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OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

[Docket Number: OFR–2013–0001]

RIN 3095–AB78

Incorporation by Reference

AGENCY: Office of the Federal Register, National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: In this document, we are revising our regulations on incorporation by reference to require that agencies seeking the Director of the Federal Register's approval of their incorporation by reference requests add more information regarding materials incorporated by reference to the preambles of their rulemaking documents. Specifically, agencies must set out, in the preambles of their proposed and final rules, a discussion of the actions they took to ensure the materials are reasonably available to interested parties and that they summarize the contents of the materials they wish to incorporate by reference.

DATES: This rule is effective January 6, 2015.

ADDRESSES: You may find information on this rulemaking docket at Federal eRulemaking Portal: *http://www.regulations.gov*. Docket materials are also available at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002, 202–741–6030. Please contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection of docket materials. The Office of the Federal Register's official hours of business are Monday through Friday, 8:45 a.m. to 5:15 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Miriam Vincent, Staff Attorney, Office of the Federal Register, at *Fedreg.legal@nara.gov*, or 202–741–6030.

SUPPLEMENTARY INFORMATION: The Office of the Federal Register (OFR or we) published a request for comments on a petition to revise our regulations at 1 CFR part 51 [1] (part 51). The petition specifically requested that we amend our regulations to: (1) Define "reasonably available" and (2) include several requirements related to the statutory obligation that material incorporated by reference (IBR) be reasonably available. Our original request for comments had a 30-day comment period. After requests from several interested parties, we extended the comment period until June 1, 2012.[2]

Our current regulations require that agencies provide us with the materials they wish to IBR. Once we approve an IBR request, we maintain the IBR'd materials in our library until they are accessioned to the National Archives and Records Administration (NARA) under our records schedule).[3] NARA then maintains this material as permanent Federal records.

We agreed that our regulations needed to be updated and published a proposed rule on October 2, 2013.[4] However, we stated that the petitioners' proposed changes to our regulations go beyond our statutory authority. The petitioners contended that changes in technology, including our new Web site *www.federalregister.gov*, along with electronic Freedom of Information Act [5] (E–FOIA) reading rooms, have made the print publication of the **Federal Register** unnecessary. They also suggested that the primary, original reason for allowing IBR was to limit the amount of material published in the **Federal Register** and Code of Federal Regulations (CFR).[6] The petitioners argued that with the advent of the Internet and online access our print-focused regulations are out of date and obsolete. The petition then stated that statutory authority and social development since our current regulations were first issued require that material IBR'd into the CFR be available online and free of charge.

The petition further suggested that our regulations need to apply at the proposed rule stage of agency rulemaking projects and that the National Technology Transfer and Advancement Act of 1995 (NTTAA) and the Office of Management and Budget's (OMB) Circular A–119 distinguish between regulations that require use of a particular standard and those that "serve to indicate that one of the ways in which a regulation can be met is through use of a particular standard favoring the use of standards as non-binding ways to meet compliance." [7] In addition, the petition argued that *Veeck* v. *S. Bldg. Code Cong. Int'l*, 293 F.3d 791 (5th Cir. 2002) casts doubt on the legality of charging for standards IBR'd. Finally, the petition stated that in the electronic age the benefits to the federal government are diminished by electronic publication as are the benefits to the members of the class affected if they have to pay high fees to access the standards. Thus, agencies should at least be required to demonstrate how they tried to contain those costs.

The petitioners proposed regulation text to enact their suggested revisions to part 51. The petitioners' regulation text would require agencies to demonstrate that material proposed to be IBR'd in the regulation text was available throughout the comment period: (1) In the Federal Docket Management System (FDMS) in the docket for the proposal or interim rule; (2) on the agency's Web site or; (3) readable free of charge on the Web site of the voluntary standards organization that created it during the comment period of a proposed rule or interim rule. The petition suggested revising § 51.7—"What publications are eligible"—to limit IBR eligibility only to standards that are available online for free by adding a new (c)(3) that would ban any standard not available for free from being IBR'd. It also appeared to revise § 51.7(a)(2) to include documents that would otherwise be considered guidance documents. And, it would revise § 51.7(b) to limit our review of agency-created materials to the question of whether the material is available online. The petition would then revise § 51.9 to distinguish between required

[1] 77 FR 11414 (February 27, 2012).

[2] 77 FR 16761 (March 22, 2012).

[3] *http://www.archives.gov/federal-register/cfr/ibr-locations.html* last visited August 11, 2014.

[4] 78 FR 60784 (October 2, 2013). We extended the comment period on this proposal until January 31, 2014. See, 78 FR 69006 (November 18, 2013) and 78 FR 69594 (November 20, 2013).

[5] Public Law 104–231 (1996).

[6] In fact, agencies were incorporating material by reference long before we were assigned the task of normalizing the process.

[7] NARA–12–0002–0002.

standards and those that could be used to show compliance with a regulatory requirement. Finally, the petition would add a requirement that, in the electronic version of a regulation, any material IBR'd into that regulation be hyperlinked.

The petitioners wanted us to require that: (1) All material IBR'd into the CFR be available for free online; and (2) the Director of the Federal Register (the Director) include a review of all documents that agencies list in their guidance, in addition to their regulations, as part of the IBR approval process. We find these requirements go beyond our statutory authority. Nothing in the Administrative Procedure Act (APA) (5 U.S.C. chapter 5), E–FOIA, or other statutes specifically address this issue. If we required that all materials IBR'd into the CFR be available for free, that requirement would compromise the ability of regulators to rely on voluntary consensus standards, possibly requiring them to create their own standards, which is contrary to the NTTAA and the OMB Circular A–119.

Further, the petition didn't address the **Federal Register** Act (FRA) (44 U.S.C. chapter 15), which still requires print publication of both the **Federal Register** and the CFR, or 44 U.S.C. 4102, which allows the Superintendent of Documents to charge a reasonable fee for online access to the Federal electronic information, including the **Federal Register**.[8] The petition suggested that the Director monitor proposed rules to ensure that the material proposed to be IBR'd is available during the comment period of a proposed rule. Then, once a rule is effective, we monitor the agency to ensure that the IBR'd materials remain available online. This requirement that OFR continue monitoring agency rules is well beyond the current resources available to this office.

As for the petition's limitation on agency-created material, the Freedom of Information Act (FOIA), at 5 U.S.C. 552(a) (section 552(a)), mandates approval by the Director of material proposed for IBR to safeguard the **Federal Register** system. Thus, OFR regulations contain a provision that material IBR'd must not detract from the legal and practical attributes of that system.[9] An implied presumption is that material developed and published by a Federal agency is inappropriate for IBR by that agency, except in limited circumstances. Otherwise, the **Federal Register** and CFR could become a mere index to material published elsewhere. This runs counter to the central publication system for Federal regulations envisioned by Congress when it enacted the FRA and the APA.[10]

Finally, the petition didn't address the enforcement of these provisions. Agencies have the expertise on the substantive matters addressed by the regulations. To remove or suspend the regulations because the IBR'd material is no longer available online would create a system where the only determining factor for using a standard is whether it is available for free online. This would minimize and undermine the role of the Federal agencies who are the substantive subject matter experts and who are better suited to determine what standard should be IBR'd into the CFR based on their statutory requirements, the entities they regulate, and the needs of the general public.

Additionally, the OFR's mission under the FRA is to maintain orderly codification of agency documents of general applicability and legal effect.[11] As set out in the FRA and the implementing regulations of the Administrative Committee of the **Federal Register** (ACFR) (found in 1 CFR chapter I), only the agency that issues the regulations codified in a CFR chapter can amend those regulations. If an agency took the IBR'd material offline, OFR could only add an editorial note to the CFR explaining that the IBR'd material was no longer available online without charge. We could not remove the regulations or deny agencies the ability to issue or revise other regulations. Revising our regulations as proposed by the petition would simply add requirements that could not be adequately enforced and thus, likely wouldn't be complied with by agencies.

In our document announcing that we received a petition to revise our regulations in part 51, we specifically requested comments on nine issues.[12] We received comments on each of those issues and addressed them in our NPRM.[13]

In our NPRM, we stated our concerns regarding several of the petitioners' suggested revisions to our regulations. We stated that while OFR does have the authority to review NPRMs to ensure our publication requirements are met, a substantive review of IBR'd materials referenced in a proposed rule, as implied by the petition, is beyond our authority and resources. We also noted that the OFR has not reviewed IBR'd material in NPRMs for approval because agencies may decide to request approval for different standards at the final rule stage based on changed circumstances, including public comments on the NPRM, requiring a new approval at the final rule stage. Or, agencies could decide to withdraw the NPRM. These factors make review and approval at the proposed rule stage impractical.

In our discussion of the copyright issues raised by the petitioners and commenters, we noted that recent developments in Federal law, including the *Veeck* decision[14] and the amendments to FOIA, and the NTTAA have not eliminated the availability of copyright protection for privately developed codes and standards referenced in or incorporated into federal regulations. Therefore, we agreed with commenters who said that when the Federal government references copyrighted works, those works should not lose their copyright. However, we believed the responsible government agency should collaborate with the standards development organizations (SDOs) and other publishers of IBR'd materials, when necessary, to ensure that the public does have reasonable access to the referenced documents. Therefore, we proposed in the NPRM to require that agencies discuss how the IBR'd standards are reasonably available to commenters and to regulated entities. One way to make standards reasonably available, if they aren't already, is to work with copyright holders.

We also proposed to review agency NPRMs to ensure that the agency provides either: (1) An explanation of how it worked to make the proposed IBR'd material reasonably available to commenters or; (2) a summary of the proposed IBR'd material. We proposed that agencies include a discussion in their final rule preambles regarding the ways it worked to make the incorporated materials available to interested parties. We stated that this process would not unduly delay publication of agency NPRMs or Final Rules and did not go beyond OFR's statutory authority.

Several commenters were concerned that our NPRM didn't go far enough—specifically noting that the proposed rule wouldn't require agencies to provide free access to standards incorporated by reference into the CFR. The issue of "reasonable availability" continued to elicit comments related to the NPRM and we will discuss this issue, along with other comments, below.

[8] See also 44 U.S.C. 4101.

[9] See also 44 U.S.C. 4101.

[10] 47 FR 34107 (August 6, 1982).

[11] 44 U.S.C. 1505 and 1510.

[12] 77 FR 11414 (February 27, 2012).

[13] 78 FR 60784 (October 2, 2013).

[14] *Veeck* v. *Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002).

Based on comments to our NPRM, we have modified the regulation text slightly so that we now require that if agencies seek the Director's approval of an IBR request, they must set out the following information in the preambles of their rulemaking documents: (1) Discussions of how the materials are reasonably available and, if they aren't, the actions the agency took to make the materials reasonably available to interested parties and; (2) summaries of the content of the materials the agencies wish to IBR.

Discussion of Comments

Authority of the Director To Issue Regulations Regarding IBR

One commenter again alleged that the OFR does not have the proper authority to amend the regulations in 1 CFR part 51.[15] As we stated in the NPRM, we disagree with the commenter. Because section 552(a) specifically states that the Director will approve agency requests for IBR and that material IBR'd is not set out in regulatory text, the Director has the sole authority to issue regulations governing the IBR-approval request procedures. We have maintained this position since the IBR regulations were first issued in the 1960's.

The regulations on the IBR approval process were first issued by the Director in 1967 and found at 1 CFR part 20.[16] Even though this part was within the ACFR's CFR chapter, the preamble to the document stated "the Director of the Federal Register hereby establishes standards and procedures governing his approval of instances of incorporation by reference."[17] And, while these regulations appeared in the ACFR's CFR chapter, this final rule was issued and signed solely by the Director. These regulations were later republished, along with the entire text of Chapter I, by the ACFR in 1969;[18] however the ACFR stated that the republication contained no substantive changes to the regulations. In 1972, the ACFR proposed a major substantive revision of Chapter I.[19] In that proposed rule, the ACFR proposed removing the IBR regulations from Chapter I because "part 20. . . is a regulation of the Director of the Federal Register rather than the Administrative Committee."[20] In that same issue of the **Federal Register**, the Director issued a proposed rule proposing to establish a new Chapter II in Title 1 of the CFR that governed IBR approval procedures.[21] These proposals were not challenged on this issue, so the final rules removing regulations from the ACFR chapter and establishing a new chapter for the Director were published on November 4, 1972 at 37 FR 23602 and 23614, respectively. Thus, it is appropriate for the Director, not the ACFR, to issue the regulations found in 1 CFR part 51.

As for this commenter's concerns regarding following the rulemaking requirements, we believe that we have followed the proper rulemaking procedures as we are required to do and that we have taken into consideration the impact of our revisions on both federal agencies and the public.

Class of Persons Affected

A few commenters suggested that we define "class of persons affected" to mean all interested parties. At least one commenter claimed that section 552(a)'s reference to "class of persons affected" is broader than just those who must comply with the regulation—that it includes anyone with a "stake in the content of the IBR materials."[22] The commenter based this claim on the phrase in the undesignated paragraph, which provides that if the document doesn't publish in the **Federal Register** and the person doesn't have actual notice of the document that person may be "adversely affected" by the agency document. This commenter claimed that this provision, along with the provision in 5 U.S.C. 702 (allowing persons who have been "adversely affected" by an agency action to seek judicial review), demonstrates that "class of persons affected," as stated in the provision allowing IBR, should be read more broadly "to require availability to those simply 'affected' by the terms of the incorporated material."[23]

However, the IBR provision contains a slight language change that modifies "affected" by adding the phrase "class of persons." This addition could be read as an indication that the IBR material must be reasonably available to those who must directly comply with the regulation. Under the statute, it is acceptable to have material reasonably available beyond the class of persons affected but it is not required.

We continue to have concerns that any definition will fail because it is either too broad to be meaningful or too restrictive to capture a total class. Therefore we decline to define the phrase "class of persons affected." Thus, agencies maintain the flexibility to determine who is within the class of persons affected by a regulation or regulatory program on a case-by-case basis to respond to specific situations.

Reasonably Available

Several commenters agreed with the petitioners that reasonably available means for free to anyone online, but they provided little or no additional comment on this point. Many of the SDOs supported our proposal and discussed how they are already providing access to their standards that have been IBR'd. One commenter who supported our NPRM noted that reasonably available was highly content-driven and felt the agency issuing the rule should ensure that the standards are reasonably available.[24] Another agreed with our proposal, stating that agency subject matter experts are suited to determine if a standard should be IBR'd.[25]

However, some commenters alleged that the only way for OFR to meet its statutory obligation was to deny IBR approval for all standards there were not available for free online. A couple of commenters modified their stance and claimed that OFR has a duty to deny IBR approval for all standards that were not available at no cost to all interested persons. Another suggested that, because of the internet, reasonably available "with respect to the law must now be understood to mean available with not more than the minimal cost or effort required to travel to a public or government depository library."[26]

One commenter commented generally on the U.S. tradition to provide "inexpensive and widespread access to the law."[27] This tradition is tied to the current Administration's goal of transparency and accountability. This commenter further stated that the government's decision to regulate by incorporating expensive standards into regulations is similar to charging filing fees and poll taxes and sends a damaging message to the public. Other commenters suggested that our proposal unlawfully delegates the reasonably available determination to agencies. At least one commenter stated that OFR is bound by statute to ensure that materials are reasonably available "regardless of the effect on the use of voluntary standards."[28]

Two other commenters vehemently argued that in order to be reasonably

[15] OFR–2013–0001–0027.
[16] 32 FR 7899 (June 1, 1967).
[17] *Id.*
[18] 34 FR 19106 at 19115 (December 2, 1969).
[19] 37 FR 6804 (April 4, 1972).
[20] *Id.*
[21] 37 FR 6817 (April 4 1972).
[22] OFR–2013–0001–0029 at page 13.
[23] OFR–2013–0001–0029 at page 13.
[24] OFR–2013–0001–0030.
[25] OFR–2013–0001–0038.
[26] OFR–2013–001–0029 at page 5.
[27] OFR–2013–0001–0036, see also OFR–2013–0001–0029.
[28] OFR–2013–0001–0037 at page 2.

available, IBR'd standards must be accessible to all interested parties.[29] Both suggested that it is not enough to have material available to be examined at the OFR. One commenter was concerned that our proposal merely asks agencies how they worked with SDOs and other publishers on the access issue.[30] This commenter went on to state that this requirement won't provide more consistent availability of standards or ensure that the public has enough information to submit an effective comment. The commenter expressed concern that agencies may, in an effort to save money or time (negotiating with SDOs), decide that despite unsuccessful attempts to make a standard reasonably available, it would still request IBR approval, which we would grant. The commenter further stated "[a]t root then, access to all incorporated matter should be free, if the evils of 'secret law' OFR was established to resist are to be avoided."[31]

These commenters appeared to have a fundamental issue with agencies' ability to IBR materials into the CFR. We decline to address whether or not agencies should be allowed to IBR materials into the CFR. This is beyond our authority. In this rule, we balanced our statutory obligations regarding reasonable availability of the standards with: (1) U.S. copyright law, (2) U.S. international trade obligations, and (3) agencies' ability to substantively regulate under their authorizing statutes. To achieve this balance, this rule requires that agencies to discuss how IBR'd materials were made available to parties (and where those materials are located) and to provide a summary of those materials in the preambles of their rulemaking documents. These requirements oblige agencies to provide more information on how they made IBR'd material available and a summary of the material, so the readers can, if they like, find and review the standards. This rule continues to require that agencies provide the OFR with a copy of the standard and maintain a copy at the agency for public inspection; therefore we disagree that this rule is an unlawful delegation of authority to the agencies.

Another commenter adamantly stated that the Director of the Federal Register has the sole authority to set procedures for the approval of agency requests for IBR. This commenter stated that "reasonably available" is the sole statutory criterion for IBR approval so all other considerations must be considered secondarily.[32] This commenter went on to state that it is not enough that agencies are required to simply announce the location of IBR'd material.[33] The commenter added that our proposal won't work, because requiring a summary of the standards in the preamble does nothing for interested parties[34] "and would simply represent another wasteful check-off process in the **Federal Register** publication process."[35]

It is unfortunate that this commenter believed that the publication requirements of the ACFR and Director (found in 1 CFR chapters I and II) are just wasteful check-off processes. The FRA established the ACFR, in part to provide that there was consistency on how agency documents publish in the **Federal Register**. When this Act was amended in 1938 to create the CFR, it provided that the ACFR would issue regulations to carry out the codification of agency documents of general applicability and legal affect.[36] As discussed throughout this rule, the FOIA gave the Director the authority to approve agency requests to IBR materials into their regulations.[37] Both the ACFR and the Director have throughout the years worked hard to ensure that the publication requirements they issue provide the agencies and the public clarity, uniformity, and consistency to maintain an orderly publication system for federal agency documents and minimize busy work for the agencies.

