 U.S.C. 5001(a)(1), the person must, before making any such shipment, furnish a bond. The person must furnish a bond on TTB Form 5110.50 for each premises from which shipment will be made, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all distilled spirits products shipped. The bond must be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond. The penal sum of such bond must not exceed $1,000,000, but in no case will the penal sum be less than $1,000.

* * * * *

(c) *Bonds covering spirits for nonindustrial use and industrial use—*(1) *Nonindustrial use.* A person who pays tax on a deferred basis under § 26.112 is not required to furnish a bond under this section to cover shipments of distilled spirits for nonindustrial use during any portion of a calendar year for which the person is eligible to use an annual or quarterly return period under § 26.112(b)(2) or (b)(3). For purposes of the preceding sentence, a person is considered to be paying tax on a deferred basis even if the person does not pay tax during every return period as long as the person intends to pay tax in a future period. TTB may require a person who has defaulted on any payment to prepay tax as provided in § 26.112(e).

(2) *Industrial use.* A person is required to furnish a bond under this section to cover shipments of distilled spirits for industrial use even if the person pays tax on a deferred basis under § 26.112 and is eligible to use an annual or quarterly return period under § 26.112(b)(2) or (b)(3). For bond requirements governing industrial spirits and other products brought into the United States without incurring tax liability, see § 26.36.

(3) *Nonindustrial use and industrial use defined.* The nonindustrial and industrial uses of distilled spirits are defined in subpart D of part 1 of this chapter.

* * * * *

■ 88. Section 26.67 is revised to read as follows:

§ 26.67 Bond, TTB Form 5120.32—Wine.

(a) *General.* Except as provided in paragraph (b) of this section, where a proprietor intends to withdraw, for purpose of shipment to the United States, wine of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by 26 U.S.C. 7652(a), equal to the tax imposed in the United States by 26 U.S.C. 5041, the proprietor must, before making any such withdrawal, furnish a bond. The proprietor must furnish the bond on TTB Form 5120.32, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all wine so withdrawn. The bond must be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond. The penal sum of such bond must not exceed $250,000, but in no case will the penal sum be less than $500.

(b) *Bonds covering wine for nonindustrial use and industrial use—* (1) *Nonindustrial use.* A proprietor who pays tax on a deferred basis under § 26.112 is not required to furnish a bond under this section to cover shipments of wine for nonindustrial use during any portion of a calendar year for which the proprietor is eligible to use an annual or quarterly return period under § 26.112(b)(2) or (b)(3). For purposes of the preceding sentence, the proprietor is considered to be paying tax on a deferred basis even if the proprietor does not pay tax during every return period as long as the proprietor intends to pay tax in a future period. TTB may require a proprietor who has defaulted on any payment to prepay tax as provided in § 26.112(e).

(2) *Industrial use.* A proprietor is required to furnish a bond under this section to cover shipments of wine for industrial use even if the proprietor pays tax on a deferred basis under § 26.112 and is eligible to use an annual or quarterly return period under § 26.112(b)(2) or (b)(3).

(3) *Nonindustrial use and industrial use defined.* The nonindustrial and industrial uses of wine are defined in subpart D of part 1 of this chapter.

(Aug. 16, 1954, Chapter 736, 68A Stat. 775, as amended, 847, as amended, 906, 907, as amended (26 U.S.C. 6302, 7101, 7102, 7651(2)(B), 7652(a)))

■ 89. Section 26.68 is revised to read as follows:

§ 26.68 Bond, TTB Form 5130.16—Beer.

(a) *General.* Except as provided in paragraph (b) of this section, where a brewer intends to withdraw, for purpose of shipment to the United States, beer of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by 26 U.S.C. 7652(a), equal to the tax imposed in the United States by 26 U.S.C. 5051, the brewer must, before making any such withdrawal, furnish a bond. The brewer must furnish the bond on TTB Form 5130.16, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all beer so withdrawn. The bond must be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond. The penal sum of such bond must not exceed $500,000, but in no case will the penal sum be less than $1,000.

(b) *Bond exemption for certain brewers based on tax liability.* A brewer who pays tax on a deferred basis under § 26.112 is not required to furnish a bond under this section to cover shipments of beer during any portion of a calendar year for which the brewer is eligible to use an annual or quarterly return period under § 26.112(b)(2) or (b)(3). For purposes of the preceding sentence, the brewer is considered to be paying tax on a deferred basis even if the brewer does not pay tax during every relevant period as long as the brewer intends to pay tax in a future period. TTB may require a brewer who has defaulted on any payment to prepay tax as provided in § 26.112(e).

(Aug. 16, 1954, Chapter 736, 68A Stat. 775, as amended, 847, as amended, 906, 907, as amended (26 U.S.C. 6302, 7101, 7102, 7651(2)(B), 7652(a)))

§ 26.68a [Amended]

■ 90. In § 26.68a, the second sentence is amended as follows:

■ a. By removing the words ''TTB Form 5110.51 or 2900'' and adding, in their place, the words ''TTB Form 5110.51 or 5100.21''; and

■ b. By removing the words '', TTB Form 5110.32, 2927, or 2929,''.

■ 91. Section 26.70 is revised to read as follows:

§ 26.70 Superseding bonds and new bonds for previously exempt persons.

(a) *Superseding bonds.* Superseding bonds will be required in case of insolvency or removal of any surety, and may, at the discretion of the appropriate TTB officer, be required in any other contingency affecting the validity or impairing the efficiency of an existing bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, must execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 26.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the operations to which such bond relates, he must file a valid superseding bond to be effective on or before the date specified in the surety's notice. Superseding bonds must show the current date of execution and the effective date.

(b) *New bonds for previously exempt persons.* If a person has not furnished a bond as provided in this subpart because the person was exempt from bond requirements under §§ 26.66(c), 26.67(b), or 26.68(b), the person must furnish a bond to cover shipments following the first date on which the aggregate amount of tax due from the person during the calendar year exceeds $50,000. If a person has not furnished the required bond for shipments under this subpart, the person must prepay tax on those shipments as provided in § 26.112(e).

§ 26.71 [Amended]

■ 92. In § 26.71, paragraph (c) is amended by adding after the words ''under the bond'' the words ''(including for the reason that the principal is exempt from bond requirements under §§ 26.66(c), 26.67(b), or 26.68(b))''.

■ 93. Section 26.74 is revised to read as follows:

§ 26.74 Release of pledged securities or cash (including cash equivalents).

Securities of the United States pledged and deposited as provided in § 26.63(a), will be released only in accordance with the provisions of 31 CFR part 225. Securities and cash (including cash equivalents) will not be released by the appropriate TTB officer until the liability under the bond for which they were pledged has been terminated. When the appropriate TTB officer is satisfied that they may be released, the appropriate TTB officer will fix the date or dates on which a part or all of such securities and cash (including cash equivalents) may be released. At any time prior to the release, the appropriate TTB officer may extend the date of release for such

additional length of time as the appropriate TTB officer deems necessary.

(61 Stat. 650; 6 U.S.C. 15)

■ 94. Section 26.75 is amended as follows:

■ a. By revising the section heading; and

■ b. By removing the words ''Form 1490'' and adding, in their place, the words ''TTB Form 5000.23 PR''.

The revision reads as follows:

§ 26.75 TTB Form 5000.23 PR, Notice of Termination of Bond.

* * * * *

§ 26.76 [Amended]

■ 95. Section 26.76 is amended as follows:

■ a. By removing the words ''Form 2900'' and adding, in their place, the words ''TTB Form 5100.21''; and

■ b. By removing the words ''Form 487B'' and adding, in their place, the words ''TTB Form 5170.7''.

■ 96. Section 26.80 is amended as follows:

■ a. By revising paragraph (a); and

■ b. By revising the Office of Management and Budget control number reference at the end of the section.

The revisions read as follows:

§ 26.80 Deferred payment of tax—release of spirits.

(a) *Action by proprietor.* Where the proprietor wishes to defer payment of tax, he must execute an agreement on TTB Form 5110.51 to pay the amount of tax which has been computed and entered on the form. If a bond is required under § 26.66, he must certify, under the penalties of perjury, that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the distilled spirits described on the form in addition to all other amounts chargeable against this bond. If the proprietor deferring payment of tax is not required to provide a bond under § 26.66, the proprietor must certify under the penalties of perjury that the proprietor was liable for not more than $50,000 in taxes in the preceding calendar year, reasonably expects to be liable for not more than $50,000 during the current calendar year, and is not using the TTB Form 5100.21 for any shipment of distilled spirits for industrial use. The proprietor must deliver all copies of TTB Form 5110.51 and any package gauge record as provided in § 26.164a to the revenue agent.

* * * * *

(Approved by the Office of Management and Budget under control number 1513–0056)

§ 26.87 [Amended]

■ 97. Section 26.87 is amended by removing the words ''Form 487B'' and adding, in their place, the words ''TTB Form 5170.7''.

■ 98. Section 26.93 is amended as follows:

■ a. By revising the section heading; and

■ b. By removing the words ''Form 2900'' and adding, in their place, the words ''TTB Form 5100.21''.