With respect to this commenter's other issues concerning the Director's authority, as we stated in our NPRM, we are a procedural agency. We do not have the subject matter expertise (technical or legal) to tell another agency how they can best reach a rulemaking decision. There must be a balance between procedural requirements and agencies' substantive statutory authority and requirements. To achieve this balance, we are issuing rules that require agencies to discuss how IBR'd materials were made available to parties (including where those materials are located) and to summarize those materials in the preambles of their rulemaking documents. We added the summary requirement, not as a replacement for access to the IBR'd standard, but to give the public enough information to know if they need access to the standard. We believe the requirements set out in this rule provide flexibility needed for agencies to determine that IBR'd documents are reasonably available.

Some commenters made a distinction between reasonably available at different stages of rulemaking, suggesting that materials need to be more widely available at no cost during the comment period of a proposed rule.[38] These commenters' suggested that reasonably available would be more limited during the effective period of the rule, in part to ease the burden on OFR resources.[39] We disagree; distinguishing between the proposed rule and final rule stages of agency rulemakings will require development of a more elaborate approval process that will place additional burdens on agency and OFR staff. In the late 1970s we attempted a more complex approval process that was too difficult to maintain so we revised the IBR approval process in 1982.[40]

One commenter suggested that we provide a "safe harbor" by declaring that any standards provided for free online are deemed reasonably available by the Director.[41] This commenter would place the burden of proof on the agency to demonstrate that the materials were reasonably available if they were not available for free online. We decline to follow this suggestion; it creates an uncertainty in the law because no one knows whether an IBR is enforceable or not. It is not clear what would happen if the material was no longer available for free online and the agency didn't certify that it was reasonably available. Under ACFR regulations, we cannot amend another agency's CFR provisions, so at best we would need to add an editorial note after each CFR provision that included IBR'd material that was no longer approved. We would also need to monitor all IBR's to ensure that some information regarding the status of IBR'd materials were maintained.

At least 2 commenters complained that the proposed rule didn't address

[29] OFR–2013–001–0024 and OFR–2013–001–0029.

[30] OFR–2013–001–0029.

[31] OFR–2013–001–0029 at page 3.

[32] OFR–2013–0001–0004.

[33] Id. At page 1. Citing Senator report No 88–1219 at 4 (1964) and the 1967 Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act (1967).

[34] This commenter goes on to claim that OFR is wrong to assume that agencies would remove online access to IBR'd materials, while in the same comment, stating that the proposal provides agencies no practical incentive to make IBR'd materials reasonably available, implying that without OFR specifically requiring IBR'd materials be available for free online, agencies will do nothing to improve access to standards.

[35] OFR–2013–0001–0004 at page 4.

[36] 44 U.S.C. 1510.

[37] 5 U.S.C. 552(a).

[38] OFR–2013–0001–0022 and OFR–2013–001–0007.

[39] OFR–2013–001–0007 at page 3.

[40] 47 FR 34108 (August 6, 1982).

[41] OFR–2013–001–0007 at page 6.

the reasonable availability of the standards once the final rules were codified in the CFR. One commenter stated that "the CFR has been transformed from a mechanism to inform citizens into a profit opportunity for a few private organizations."[42] Another commenter suggested that agencies post the text of the standards on their Web sites to ensure that text of the IBR'd standards is available while the rule is codified in the CFR.[43] As an alternative, the commenter states that materials could be posted on SDOs Web sites so long as agencies certify, each year, that IBR'd materials are still on the SDOs Web site.

We note that even if agencies decide to repackage the text of standards they wish to IBR, they must ensure that this repackaged text meets the requirements in 51.7 and 51.9 or we will not approve the agency's IBR request. As for the suggestion that agencies annually certify that IBR materials are reasonably available—we have already demonstrated that is not a viable option. From 1979 through 1982, we approved material IBR'd on a yearly basis, as part of a comprehensive review of all material IBR'd and a review of the overall approval process.[44] It soon became clear that a one-year review was neither practical nor efficient. We chose not to extend the program but to return to the original process. As we stated above, the orderly codification requirements of the FRA and the ACFR prohibit us from amending another agency's regulations so it is not clear how the expiration of an IBR approval would be identified in the CFR without undermining orderly codification and without returning to an approval system that has already failed.

Access

Several commenters specifically discussed access as part of their comments addressing reasonably available. Many commenters agreed with the petitioners, stating that the law must be accessible and free to use, therefore IBR'd standards should also be freely available to anyone wishing to review them. One commenter stated that free access to IBR'd standards strengthens the capacity of public interest groups to engage in the rulemaking process and work on solutions to public policy issues.[45] Another stated that the public's right to access the content of regulations, including IBR'd material, is "a critical safeguard to agency capture and other government issues."[46] Other commenters generally agreed with our NPRM, stating that reasonable availability and transparency did not automatically mean free access[47] and supporting the idea that agencies need flexibility to work with the SDOs to provide access to standards.[48]

A number of SDOs commented specifically on access and discussed how they make their standards available online.[49] One stated that access should not require the loss of copyright protection.[50] One SDO board stated that they make standards available in the following ways: Online sales; classes; limited-time, no-cost, no-print electronic access; membership in the organization, and the ability to request fee waivers.[51] Another standards organization stated that its standards are available through third party vendors.[52] It also stated that the headings and outlines of its standards are freely available and that it also provides read-only online access to its standards. Another also stated that it provides no-cost read-only online access to its standards and also provides scopes and summaries of each standard on its Web site.[53] One stated that access is important but shouldn't undermine or dismantle the public-private partnership that currently exists to create high-quality technical standards.[54] To support access and agency efforts to update standards referenced in regulations, it makes immediate past versions of its standards available for review in online in RealRead. Further, older standards can be purchased and it will work with agencies to expand its titles in RealRead.[55]

OFR applauds all the efforts of these private organizations to make their IBR'd standards available to the public. We encourage agencies and SDOs to continue to ensure access to IBR'd standards.

One commenter stated that summarizing the documents isn't enough; regulated entities must have access to the actual documents and these documents must be available free to the public in at least one location as long as the rule is effective. Since it is hard to access the copies at the National Archives, we require that agencies maintain a copy of the documents they IBR. We retained the requirements in this rule that agencies retain a copy of the IBR'd standard for inspection and provide the OFR a copy of IBR standards.

Another commenter believed that access to standards on SDOs Web sites is insufficient to meet the reasonably available requirement at any stage of the rulemaking process because the SDO can remove the standard or charge for access to it at any time.[56] In addition, this commenter believed that SDOs requirement that individuals sign a release to access the read-only standard may deter the public or small businesses from accessing standards. If the SDO does remove standards from its Web site, the only option, according to this commenter, is to travel to our offices in Washington, DC to review them.

We have no authority to require SDOs to upload and maintain their standards on their Web sites, and while this is one way to demonstrate access, it is not the only way to show reasonable availability. To improve access to standards and provide the public more information on how to access the standards, this rule requires that agencies discuss how the standards were made available during the life-cycle of the rule. We also require that agencies provide a summary of the standard in the preamble to allow readers to make their determination on whether to access a standard to assist in drafting a comment on a particular rulemaking project. We disagree with the commenter's assertion that the only place interested parties can access standards, if they aren't available online, is at our office in Washington, DC. As mentioned above, we kept the requirement that agencies retain a copy of the IBR'd standard for inspection and provide the OFR a copy of IBR'd standards. Further, material remains available through SDOs and usually, if a standard has been discontinued, through resellers.

Another commenter recommended that OFR adopt an IBR approval program based on contingent approvals. The commenter suggested that OFR's IBR approval be effective only as long as the standard is freely available. If the public can't access a standard for free, then the IBR approval "would

[42] OFR–2013–0001–0012 at page 5.

[43] OFR–2013–0001–0024.

[44] 44 FR 18630, as corrected at 44 FR 19181.

[45] OFR–2013–0001–0031.

[46] OFR–2013–0001–0029 at page 11.

[47] OFR–2013–0001–0033.

[48] OFR–2013–0001–0020 and OFR–2013–0001–0018.

[49] See, OFR–2013–001–0017, OFR–2013–001–0020, OFR–2013–001–0027 and OFR–2013–001–0028.

[50] OFR–2013–0001–0018.

[51] OFR–2013–001–0023.

[52] OFR–2013–001–0035.

[53] OFR–2013–001–0025.

[54] OFR–2013–0001–0028.

[55] *Id.*

[56] OFR–2013–0001–0036. The commenter also asserted that the SDO standards development processes doesn't balance all interests reliably so the public needs complete access to the standards to make sure the agencies are "acting appropriately in relying upon these standards." At page 5.

evaporate." [57] The standard would not be legally IBR'd and would be unenforceable. The commenter stated that the statute doesn't prohibit an approval that would be revoked automatically and that revocation could be privately enforced by individuals using the Federal courts. The commenter asserted that these contingent approvals would not drain OFR resources because the revocation of the IBR approval would be automatic and immediate. It would provide an incentive for both the agencies and the SDOs to ensure continued free online access because standards that weren't freely available online would not be enforceable.

We disagree with these commenters' assertion that we can delegate our enforcement authority to private entities without "final reviewing authority over the private party's actions." [58] Even if we could, it would create uncertainty in the law because no one would know whether an IBR is effective and enforceable or not. There is no way we can track and review all Federal court cases for IBR'd material. We also can't resolve conflicts between Circuits. Finally, even with a definitive court decision, we couldn't amend another agency's regulations. So the system this commenter suggested is less transparent and accessible than the current IBR approval process.

Costs of Standards

Several commenters discussed the costs of the standards in their comments on our NPRM.[59] Some raised concerns that SDOs were charging monopoly prices for standards [60] or using copyright as a device to make money and fund SDO operations.[61] Others were of the opinion that any charge for an IBR'd standard effectively hides the law behind a pay wall which is illegal and means the standard is not available.[62] At least one commenter stated that while there was a need to charge a reasonable fee to recover printing costs, this no longer applies where technology now enables the storage and retrieval of large amounts of data at virtually no cost.[63] This commenter suggested that giving the public free access to the standards would not "undermine incentives to participate in the voluntary standards development process." [64]

As we stated in our NPRM, these materials may not be as easily accessible as the commenters would like, but they are described in the regulatory text in sufficient detail so that a member of the public can identify the standard IBR'd into the regulation. OFR regulations also require that agencies include publisher information and agency contact information so that anyone wishing to locate a standard has contact information for the both the standard's publisher and the agency IBRing the standard.

A couple of commenters suggested that OFR needs to proceed with caution and consider the costs of IBR'd standards, including extra compliance costs for small businesses in highly regulated areas.[65] At least 2 commenters suggested that OFR must consider the cost of the standard and the price of access, including the cost of travel to Washington DC to examine the standard, when deciding whether to approve an agency request to IBR standards.[66]

Expanding on this idea, one commenter stated that OFR is allowing agencies to IBR standards that must be purchased, therefore OFR needs to make sure the regulatory requirements are set out in the rule in enough detail that people can understand those requirements.[67] This commenter also insisted that, as part of the approval process, agencies must state the cost of the standard before they receive approval and certify that if the price changes or if the standard isn't available the regulation is unenforceable to ensure the reasonable availability of the IBR's standard during the entire lifecycle of the rule.[68]

Another commenter stated generally that the cost of buying the standard is less than the cost of complying with the regulation.[69] One of these commenters stated that OFR needs to review the standards for costs to the affected industries and look for any potential conflicts in regulations along with formally defining "reasonably available." [70]

One commenter stated that free and online would compromise the ability of regulators to rely on voluntary consensus standards.[71] This commenter stated that revenue from sales, along with providing salaries, benefits facilities, global development and training, and also supports the broader mission of professional engineering societies and funds research for standards and technology. Finally, this commenter suggested that there may also be a potential downstream impact threatening billions of dollars in global trade and the development of internationally harmonized safety requirements.

Another commenter supported purchasing standards at the final rule stage.[72] This commenter expressed concern that organizations that rely on sales of standards may go out of business if they can't raise revenue from sales of standards. The commenter noted that corporate sponsors could be used to raise the revenue needed but that this might lead to standards that favored the corporate sponsor, whereas obtaining the revenue from the government could lead to the development of standards based on politics.

To address the concerns mentioned in comments from SDOs, one commenter stated that the SDOs whose business models are based on sales of their standards may have some negative economic impact in the short term.[73] This commenter saw no long term negative economic impact on the SDOs, because requiring the standards to be posted as read-only files still allows SDOs to sell hard copies as business will still need to highlight and annotate the standard.[74] Additionally, SDOs exist to fill a business needs that are separate from government regulation and these needs continue to exist even if read-only access is given to standards. In cases where the standard wasn't developed to become part of regulations, agencies should seek a license, although the commenter admitted that the licensing fees could be cost- prohibitive for small agencies.

While technological (and publication) costs continue to decrease, these

[57] OFR–2013–0001–0004 at pages 4–5.

[58] *National Park and Conservation Ass'n* v. *Stanton*, 54 F.Supp2d 7, 18 (D.D.C. 1999).

[59] At least 2 comments stated that FOIA envisioned that IBR'd standards would be commercially available through a subscription service, not held for individual sale, suggesting that purchasing a subscription could be more affordable than purchasing each individual standard, see OFR–2013–001–0024 and OFR–2013–001–0029. We note that we received comments to our initial request for comments on the petition that suggested obtaining access to subscriptions services for certain IBR'd materials is not substantially cheaper and sets up other road blocks for entities wishing to purchase only one particular standard.

[60] OFR–2013–001–0012.

[61] OFR–2013–001–0019.

[62] See generally, OFR–2013–001–0024, OFR–2013–001–0036, OFR–2013–001–0029, OFR–2013–001–0004, OFR–2013–001–0021, and OFR–2013–001–0037.

[63] OFR–2013–001–0034.

[64] OFR–2013–001–0034.

[65] OFR–2013–001–0019 and OFR–2013–001–00319. See also OFR–2013–001–0029, this commenter specifically referenced technical standards, saying they must be available to the public, and stating that the compliance obligations are same.

[66] OFR–2013–001–0021.

[67] OFR–2013–001–0029.

[68] *Id.*

[69] OFR–2013–001–0023.

[70] OFR–2013–001–0023.

[71] OFR–2013–001–0038.

[72] OFR–2013–001–0022.

[73] OFR–2013–001–0029.

[74] *Id.*

commenters addressed only the cost of making something available online and did not address costs associated with creating the standard or providing free access to it. OFR staff do not have the experience to determine how costs factor into development of, or access to, a standard for a particular regulated entity or industry. Thus, this rule doesn't specifically address the costs associated with an IBR'd standard, which allows the agencies flexibility to address cost concerns when exercising their authority to issue regulations.

As we stated in our proposed rule, OFR is a procedural agency. We do not have the subject matter expertise (technical or legal) to tell another agency how they can best reach a rulemaking decision. Further, we do not have that authority. Neither the FRA, the FOIA, nor the APA authorizes us to review proposed and final rulemaking actions for substance. We agree that agencies should consider many factors when engaging in rulemaking, including assessing the cost of developing and accessing the standard. Thus, we are requiring agencies to explain why material is reasonably available and how to get it, and to summarize the pertinent parts of the standard in the preamble of both proposed and final rules.

Other Issues

a. Constitutional Issues
b. Copyright Issues
c. Outdated standards IBR'd into the CFR
d. Incorporation of guidance documents and the use of safe harbors
e. Indirect IBR'd standards
f. Data and studies used to create standards
g. Section-by-section analysis of the regulatory text

a. Constitutional Issues

A couple of commenters suggested that our proposal was Constitutionally suspect, claiming that it violates Due Process, Equal Protection, and First Amendment rights.[75] They claimed that the public's inability to access standards for free online creates due process concerns, because due process requires notice of obligations before the imposition of sanctions. Having to pay fees for standards creates obstacles and impacts notice, which in turn creates due process problems. They claimed there might be a First Amendment issue because the public can't discuss or criticize regulations if they don't know what they are. Finally they argued that equal protection and due process are jeopardized when some people can purchase the law and others can't. One commenter stated that access to the standards in Washington, DC is not sufficient when the rule applies nationwide, because people have to travel to DC to view the standard and traveling costs money. Therefore, they argued, OFR needed to take those travel costs into account when approving agency requests to incorporate documents by reference into the CFR.

Constitutional issues were raised in earlier documents as well. Commenters to the request for comments on the petition argued that the government could simply exercise the Takings Clause of the 5th Amendment.[76]

While we don't speak for the Federal Government as a whole, we see no reason why the government would exercise the Takings Clause. However, we note that this rule continues to require that agencies provide us a copy of all documents they wish to IBR into the CFR. Agencies must also maintain at least one copy of all IBR'd standards for public inspection at their agency. They must also provide their contact information along with contact information for the OFR and the standards' publishers in the regulatory text. Anyone can contact any of these 3 groups with questions regarding access to the documents IBR'd by an agency into the CFR, so access is not restricted to the Office of the Federal Register in Washington, DC.

Further, nothing in this rule prevents the public from discussing or criticizing any Federal regulations. By requiring agencies to add to the preamble a discussion of how to examine or obtain copies of standards referenced in their rulemaking documents, along with summaries of those standards, we are ensuring that members of the public have more information for determining if the summary is sufficient or if they need (or just want) to contact the agencies with questions on how to access the IBR'd standards.

b. Copyright Issues

Several commenters claimed that once a standard is IBR'd into a regulation it becomes law and loses its copyright protection and, therefore, that IBR'd standards must be available for free online without any further discussion. Other commenters[77] stated that the public is the owner and author of the regulations and thus has the right to know the law, relying on the *Veeck* case.[78] At least one commenter stated that the law is in the public domain and therefore not "amenable to copyright."[79]

Several commenters appeared to argue that the *Veeck* case demonstrates that SDOs have survived and grown over the years despite not having copyright protection awarded by a court because SDOs still create and charge for standards even after the Veeck decision; that the complexity of the modern age requires that agencies standardize across the Federal government, thus compelling the use of standards; and that SDOs can annotate their standards and charge fees for those annotations. These commenters' conclusion seemed to be that SDOs will continue to create standards and push for their incorporation into Federal regulations. Therefore, OFR must require that only standards available for free online are eligible for IBR approval.

One commenter referenced the NTTAA[80] and stated that since this statute says agencies shouldn't use standards in a way inconsistent with applicable law, therefore if agencies can't use the standard without violating copyright law, then the agency shouldn't IBR that standard.[81]

As we stated in our NPRM, recent developments in Federal law, including the *Veeck* decision[82] and the amendments to FOIA, and the NTTAA have not eliminated the availability of copyright protection for privately developed codes and standards that are referenced in or incorporated into federal regulations. Therefore, we cannot issue regulations that could be interpreted as removing copyright protection from IBR'd standards. We recommend that the responsible government agency collaborate with the SDOs and other publishers of IBR'd materials to ensure that the public does have reasonable access to the referenced documents. Therefore, in this final rule we require that agencies discuss how the IBR'd standards are reasonably available to commenters and to regulated entities. One way to make standards reasonably available, if they aren't already, is to work with copyright holders.

One commenter stated that since it is the text of standards that must be available (citing *Veeck* for the proposition that the law is not subject to copyright law), agencies should copy the text of IBR'd standards and place the

[75] OFR–2013–0001–0029 and OFR–2013–0001–0036.