The revision reads as follows:

§ 26.93 Application and permit, TTB Form 5100.21.

* * * * *

■ 99. Section 26.95 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b), by removing the words ''Form 2900'' each place they appear and adding, in their place, the words ''TTB Form 5100.21''; and

■ c. In paragraph (b), by removing the words ''Form 2897'' and adding, in their place, the words ''TTB Form 5120.32''.

The revision reads as follows:

§ 26.95 Deferred payment of tax—release of wine.

(a) *Action by proprietor.* Where the proprietor wishes to defer payment of tax, he must execute the agreement on TTB Form 5100.21 to pay the amount of tax which has been computed and entered on the form. If a bond is required under § 26.67, he must certify under the penalties of perjury that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the wine described on the form in addition to all other amounts chargeable against his bond. If the proprietor deferring payment of tax is not required to provide a bond under § 26.67, the proprietor must certify under the penalties of perjury that the proprietor was liable for not more than $50,000 in taxes in the preceding calendar year, reasonably expects to be liable for not more than $50,000 during the current calendar year, and is not using the TTB Form 5100.21 for any shipment of wine for industrial use. The proprietor must deliver all copies of TTB Form 5100.21 to the revenue agent.

* * * * *

§ 26.97 [Amended]

■ 100. Section 26.97 is amended as follows:

■ a. By removing the words ''Form 487B'' and adding, in their place, the words ''TTB Form 5170.7''; and

■ b. By removing the word ''487B–61–3'' and adding, in its place, the words ''5170.7–17–1''.

■ 101. Section 26.102 is amended as follows:

■ a. By revising the section heading; and

■ b. By removing the words ''Form 2900'' each place they appear and adding, in their place, the words ''TTB Form 5100.21''.

The revision reads as follows:

§ 26.102 Application and permit, TTB Form 5100.21.

* * * * *

§ 26.103 [Amended]

■ 102. Section 26.103 is amended by removing the words ''Form 2900'' and adding, in their place, the words ''TTB Form 5100.21''.

■ 103. Section 26.104 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b), by removing the words ''Form 2900'' each place they appear and adding, in their place, the words ''TTB Form 5100.21''; and

■ c. In paragraph (b), by removing the words ''Form 2898'' and adding, in their place, the words ''TTB Form 5130.16''.

The revision reads as follows:

§ 26.104 Deferred payment of tax—release of beer.

(a) *Action by brewer.* Where the brewer will defer payment of tax, he must execute the agreement on TTB Form 5100.21 to pay the amount of tax which has been computed and entered on the form. If a bond is required under § 26.68, he must certify under the penalties of perjury that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the beer described on the form in addition to all other amounts chargeable against his bond. If the brewer deferring payment of tax is not required to provide a bond under § 26.68, the brewer must certify under the penalties of perjury that the brewer was liable for not more than $50,000 in taxes in the preceding calendar year and reasonably expects to be liable for not more than $50,000 during the current calendar year. The brewer must deliver all copies of Form 5100.21 to the revenue agent.

* * * * *

§ 26.106 [Amended]

■ 104. Section 26.106 is amended as follows:

■ a. By removing the words ''Form 487B'' and adding, in their place, the words ''TTB Form 5170.7''; and

■ b. By removing the word ''487B–61–3'' and adding, in its place, the words ''5170.7–17–1''.

■ 105. Section 26.108 is amended as follows:

■ a. By revising the section heading; and

■ b. By removing the words ''Form 2900'' from paragraph (b) and adding, in their place, the words ''TTB Form 5100.21''.

The revision reads as follows:

§ 26.108 Application for permit, TTB Form 5100.51 and/or 5100.21.

* * * * *

§ 26.110 [Amended]

■ 106. Section 26.110 is amended by removing the words ''Form 2900'' each place they appear and adding, in their place, the words ''TTB Form 5100.21''.

■ 107. Section 26.112 is amended as follows:

■ a. By revising paragraph (b);

■ b. In paragraph (d), by removing the words ''TTB F 5000.24'' each place they appear and adding, in their place, the words ''TTB Form 5000.25''; and

■ c. In paragraph (e), by removing the word ''bonded''.

The revision reads as follows:

§ 26.112 Returns for deferred payment of tax.

* * * * *

(b) *Return periods*—(1) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, annual or quarterly return periods as provided in paragraph (b)(2) or (b)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (d) of this section.