[76] 78 FR 60791 (October 2, 2013).

[77] OFR–2013–0001–0029.

[78] *Veeck* v. *Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002).

[79] OFR–2013–0001–0012.

[80] 15 U.S.C. 3701 et seq.

[81] OFR–2013–0001–0004.

[82] One commenter stated that OFR needs to show that the 5th Circuit didn't consider specific arguments, and, that if we don't, we can't reject the decision of the court. See OFR–2013–0001–0021. We disagree.

text online. In a footnote, the commenter suggested that OFR require agencies to place the text of their "regulatory obligations" in their online dockets. This way the "text of the legal obligation and not the standard as such" is available online for free.[83]

We leave it to the agencies to determine if they should follow this commenter's suggestion. We do note that agencies requesting IBR approval must follow the requirements set out in part 51, including § 51.9, requiring very specific information about the standard, so that the standard and "regulatory obligations" can be clearly identified.

c. Outdated Standards IBR'd Into the CFR

A few commenters again mentioned that some of the standards IBR'd into the CFR were outdated or expressed concern that agencies were failing to update the IBR references in the CFR. The orderly codification requirements of the FRA and the ACFR prohibit us from amending another agency's regulations,[84] so we cannot take unilateral action. Further, we don't have the authority to decide that a newer version of a particular standard serves the same purpose as an older version; that determination is solely for the agency. However, we continue to provide support and assistance to agencies that are implementing or updating regulations with IBR'd material. We contact agencies and let them know if we hear from someone that a standard is difficult to find. We also refer callers to our agency contacts.

One commenter stated that two-thirds of IBR'd standards were published in 1995 or earlier, thus, these standards are no longer available except at the National Archives and Records Administration.[85] The commenter suggested that to address this issue OFR needs to include a sunset provision in part 51 to limit the duration of an IBR approval or to require that agencies certify for each annual edition of the CFR that standards IBR'd are still available. From 1979 through 1982, we approved material IBR'd on a yearly basis, as part of a comprehensive review of all material IBR'd and a review of the overall approval process.[86] We initially established the annual review for only 3 years, but it soon became clear that a one-year review was neither practical nor efficient. We chose not extend the program at the end of 3 years but to return instead to the original process.[87]

As we stated above, the orderly codification requirements of the FRA and the ACFR prohibit us from amending another agency's regulations[88] so it is not clear how the expiration of an IBR approval would be identified in the CFR without undermining orderly codification and without returning to an approval system that has already failed.

d. Incorporation of Guidance Documents and the Use of Safe Harbors

While some of the commenters approved of our proposal and its rejection of the notion that IBR standards should be removed from regulations and incorporated into agency guidance,[89] one commenter modified the argument and suggested that OFR needs to adopt the formal stance that "incorporated standards do not create legal obligations, as such, rather identify appropriate means for achieving compliance with regulatory requirements that are independently and fully stated in public law." [90] This commenter suggested that adopting this proposition would bring our requirements in line with the European Union's stance on incorporation by reference. The commenter then went on to describe the way the EU countries develop standards and recommended that the U.S. adopt that model of standards development. However, the OFR has no statutory authority to completely change the way standards are developed in the U.S. We continue to maintain that the explicit statutory language of section 552(a) applies when agencies request to IBR materials into the CFR. Therefore, we have no authority to approve IBRs of standards into agency guidance documents.

The commenter continued by stating that OFR cannot, in its regulations, allow materials that are copyrighted to become binding legal requirements through IBR. They also stated that OFR needs to accept the IBR of guidance documents that are not legally binding and limit the IBR'ing of required standards to ones that are available for free online.[91]

This commenter went on to state that section 552(a)(1) clearly allows for the IBR of guidance documents, stating that "part 51's refusal to consider these IBRs is unprincipled and unjustified." [92] This commenter then listed the merits of IBR'ing of guidance documents, for example, no copyright issues and ease for agencies to update the reference when the standards are updated.

Agencies are not required to request IBR approval for guidance documents referenced in their regulations. Currently, if materials that are published elsewhere are referenced as guidance documents in regulatory text or a CFR appendix, agencies are not required to submit an IBR request; they must simply add information on how to obtain the guidance material in the regulatory text. This requirement is less stringent than IBR approval and we see no reason to change our policy at this time. While this commenter is correct that in the past we have approved IBR in limited instances for guidance documents, there has never been a requirement in our regulations that guidance documents must obtain IBR approval; that is because not all agency guidance documents or the materials referenced in those documents are published or referenced in the **Federal Register**. Regardless, any requests for IBR must still meet the requirements of part 51 and any changes to the CFR or a CFR appendix must publish in the Rules and Regulations section of the **Federal Register**. That publication requirement will increase the time it takes to update IBR'd guidance documents and may not provide the flexibility to update guidance the commenter hoped for.

This commenter also suggested that we don't understand the law and that we believe that guidance documents aren't regulatory.[93] However, we do understand the concept that guidance documents are not requirements and if agencies try to enforce them as binding, private entities can sue the agency.

Both the FRA and the APA require that documents of general applicability and legal effect be published in the **Federal Register** and codified in the CFR. In general, agencies are not required to codify their guidance documents, policy letters, or directives in the CFR and thus, they might not be published in the **Federal Register**.[94] Nor

[83] OFR–2013–001–0024 footnote 23 at page 8.

[84] 44 U.S.C. 1510 and 1 CFR part 21.

[85] OFR–2013–001–0024.

[86] 44 FR 18630, as corrected at 44 FR 19181.

[87] 47 FR 34108.

[88] OFR–2013–001–0024.

[89] OFR–2013–001–0030.

[90] OFR–2013–001–0024 at page 2.

[91] *Id.* at page 2, OFR–2013–001–0004.

[92] *Id.* at page 3.

[93] *Id.* at page 8.

[94] ACUS Recommendation 76–2 (41 FR 29653, July 19, 1976) recommends that agencies publish their statements of general policy and interpretations of general applicability in the **Federal Register** citing 5 U.S.C. 522(a)(1)(D). This recommendation further recommends that when these documents are of continuing interest to the public they should be "preserved" in the CFR. 41 FR 29654. The recommendation also suggests that agencies preserve their statements of basis and purpose related to a rule by having them published in the CFR at least once in the CFR edition for the year rule is originally codified. Many agencies have

are they required to formally request approval for standards referenced in the CFR that are not binding requirements. OFR has long interpreted section 552(a)'s use of the term "affected" to be related to binding requirements that have an effect on parties. Thus, we haven't required that references in the CFR to standards for guidance purposes go through IBR approval. We do not have the staff or other resources needed to approve IBR requests for documents that are guidance rather than documents that are requirements. As we mentioned above, agencies can already reference those documents in the CFR without going through the formal IBR review process. Thus, is not clear why agencies would need IBR approval for these non-regulatory documents.

One commenter stated that there is no distinction between a regulatory standard and a safe harbor.[95] This commenter stated that a safe harbor in regulatory text will bind the agency to accept actions that are within the safe harbor as compliance. Thus, the safe harbor will dominate as the compliance method. Therefore, this commenter believed that all requirements suggested for IBR'd standards (most importantly that they must be available for free online) also apply to safe harbors. We agree that this is a concern, however we don't see that this specific issue is covered by part 51.

e. Indirect IBR'd Standards

At least 4 commenters raised the issue that some of the IBR'd standards also reference other standards in their text. A couple of these comments suggested that the OFR deny IBR approval unless all standards are available for free online, including those referenced within the standard the agency is seeking IBR approval for. At least, one of the commenters stated that obtaining IBR'd material can cost several thousands of dollars a year.

As we stated in our proposed rule, our regulations have never contained any provision to allow for IBR of anything but the primary standards and, as a practical matter, we have no mechanism for approving anything but those primary standards. The OFR is a procedural agency and we do not have subject matter or policy jurisdiction over any agency or SDO. We must assume that agencies have fully considered the impact of any document (including material IBR'd) that they publish in the **Federal Register**. In many instances, agencies reference third-party standards in their NPRMs, so both the general public and the regulated public can review and comment on those standards before they are formally IBR'd in the CFR. We do not review material submitted for IBR to determine if that material also has other materials included; we look only at the criteria set out in our regulations. Determining that an agency intends to require some type of compliance with documents referenced in third-party standards is outside our jurisdiction; similarly, we cannot determine whether or not the subject matter of a third-party standard is appropriate for any given agency.

What these commenters suggested would require that OFR substantively review each standard IBR'd to determine if it references other standards and then determine if those standards are required to comply with the IBR'd standard and the agency's regulations. That is beyond the authority and subject matter expertise of this office and would increase the review time required to process IBR approval requests. Therefore, we continue our practice of reviewing approval requests only for standards directly IBR'd into the CFR.

f. Data and Studies Used To Create Standards

At least 2 commenters suggested that a condition of IBR approval must be that data and studies relied on to create the standard must be available for free online during the comment period of the NPRM, citing *Portland Cement Ass'n* v. *Ruckelshaus* 486 F.2d 375 (DC Cir 1973). They also stated that agencies should be required in their NPRM preambles to "include specification of the means by which would-be commenters can gain access to the studies and data on which the standard proposed to be incorporated is based" without incurring a significant fee.[96] They claimed that without this requirement interested persons cannot meaningfully comment on an agency's NPRM.

The APA, other statutory authorities, and case law have continually stood for the proposition that the publishing agencies, not the OFR, are responsible for ensuring that the public has appropriate information to provide comments on their proposed rules. The task of ensuring agencies provide access to data and to the studies that were used to develop materials incorporated by reference is beyond our statutory authority and resources. Therefore, we decline to revise the regulations to require that the materials used to develop standards be available for free online.

g. Section-by-Section Analysis of the Regulatory Text

Several commenters had comments on specific sections set out in our NPRM. We address those comments by section below.

Section 51.1(b)

Some commenters suggested that we add the E–FOIA and the E-Government Act[97] to our list of authorities in § 51.1(b), claiming that our refusal to do so "reveal[s] OFR's regrettable indifference to the realities of the Information Age."[98] It is not clear where these commenters would have us reference these statutes. Our statutory authority appropriately references section 552(a), which grants the Director the authority to approve agency requests for IBR into the CFR. If the commenters were focusing on the text of § 51.1(b), what they fail to take into account is that this section specifically lists authorities that directly relate to the requirement that certain documents be published in the **Federal Register**. Paragraph (b)(4) allows for us to review based on Acts other than the FRA that require publication in the **Federal Register**. Since this paragraph (b)(4) can be read broadly to include many different statutes, we do not believe we need to specifically reference these statutes.

Section 51.1(e)

One commenter stated that paragraph (e) of § 51.1 was confusing because it states that use of the phrase "incorporation by reference" by itself does not mean the Director has approved an agency request for incorporation by reference. The commenter suggested that this paragraph be removed.

The CFR uses the phrase "incorporation by reference" throughout its titles even when this phrase does not mean incorporation by reference pursuant to section 552(a). For example, the Federal Acquisition regulations in Title 48 of the CFR and 40 CFR 1502.21 (which discusses incorporating materials by reference into agency environmental impact statements) both use the phrase "incorporation by reference" in ways unrelated to the use of the "incorporation by reference" described, in section 552(a). Paragraph (e) clarifies that if the Director's

not followed this recommendation, most likely because some of the material is published in the United States Government Manual or they find the cost prohibitive.

[95] OFR–2013–0001–0029.

[96] OFR–2013–0001–0024 and OFR–2013–0001–0029.

[97] Public Law 107–347 (2002).

[98] OFR–2013–0001–0029.

approval language is not linked to the IBR reference in the CFR, that use of the term IBR has not been approved by the Director and may be unrelated to section 552(a) and the regulations found in part 51. Therefore, because this phrase is used in multiple ways in the CFR, we decline to remove paragraph (e) from § 51.1.

Section 51.5

One commenter, when discussing §§ 51.3 and 51.5, stated that our proposal would reduce "reasonably available" to formality that doesn't encourage agencies to comply with section 552(a) or with 5 U.S.C. 553. They argued that OFR is not paying enough attention to the public's ability to comment on NPRMs (other commenters also suggested that the OFR should require rulemaking documents be understandable without the need for the reader to rely on the IBR'd material [99]). The commenter believed that a discussion of how the agency made the material reasonably available doesn't go far enough. This commenter recommended that we change the text to require that agencies explain what they propose to require in their rulemaking. Along this same line, another commenter wanted a detailed abstract of the IBR'd materials.

It is the responsibility of the agency issuing the regulations to ensure that it complies with the requirements of the APA. Our intent with these changes is to provide the public more information regarding standards IBR'd, both how to access these standards and to get a summary of what the standard is about. The OFR can't ensure that every agency complies with the requirements of the APA; we are not subject matter experts in all areas of federal law so we can't make a determination on whether an agency's preamble provides enough information for the public to thoughtfully comment on agencies' proposals. This commenter's suggested language would require OFR to do a substantive review of all preambles in rulemakings where the agencies propose to IBR materials into their regulations. This is beyond our authority; we can't do it for documents without IBR and nothing in section 552(a) gives us special authority to perform substantive reviews of rulemaking documents with IBR.

One commenter expressed concerns that the requirement to summarize standards in preambles is not specific enough. This commenter wanted more specificity on what constitutes reasonable availability. The commenter said that requiring too much detail is a problem, because the summary doesn't replace the actual text of the standard and agencies shouldn't be placed in a position to argue or litigate whether there was enough detail in the summary. The summary should alert readers to go to the standard. We agree that this summary of the standard needs to give readers enough information to decide if they need to read the standard for more detail or not, thus we kept the regulatory text flexible to allow agencies to write these summaries in ways that best meet the needs of their readers.

Another commenter, while agreeing that "reasonably available" might not mean free online, stated that it does mean more than the agency simply having a copy available for examination in its Washington, DC headquarters.[100] This commenter stated that the OFR needs to define reasonably available and let the public comment on that proposed definition. It also stated that OFR needs to provide agencies with guidance on how we expect them to comply with this requirements. This commenter further urged that OFR define "reasonably available" differently, depending on where in the rulemaking process the regulation is. Thus, this commenter recommended that "reasonably available" be defined at the proposed rule stage to mean the material proposed to be IBR'd be available to review for free online. At the final rule stage, and while the rule is effective "reasonably available" would mean that IBR'd material could be purchased from the publisher.

We decline to define "reasonably available." Much like the request to define "class of persons affected," we are concerned that any definition will fail because it is either too broad to be meaningful or too restrictive, impeding agencies' ability to work with SDOs and other publishers to make the material available to wide audience either during the comment period of a proposed rule or while a regulation is in effect. The absence of a too-broad or too-narrow definition allows agencies to maintain flexibility in making IBR'd materials "reasonably available" during the life-cycle of a regulation and their regulatory programs on a case-by-case basis to respond to specific situations.

Another commenter stated that the proposed regulatory text in § 51.5 was too focused on the reasonable availability issue. This commenter claimed that the NPRM suggests that there are "varying degrees" of reasonable availability when in reality material is either reasonably available or it is not.[101] The commenter objected to the proposed language in § 51.5 because, the commenter claimed, that by requiring agencies to discuss how they worked with publishers to make material reasonably available, we are suggesting a link between reasonably available and free online. This commenter recommended changing the focus of the text from the reasonably available requirement to instead require that agencies discuss all the factors they considered, including availability, when proposing to IBR a standard. The commenter believed that this language better articulates federal policy.

Section 552(a) specifically mentions reasonable availability without addressing other factors agencies used to determine if they wished to request IBR approval for particular standards. Therefore, this section properly focuses on a discussion of how the materials are available. Nothing in this rule prohibits agencies from discussing, in their preambles, what factors they considered when determining if and what materials they would request approval for. Thus, we decline to revise this section to make this commenter's suggested changes.

One commenter stated that using the term "or" instead of "and" in the proposed rule text violates the statute because the material must be made reasonably available under the statute.[102] The commenter continued, stating that it's the Director who determines reasonable availability and not the agencies. Therefore, the proposed language puts the reasonable availability determination on the wrong party. The commenter assumes agencies will develop different criteria for determining whether something is reasonably available. The NPRM stated that agencies might not be able to IBR SDO standards if we require that they be available for free; the commenter disagreed with this statement.

We disagree with the commenter's assessment of this proposal. The OFR (including the Director) does not have the subject matter expertise or the familiarity with the affected parties to make a case-by-case analysis of "reasonable availability." We must rely on the analysis of the agency. The revisions to this section now require

[99] See, OFR–2013–0001–00024 and OFR–2013–0001–00032. One commenter alleges that it is a "mere phantasm if the agency can meet the requirement by stating that a copy of the publication has been placed at the bottom of a locked filing cabinet . . .", see OFR–2013–0001–0037. We can't assume, as this commenter appears to do, that agencies will willfully obstruct access to the standards they've IBR'd.

[100] OFR–2013–0001–0022.

[101] OFR–2013–0001–0026.

[102] OFR–2013–0001–0021.

that agencies provide at least part of that analysis instead of simply asserting that the material is "reasonably available." Nothing in the proposal removes the requirement that IBR'd materials be maintained at the agency and at the OFR. And, the summary provides information to people so they can determine if they want to review the IBR material at the agency or the OFR or elsewhere.

One commenter supported our revisions to § 51.5 because these requirements will bring attention to the availability issue and suggested that agencies will "proactively seek to improve the availability of IBR materials throughout the rulemaking process." [103] This commenter recommended that OFR strengthen this provision by removing the "or" and replacing it with an "and." This would require agencies to discuss both the substance of the standard and how they worked to make the standard reasonably available. This recommendation is also consistent with ACUS' recommendation 2011–5.[104]

We agree that this provision should be strengthened so we replaced the "or" with an "and." And, we have removed the requirement that the agency discuss, in the final rule, how the incorporated material was reasonably available at the proposed rule stage. We require, at both the proposed and final rule stages, that agencies include language in their rulemaking preambles that both discuss the availability of the standards and provide a summary of the standards themselves.

Section 51.7

At least 2 commenters suggested that we remove the requirement that standards be technical in nature to receive IBR approval in an attempt to limit the number of printed **Federal Register** and CFR pages.[105] One commenter also expressed a concern that by removing the requirement that IBR'd standards must be technical in nature, OFR is allowing agencies to remove essential requirements from the regulatory text so that the legal obligation is hidden within the IBR'd standard merely to save printed pages in the **Federal Register**. This commenter argued that agency regulations need to be sufficiently and adequately set out to allow the reader to know and be able to meet the regulatory obligations. This commenter claimed that OFR needs to add a provision to part 51 requiring that the IBR material be technical in nature and that it supplement the regulatory text, not be a substitute for it. The commenter also stated that OFR must review both the regulatory text and the standards to ensure the IBR material doesn't replace the requirements set out in regulatory text.