(2) *Annual return period.* Subject to paragraph (b)(4) of this section, a taxpayer may choose to use an annual return period if the taxpayer was not liable for more than $1,000 in taxes imposed by 26 U.S.C. 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $1,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return will be the 14th day after the last day of the calendar year. However, the taxpayer may not use the annual return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $1,000, and any tax that has not been paid on that date will be due on the 14th day after the last day of the quarterly or semimonthly period in which that date occurs.

(3) *Quarterly return period.* Except as provided in paragraph (b)(2) of this section and subject to paragraph (b)(4) of this section, a taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes imposed by 26 U.S.C. 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(4) The following additional rules apply to the annual and quarterly return period procedures under this section:

(i) A ''taxpayer'' is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(ii) ''Reasonably expects'' means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(iii) A taxpayer with multiple locations must combine the tax liability for all locations with respect to distilled spirits, wine, or beer tax liability to determine eligibility for the return procedures;

(iv) A taxpayer who has both domestic operations and import transactions must combine the tax liability on the domestic operations and the imports with respect to distilled spirits, wine, or beer tax liability to determine eligibility for the return procedures;

(v) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the return procedures. However, a taxpayer who is eligible for the return procedures, and who is a member of a controlled group that owes $5 million or more in distilled spirits, wine, or beer excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT must be transmitted in accordance with section 5061(e);

(vi) A new taxpayer is eligible to use the return procedures in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $1,000 (in the case of the annual return procedure) or $50,000 (in the case of the quarterly return procedure) in distilled spirits, wine, or beer taxes during that calendar year; and

(vii) If a taxpayer becomes ineligible to use a return procedure described in paragraph (b)(2) or (3) of this section because the taxpayer's liability exceeds $1,000 or $50,000, respectively, during a taxable year, that taxpayer may resume that return procedure only after a full calendar year has passed during which the taxpayer's liability did not exceed $1,000 or $50,000 as the case may be. A taxpayer may not use an annual or quarterly return procedure during any calendar year in which the taxpayer reasonably expects to be liable for more than $1,000 (in the case of the annual return procedure) or $50,000 (in the case of the quarterly return procedure) in distilled spirits, wine, or beer taxes.

* * * * *

■ 108. In § 26.113, paragraph (a) is amended by adding a new first sentence immediately after the paragraph heading to read as follows:

§ 26.113 Returns for prepayment of taxes.

(a) * * * Except as provided in §§ 26.66(c), 26.67(b), or 26.68(b), a proprietor must have an approved bond to defer payment of taxes. * * *.

* * * * *

■ 109. Section 26.115 is amended as follows:

■ a. By revising the section heading; and

■ b. By removing the words ''Form 487B'' each place they appear and adding, in their place, the words ''TTB Form 5170.7''.

The revision reads as follows:

§ 26.115 Application, TTB Form 5170.7.

* * * * *

■ 110. Section 26.116 is amended as follows:

■ a. By revising the section heading;

■ b. In the first sentence, by removing the words '', pursuant to a sufficient bond,''; and

■ c. By removing the words ''Form 487B'' each place they appear and adding, in their place, the words ''TTB Form 5170.7''.

The revision reads as follows:

§ 26.116 Issuance of permit, TTB Form 5170.7, and customs inspection.

* * * * *

§ 26.117 [Amended]

■ 111. Section 26.117 is amended by removing the words ''Form 487B'' and adding, in their place, the words ''TTB Form 5170.7''.

§ 26.118 [Amended]

■ 112. Section 26.118 is amended by removing the words ''Form 487B'' each place they appear and adding, in their place, the words ''TTB Form 5170.7''.

§ 26.119 [Amended]

■ 113. Section 26.119 is amended by removing the words ''Form 487B'' and adding, in their place, the words ''TTB Form 5170.7''.

§ 26.165 [Amended]

■ 114. In § 26.165, paragraph (a) introductory text is amended by removing the words ''TTB bond'' and adding, in their place, the words ''the bonded premises of a distilled spirits plant''.

■ 115. The heading for subpart Ib is revised to read as follows:

Subpart Ib—Shipment of Bulk Distilled Spirits From Puerto Rico, Without Payment of Tax, for Transfer From Customs Custody to the Bonded Premises of a Distilled Spirits Plant

§ 26.199 [Amended]

■ 116. Section 26.199 is amended by removing the words ''internal revenue bond'' and adding, in their place, the words ''the bonded premises of a distilled spirits plant''.

§ 26.199d [Amended]

■ 117. In § 26.199d, paragraph (b) is amended by removing the words ''internal revenue bond'' and adding, in their place, the words ''the bonded premises of a distilled spirits plant''.