This commenter was, in effect, suggesting that OFR conduct a substantive review of both the regulatory text and the standards. A review of this nature would require a substantive review of agency regulations, something that is beyond our authority, so, while we clarified § 51.7(a)(2) to require that standards IBR'd be technical standards, we decline to make these suggested changes that would require us to review the materials to ensure that they didn't include regulatory obligations not set out in the regulatory text.

Another concern raised by some of the commenters was that completely removing the requirement that IBR standards be technical in nature "will spur further inappropriate incorporations by reference." [106]

At least one other commenter specifically referenced § 51.7(a) and expressed concern that the proposal removed the requirement that IBR'd standards be technical in nature. The commenter stated that this requirement reduces the risk that agencies will IBR standards that are regulatory in nature. This commenter suggested that the requirement was the public-private equivalent of our prohibition on agencies IBR'ing their own publications.

We understand these concerns regarding the proposed language, so we modified the language in § 51.7(a)(2) to retain the original language of this paragraph, while modifying the structure to emphasize that standards cannot detract from the **Federal Register** publication system. So, much like our provision addressing agency-produced documents, these changes allow us the flexibility to work with agencies on the types of materials IBR'd.

There were a couple of commenters who specifically referenced proposed revisions to § 51.7, explaining what types of documents are eligible for IBR approval. One commenter objected to the language in § 51.7(a)(3) claiming that OFR does not need to include requirements for usability in the regulations because the requirements seem print-focused and are irrelevant in the age of the Internet.

Despite the commenter's attempt to show that the OFR is out-of-touch with the information age, we still receive hard copies of the materials agencies IBR into the CFR. Thus, we decline to remove this paragraph entirely. We have modified the language slightly with the phrase "as applicable" to indicate to agencies that submit hard copies of their IBR'd material this requirement still applies. Further, the numbering and ordering requirement may still apply to electronic material. We are not unduly focused on print publications, but until no standards are available in print, we have to consider both print and electronic publications.

Finally, we restructured paragraph (a) into a more logical order.

Regulatory Analysis

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below is a summary of our determinations with respect to this rulemaking proceeding.

Executive Orders 12866 and 13563

The rule was drafted in accordance with Executive Order 12866, section 1(b), "Principles of Regulation" and Executive Order 13563 "Improving Regulation and Regulatory Review." We sent the rule to OMB under section 6(a)(3)(E) of Executive Order 12866 and it was determined to be a significant regulatory action as defined under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant impact on small entities since it imposes requirements only on Federal agencies.[107] Members of the public can access **Federal Register** publications for free through the Government Printing Office's Web site. Accordingly, the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Federalism

This rule has no Federalism implications under Executive Order 13132. It does not impose compliance costs on state or local governments or preempt state law.

Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). We will

[103] OFR–2013–001–0030.

[104] 77 FR 2257 (January 17, 2012).

[105] OFR–2013–0001–0024 and OFR–2013–001–0029.

[106] OFR–2013–0001–0029.

[107] One commenter suggests that OFR needs to do a complete regulatory flexibility analysis on the issues surrounding IBR within the federal government, see OFR–2013–0001–0024 footnote 10 at page 4. Because the only new action in this rule is to require that agencies provide more information in their preambles regarding IBR'ing of standards we do not believe that it has a monetary impact on small businesses or increases their burden. Therefore, we decline to follow the commenter's suggestion.

submit a rule report, including a copy of this rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects in 1 CFR Part 51

Administrative practice and procedure, Code of Federal Regulations, **Federal Register**, Incorporation by reference.

For the reasons discussed in the preamble, under the authority at 5 U.S.C. 552(a), the Director of the Federal Register amends chapter II of title 1 of the Code of Federal Regulations as set forth below:

PART 51—INCORPORATION BY REFERENCE

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 5 U.S.C. 552(a).

■ 2. Revise 51.3 to read as follows:

§ 51.3 When will the Director approve a publication?

(a)(1) The Director will informally approve the proposed incorporation by reference of a publication when the preamble of a proposed rule meets the requirements of this part (See § 51.5(a)).

(2) If the preamble of a proposed rule does not meet the requirements of this part, the Director will return the document to the agency (See 1 CFR 2.4).

(b) The Director will formally approve the incorporation by reference of a publication in a final rule when the following requirements are met:

(1) The publication is eligible for incorporation by reference (See § 51.7).

(2) The preamble meets the requirements of this part (See § 51.5(b)(2)).

(3) The language of incorporation meets the requirements of this part (See § 51.9).

(4) The publication is on file with the Office of the Federal Register.

(5) The Director has received a written request from the agency to approve the incorporation by reference of the publication.

(c) The Director will notify the agency of the approval or disapproval of an incorporation by reference in a final rule within 20 working days after the agency has met all the requirements for requesting approvals (See § 51.5).

■ 3. Revise 51.5 to read as follows:

§ 51.5 How does an agency request approval?

(a) For a proposed rule, the agency does not request formal approval but must:

(1) Discuss, in the preamble of the proposed rule, the ways that the materials it proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties; and

(2) Summarize, in the preamble of the proposed rule, the material it proposes to incorporate by reference.

(b) For a final rule, the agency must request formal approval. The formal request package must:

(1) Send a letter that contains a written request for approval at least 20 working days before the agency intends to submit the final rule document for publication;

(2) Discuss, in the preamble of the final rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials;

(3) Summarize, in the preamble of the final rule, the material it incorporates by reference;

(4) Send a copy of the final rule document that uses the proper language of incorporation with the written request (See § 51.9); and

(5) Ensure that a copy of the incorporated material is on file at the Office of the Federal Register.

(c) Agencies may consult with the Office of the Federal Register at any time with respect to the requirements of this part.

■ 4. In § 51.7, revise paragraph (a) to read as follows:

§ 51.7 What publications are eligible?

(a) A publication is eligible for incorporation by reference under 5 U.S.C. 552(a) if it—

(1) Conforms to the policy stated in § 51.1;

(2)(i) Is published data, criteria, standards, specifications, techniques, illustrations, or similar material; and

(ii) Does not detract from the usefulness of the **Federal Register** publication system; and

(3) Is reasonably available to and usable by the class of persons affected. In determining whether a publication is usable, the Director will consider—

(i) The completeness and ease of handling of the publication; and

(ii) Whether it is bound, numbered, and organized, as applicable.

* * * * *

■ 5. In 51.9, revise paragraphs (a) and (c) to read as follows:

§ 51.9 What is the proper language of incorporation?

(a) The language incorporating a publication by reference must be precise, complete, and clearly state that the incorporation by reference is intended and completed by the final rule document in which it appears.

* * * * *

(c) If the Director approves a publication for incorporation by reference in a final rule, the agency must include—

(1) The following language under the **DATES** caption of the preamble to the final rule document (See 1 CFR 18.12 Preamble requirements):

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of _____.

(2) The preamble requirements set out in 51.5(b).

(3) The term "incorporation by reference" in the list of index terms (See 1 CFR 18.20 Identification of subjects in agency regulations).

Dated: November 3, 2014.

Amy P. Bunk,

Acting Director, Office of the Federal Register.

[FR Doc. 2014–26445 Filed 11–6–14; 8:45 am]

BILLING CODE 1505–02–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN 3206–AM99

Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its proposed rule to revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986. These rules are necessary to ensure that the tables conform to the economic and demographic assumptions adopted by the Board of

Actuaries and published in the **Federal Register** on May 21, 2014, as required by 5 U.S.C. 8461(i).

DATES: This rule becomes effective on November 7, 2014.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On May 21, 2014, OPM published at 79 FR 29224, a notice in the **Federal Register** to revise the normal cost percentages under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, as amended, based on economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. Under 5 U.S.C. 8461(i), the demographic factors and economic assumptions require corresponding changes in factors used to produce actuarially equivalence when required by the FERS Act. As a result, on July 18, 2014, at 79 FR 41929, OPM published a proposed rule in the **Federal Register** to revise the table of reduction factors in Appendix A to subpart C of part 843, Code of Federal Regulations, for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under 5 CFR 843.309. OPM received no written comments on the proposed rule.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order (E.O.) 12866, as amended by E.O. 13258 and E.O. 13422.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to surviving current and former spouses of former employees and Members who separated from Federal service with title to a deferred annuity.

List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
Katherine Archuleta,
Director.

For the reasons stated in the preamble, the Office of Personnel Management amends 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

■ 1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208, and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

Subpart C—Current and Former Spouse Benefits

■ 2. In § 843.309, revise paragraph (b)(2) to read as follows:

§ 843.309 Basic employee death benefit.

* * * * *

(b) * * *

(2) For deaths occurring on or after October 1, 2014, 36 equal monthly installments of 2.99522 percent of the amount of the basic employee death benefit.

* * * * *

■ 3. Revise Appendix A to subpart C of part 843 to read as follows:

Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Comencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

With at least 10 but less than 20 years of creditable service—

Age of separated employee at birthday before death	Multiplier
26	.0638
27	.0700
28	.0764
29	.0831
30	.0902
31	.0978
32	.1058
33	.1142
34	.1233
35	.1331
36	.1435
37	.1547
38	.1667
39	.1794
40	.1931
41	.2079
42	.2236
43	.2406
44	.2588
45	.2784
46	.2993
47	.3218
48	.3463
49	.3725
50	.4008
51	.4313
52	.4644
53	.5001
54	.5387
55	.5806
56	.6262
57	.6756
58	.7295
59	.7882
60	.8525
61	.9228

With at least 20, but less than 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier
36	.1693
37	.1825
38	.1966
39	.2116
40	.2276
41	.2449
42	.2634
43	.2833
44	.3047
45	.3276
46	.3523
47	.3787
48	.4073
49	.4380
50	.4712
51	.5070
52	.5457
53	.5875
54	.6327
55	.6818
56	.7351
57	.7930
58	.8560
59	.9248

With at least 30 years of creditable service—

Age of separated employee at birthday before death	Multiplier by separated employee's year of birth	
	After 1966	From 1950 through 1966
46	.4457	.4811
47	.4790	.5170
48	.5151	.5559
49	.5538	.5976
50	.5955	.6426
51	.6405	.6911
52	.6892	.7435
53	.7417	.8001
54	.7986	.8614
55	.8603	.9279
56	.9272	1.0000

[FR Doc. 2014–26469 Filed 11–6–14; 8:45 am]
BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0483; Directorate Identifier 2014–NM–082–AD; Amendment 39–18012; AD 2014–22–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–16–08 for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. AD 2013–16–08 required inspection of the main landing gear (MLG) retraction actuator components; corrective actions if necessary; and, for certain retraction actuators, installation of a new jam nut. This new AD continues to require those actions. This AD was prompted by a determination that a certain part was incorrectly identified in a certain section of AD 2013–16–08. We are issuing this AD to prevent disconnection of the MLG retraction actuator, which could result in extension of the MLG without damping, and consequent structural damage and collapse of the MLG during landing.

DATES: This AD becomes effective December 12, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 24, 2013 (78 FR 51055, August 20, 2013).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0483;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; email *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013). AD 2013–16–08 applied to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. The NPRM published in the **Federal Register** on July 25, 2014 (79 FR 43322). The NPRM was prompted by a determination that a certain part was incorrectly identified in a certain section of AD 2013–16–08.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–36R1, dated October 3, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. The MCAI states:

> Corrosion of the main landing gear (MLG) retraction actuator components was found in-service, either at the interface of the rod end and the piston or at the bracket and its related pins. This can cause the MLG retraction actuator to disconnect, leading to an MLG extension without damping, and a potential for MLG structural damage and possible collapse during landing.
>
> This [Canadian] AD mandates the inspection and rectification [corrective action] of the MLG retraction actuator components.
>
> This revision is to mandate [, for certain MLG retraction actuators,] the installation of the new retraction actuator jam nut. This revision also corrects the background information and updates Service Bulletin (SB) references.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0483-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 43322, July 25, 2014) 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 (79 FR 43322, July 25, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 43322, July 25, 2014).

Costs of Compliance

We estimate that this AD affects 391 airplanes of U.S. registry.

The actions required by AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), and retained in this AD take up to 16 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $1,018 per product. Based on these figures, the estimated cost of the actions that are required by AD 2013–16–08 is $2,378 per product.

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

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701:

General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0483;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), and adding the following new AD:

2014–22–07: Amendment 39–18012. Docket No. FAA–2014–0483; Directorate Identifier 2014–NM–082–AD.

(a) Effective Date

This AD becomes effective December 12, 2014.

(b) Affected ADs

This AD replaces AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013).

(c) Applicability

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

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 and subsequent.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers15001 and subsequent.

(d) Subject

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

(e) Reason

This AD was prompted by a report of corrosion of the components of the main landing gear (MLG) retraction actuator found in service; the corrosion was found at the interface of the rod end and the piston, and at the bracket and related pins. We are issuing this AD to prevent disconnection of the MLG retraction actuator, which could result in extension of the MLG without damping, and consequent structural damage and collapse of the MLG during landing.

(f) Compliance

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

(g) Retained Inspection of the MLG Retraction Actuator and Corrective Actions With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. For any airplane with an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, except airplanes on which modification status "32–64" is marked on the identification plate: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, perform a detailed inspection of the retraction actuator assembly for evidence of corrosion and security of the jam nut, as applicable, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012; and Goodrich Service Bulletin 49600–32–63 R1, dated May 17, 2011. If any corrosion or unsecured jam nut is found, before further flight, replace the retract actuator with a new or serviceable retract actuator; and install the retract actuator, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012. Repeat the inspection thereafter at intervals not to exceed 1,200 flight hours or 12 months, whichever occurs first.

(1) For MLG retraction actuator assemblies on which, as of September 24, 2013 (the effective date of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013)), 8,000 or more total flight hours have accumulated since new or since overhaul, or that have been in service for more than 4 years since new or since overhaul: Inspect within 1,200 flight hours or 12 months after September 24, 2013, whichever occurs first.

(2) For MLG retraction actuator assemblies on which, as of September 24, 2013 (the effective date of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013)), less than 8,000 total flight hours have accumulated since new or since overhaul, and that have been in service for 4 years or less since new or since overhaul: Inspect before the accumulation of 9,200 total flight hours on the MLG retraction actuator assembly since new or since overhaul or within 5 years in service since new or since overhaul, whichever occurs first.

(h) Retained Inspection of MLG Retraction Actuator Bracket and Related Pins, and Corrective Actions With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. For any airplane with an MLG dressed shock strut having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012: Within 4,400 flight hours or 24 months after September 24, 2013 (the effective date of AD 2013–16–08), whichever occurs first, perform a detailed inspection of the retract actuator bracket assembly, associated pins, and the mating lugs on the outer cylinder for evidence of corrosion, in accordance with Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012; and Goodrich Service Bulletin 49000–32–46 R2, dated November 11, 2011. Do all applicable corrective actions before further flight (i.e., replace retract actuator bracket assembly and pins, or outer cylinder lugs, as applicable).

(i) Retained Installation of New Jam Nut With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. For any airplane with an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C,

dated April 17, 2012, except airplanes on which modification status "32–64" is marked on the identification plate: Within 20,000 flight hours or 10 years after September 24, 2013 (the effective date of AD 2013–16–08), whichever occurs first, install a new jam nut having part number 49606–5, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012; and Goodrich Service Bulletin 49600–32–64 R3, dated December 15, 2011.

(j) Retained Credit for Previous Actions With Change to Paragraph (j)(1)(iii) of This AD

(1) This paragraph restates the credit provided by paragraph (j)(1) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with a change to the service information citation in paragraph (j)(1)(iii) of this AD. This paragraph provides credit for the actions required by paragraphs (g) and (i) of this AD, if those actions were performed before September 24, 2013 (the effective date of AD 2013–16–08), using the service information specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–031, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–031, Revision A, dated June 9, 2011.

(iii) Bombardier Service Bulletin 670BA–32–031, Revision B, dated July 29, 2011.

(2) This paragraph restates the credit provided by paragraph (j)(2) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before September 24, 2013 (the effective date of AD 2013–16–08), using the service information specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–033, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–033, Revision A, dated July 29, 2011.

(k) Retained Parts Installation Limitations With Change to Paragraph (k)(2) of This AD

(1) This paragraph restates the parts installation limitation specified in paragraph (k)(1) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. As of September 24, 2013 (the effective date of AD 2013–16–08), no person may install on any airplane an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, unless that retraction actuator assembly has been inspected as specified in paragraph (g) of this AD, and all applicable corrective actions (i.e., replacement of the retract actuator) specified in paragraph (g) of this AD have been done. Repeat the inspection specified in paragraph (g) of this AD thereafter at the intervals specified in paragraph (g) of this AD.

(2) This paragraph restates the parts installation limitation specified in paragraph (k)(2) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with a revised part name. As of the effective date of this AD, no person may install on any airplane an MLG dressed shock strut having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012, unless that retraction actuator assembly has been inspected and all applicable corrective actions have been done, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2011–36R1, dated October 3, 2012, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0483-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(4), (n)(5), and (n)(6) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 24, 2013 (78 FR 51055, August 20, 2013).

(i) Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012.

(ii) Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012.

(iii) Goodrich Service Bulletin 49000–32–46 R2, dated November 11, 2011.

(iv) Goodrich Service Bulletin 49600–32–63 R1, dated May 17, 2011.

(v) Goodrich Service Bulletin 49600–32–64 R3, dated December 15, 2011.

(4) For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(5) For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; email *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

(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 October 28, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–26437 Filed 11–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA–2013–0988]

Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Policy Amendment.

SUMMARY: This action adopts an amendment to the FAA *Policy and Procedures Concerning the Use of Airport Revenue* published in the **Federal Register** at 64 FR 7696 on February 16, 1999 ("Revenue Use Policy"). This action confirms FAA's long-standing policy on Federal requirements for the use of proceeds

from taxes on aviation fuel. Under Federal law, airport operators that have accepted Federal assistance generally may use airport revenues only for airport-related purposes. Local taxes on aviation fuel are subject to airport revenue use requirements. State taxes on aviation fuel (imposed by either an airport sponsor or a non-sponsor) are subject to use either for a State aviation program or for airport-related purposes. The statutory revenue use requirements apply to certain State and local government taxes on aviation fuel, as well as to revenues received directly by an airport operator. This document formally adopts, through an amendment to the Revenue Use Policy, FAA's interpretation of the Federal requirements for use of revenue derived from taxes on aviation fuel.

DATES: This document is effective December 8, 2014.

FOR FURTHER INFORMATION CONTACT: Randall S. Fiertz, Director, Office of Airport Compliance and Management Analysis, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile (202) 267–5257.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this Policy and all other documents in docket FAA 2013–0988 using the Internet by: (1) Searching the Federal eRulemaking portal at *http://www.regulations.gov/search;* (2) Visiting FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/policy_guidance/;* or (3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3085. Please make sure to identify the docket number, notice number, or amendment number of this proceeding.

Authority for the Policy Amendment. This Policy Amendment is published under the authority described in Subtitle VII, part B, chapter 471, section 47122, and the Federal Aviation Administration Authorization Act of 1994, § 112(a), Public Law 103–305, 49 U.S.C. 47107(l)(1) (Aug. 23, 1994).