■ 118. The heading for subpart Oa is revised to read as follows:

Subpart Oa—Shipment of Bulk Distilled Spirits From the Virgin Islands, Without Payment of Tax, for Transfer From Customs Custody to the Bonded Premises of a Distilled Spirits Plant

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 119. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6109, 6302, 7805.

■ 120. Section 27.11 is amended as follows:

■ a. In the definition of ''Bonded premises—distilled spirits plant'', by adding a second sentence; and

■ b. In the definition of ''Eligible wine'', by adding a second sentence.

The additions read as follows:

§ 27.11 Meaning of terms.

* * * * *

Bonded premises—distilled spirits plant. * * * This term includes premises described in the preceding sentence even if the distilled spirits plant proprietor, as authorized under the exemption set forth in § 19.151(d) of this chapter, has not provided a bond for the premises.

* * * * *

Eligible wine. * * * For purposes of this definition, the phrase ''receipt in bond'' applies to wine on which tax has not been determined or paid that is received by the proprietor of a distilled spirits plant, even if the proprietor, as authorized under the exemption set forth in § 19.151(d) of this chapter, is not required to provide a bond for the premises where the wine is received.

* * * * *

§ 27.40 [Amended]

■ 121. In § 27.40, paragraph (a) is amended by removing the words ''entered into bond'' and adding, in their place, the words ''transferred to the bonded premises of a distilled spirits plant''.

§ 27.43 [Amended]

■ 122. Section 27.43 is amended by removing the words ''entered into bond'' and adding, in their place, the words ''transferred to the bonded premises of a distilled spirits plant''.

§ 27.171 [Amended]

■ 123. Section 27.171 is amended by removing the words ''internal revenue bond'' and adding, in their place, the words ''the bonded premises of a distilled spirits plant''.

■ 124. Section 27.175 is amended by adding a new second sentence immediately after the first sentence to read as follows:

§ 27.175 Receipt by consignee.

* * * Proprietors of distilled spirits plants may receive such imported spirits even if they are exempt from bond requirements under § 19.151(d) of this chapter. * * *

PART 28—EXPORTATION OF ALCOHOL

■ 125. The authority citation for part 28 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5121, 5122, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6109, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

§§ 28.61, 28.62, 28.63, 28.64, 28.70, 28.72, 28.160, and 28.214 [Amended]

■ 126. For each section indicated in the left-hand column of the table below, the section is amended by removing the text indicated in the middle column, and adding, in its place, the text indicated in the right-hand column:

Section	Remove	Add
28.61, section heading	Bond, Form 2734 (5100.25)	Bond, Form 5100.25.
28.61, text	2734 (5100.25)	5100.25.
28.62, section heading	Bond, Form 2735 (5100.30)	Bond, Form 5100.30.
28.62(a)	2735 (5100.30)	5100.30.
28.62(c)	2735 (5100.30)	5100.30.
28.62(c)	1533 (5000.18)	5000.18.
28.62(d)	2735 (5100.30)	5100.30.
28.62(d)	1533 (5000.18)	5000.18.
28.63, section heading	Bond, Form 2736 (5100.12)	Bond, Form 5100.12.
28.63, text	2736 (5100.12)	5100.12.
28.64, section heading	Bond, Form 2737	Bond, Form 5110.67.
28.64(a), first sentence	2737 (5110.67)	5110.67.
28.64(a), twice in the fourth sentence	2737 (5110.67)	5110.67.
28.64(b)	2737 (5110.67)	5110.67.
28.64(b)	1533	5000.18.

Section	Remove	Add
28.70, section heading	Termination of Bonds, Forms 2734 (5120.25) and 2736 (5100.12).	Termination of Bonds, Forms 5120.25 and 5100.12.
28.70, text	2734 (5120.25) and 27.36 (5100.12)	5120.25 and 5100.12.
28.72	2735 (5100.30), 2737 (5110.67), or 2738 (5110.68).	5100.30 or 5110.67.
28.160(b)	1533	5000.18.
28.214, section heading	Notice and claim, Form 1582–A (5120.24)	Notice and claim, Form 5120.24.
28.214, first sentence	1582–A (5120.24)	5120.24.
28.214, second sentence	1582–A (5120.24)	5120.24.

§ 28.3 [Amended]

■ 127. In § 28.3, the list of related regulations is amended by removing the entry ''31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds'' and adding, in its place, the entry ''31 CFR part 225—Acceptance of Bonds Secured by Government Obligations in Lieu of Bonds with Sureties''.