Background

On November 21, 2013, FAA published a proposed amendment to its policy on Federal requirements for the use of proceeds from taxes on aviation fuel. (78 FR 69789, November 21, 2013). This action finalizes the amendment of FAA's Revenue Use Policy. Under Federal law, airport operators that have accepted Federal assistance generally may use airport revenues only for airport-related purposes. The revenue use requirements apply to the proceeds from certain State and local government taxes on aviation fuel, as well as to revenues received directly by an airport operator. This document formally adopts FAA's interpretation of the Federal requirements for use of revenues derived from taxes on aviation fuel. Briefly, an airport operator or State government submitting an application under the Airport Improvement Program must provide assurance that revenues from State and local government taxes on aviation fuel will be used for certain aviation-related purposes. These purposes include airport capital and operating costs, and State aviation programs. The policy amendment applies prospectively to use of proceeds from both new taxes and to existing taxes that do not qualify for grandfathering from revenue use requirements. For existing taxes that do not qualify for grandfathering (which are State or local taxes on aviation fuel in effect on December 30, 1987), the FAA will allow for an up to three-year transition period from the effective date of this document.

The FAA invited public comment on the policy interpretation question, in part due to the interests of sellers and consumers of aviation fuel, and of State and local government taxing authorities on limits on the use of proceeds from taxes touching aviation fuel. The notice also solicited comments about whether there are other reasonable interpretations of the statute as it relates to local taxes that were not enumerated in the published notice of proposed clarification that should have been considered by the FAA.

The comment period for the notice of proposed clarification closed on January 21, 2014. The FAA extended the comment period for thirty days until March 3, 2014 (79 FR 5318, January 31, 2014) in order to provide the public additional time to submit comments on the proposed Policy amendment.

Executive Order 13132 (Federalism)

Executive Order 13132 establishes certain principles and criteria that apply to regulations, legislative comments, and other policy statements that have a substantial direct effect on States, or on the relationship between the national government and the States or on the responsibilities among the various levels of government. Because States have flexibility in designing general sales taxes subject to the limited restriction on the use of aviation fuel tax proceeds, State decisions will ultimately influence, regulate, and control implementation of taxes, including those touching aviation fuel.

While this final policy amendment does not impose substantial direct requirement costs on State and local governments, this amendment may have Federalism implications due to effects on the use of the proceeds for taxes assessed on aviation fuel. FAA believes that the Federalism implications (if any) are substantially mitigated because the plain language of the statute at issue, 49 U.S.C. 47133, and the detailed legislative history, reflect strong Congressional intent that aviation fuel taxes be used for airport purposes and State aviation programs.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, FAA engaged in efforts to consult with and work cooperatively with States, local governments, and political subdivisions, including participating in conference calls with representatives from the National Governors Association, US Conference of Mayors, National Conference of State Legislatures, National League of Cities, and National Association of State Aviation Officials. In addition, FAA reached out to certain states on an individual basis and interested trade groups including Airlines for America; American Association of Airport Executives; and Airports Council International—North America. Furthermore, we published the proposed amendment for notice and comment, and received comments from Kentucky, Iowa, and Georgia. This notice responds to these comments.

Through consultation, meetings and teleconferences as part of a robust public engagement process, FAA has balanced the States' interests in meeting its taxing obligations, and Congress' intent to ensure that taxes on aviation fuel are expended for airport purposes. By doing so, the FAA has complied with the requirements of Executive Order 13132.

Comments Received on the Proposed Policy Amendment

The FAA received 25 substantive comments on the proposals, from airport operators; industry and nonprofit associations representing airports, air carriers, business aviation

and airport service businesses; an air carrier; State government agencies; and private citizens. This summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice.

A majority of commenters supported the general purpose of the policy (and the underlying statutes): using airport revenue for airport purposes and using State and local aviation fuel tax revenue for airport purposes or State aviation programs. Commenters representing airlines and airport users all supported the FAA's proposed amendment of the Revenue Use Policy regarding 49 U.S.C. § 47107(b) and § 47133. An air carrier expressed the position that there is no ambiguity in the 1987 amendment to section 47107, and maintained that there are no other possible correct interpretations of these statutes.

The comments requesting a change in the proposed policy tended to focus on several issues:

1. The unfairness of holding airport operators responsible for the actions of State and local government taxing authorities, particularly non-sponsor governments.
2. The intent of § 47133 to require compliance by non-sponsor State and local governments.
3. Defining the portion of general sales taxes collected on aviation fuel as an 'aviation fuel tax,' and the administrative burden of identifying the aviation fuel component of general taxes.
4. Time allowed before full compliance with § 47133 is required.
5. Clarifying that "noise mitigation" refers only to mitigation of aircraft noise.
6. How FAA will enforce § 47133 with respect to jurisdictions that are not parties to an AIP grant agreement.
7. The proposal requires a federalism analysis under Executive Order 13132.
8. Suggestions for editorial changes to the proposed policy language.

1. *Comment: Airport operators should not be held responsible for State and local taxes outside of the airport operator's control.*

The majority of commenters, including all of the airport and government commenters, argued that proposed new paragraph IV.D.2 would unfairly hold airport operators responsible for the imposition of taxes over which they had no control. Airport operators are typically local governments, either cities or counties, or public airport authorities. These local entities contend that they have no control over State and local taxes, and therefore have no ability to eliminate a State or local tax that is not in compliance with Federal requirements for use of airport revenue. These commenters state that in many cases, an airport operator does not have control over local taxes, if the airport is located in a different jurisdiction than the operating government entity. They note that port authorities and airport authorities may not have any taxing power, and therefore have no ability to control even local taxes on the airport.

Beyond the complaint that this provision is unfair, the Airport Council International—North America (ACI–NA) raised additional objections to paragraph IV.D.2. First, 49 U.S.C. 47107(b) requires an airport sponsor to provide an assurance that the airport will remain in compliance with revenue use requirements. However, no local airport sponsor could actually provide that assurance because the airport sponsor has no ability to prevent a noncomplying State tax. Airport sponsors would find it impossible to provide assurance that other government agencies would comply with the revenue use statutes for the life of an AIP grant. Further, sponsors should not be required to agree to a condition that would subject the airport to sanctions with no ability to correct the noncomplying condition. Second, ACI–NA argues that holding airport sponsors responsible for State taxes is a federalism issue, as "an attempt to change the relationships" between Federal, and State and local governments. ACI–NA commented that the proposal does not comply with Executive Order 13132 on federalism, because the agency did not conduct a federalism analysis on the impacts on State taxing authority and the relationship between State and local governments and airport sponsors. The American Association of Airport Executives (AAAE) also suggested that the proposal may be in violation of the reservation of State powers in the U.S. Constitution, and urged FAA to conduct a federalism analysis of this proposal because of the impact on State and local government relations.

Response: Upon entering into an AIP grant agreement, an airport sponsor does in fact provide assurances that local taxes on aviation fuel will be in compliance with §§ 47107(b) and 47133, as required by Congress. The grant assurances provided by airport sponsors include Grant Assurance 25, which provides, in relevant part: "All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other facilities which are owned and operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property. . . ." Moreover, airport sponsors often can have influence on the taxation of aviation activities in their States and localities, and the FAA expects airport sponsors to use the influence they have to shape State and non-sponsor local taxation to conform to these Federal laws.

However, the FAA agrees with the majority of commenters that it would be unfair to penalize airport sponsors for taxes imposed by another entity. Thus, the FAA is revising paragraph IV.D.2 to acknowledge the differences in taxes that are and are not controlled by the airport sponsor, for purposes of grant compliance. For taxes within the airport sponsor's direct control, the airport sponsor must comply with the revenue use requirements of §§ 47107(b) and 47133. Further, in instances of unlawful revenue diversion where the sponsor is in control of the taxes, an airport sponsor can also be subject to administrative action in which the Secretary may withhold amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to Title 49. [See 49 U.S.C. 47107(n)(3).]

For taxes imposed by non-sponsor State and local governments, the airport sponsor will be expected to advise those entities of Federal requirements for use of aviation fuel tax revenues, and to take action reasonably within the sponsor's power to tailor State and local taxation to conform to the requirements of §§ 47107(b) and 47133. If a noncompliant tax is adopted by a non-sponsor State or local government, notwithstanding the airport sponsor's advice and efforts, the FAA would not take enforcement action against the airport sponsor out of fairness to the sponsor who is not responsible for the noncompliance. However, the FAA will pursue enforcement action pursuant to 49 U.S.C. 46301 or 47111 (f) against a non-sponsor State or local government that violates the Revenue Use Policy or the limitations in 49 U.S.C. 47133. This is similar to the approach that the FAA has taken to compliance with the obligation in grant assurance No. 21 to

maintain compatible land use around the airport.

Accordingly, as revised, paragraph IV.D.2 will state that assurance 25 will be considered an enforceable commitment with respect to taxes on aviation fuel imposed by the airport operator or owner itself; for taxes imposed by non-sponsor State and local jurisdictions, an airport sponsor will be expected to inform taxing authorities of Federal requirements and take reasonable action within the sponsor's power to influence State and local tax laws to conform to those requirements.

The comments on federalism and federalism analysis are discussed separately under Comment 7. With respect to the comment that the proposal raises issues regarding the 10th Amendment of the U.S. Constitution, the FAA appropriately presumes the constitutionality of the statutes implemented by this policy.

2. *Comment: FAA should not enforce compliance by State and local governments that are not airport sponsors.*

The Georgia Department of Law, on behalf of the Georgia Department of Transportation and the Georgia Department of Revenue (GDOT/GDOR), filed comments objecting to several elements of the proposed policy. GDOT/GDOR commented that applying sanctions for violation of §§ 47107 and 47133 to entities that are not airport sponsors is "unprecedented and illogical." (The FAA notes that sanctions would apply to non-sponsors under § 47133 and § 47111(f), whereas § 47107 is binding only on parties that have signed a grant agreement with FAA.) GDOT/GDOR bases its argument primarily on the observation that most FAA policy statements on revenue use and revenue diversion refer to airport sponsors, and do not mention non-sponsor entities.

Response: It is true that FAA published policy on revenue use refers to airport sponsors, but that fact alone does not deal with the breadth of § 47133, which imposes a federal statutory obligation on certain non-sponsors. Also, contrary to GDOT/GDOR's comments, the FAA has not been silent on this issue. In the few circumstances involving the issue of a non-sponsor imposing a tax on aviation fuel, the FAA has communicated a consistent message that compliance with § 47133 is required. The FAA letters to non-sponsors describing this obligation are cited in the notice of proposed policy at 78 FR 69790–69691. Copies of FAA's letters are posted in Docket No. FAA–2013–0988. The **Federal Register** Notice also explained why FAA believed that there were "compelling reasons" for its past interpretations that support the adoption of an amendment to the Revenue Use Policy. 78 FR at 69792.

GDOT/GDOR argue that imposing sanctions (and therefore compliance) on non-sponsor governments is both unfair and contrary to the logical enforcement of the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et se. However, as noted, § 47133 imposes an obligation on entities that are not airport sponsors. First, the language of § 47133 (a) imposes a limitation on the use of local taxes on aviation fuel, regardless of whether the tax is imposed by a sponsor or non-sponsor. Second, § 47133 (c) limits the use of State-imposed taxes on aviation fuel to State aviation programs. Uses of tax revenues beyond these permissible uses are a violation of Section 47133. Therefore, the obligation to enforce compliance with the statute, using available sanctions for noncompliance, is not only logical but is required as part of the FAA's statutory responsibility for implementation of the AAIA.

GDOT/GDOR's posits that there should be no sanction on a non-sponsor government for violation of § 47133. But that would be contrary to the language of § 47133 which makes no distinction between sponsor or non-sponsor entities for purposes of the limitation on the use of aviation tax revenues. Moreover, FAA's civil penalty enforcement authority in 49 U.S.C. § 46301 specifically authorizes the imposition of civil penalties for a violation of § 47133 and does not exclude non-sponsors from its coverage. GDOT/GDOR's interpretation would effectively mean that non-sponsor governments are allowed to disregard the requirements of § 47133 and render the statutory requirement virtually meaningless.

Importantly, Congress did not limit FAA's enforcement authority in 49 U.S.C. § 47111 (f) to just airport sponsors, but rather permitted judicial enforcement to restrain "any violation" of chapter 471—that includes the requirements of § 47133—by *any person* for a violation. "Any violation" encompasses violations by non-sponsors as well as airport sponsors. This expansive authority is based on the plain language of section, 47111(f), and supported by a review of the legislative history and prior versions of the law under consideration. These prior versions limited enforcement to the airport sponsor. See 140 Cong. Rec. S7139–02, 1994 WL 27189 (noting that under the bill, "such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such *airport sponsor* from further violation of such section or assurance and requiring their obedience thereto.") However, Congress ultimately expanded this authority by explicitly stating in section 47111(f) that "such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining *any person* from further violation." (emphasis added)

Given that the FAA interprets section 47111 and 47133 to obligate non-sponsor State and local governments to use proceeds from aviation fuel taxes for certain purposes, the FAA does not agree that the same sanctions that apply to other aviation statutes would not apply to § 47133. Congress expressly provided for such sanctions by including § 47133 in the statutory provisions that can be enforced by civil penalty in 49 U.S.C. 46301. In addition as noted, compliance with § 47133 by non-sponsor State and local governments may be enforced by application to the U.S. district court for judicial enforcement under 49 U.S.C. 47111(f).

3. *Comment: Defining the taxes on aviation fuel collected as part of a general sales tax is not supported by legislation and would be an administrative burden to State and local governments.*

The American Association of Airport Executives (AAAE) commented that applying the revenue use requirements to generally applicable taxes, such as sales taxes and taxes on all fuel products, is not supported by the legislative history and incorrectly interprets §§ 47107(b) and 47133. Both AAAE and GDOT/GDOR commented that it would be difficult and costly for State and local governments and taxpayers to segregate revenues collected on aviation fuel from the rest of a general tax collection. The Franklin-Hart Airport Authority, Georgia, expressed concern that redirecting some local taxes on aviation fuel to the airport could lead those jurisdictions to reduce other, non-tax support for the airport. The comment suggested that for that reason the proposed policy could be a hardship for the airport, but did not assert that the proposed amendment was incorrect. One individual commented that an airport receives the same general benefit as other taxpayers, and that general taxes on aviation fuel sales should be retained by State and local governments to pay for these general community services.

Response: AAAE and one individual were the only commenters that

specifically objected to the proposed amendment that general taxes collected on aviation fuel sales are "taxes on aviation fuel." The FAA's rationale for clarifying that general sales taxes also collected on aviation fuels constitute "taxes on aviation fuel" is based on the plain reading of the statute. The Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. Law No. 100–223, amended the airport grant revenue assurance provision to include, within the scope of revenue retention, "any" taxes on aviation fuel. The 1994 recodification, which removed the word "any" from the statutory text as recodified in 49 U.S.C. 47107(b), did not make any substantive changes in the law. *See* Public Law 103–272, 108 Stat. 1378:

> Certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted by subsections (c)–(e) of this section without substantive change as subtitles II, III, and V–X of title 49, United States Code, "Transportation". Those laws may be cited as "49 U.S.C. _____". Section 1.(a)

Additionally, determining that the statute did not include general taxes would permit States to tax aviation fuel as "general" taxes without limit, and would be inconsistent with the purposes of the revenue use statutes. The FAA continues to believe that applying the requirements of §§ 47107(b) and 47133 to the portion of general taxes collected on aviation fuel sales, in addition to aviation-specific fuel taxes, is the most reasonable interpretation of those statutes, and most consistent with the congressional intent of the legislation on use of aviation fuel tax revenues. AAAE, which does not represent local governments but whose membership, representing airports and organizations that support the airport industry, has an interest in this issue, and GDOT/GDOR commented on the burden of reporting fuel sales as separate from other items taxed under the same ordinance.

As explained more fully below, the FAA would permit a State a reasonable amount of time to bring itself into compliance through an "action plan," which takes account of the State's legislative schedule, if necessary. And while we appreciate that there could be some additional work required to track the amount of "general" tax revenue attributable to aviation fuel, the FAA is charged with implementing § 47133, which does not carve out an exception for revenue generated through a general tax. We believe that the FAA's acceptance that a State will require time to bring itself into compliance will afford the State sufficient time to develop a mechanism for administering taxes in accordance with this policy.

With respect to the comment that aviation fuel tax revenues should support general government services, the FAA notes, first, that general sales taxes of all other products and services at an airport other than aviation fuel sales do go to support State and local general programs. Also, where non-sponsor State and local governments provide services directly to the airport, those jurisdictions can charge for those services and be reimbursed from airport funds.

4. *Comment: The FAA should clarify the time line allowed for jurisdictions imposing taxes that affect aviation fuel to come into compliance with the policy.*

GDOT/GDOR requested a more definitive time for Georgia state agencies and local jurisdictions to comply with the announced policy, and specifically requested that the FAA provide at least 180 days from the final policy effective date. GDOT/GDOR based this request on the time required to set up tracking systems for aviation fuel sales, and to amend State laws that mandate use of tax proceeds in a manner inconsistent with the FAA policy. Airlines for America and the Air Line Pilots Association filed joint comments urging that FAA limit any grace period before compliance is required to 60 days, and that if jurisdictions require more time, they can stop collecting the taxes until the tax law is brought into compliance.

Response: The notice of proposed policy amendment stated that FAA would allow a reasonable time for noncomplying tax laws to be brought into compliance with federal law. By this notice FAA is announcing a formal amendment to its Revenue Use Policy; the policy underlying this amendment may not have been followed previously by affected State and local government non-sponsors—despite the existence of DOT/FAA's legal opinions on this subject. The amendment we adopt today is a final decision and amends FAA's Policy and Procedure Concerning the Use of Airport Revenue as set forth below. The amendment binds the FAA and the Secretary of Transportation, as well as airport sponsors and non-airport sponsors (including a State, a political subdivision of a State, and a political authority of at least 2 States) covered by this Policy.

Therefore, after considering on this matter, the comments we have received and the potential difficulties with requiring immediate compliance, FAA has concluded that there is a need for all affected entities to have sufficient time to come into compliance with the final policy announced today. GDOT/GDOR itself requested additional time to come into compliance with the policy. While comments were limited to agencies of the State of Georgia and a few local jurisdictions in Georgia, the FAA understands that other States may have laws that require, or at least allow, proceeds of general taxes on aviation fuel to be used for purposes other than airports or State aviation programs.

The FAA further understands that changes to bring State and local taxes into compliance may require State legislation. The Georgia legislature meets each year from January through March. Accordingly, in Georgia, the State and local taxes at issue could not practically be amended until early 2015. A legislative season from January to March or April is common to many other States as well. On this basis, the FAA believes that State and local officials should prepare an action plan to initiate the process to amend any non-compliant State laws and local ordinances as necessary to conform to federal law on use of aviation fuel tax revenues. The action plan should detail the process necessary to develop reporting requirements and tracking systems for discrete information on aviation fuel tax revenues. The plan may include a reasonable transition period, not to exceed three years, during which the FAA would agree, in an exercise of its prosecutorial discretion, not to enforce the revenue use requirement against a non-sponsor State or local government. State and local governments should submit an action plan to the FAA within a year of the effective date of this notice.