■ 128. Section 28.11 is amended as follows:

■ a. In the definition of ''Bonded premises—distilled spirits plant'', by adding a second sentence; and

■ b. In the definition of ''Bonded wine cellar'', by adding a second sentence.

The additions read as follows:

§ 28.11 Meaning of terms.

* * * * *

Bonded premises—distilled spirits plant. * * * This term includes premises described in the preceding sentence even if the distilled spirits plant proprietor, as authorized under the exemption set forth in § 19.151(d) of this chapter, has not provided a bond for the premises.

Bonded wine cellar. * * * This term includes premises described in the preceding sentences even if the proprietor, as authorized under the exemption set forth in § 24.146(d), has not provided a bond for the premises.

* * * * *

§ 28.22 [Amended]

■ 129. Section 28.22 is amended by adding after the words ''principal on the bond'' the words ''or, if no bond is required, against the person liable for the tax''.

■ 130. Section 28.51 is amended as follows:

■ a. By redesignating the existing text as paragraph (a) and adding a paragraph heading; and

■ b. By adding paragraphs (b) and (c).

The additions read as follows:

§ 28.51 General.

(a) *Bond requirements.* * * *

(b) *Exemption from bond requirements.* If a taxpayer described in this paragraph exports distilled spirits, wine, or beer for which a bond is otherwise required under this part, the taxpayer is not required to file a bond for the exportation if all the following are true:

(1) In the case of exportation of distilled spirits or wine, the distilled spirits or wine is for nonindustrial use; and

(2) The taxpayer:

(i) Reasonably expects to be liable for not more than $50,000 in taxes described in 26 U.S.C. 5061(d)(4) during the current calendar year;

(ii) Was liable for not more than $50,000 in such taxes in the preceding calendar year; and

(iii) Pays such taxes on a deferred basis using a semimonthly, quarterly, or annual return period as described in 26 U.S.C. 5061(d).

(c) *Definitions.* For purposes of paragraph (b) of this section, the following terms have the meanings indicated:

Nonindustrial use. The nonindustrial uses of distilled spirits and wine are defined in subpart D of part 1 of this chapter.

Reasonably expects. When used with reference to a taxpayer, *reasonably expects* means that there is no existing or anticipated circumstances known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit.

Taxpayer. A *taxpayer* is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number (EIN) as defined in 26 CFR 301.7701–12.

■ 131. Section 28.52 is amended as follows:

■ a. In paragraph (a), by removing the words ''Circular No. 570'' and adding, in their place, the words ''Circular 570''; and

■ b. By revising paragraph (b).

The revision reads as follows:

§ 28.52 Corporate surety.

* * * * *

(b) Department of the Treasury Circular 570 is published in the **Federal Register** annually on the first business day in July, and supplemental changes are published periodically thereafter. The most recent circular and any supplemental changes to it may be viewed on the Bureau of the Fiscal Service Web site at *https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm.*

* * * * *

■ 132. Section 28.53 is amended as follows:

■ a. By revising the section heading;

■ b. By redesignating the existing text as paragraph (a) and adding a paragraph heading; and

■ c. By adding paragraph (b).

The revision and additions read as follows:

§ 28.53 Deposit of securities or cash (including cash equivalent) in lieu of corporate surety.

(a) *Deposit of securities.* * * *

(b) *Deposit of cash (including cash equivalent).* In lieu of corporate surety, a person may file a bond that guarantees payment of the liability by submitting cash or its equivalent (including a money order, cashier's check, or personal check). Cash or its equivalent must be no less than the penal sums of the required bonds. Cash equivalents must be payable to the Alcohol and Tobacco Tax and Trade Bureau.

* * * * *

§ 28.54 [Amended]

■ 133. Section 28.54 is amended by removing the words ''Form 1533'' and adding, in their place, the words ''TTB Form 5000.18''.

■ 134. In § 28.58, paragraphs (a) and (b) are revised to read as follows:

§ 28.58 Operations or unit bond—distilled spirits.

(a) *Spirits.* Where, as authorized in § 28.91, spirits are withdrawn without payment of tax, from the bonded premises of a distilled spirits plant on notice of the proprietor thereof, the approved operations or unit bond must cover such withdrawals if the proprietor is required to give a bond under part 19 of this chapter.

(b) *Wine.* Where the provisions of part 19 of this chapter require an operations or unit bond to be given and approved to cover the operations of a distilled spirits plant and an adjacent bonded wine cellar, such bond will cover the withdrawal of wine without payment of tax, as authorized in § 28.121, from such bonded wine cellar on application for such withdrawal by the proprietor.

* * * * *

■ 135. Section 28.60 is revised to read as follows:

§ 28.60 Brewer's bond, Form 5130.22.

When beer or beer concentrate is removed from a brewery without payment of tax for any of the purposes authorized in § 28.141, the brewer's bond, Form 5130.22, will cover the removals if a bond is required to be furnished under the provisions of part 25 of this chapter.

(49 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1388, as amended (26 U.S.C. 5053, 5401))

§ 28.65 [Removed and Reserved]

■ 136. Section 28.65 is removed and reserved.

■ 137. Section 28.67 is revised to read as follows:

§ 28.67 Superseding bonds and new bonds for previously exempt persons.

(a) *Superseding bonds.* Superseding bonds will be required in case of insolvency or removal of any surety, and may, at the discretion of the appropriate TTB officer, be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, must execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 28.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business or operations to which such bond relates, he must file a valid superseding bond to be effective on or before the date specified in the surety's notice. If the principal does not file a superseding bond when required, he must discontinue the operations intended to be covered by such bond forthwith. Superseding bonds must show the date of execution and the effective date.

(b) *New bonds for previously exempt persons.* If a person has not furnished a bond as provided in this subpart because the person was exempt from bond requirements under § 28.51(b), the person must furnish the required bond for any exportation that occurs during any period to which any of the exemption criteria in § 28.51(b) do not apply to the person.

(72 Stat. 1336, 1362; 26 U.S.C. 5062, 5214)

■ 138. Section 28.71 is revised to read as follows:

§ 28.71 Termination of bonds, Forms 5100.30 and 5110.67.

(a) *General.* Continuing bonds, Forms 5100.30 and 5110.67, covering distilled spirits and/or wines withdrawn from time to time without payment of tax under this part, may be terminated as to liability for future withdrawals under the following circumstances:

(1) Pursuant to application of surety as provided in § 28.72;

(2) On approval of a superseding bond as provided in § 28.67; or

(3) On written notification to the appropriate TTB officer by the principal of the discontinuance of withdrawals under the bond (including discontinuance of withdrawals under the bond because the proprietor has become exempt from bond requirements under § 28.51(b)).

(b) *Cancellation.* When no further withdrawals are to be made under a bond on Form 5100.30 or 5110.67 under the circumstances specified in paragraph (a), the bond will be canceled by the appropriate TTB officer in the manner and subject to the conditions provided in § 28.70.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

■ 139. Section 28.73 is revised to read as follows:

§ 28.73 Relief of surety from bond.

(a) *Bonds, Forms 5120.25 and 5100.12.* The surety on a bond given on Form 5120.25 or Form 5100.12 will be relieved from his liability under the bond when the bond has been canceled as provided for in § 28.70.

(b) *Bonds, Forms 5100.30 and 5110.67.* Where the surety on a bond given on Form 5100.30 or Form 5110.67 has filed application for relief from liability, as provided in § 28.72, the surety will be relieved from liability for withdrawals made wholly subsequent to the date specified in the notice, or on the effective date of a superseding bond, if one is given. Notwithstanding such relief, the liability of the surety will continue until the spirits and/or wines withdrawn without payment of tax under the bond have been properly accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

■ 140. Section 28.74 is revised to read as follows:

§ 28.74 Release of pledged securities or cash (including cash equivalents).

Securities of the United States, pledged and deposited as provided in § 28.53, will be released only in accordance with the provisions of 31 CFR part 225. Securities and cash (including cash equivalents) will not be released by the appropriate TTB officer until liability under the bond for which they were pledged has been terminated. When the appropriate TTB officer is satisfied that they may be released, he will fix the date or dates on which a part or all of such securities and cash (including cash equivalents) may be released. At any time prior to the release, the appropriate TTB officer may extend the date of release for such additional length of time as he deems necessary.

(61 Stat. 650; 6 U.S.C. 15)

§ 28.80 [Amended]

■ 141. Section 28.80 is amended by removing the last sentence.

§ 28.91 [Amended]

■ 142. In § 28.91, paragraph (b) is amended by removing the words ''All withdrawals'' and adding, in their place, the words ''Except as provided in § 28.51(b), all withdrawals''.

§ 28.95 [Amended]

■ 143. Section 28.95 is amended by removing the words ''in internal revenue bond'' and adding, in their place, the words ''on the bonded premises of a distilled spirits plant''.

§ 28.96 [Amended]

■ 144. Section 28.96 is amended by removing the words ''required bond'' and adding, in their place, the words ''bond (if required)''.

§ 28.116 [Amended]

■ 145. In § 28.116, paragraph (d) is amended by removing the words ''principal on the bond under which the spirits were withdrawn'' and adding, in their place, the words ''person who withdrew the spirits''.