Initiation of an action plan would provide State and local governments sufficient time to plan for restructuring of general revenues to adapt to the dedication of aviation fuel tax revenue to airports and State aviation programs within a reasonable transition period, not to exceed three years from the effective date of this notice. Demonstration of an action plan detailing (1) a commitment to undertake the legislative process; and (2) the timeframe for action within the three year period, will demonstrate voluntary compliance with federal obligations.

5. *Comment: The policy should make clear that "noise mitigation" refers only to mitigation of aircraft noise.*

The National Association of State Aviation Officials commented that the reference to off-airport noise mitigation, as an acceptable use of aviation fuel tax proceeds, should be revised to clarify that this refers only to noise related to aircraft operation.

Response: The definition of "noise mitigation" was not the subject of the proposed amendment. While the phrase "noise mitigation" in Section 47133 commonly refers to aircraft noise, we decline here to reach whether the statute precludes consideration of other sources of noise for mitigation purposes. In addition, we note that the statute provides for use of airport revenues on and off airport for noise mitigation purposes.

6. *Comment: FAA should clarify how it will require non-airport sponsors to comply with the policy.*

The Iowa Public Airports Association requested clarification on how parties that have not entered into a grant agreement with the FAA would be required to comply with the federal requirements for use of aviation fuel tax revenues.

Response: The preamble of the notice of proposed policy noted that there are two means of enforcing compliance with § 47133 by non-sponsor State and local governments: civil penalties, under 49 U.S.C. 46301(a), and application to the U.S. district court for judicial enforcement under 49 U.S.C. 47111(f). While not an issue in Iowa, States that have entered into block grant agreements with the FAA under 49 U.S.C. 47128 could also be subject to action for breach of that agreement. The FAA agrees that the agency's enforcement process should be described in the policy statement itself. Accordingly, new language has been added to Section IX.E., *Sanctions for Noncompliance,* for this purpose.

7. *Comment: The proposal affects the relationship between federal, State and local governments, and therefore requires a federalism analysis under Executive Order 13132.*

ACI–NA and AAAE commented that the proposal does not comply with Executive Order 13132 on federalism, because the proposed policy is not required by statute, and because the agency did not conduct a federalism analysis on the impacts on State taxing authority and the relationship between State and local governments and airport sponsors.

Response: First, to the extent the comment referred to paragraph IV.D.2 of the proposed policy, holding airport sponsors responsible for taxation beyond their control, that issue is resolved by the changes to paragraph IV.D.2 in the final policy.

Second, the FAA does not agree that the proposed policy is not required by statute. In the notice of proposed policy, the FAA analyzed each of the key terms of the statute with reference to the legislative intent of the revenue use legislation, to the meaning of the statute as a whole, and to the consistent use of terminology throughout the AAIA. Several commenters not only supported the FAA amendment, but commented that no other interpretation of the statute was reasonably possible. Even if an alternative interpretation of certain terms were theoretically permissible, a policy interpreting the statute in a manner that substantially undermined the legislative purpose of the statute is not a viable option for the agency. Accordingly, the FAA believes that the policy as adopted correctly implements the revenue use legislation adopted by Congress. The policy is, therefore, required by statute for purposes of the executive order. Because this policy simply implements the explicit mandate set forth in section 47133, the requirements of Executive Order 13132 and DOT's Guidance on Federalism (July 21, 1988), are not triggered.

Thus, although a federalism analysis of this policy is not required by Executive Order 13132, the FAA did engage in efforts to consult with and work cooperatively with States, local governments, political subdivisions, and interested trade groups. Through consultation, meetings and teleconferences as part of a robust public engagement process, FAA has balanced the States' interests in meeting its taxing obligations, and Congress' intent to ensure that taxes on aviation fuel are expended for airport purposes or for State aviation programs consistent with the mandate set forth in 49 U.S.C. 47133.

In addition to that engagement process, the FAA also published the policy amendment for notice and comment in the **Federal Register**, soliciting comment from State and local governments, as well as other interested parties. The only cost information submitted by any commenter was received from the Franklin-Hart Airport Authority, which expressed concern that redirecting some local taxes on aviation fuel to the airport could lead those jurisdictions to reduce other, non-tax support for the airport. However, the anticipated cost would result not from the agency's policy itself, but from the expected actions of local governments in reducing voluntary support for the airport.

For the above reasons, the FAA finds that further analysis of the adopted policy for federalism issues is not required by Executive Order 13132.

8. *Comment: The final policy should include certain grammatical and style changes.*

Response: Delta Airlines and Airlines For America recommended certain edits for grammar and clarity:

Paragraph II.B.2: Clarify the phrase "on or off the airport."

Paragraph IV.D.1: Clarify that only State aviation fuel taxes may be used for State aviation programs.

Paragraph IV.D.4.b: Clarify that §§ 47107(b) and 47133 apply to taxes on the use of aviation fuel.

In each case the proposed edits more accurately describe the requirements of §§ 47107(b) and 47133 as stated in prior FAA policy, and do not make any substantive change in the policy proposed in the notice. Accordingly, the FAA has made the requested edits in the final policy.

Final Policy

For the reasons set out above, the FAA amends the Policy and Procedure Concerning the Use of Airport Revenue, published in the **Federal Register** at 64 FR 7696 on February 16, 1999, as follows:

1. Section II, Definitions, paragraph B.2, is revised to read:

State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered subject to the revenue-use requirements in 49 U.S.C. 47107 (b) and 47133. However, revenues from a State tax on aviation fuel may be used to support a State aviation program, and airport revenues may be used on or off the airport for a noise mitigation purpose.

2. In Section IV, Statutory Requirements for the Use of Airport Revenue, renumber paragraphs D and E as paragraphs E and F, and add a new paragraph D to read as follows:

D. Use of Proceeds from Taxes on Aviation Fuel.

1. Federal law limits use of the proceeds from a State or local government tax on aviation fuel to the purposes permitted in those sections, as described in IV.A. of this Policy. Proceeds from a tax on aviation fuel may be used for any purpose for which other airport revenues may be used, and proceeds from a State tax may also be used for a State aviation program.

2. Airport sponsors that are subject to an AIP grant agreement have agreed, as a condition of receiving a grant, that the proceeds from a State or local government tax on aviation fuel will be used only for the purposes listed in paragraph 1. This assurance is considered an enforceable commitment with respect to taxes on aviation fuel imposed by the airport operator. For taxes on aviation fuel imposed by non-sponsor State government and other local jurisdictions, airport sponsors are

expected to inform taxing authorities of Federal requirements for use of aviation fuel tax revenues and to take reasonable action within their power to influence State and local tax laws to conform to those requirements.

3. The Federal limits on use of aviation fuel tax proceeds apply at an airport that is the subject of Federal assistance (as defined in Section II.b.2 of this Policy), whether or not the airport is currently subject to the terms of an AIP grant agreement, and regardless of the State or local jurisdiction imposing the tax.

4. The limits on use of aviation fuel tax revenues established by section 47107(b) and section 47133:

a. Apply to any tax imposed on aviation fuel by either a State government or a local government taxing authority whether or not acting as a sponsor or airport owner or operator;

b. Apply to any tax on aviation fuel, whether the tax is imposed only on aviation fuel or is imposed on other products as well as aviation fuel. However, the limits on use of revenues apply only to the amounts of tax collected specifically for the sale, use, purchase or storage of aviation fuel, and not to the amounts collected for transactions involving products other than aviation fuel under the same general tax law;

c. apply to taxes on all aviation fuel dispensed at an airport, regardless of where the taxes on the sale of fuel at the airport are collected; and

d. apply to a new assessment or imposition of a tax on aviation fuel, even if the tax could have been imposed earlier under a statute enacted before December 30, 1987.

3. In Section IX, Monitoring and Compliance, add a new paragraph h. to E.1 to read as follows:

h. For a non-sponsor State or local government that fails to comply with requirements for use of proceeds from a tax on aviation fuel, the Secretary may assess a civil penalty as described in E.1.g, or apply to a U.S. district court for a compliance order. In addition, for a State government that participates in the State Block Grant Program under 49 U.S.C. 47128, the FAA may have additional sanctions for violation of the State's commitments in its application for participation in the program.

Issued in Washington, DC, on November 3, 2014.

Randall S. Fiertz,

Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2014–26408 Filed 11–6–14; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 141029906–4906–01]

RIN 0694–AG31

Venezuela: Implementation of Certain Military End Uses and End Users License Requirements Under the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In response to the Venezuelan military's violent repression of the Venezuelan people, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) in this final rule to impose license requirements on the export, reexport, or transfer (in-country) of certain items to or within Venezuela when intended for a military end use or end user. This change complements an existing U.S. arms embargo against Venezuela for its failure to cooperate in areas of counterterrorism.

DATES: *Effective date:* This rule is effective November 7, 2014

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Phone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

Starting in February 2014, the Venezuelan military was instrumental in implementing a violent crackdown on anti-government protests. The government's repression included direct violence against protesters, detentions of protesters and political leaders, and acts of intimidation, resulting in numerous deaths and injuries. On July 30, 2014, the Department of State imposed visa restrictions against Venezuelan government officials, including members of the Venezuelan military, who participated or were complicit in human rights violations and undermined democratic processes.

The actions and policies of the Venezuelan military undermine democratic processes and institutions and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

In response to abuses committed by the Venezuelan military on the Venezuelan people, the U.S. Government is imposing "military end use" and "military end user" license requirements on Venezuela.

Military End Use and End User Restrictions

It is generally the policy of the United States Government to facilitate U.S. exports for civilian end uses, while preventing exports that would enhance the military capability of certain destinations and thereby threaten the national security and foreign policy of the United States and its allies. In furtherance of this policy, the Bureau of Industry and Security (BIS) established a license requirement for certain items intended for "military end uses" in a final rule published June 19, 2007 (72 FR 33646). Specifically, that final rule established a control, based on knowledge of a "military end use," on exports and reexports of certain items on the Commerce Control List (CCL) that otherwise would not require a license to a specified destination. The "military end use" control initially applied to certain items exported, reexported or transferred (in country) to the People's Republic of China. Subsequently, BIS applied "military end use" and "military end user" controls to Russia in a final rule published September 17, 2014 (79 FR 55608).

Imposition of Military Restrictions on Venezuela

To implement the U.S. Government's response to the abuses by the Venezuelan military, in this rule, BIS amends § 744.21 of the EAR to apply "military end use" and "military end user" license requirements to Venezuela. Specifically, BIS amends § 744.21 by adding "or Venezuela" after "Russia," wherever that name appears, including in the heading of the section. Items subject to these license requirements are those listed in Supplement No. 2 to Part 744.

This final rule also adds a paragraph (h) to address the effects of these new license requirements on transactions under contract prior to the effective date of this rule.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on November 7, 2014, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without

a license (NLR) so long as they are exported or reexported before December 8, 2014. Any such items not actually exported or reexported before midnight, on December 8, 2014, require a license in accordance with this regulation.

Foreign Policy Report

The extension of the military end use and end user controls to Venezuela in this rule is the imposition of a foreign policy control. Section 6(f) of the Export Administration Act requires that a report be delivered to Congress before imposing such controls. The report was delivered to Congress on November 6, 2014.

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 7, 2014, 79 FR 46959 (August11, 2014), 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 significantly 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 also implements this rule to protect U.S. national security or foreign policy objectives from being undermined by immediately restricting the export, reexport or transfer (in-country) of certain items to Venezuela for a military end use or end-user. 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.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *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 August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of September 17, 2014, 79 FR 56475 (September 19, 2014); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013); Notice of January 21, 2014, 79 FR 3721 (January 22, 2014).

■ 2. Section 744.21 is revised to read as follows:

§ 744.21 Restrictions on Certain 'Military end uses' in the People's Republic of China (PRC) or for a 'Military end use' or 'Military end user' in Russia or Venezuela.

(a)(1) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) any item subject to the EAR listed in Supplement No. 2 to Part 744 to the PRC, Russia or Venezuela without a license if, at the time of the export, reexport, or transfer (in-country), either:

(i) You have "knowledge," as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a 'military end use,' as defined in paragraph (f) of this section, in the PRC or for a 'military end use' or 'military end user' in Russia or Venezuela; or

(ii) You have been informed by BIS, as described in paragraph (b) of this section, that the item is or may be intended, entirely or in part, for a 'military end use' in the PRC or for a 'military end use' or 'military end-user' in Russia or Venezuela.

(2) *General prohibition.* In addition to the license requirements for 9x515 and "600 series" items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) any 9x515 or "600 series" item, including items described in a .y paragraph of a 9x515 or "600 series" ECCN, to the PRC, Russia or Venezuela without a license.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to 'military end use' activities in the PRC or for a 'military end use' or 'military end user' in Russia or Venezuela. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is

provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *License exception.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the "additional information" block of the application that "this application is submitted because of the license requirement in § 744.21 of the EAR (Restrictions on Certain Military End Uses in the People's Republic of China or for a 'Military End Use' or 'Military End User' in Russia or Venezuela)." In addition, either in the additional information block of the application or in an attachment to the application, you must include for the PRC all known information concerning the military end use of the item(s) and for Russia or Venezuela, all known information concerning the 'military end use' and 'military end users' of the item(s). If you submit an attachment with your license application, you must reference the attachment in the "additional information" block of the application.

(e) *License review standards.* (1) Applications to export, reexport, or transfer items described in paragraph (a) of this section will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the PRC, Russia, or Venezuela, and would result in advancing the country's military activities contrary to the national security interests of the United States. When it is determined that an export, reexport, or transfer would make such a contribution, the license will be denied.

(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4) and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

(3) Applications for items requiring a license for other reasons that are destined to the PRC for a 'military end use' or that are destined to Russia or Venezuela for a 'military end use' or 'military end user' also will be subject to the review policy stated in paragraph (e)(1) of this section.

(f) *Military end use.* In this section, 'military end use' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); incorporation into items classified under ECCNs ending in "A018" or under "600 series" ECCNs; or for the "use," "development," or "production" of military items described on the USML or the Wassenaar Arrangement Munitions List, or items classified under ECCNs ending in "A018" or under "600 series" ECCNs.

Note to paragraph (f) of this section: (1) As defined in Part 772 of the EAR, "use" means operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing; "development" is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts; and "production" means all production stages, such as: product engineering, manufacturing, integration, assembly (mounting), inspection, testing, quality assurance.

(2) For purposes of this section, "operation" means to cause to function as intended; "installation" means to make ready for use, and includes connecting, integrating, incorporating, loading software, and testing; "maintenance" means performing work to bring an item to its original or designed capacity and efficiency for its intended purpose, and includes testing, measuring, adjusting, inspecting, replacing parts, restoring, calibrating, overhauling; and "deployment" means placing in battle formation or appropriate strategic position.

(g) *Military end user.* In this section, the term 'military end user' means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end uses' as defined in paragraph (f) of this section.

(h) *Effects on contracts. Venezuela:* Transactions involving the export, reexport or transfer (in country) of items to or within Venezuela are not subject to the provisions of § 744.21 if the contracts for such transactions were signed prior to November 7, 2014.

Dated: November 3, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–26465 Filed 11–6–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Docket ID: DoD–2014–OS–0145]

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Direct final rule with request for comments.

SUMMARY: The Office of the Secretary of Defense (OSD) is exempting records maintained in DMDC 17 DoD, entitled "Continuous Evaluation Records for Personnel Security," from pertinent provisions of 5 U.S.C. 552a. In the course of carrying out records checks for continuous evaluation, exempt records received from other systems of records may become part of this system. To the extent that copies of exempt records from those 'other' systems of records are maintained in this system, OSD claims the same exemptions for the records from those 'other' systems that are maintained in this system, as claimed for the original primary system of which they are a part.

DATES: The rule is effective on January 16, 2015 unless adverse comments are received by January 6, 2015. If adverse comment is received, the Department of Defense will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: This direct final rule makes nonsubstantive changes to the OSD Privacy Program rules. These changes will allow the Department to add an exemption rule to the OSD Privacy Program rules that will exempt applicable Department records and/or material from certain portions of the Privacy Act. This is being published as a direct final rule as the Department of Defense does not expect to receive any adverse comments, and so a proposed rule is unnecessary.

Direct Final Rule and Significant Adverse Comments

DoD has determined this rulemaking meets the criteria for a direct final rule because it involves nonsubstantive changes dealing with DoD's management of its Privacy Programs. DoD expects no opposition to the changes and no significant adverse comments. However, if DoD receives a significant adverse comment, the Department will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, DoD will consider whether it warrants a substantive response in a notice and comment process.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

It has been determined that this rule is not a significant rule. This rule does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive orders.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C Chapter 6)

It has been certified that this rule does not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within DoD. A Regulatory Flexibility Analysis is not required.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that it will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this rule does not have federalism implications. This rule does 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.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE AND JOINT STAFF PRIVACY PROGRAM

■ 1. The authority citation for part 311 continues to read as follows:

Authority: 5 U.S.C. 522a.

■ 2. Section 311.8 is amended by adding paragraph (c)(23) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

(c) * * *

(23) System identifier and name: DMDC 17 DoD, Continuous Evaluation Records for Personnel Security.

(i) Exemption: In the course of carrying out records checks for continuous evaluation, exempt records from other systems of records may in turn become part of the case records maintained in this system. To the extent that copies of exempt records from those 'other' systems of records are maintained into this system, OSD claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) Authority: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(5), (k)(6), and (k)(7).

(iii) Reasons: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent that such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now maintained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy; to avoid interference during the conduct of criminal, civil, or administrative actions or investigations; to ensure protective services provided the President and others are not compromised; to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations; to preserve the confidentiality and integrity of Federal testing materials; and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: October 29, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–26407 Filed 11–6–14; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2014–0343; FRL–9918–84–Region 10]

Approval and Promulgation of Implementation Plans; Washington: Nonattainment New Source Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology) on

January 27, 2014. These revisions update the preconstruction permitting regulations for large industrial (major source) facilities located in designated nonattainment areas, referred to as the Nonattainment New Source Review (major nonattainment NSR or major NNSR) program. While these revisions update Ecology's major NNSR program generally, the most significant change is the incorporation of regulations to implement major NNSR for fine particulate matter, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). The major NNSR program is designed to ensure that major stationary sources of air pollution are constructed or modified in a manner that is consistent with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

DATES: This final rule is effective on December 8, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2014–0343. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) 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 will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Programs Unit, Office of Air Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov*, or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials "Act" or "CAA" mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words "EPA", "we", "us" or "our" mean or refer to the Environmental Protection Agency.

(iii) The initials "SIP" mean or refer to State Implementation Plan.

(iv) The words "Washington" and "State" mean the State of Washington.

Table of Contents

I. Background Information
II. Final Action
III. Statutory and Executive Orders Review

I. Background Information

On January 27, 2014, Washington submitted revisions updating the general air quality regulations that apply to sources within Ecology's jurisdiction, including the major nonattainment NSR permitting program. On July 25, 2014, the EPA proposed to approve the major nonattainment NSR-related provisions contained in the submittal (79 FR 43345). An explanation of the CAA requirements, a detailed explanation of the revisions, and the EPA's reasons for approval were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on August 25, 2014. We did not receive any comments on the proposal.

II. Final Action

The EPA is approving the major nonattainment NSR-related provisions listed in the table below. As discussed in the proposed rulemaking, the EPA intends to take action on the remaining provisions included in Ecology's January 27, 2014 submittal, related to the Prevention of Significant Deterioration and visibility permitting requirements for major stationary sources, in a separate, future action. The EPA is also approving the general air quality regulations contained in Washington Administrative Code (WAC) 173–400–110 through–112 and WAC 173–400–171, which were previously approved by the EPA for purposes of minor new source review, as consistent with the EPA's requirements for major nonattainment NSR. For more information see 79 FR 59653, October 3, 2014.

At this time, the EPA's approval of the major nonattainment NSR-related provisions listed in the table below is limited to only those counties or sources where Ecology has direct jurisdiction. This approval excludes sources subject to Energy Facility Site Evaluation Council (EFSEC) or local clean air agency jurisdiction, as described in the proposed rulemaking. The counties where Ecology has direct jurisdiction are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman. The EPA also notes that under the SIP-approved provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012, Ecology has statewide, direct jurisdiction for kraft pulping mills, sulfite pulping mills, and primary aluminum plants, including the RockTenn facility located in the Tacoma-Pierce County fine particulate matter nonattainment area.

WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS FOR APPROVAL

State citation	Title/subject	State effective date	Explanation
Chapter 173–400 WAC, General Regulations for Air Pollution Sources			
173–400–131	Issuance of Emission Reduction Credits	4/1/11	
173–400–136	Use of Emission Reduction Credits (ERC)	12/29/12	
173–400–800	Major Stationary Source and Major Modification in a Nonattainment Area	4/1/11	
173–400–810	Major Stationary Source and Major Modification Definitions	12/29/12	
173–400–820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements	12/29/12	

WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS FOR APPROVAL—Continued

State citation	Title/subject	State effective date	Explanation
173–400–830	Permitting Requirements	12/29/12	
173–400–840	Emission Offset Requirements	12/29/12	
173–400–850	Actual Emissions Plantwide Applicability Limitation (PAL)	12/29/12	
173–400–860	Public Involvement Procedures	4/1/11	

III. 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 Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; 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 Washington except for as specifically noted below 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated February 25, 2014. The EPA did not receive a request for consultation.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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: October 22, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons stated 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 WW—Washington

■ 2. Section 52.2470 is amended in paragraph (c), table 2, by:

■ a. Adding in numerical order entries for 173–400–131, 173–400–136, and 173–400–800 through 173–400–860.

■ b. Revising the footnote at the bottom of the table.

The additions and revisions read as follows:

§ 52.2470 Identification of plan.

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(c) * * *

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012]

State citation	Title/Subject	State effective date	EPA Approval date	Explanations
Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources				
*	* * *	*	* *	*
173–400–131	Issuance of Emission Reduction Credits	4/1/11	11/7/14[Insert **Federal Register** citation].	
173–400–136	Use of Emission Reduction Credits (ERC).	12/29/12	11/7/14[Insert **Federal Register** citation].	
*	* * *	*	* *	*
173–400–800	Major Stationary Source and Major Modification in a Nonattainment Area.	4/1/11	11/7/14[Insert **Federal Register** citation].	
173–400–810	Major Stationary Source and Major Modification Definitions.	12/29/12	11/7/14[Insert **Federal Register** citation].	
173–400–820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements.	12/29/12	11/7/14[Insert **Federal Register** citation].	
173–400–830	Permitting Requirements	12/29/12	11/7/14[Insert **Federal Register** citation].	
173–400–840	Emission Offset Requirements	12/29/12	11/7/14[Insert **Federal Register** citation].	
173–400–850	Actual Emissions Plantwide Applicability Limitation (PAL).	12/29/12	11/7/14[Insert **Federal Register** citation].	
173–400–860	Public Involvement Procedures	4/1/11	11/7/14[Insert **Federal Register** citation].	

*The EPA's approval of the WAC 173–400–110 through –113, 173–400–036, 173–400–171, and 173–400–560 is not a determination that these regulations meet requirements for a SIP-approved Prevention of Significant Deterioration permitting program (40 CFR 51.166) or a SIP-approved visibility program (40 CFR 51.307) for major sources.

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[FR Doc. 2014–26451 Filed 11–6–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0297; FRL–9918–24]

Deltamethrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of deltamethrin in or on finfish. Center for Regulatory Services, Inc., on behalf of PHARMAQ AS, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 7, 2014. Objections and requests for hearings must be received on or before January 6, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0297, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through

the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0297 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 6, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0297, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of May 23, 2014 (79 FR 29729) (FRL–9910–29), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E8178) by the Center for Regulatory Services, Inc, 5200 Wolf Run Shoals Rd., Woodbridge, VA 22192–5755, on behalf of PHARMAQ AS, P.O. Box 267, Skøyen, N–0213 Oslo, Norway. The petition requested that 40 CFR 180.435 be amended by establishing tolerances for residues of the insecticide deltamethrin, (1R, 3R)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropane-carboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and its major metabolites: Trans-deltamethrin, (*s*)-alpha-cyano-3-phenoxybenzyl-(1R, 3S)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate, and alpha-*R*-deltamethrin, (*R*)-alphacyano-3-phenoxybenzyl-(1R, 3R)-3-(2,2-dibromovinyl)-2,2-dimethyl cyclopropanecarboxylate, in or on finfish at 0.01 parts per million (ppm). That document referenced a summary of the petition prepared by PHARMAQ AS, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the petition by correcting the commodity definition. The Agency also revised the tolerance expression for deltamethrin. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for deltamethrin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with deltamethrin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Deltamethrin, a Type II pyrethroid, targets the nervous system by disrupting the voltage-gated sodium channels, resulting in neurotoxicity. Neurotoxicity was observed throughout the toxicity database, and effects were seen across species, sexes, exposure duration, and routes of administration. Clinical signs characteristic of Type II pyrethroids, such as increased salivation, altered mobility/gait, and tremors were the most common effects observed. Increased sensitivity to external stimuli, abnormal vocalization, and decreased fore- and hind-limb grip strength were also commonly observed in the database.

Deltamethrin is rapidly absorbed following an oral dose, and effects are typically observed within 2 to 5 hours after dosing. For pyrethroids, as a class, the combination of rapid absorption, metabolism, and elimination precludes accumulation and increased potency following repeated dosing. This is also true of deltamethrin. No observed adverse effect levels (NOAELs) for the acute and chronic studies are similar, and the acute endpoint is protective of the endpoints from repeat dosing studies. The Wolansky et al. acute oral study (2006), provides the most robust data set for extrapolating risk from exposure to deltamethrin. The dose used for risk assessment was determined using a benchmark dose (BMD) analysis using one standard deviation from the control group as the benchmark response (BMR). The study endpoint and dose were used for all exposure scenarios.

A dermal risk assessment was not conducted based on the lack of effects in a 21-day dermal study and low potential for dermal absorption for deltamethrin. These findings are consistent with the toxicology profile of many pyrethroids.

Deltamethrin did not have any adverse effects on fetuses or offspring in the prenatal developmental studies in rats and rabbits. However, potential qualitative susceptibility was observed at high doses in the developmental neurotoxicity study (DNT) and the 2-generation reproduction study. Symptoms included vocalization, decreased pre- and post-weaning body weight in pups of both sexes, decreased body weight and body weight gain in maternal animals, hyperactivity, and excessive salivation. The increased qualitative susceptibility in the DNT and 2-generation reproduction study was observed at doses 10- to 20-fold higher (near lethal doses) than the current points of departure (PODs) selected for risk assessment. At doses near the POD, no effects on parental animals or offspring were observed in either the DNT or 2-generation reproductive studies. Therefore, the current PODs are protective of the observed sensitivity.

There was no evidence of immunotoxicity after deltamethrin exposure in the toxicology database or in an immunotoxicity study in rats. Deltamethrin is classified as "not likely to be carcinogenic to humans." There was no evidence of carcinogenicity in the combined chronic/carcinogenicity study in rats or the carcinogenicity study in mice. In a battery of mutagenicity studies there was no evidence of a mutagenic effect.

The database shows that deltamethrin has moderate to minimal acute toxicity via the oral route, moderate acute toxicity via the inhalation route, and minimal acute toxicity via the dermal route of exposure. Deltamethrin is minimally irritating to the eyes, non-irritating to the skin, and is not a skin sensitizer.

The Agency is making best use of the extensive scientific knowledge about the mode of action/adverse outcome pathway (MOA/AOP) on pyrethroids in the risk assessments for this class of pesticides. A significant portion of the scientific literature on pyrethroids utilizes deltamethrin as the test chemical. In the on-going work by the Council for the Advancement of Pyrethroid Human Risk Assessment (CAPHRA), deltamethrin is one of two sentinel pyrethroids being used to develop the initial, extensive database of *in vitro* and *in vivo* toxicology studies and highly refined physiologically based pharmacokinetic (PBPK) models. Pharmacokinetics (PK) can be defined as what the body does to the chemical. The underlying PK of pyrethroids is an important determination of their toxicity because the concentration of pyrethroid at the sodium channel relates to the extent of toxicity; greater pyrethroid concentration translates as increased neurotoxicity. Age-dependent PK differences have been identified for several pyrethroids (i.e., there are differences in the ability of adults and juveniles to metabolize pyrethroids). The enzymes that metabolize and detoxify pyrethroids are present in rats and humans at birth, and as a result, both juveniles and adults are able to tolerate low doses of pyrethroids when the internal dose, or the amount of pyrethroid at the sodium channel, is low. However, the activity of these enzymes increases with age, conveying in adults a greater capacity to detoxify pyrethroids compared to juveniles and the PK contribution to the Food Quality Protection Act Safety Factor (FQPA SF) will be 1× for adults and children >6 years old, and 3× for children <6 years old.

Pharmacodynamics (PD) can be defined as the changes that chemicals cause to the body, in this case, how pyrethroids interact with the sodium channels. In contrast to the age-related PK differences identified for pyrethroids, PD contributions to pyrethroid toxicity are not age-dependent. The occurrence and ontogeny of voltage-gated sodium channels in humans are not well characterized compared to those in the rat. The available data indicate that the rat is a highly sensitive model and extrapolations from the rat would be protective of human health. Based on the comparable function and distribution of sodium channels between the species, the rat is an appropriate surrogate for the evaluation of human PD. Based on the body of data, the Agency concludes that juvenile rats are not more sensitive than adults with respect to pyrethroid PD, and the PD contribution to the FQPA SF will be 1×.

The Wolansky et al. acute oral study (2006), in which decreased motor activity was observed, provides the most robust data set for extrapolating risk from exposure to deltamethrin. The dose used for risk assessment was determined using a BMD analysis using one standard deviation from the control group as the BMR as suggested for continuous endpoints in the Agency's BMD guidance (EPA, 2012). The Wolansky et al. acute study, endpoint, and dose were used for all dietary (acute), non-occupational (incidental oral and inhalation), and occupational exposure (inhalation) scenarios because it was the most robust data set for extrapolating risk from deltamethrin, and there is a lack of increased hazard from repeated/chronic exposure to deltamethrin.

Specific information on the studies received and the nature of the adverse effects caused by deltamethrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled "Deltamethrin. Human Health Risk Assessment for the Proposed Use of Deltamethrin without U.S. Registration on Finfish" at p. 46 in docket ID number EPA–HQ–OPP–2014–0297.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological PODs and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for deltamethrin used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR DELTAMETHRIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (≥6 years old)	POD = Wolansky ..... $BMDL_{1SD}$ = 1.49 mg/kg UF_A = 10 x UF_H = 10 x FQPA SF = 1 x	Acute RfD = 0.015 mg/kg aPAD = 0.015 mg/kg/day	Wolansky $BMDL_{1SD}$ = 2.48 mg/kg based on decreased motor activity.
Acute dietary (<6 years old)	POD = Wolansky ..... $BMDL_{1SD}$ = 1.49 mg/kg UF_A = 10 x UF_H = 10 x FQPA SF = 3 x	Acute RfD = 0.015 mg/kg aPAD = 0.005 mg/kg/day	Wolansky $BMDL_{1SD}$ = 2.48 mg/kg based on decreased motor activity.
Chronic Dietary	A chronic dietary risk assessment was not conducted because there is no apparent increase in hazard from repeated/chronic exposures to deltamethrin.		
Incidental oral short-term (1 to 30 days).	POD = Wolansky ..... $BMDL_{1SD}$ = 1.49 mg/kg UF_A = 10 x UF_H = 10 x FQPA SF = 3 x	LOC for MOE = 300	Wolansky $BMDL_{1SD}$ = 2.48 mg/kg based on decreased motor activity.
* Inhalation short-term (1 to 30 days; ≥6 years old).	POD = Wolansky ..... $BMDL_{1SD}$ = 1.49 mg/kg UF_A = 10 x UF_H = 10 x FQPA SF = 1 x	LOC for MOE = 100	Wolansky $BMDL_{1SD}$ = 2.48 mg/kg based on decreased motor activity.
* Inhalation short-term (1 to 30 days; <6 years old).	POD = Wolansky ..... $BMDL_{1SD}$ = 1.49 mg/kg UF_A = 10 x UF_H = 10 x FQPA SF = 3 x	LOC for MOE = 300	Wolansky $BMDL_{1SD}$ = 2.48 mg/kg based on decreased motor activity.
Cancer (oral, dermal, inhalation).	Classification: "Not likely to be Carcinogenic to Humans" based on the absence of treatment related tumors in two adequate rodent carcinogenicity studies.		

$BMDL_{1SD}$ = the 95% lower confidence limit of the central estimate of the dose that results in decreased motor activity compared to control animals based upon one standard deviation using Benchmark Dose Analysis. FQPA SF = Food Quality Protection Act Safety Factor. LOC = level of concern. Mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. PAD = population adjusted dose (a = acute, c = chronic). POD = Point of departure: A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

* Inhalation toxicity is assumed to be equivalent to toxicity via the oral route.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to deltamethrin, EPA considered exposure under the petitioned-for tolerances as well as all existing deltamethrin tolerances in 40 CFR 180.435. EPA assessed dietary exposures from deltamethrin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for deltamethrin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used tolerance level residues for most commodities and Pesticide Data Program (PDP) monitoring data for apples, apple juice, apple sauce, cantaloupe, carrots, cereal grains, cucumbers, milk, pears, soybeans, tomatoes, and watermelons. Maximum percent crop treated (PCT) estimates were used for some commodities. Default processing factors were used for some processed commodities and empirical factors were used for others.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 NHANES/WWEIA. As to residue levels in food, since deltamethrin is registered for use in food handling establishments (FHEs), residue values were entered for all commodities in the Dietary Exposure Evaluation Model software-Food Commodity Intake Database (DEEM–

FCID). Tolerance level residues were used for most commodities. For cereal grain commodities, average monitoring data values were used. For milk, PDP monitoring data were used. For the commodities for which the only established tolerance is the FHE tolerance, a residue value of 0.025 ppm (½ the FHE tolerance) was used. The FHE tolerance is based on the Limit of Quantitation (LOQ), and ½ the tolerance was used as a refinement in the dietary assessment. For commodities with tolerances for agricultural uses, average PCT estimates were generally used. For the commodities for which ½ the FHE tolerance was used, the assumption was made that there was a 4.65% chance that a food item consumed by a person contained deltamethrin residues as a result of treatment at some point in an FHE.

The chronic assessment was conducted solely for the purpose of obtaining estimates of background levels of dietary exposure for estimating aggregate risk.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that deltamethrin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows. For acute dietary: 2.5% for apples, cantaloupes, carrots, soybeans, tomatoes, and watermelons; 5% for cucumbers and pears. For chronic dietary: 1% for apples, cantaloupes, carrots, cotton, potatoes (some food forms), pumpkins, radishes, squash, tomatoes, turnips, and watermelon; 2.5% for cucumbers, leeks, onions, pears, and sunflowers; 4.65% for the commodities for which ½ the FHE tolerance was used; 5% for canola and peppers; 40% for globe artichokes; and 100% for all other commodities for which direct treatment is allowed.

In the chronic assessment, for the commodities for which ½ the FHE tolerance was used, the assumption was made that there was a 4.65% chance that a food item consumed by a person contained deltamethrin residues as a result of treatment at some point in an FHE.

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which deltamethrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for deltamethrin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of deltamethrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of deltamethrin for acute and chronic exposures are estimated to be 0.200 parts per billion (ppb) for both surface water and ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Deltamethrin is currently registered for the following uses that could result in residential exposures: Residential outdoor and indoor sites, turf, paint additives, and pet products. EPA assessed potential exposures for residential handlers using several application methods including handwand and backpack sprayers to treat lawns, turf, and trees; and using shaker cans and aerosol sprays for trees and indoor crack and crevice applications. A quantitative dermal assessment for residential handlers was not conducted since no systemic toxicity associated with dermal exposure to deltamethrin was observed.

MOEs were calculated for the inhalation route of exposure only. Adult post-application exposures were not quantitatively assessed since no dermal hazard was identified for deltamethrin and inhalation exposures are typically negligible in outdoor settings. Furthermore, the inhalation exposure assessment performed for residential handlers is representative of worse case inhalation exposures and is considered protective for post-application inhalation scenarios.

EPA assessed post-application incidental oral exposures to children for representative indoor/outdoor and pet incidental oral scenarios including hand-to-mouth, object-to-mouth, soil ingestion, and episodic granule ingestion scenarios. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency has determined that the pyrethroids and pyrethrins share a common mechanism of toxicity: The ability to interact with voltage-gated sodium channels ultimately leading to neurotoxicity. The cumulative risk assessment (CRA) for the pyrethroids/pyrethrins (published in the **Federal Register** of November 9, 2011 (76 FR 69726) (FRL–8888–9), and available at *http://www.regulations.gov;* EPA–HQ–OPP–2011–0746) did not identify cumulative risks of concern, allowing the Agency to consider new uses for pyrethroids. Deltamethrin was included in the pyrethroid/pyrethrin CRA.

Dietary exposures make a minor contribution to the total pyrethroid exposure. The dietary exposure assessment performed in support of the pyrethroid CRA was much more highly refined than that performed for deltamethrin alone. Additionally, the PODs selected for deltamethrin are specific to deltamethrin, whereas the PODs selected for the cumulative assessment were based on common mechanism of action data that are appropriate for all 20 pyrethroids included in the CRA. Dietary exposure to deltamethrin residues resulting from the proposed import tolerance on finfish will contribute very little to the dietary exposure to deltamethrin alone and will have an insignificant impact on the cumulative risk assessment. No dietary, residential, or aggregate risk estimates of concern have been identified in the single chemical assessment.