§ 28.117 [Amended]

■ 146. Section 28.117 is amended as follows:

■ a. In the first sentence, by removing the words ''principal on the bond under which the spirits were withdrawn'' and adding, in their place, the words ''person who withdrew the spirits''; and

■ b. By removing the word ''principal'' in every other place it appears and adding, in its place, the word ''person''.

§ 28.121 [Amended]

■ 147. Section 28.121 is amended in the undesignated concluding paragraph by removing the words ''All such withdrawals'' and adding, in their place, the words ''Except as provided in § 28.51(b), all such withdrawals''.

§ 28.131 [Amended]

■ 148. In § 28.131, paragraph (b) is amended by removing the words ''principal on the bond under which the wines were withdrawn'' and adding, in their place, the words ''person who withdrew the wines''.

§ 28.132 [Amended]

■ 149. Section 28.132 is amended as follows:

■ a. In the first sentence, by removing the words ''principal on the bond under which the wines were withdrawn'' and adding, in their place, the words ''person who withdrew the wines'';

■ b. In the second sentence, by removing the words ''principal on the bond'' and adding, in their place, the word ''person''; and

■ c. By removing the word ''principal'' in every other place it appears and adding, in its place, the word ''person''.

§ 28.141 [Amended]

■ 150. In § 28.141, paragraph (c) is amended by removing the words ''All removals'' and adding, in their place, the words ''Except where the brewer is not required to hold a bond under § 25.91(e) of this chapter, all removals''.

§ 28.215 [Amended]

■ 151. Section 28.215 is amended as follows:

■ a. In the first sentence, by removing the words ''from bond'' and adding, in their place, the words ''from bonded premises'';

■ b. By removing the words ''Form 1582–A (5120.24)'' and adding, in their place, the words ''Form 5120.24''; and

■ c. By removing the words ''Form 2605 (5120.20)'' each place they appear and adding, in their place, the words ''Form 5120.20''.

§ 28.250 [Amended]

■ 152. Section 28.250 is amended as follows:

■ a. In the introductory text, by removing the words '', and the principal has filed bond, Form 2738 (5110.68)''; and

■ b. In paragraph (a)(4), by removing the words ''1582–A (5120.24)'' and adding, in their place, the word ''5120.24''.

§ 28.303 [Amended]

■ 153. Section 28.303 is amended as follows:

■ a. In the introductory text, by removing the words ''Form 2635 (5620.8)'' and adding, in their place, the word ''5620.8''; and

■ b. In paragraph (e), by adding after the word ''bond'' the words ''(as applicable)''.

§ 28.317 [Amended]

■ 154. Section 28.317 is amended as follows:

■ a. In the introductory text, by removing the words ''Form 2635 (5620.8)'' and adding, in their place, the words ''Form 5620.8''; and

■ b. In paragraph (c), by adding after the word ''bond'' the words ''(as applicable)''.

§ 28.331 [Removed and Reserved]

■ 155. Section 28.331 is removed and reserved.

§ 28.332 [Removed and Reserved]

■ 156. Section 28.332 is removed and reserved.

■ 157. Section 28.333 is amended as follows:

■ a. By revising the section heading;

■ b. By removing the words ''1582–A (5120.24)'' in every place it appears and adding, in its place, the word ''5120.24'';

■ c. By removing the words '', is not supported by a bond on Form 2738 (5110.68)'' and adding, in their place, the words ''is made''; and

■ d. By removing the words ''Form 1582–B (5130.6)'' and adding, in their place, the words ''Form 5130.6''.

The revision reads as follows:

§ 28.333 Claims for drawback.

* * * * *

PART 30—GAUGING MANUAL

■ 158. The authority citation for part 30 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ 159. Section 30.11 is amended by adding a definition of ''Bonded premises'' in alphabetical order to read as follows:

§ 30.11 Meaning of terms.

* * * * *

Bonded premises. The bonded premises of a distilled spirits plant as described in part 19 of this chapter. This term includes premises described in the preceding sentence even if the distilled spirits plant proprietor has not provided a bond for the premises as authorized under the exemption set forth in § 19.151(d) of this chapter.

* * * * *

§ 30.36 [Amended]

■ 162. Section 30.36 is amended by removing the words ''from bond'' and adding, in their place, the words ''from bonded premises''.

Signed: December 7, 2016.

John J. Manfreda,

Administrator.

Approved: December 21, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade and Tariff Policy).

[FR Doc. 2016–31417 Filed 1–3–17; 8:45 am]

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