In the cumulative assessment, residential exposure was the greatest contributor to the total exposure. In order to determine if the registered deltamethrin indoor and turf uses will significantly contribute to, or change the overall findings in the pyrethroid CRA, the Agency performed a quantitative exposure and risk assessment. This assessment used the deltamethrin relative potency factor (RPF) as well as the same exposure algorithms and inputs that were used in the 2011 pyrethroid CRA. In all cases, the estimated deltamethrin MOEs using the RPF method were higher (i.e., less of a risk concern) than those used in the 2011 pyrethroid CRA. Thus, the Agency continues to support the previous assessment, and concludes that the registered deltamethrin uses will not significantly contribute to the overall findings in the 2011 pyrethroid CRA, and the proposed import tolerance for finfish will have no impact on the residential component of the cumulative risk estimates.

For information regarding EPA's efforts to evaluate the risk of exposure to this class of chemicals, refer to: *http://www.epa.gov/oppsrrd1/reevaluation/pyrethroids-pyrethrins.html.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10×) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There were no indications of fetal toxicity in any of the guideline studies. Evidence of increased juvenile qualitative sensitivity was observed in the DNT and 2-generation reproduction studies at doses that were considered to be relatively high (i.e., near lethal doses). However, at doses near the POD, no effects on parental animals or offspring were observed in either the DNT or 2-generation reproduction study and, therefore, there is no susceptibility at these doses.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 3× for infants and children <6 years old; and to 1× for children >6 years old, women of child bearing age and all adult populations. That decision is based on the following findings:

i. The database of experimental toxicology studies available for deltamethrin is largely complete including developmental toxicity studies in rats and rabbits, a reproduction study in rats, and acute neurotoxicity (ACN), subchronic neurotoxicity (SCN), and DNT studies. The database provides a robust characterization profile for children 6 years old and older, as well as for adults. In addition to the standard guideline studies, numerous studies from the scientific literature that describe the PD and PK profile of the pyrethroids in general have been considered in this assessment. Many of these studies were conducted with deltamethrin. A 28- or 90-day inhalation study is not available, but the Agency determined the study is not required for deltamethrin.

ii. As with other pyrethroids, deltamethrin causes neurotoxicity from interaction with sodium channels leading to clinical signs of neurotoxicity. These effects are well characterized and adequately assessed by the body of data available to the Agency.

iii. There were no indications of fetal toxicity in any of the guideline studies in the database, including developmental studies in the rat and rabbit, a developmental neurotoxicity study in rats, and a 2-generation reproduction study in rats. There was evidence of increased juvenile qualitative susceptibility at high doses observed in both the DNT and 2-generation reproduction studies. These observations are consistent with the findings of juvenile sensitivity in the literature for deltamethrin. However, the observations of increased sensitivity were at doses that were considered to be relatively high (i.e., near lethal doses), whereas at doses near the point of departure, no effects on parental animals or offspring were observed in either the DNT or 2-generation reproduction study and, therefore, there is no susceptibility at these doses. The Agency has retained a 3× uncertainty factor to protect for exposures of

children <6 years of age based on increased quantitative susceptibility seen in studies on pyrethroid PK (primarily conducted with deltamethrin) and the increased quantitative juvenile susceptibility observed in high dose guideline and literature studies with deltamethrin and other pyrethroids. The Agency has no residual uncertainties regarding age-related sensitivity for women of child bearing age as well as for all adult populations and children ≥6 years of age, based on the absence of prenatal sensitivity observed in 76 guideline studies for 24 pyrethroids and the scientific literature. Additionally, no evidence of increased quantitative or qualitative susceptibility was seen in the pyrethroid scientific literature related to PD.

iv. There are no residual uncertainties with regard to dietary exposure. The dietary exposure assessments are based on high-end residue levels for most commodities, and that account for parent and metabolites of concern, processing factors, and percent crop treated assumptions. Furthermore, conservative, upper-bound assumptions were used to determine exposure through drinking water and residential sources, such that these exposures have not been underestimated.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to deltamethrin will occupy 80% of the aPAD for children 3–5 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* A chronic dietary risk assessment was not conducted because there is no apparent increase in hazard from repeated/chronic exposures to deltamethrin. Therefore, the acute endpoint is protective of the endpoints from repeat dosing studies. A chronic dietary exposure assessment was performed in order to generate background exposure estimates to aggregate with residential exposure estimates for the short-term aggregate risk assessment.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Deltamethrin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to deltamethrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 2,500 for the general U.S. population and of 530 for children 1–2 years old, the population group receiving the greatest exposure. Because EPA's level of concern for deltamethrin is a MOE of 300 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Because no intermediate-term adverse effect was identified, deltamethrin is not expected to pose an intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, deltamethrin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to deltamethrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, utilizing gas chromatography with electron capture detection (GC/ECD), is available for enforcing tolerances for residues of deltamethrin in plant commodities, as described in Pesticide Analytical Manual (PAM) Volume II, Section 180.422. Another GC/ECD method (Method HRAV–22) is available for enforcing tolerances in livestock commodities. Adequate confirmatory method validation data have been submitted for these methods, along with adequate independent laboratory validation (ILV) trials.

Multi-residue methods data for *cis*-deltamethrin and *trans*-deltamethrin were previously sent to the Food and Drug Administration (FDA). *Cis*-deltamethrin is completely recovered through Methods 302 and 303, and partially recovered through Method 304. *Trans*-Deltamethrin is partially recovered through Method 303, but not recovered through Method 304.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for deltamethrin in finfish.

C. Response to Comments

One comment was received from the general public urging the Agency to tighten regulations for pesticides tolerances and uses. The commenter particularly addressed carcinogenic chemicals and their effects on children's health.

The toxicological database for deltamethrin shows that the chemical does not pose a cancer risk to humans. Deltamethrin is classified as "Not likely to be carcinogenic to humans" based on the absence of treatment related tumors in adequate rodent studies. Deltamethrin is a Type II pyrethroid, and as with other pyrethroids, deltamethrin causes neurotoxicity. These effects are well characterized and adequately assessed by the body of data available to the Agency. The Agency is confident that it has chosen endpoints, PODs, and uncertainty factors that are protective for all populations, including infants and children, and that have a strong scientific foundation. In addition, there are ongoing efforts to develop data to gain more information concerning the potential sensitivity of infants and young children to pyrethroids as a class. EPA has addressed the variability of sensitivities of the population to deltamethrin, including infants and children in Unit III.D.

D. Revisions to Petitioned-For Tolerances

Pharmaq AS requested the establishment of a permanent tolerance, for residues of the insecticide deltamethrin in all imported commercially farmed finfish at 0.01 ppm. Since there is no commodity definition covering all finfish, the Agency is establishing tolerances of 0.01 ppm in "fish—freshwater finfish," "fish—freshwater finfish, farm raised," "fish—saltwater finfish, other," and "fish—saltwater finfish, tuna."

The Agency is revising the tolerance expression to clarify that:

1. As provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of deltamethrin not specifically mentioned.

2. Compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of deltamethrin, including its metabolites and degradates in or on fish—freshwater finfish; fish—freshwater finfish, farm raised; fish—saltwater finfish, other; and fish—saltwater finfish, tuna at 0.01 ppm.

VI. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 29, 2014.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.435:

■ a. Revise the introductory text of paragraph (a)(1).

■ b. Add alphabetically to the table in paragraph (a)(1) the following commodities.

The amendments read as follows:

§ 180.435 Deltamethrin; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of deltamethrin, including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the tolerance levels specified is to be determined by measuring only deltamethrin, (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-*alpha*-cyano-3-phenoxybenzyl ester, and its major metabolites, *trans*-deltamethrin, (*S*)-*alpha*-cyano-*m*-phenoxybenzyl(1*R*,3*S*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate, and *alpha-R*-deltamethrin, (*R*)-*alpha*-cyano-*m*-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate, in or on the commodity.

Commodity	Parts per million
* * * * *	
Fish—freshwater finfish	0.01
Fish—freshwater finfish, farm raised	0.01
Fish—saltwater finfish, other	0.01
Fish—saltwater finfish, tuna	0.01
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[FR Doc. 2014–26430 Filed 11–6–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0393; FRL–9918–50]

Acetic Acid Ethenyl Ester, Polymer With Ethane, Ethenyltriethoxysilane and Sodium Ethenesulfonate (1:1); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1); minimum number average molecular weight (in amu), 16,200 (CASRN 913187–38–9); when used as an inert ingredient in a pesticide chemical formulation. Celanese, Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1); on food or feed commodities.

DATES: This regulation is effective November 7, 2014. Objections and requests for hearings must be received on or before January 6, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0393, 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), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0393 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 6, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0393, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of August 1, 2014 (Vol. 79 FR 44732) (FRL–9911–67), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (IN–10689) filed by Celanese Ltd, 222 W. Las Colinas Blvd., Suite 900 N, Irving, TX 75039. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as specified in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

8. The polymer's number average MW is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) is 16,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

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

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

EPA has not found acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) to share a common mechanism of toxicity with any other substances, and acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1), EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the

U.S. population, including infants and children, from aggregate exposure to residues of acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1).

VIII. Other Considerations

A. Existing Exemptions From a Tolerance

None.

B. Analytical Enforcement Methodology

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

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1).

IX. Conclusion

Accordingly, EPA finds that exempting residues of acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1) from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

Although this action does not require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 30, 2014.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960, alphabetically add the following polymer to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
Acetic acid ethenyl ester, polymer with ethane, ethenyltriethoxysilane and sodium ethenesulfonate (1:1); minimum number average molecular weight (in amu), 16,200	913187–38–9

Polymer	CAS No.
* * * * *	

[FR Doc. 2014–26528 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0418; FRL–9918–28]

2-Propenoic Acid, 2-Methyl-, Phenylmethyl Ester, Polymer With 2-Propenoic Acid, Peroxydisulfuric Acid ([(HO)S(O)2]2O2) Sodium Salt (1:2)-Initiated, Compounds With Diethanolamine; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine, with a minimum number average molecular weight of 2,000 amu; when used as an inert ingredient in a pesticide formulation. Akzo Nobel Surface Chemistry, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine on food or feed commodities.

DATES: This regulation is effective November 7, 2014. Objections and requests for hearings must be received on or before January 6, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0481, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0481 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 6, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0481, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of September 5, 2014 (79 FR 53009) (FRL–9914–98), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10705) filed by Akzo Nobel Surface Chemistry, LLC, 525 West Van Buren Street, Chicago, IL 60607–3823. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine; CAS Reg. No. 1574486–33–1. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency received five comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical

residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . ." and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

8. The polymer's number average MW of 2,000 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine is 2,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

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

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

EPA has not found 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine to share a common mechanism of toxicity with any other substances, and 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine does not appear to produce a toxic metabolite produced by other substances. For the purposes of

this tolerance action, therefore, EPA has assumed that 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine.

VIII. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

Although this action does not require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population. Four comments received were not related to this chemical. One received comment was of a general nature requesting the Agency follow the June 2014 Presidential Memorandum,

"Creating a Federal Strategy to Promote the Health of Honey Bees and Other Pollinators" which directs EPA to assess the effect of pesticides on bee and other pollinator health and take action as appropriate. This exemption from the requirement of a tolerance is for a substance used as an inert ingredient in a pesticide formulation and as such is not itself a pesticide. However, under the strategy, the Agency will consider any available product specific data on bee toxicity during the product registration process.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 30, 2014.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ **2.** In § 180.960, alphabetically add the following polymer to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
2-Propenoic acid, 2-methyl-, phenylmethyl ester, polymer with 2-propenoic acid, peroxydisulfuric acid ([(HO)S(O)2]2O2) sodium salt (1:2)-initiated, compounds with diethanolamine, minimum number average molecular weight (in amu), 2,000	1574486–33–1
* * * * * * *	

[FR Doc. 2014–26529 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0572; FRL–9917–14]

FD&C Red No. 40; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of FD&C Red No. 40 when used as an inert ingredient as colorant in antimicrobial pesticide formulation in food-contact surface sanitizer products at a maximum level in the end-use concentration of 20 parts per million (ppm). Diversey Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of FD&C Red No. 40.

DATES: This regulation is effective November 7, 2014. Objections and requests for hearings must be received on or before January 6, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0572, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0572 in the subject line on the first page of your submission. All

objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 6, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0572, by one of the following methods:

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- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Petition for Exemption

In the **Federal Register** of August 22, 2012 (77 FR 50664) (FRL–9358–9), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 1E7843) by Diversey Inc., 8310 16th Street, Sturtevant, Wisconsin 53177. The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of FD&C Red No. 40 (CAS No. 25956–17–6) when used as an inert ingredient (colorant) in food-contact surface sanitizing solutions at a maximum level in the end-use concentration of 20 parts per million (ppm). That document referenced a summary of the petition prepared by Diversey Inc., the petitioner, which is available in the docket, EPA–HQ–OPP–2012–0572, at *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for FD&C Red No. 40 including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with FD&C Red No. 40 is detailed in a May 9, 2014 Memorandum entitled "Decision Document for Petition Number 1E7843: FD&C Red No. 40 (CAS Reg. No. 25956–17–6); Human Health Risk Assessment and Ecological Effects Assessment for Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations" which is available in the docket for this rule, EPA–HQ–OPP–2012–0572. A summary of that assessment follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received is discussed in this unit.

The European Food Safety Authority (EFSA) has conducted the most recent (2009) full review of the toxicology of FD&C Red No. 40. This document relied heavily on the earlier reviews (1980), conducted by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) and the European Union Scientific Committee for Food (SCF) in 1984 and 1989. These evaluations of FD&C Red No. 40 included reviews of an extensive set of toxicological data including genotoxicity, chronic toxicity, carcinogenicity, reproductive and developmental toxicity and metabolism. The available data demonstrated that no adverse effects were seen in studies at limit dose levels.

Briefly, no compound related clinical signs of toxicity were observed when FD&C Red No. 40 (Allura Red AC) was

given to rats by gavage at doses varying from 215 to 10,000 milligrams/kilogram (mg/kg). It was not irritating to the skin of rabbits. Repeated dose toxicity studies were conducted in rats, dogs and pigs. No evidence of systemic toxicity was observed in rats fed FD&C Red No. 40 in the diet for six weeks at doses up to 2,595 mg/kg/day. The dog studies (two) were determined to be too limited to derive a NOAEL. No compound related effects were reported in pigs given gavage dose of 1,000 mg/kg/day for 21 days and then increased to 1,500 mg/kg/day for an additional 54 days.

In chronic studies, no dye-related anomalies were noted in terms of survival, or gross and histopathology of major organs and the skin in mice treated dermally with FD&C Red No. 40 with a 5% test solution twice weekly for 20 months. A moderate growth depression was observed in both sexes of rat fed at the highest dose level of 2,595 mg/kg/day for 92 weeks. No compound-related effects were observed regarding appearance, behavior, survival, organ weights, clinical laboratory studies, or gross and histopathology in rats.

FD&C Red No. 40 was evaluated for its mutagenic activity in adequate range of *in vivo* and *in vitro* mutagenicity assays. Overall, it gave a negative response for mutagenicity in *in vivo* and *in vitro* assays except Comet assay. EFSA Panel considered this finding in the light of negative carcinogenicity studies, and determined that the biological significance of the Comet assay results is uncertain.

As summarized by EFSA, no evidence of carcinogenicity was observed in male rats at doses up to 2,595 mg/kg/day and 2,829 mg/kg/day in female rats; and in mice at dose levels up to 7,422 mg/kg/day in males and 8,304 mg/kg/day in females.

Relevant reproductive and developmental toxicity studies are summarized in the EFSA document. In a multi-generation reproduction study in rats at a dietary levels of 0, 0.37, 0.72, 1.39 or 5.19% (equivalent to 0, 185, 360, 695 and 2,595 mg/kg bw/day), no treatment related adverse effects were observed in the parental animals. Only slight growth retardation was observed at the high dose levels in F_1 and F_2 pups. The NOAEL for offspring toxicity was 695 mg/kg/day and the LOAEL was 2,595 mg/kg/day. No reproductive or developmental toxicity was seen at high doses in three chronic studies in rats and mice in which these parameters were evaluated concurrently. Rats (group number not reported) were exposed up to 10% of FD&C Red No. 40 in the diet (calculated doses of 0, 1,250, 2,500 and 5,000 mg/kg/day). Litter mortality was increased between 22–24 days of age at a concentration of 10% in the diet. Significantly decreased running wheel activity was observed in all exposed groups. Increased open-field rearing was observed in the two highest dose groups. The LOAEL was determined to be 1,250 mg/kg/day; a NOAEL could not be determined from this study. No neurobehavioral effects were observed in mice administered 1.68% FD&C Red No. 40 via diet (equivalent to 2,400 mg/kg/day) for 2-generations. Teratology studies in rats and rabbits showed no evidence of adverse effects at doses up to 200 mg/kg/day administered via gavage during gestation days (GD) 0–19 in rats, and at doses up to 700 mg/kg/day administered via gavage during GD 6–18 in rabbits. In rats (group number not reported) dosed with FD&C Red No. 40 up to 0.7% in drinking water (equivalent to 939 mg/kg bw/day) during GDs, on GD 0–20 a significant increase in the incidence of fetuses with reduced ossification of the hyoid was observed at the highest dose level. No other fetal malformations were observed. The NOAEL from this study was determined to be 546 mg/kg/day.

In rats fed 5.19% FD&C Red No. 40 in the diet, only 0.1% and 29% of the unmetabolized dye was found to be excreted in the urine and feces, respectively. Several metabolites, possibly resulting from azo-reduction in the gastrointestinal tract (two identified as aromatic amines, p-cresidine sulfnic acid being the major one), were also found in the feces and urine. Finally, significant retention in the washed intestines of rat was observed, probably due to adhesion to the intestinal wall.

B. Toxicological Points of Departure/Levels of Concern

Based on the low potential hazard, toxicological endpoints of concern have not been identified for FD&C Red No. 40. Thus, due to its low potential hazard and lack of hazard endpoint, the Agency has determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate. JEFCA and EFSA established the acceptable daily intake (ADI) of 0–7 mg/kg/day based on the NOAEL of 695 mg/kg/day derived from a reproductive toxicity study in rats, which revealed slight growth suppression observed mainly at the high test levels of 2,595 mg/kg/day in F_1 and F_2 pups and from a teratogenicity study in rats which revealed lower body weights and growth rates at the highest dose level of 2,595 mg/kg/day but not at 695 mg/kg bw/day. Since adverse effects in these two studies were observed at 2.5 times the limit dose of 1,000 mg/kg/day; EPA concluded that it is not warranted to conduct a quantitative risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses and drinking water.* Dietary exposure (food and drinking water) to FD&C Red No. 40 can occur following ingestion of foods with residues from food-contact surface sanitizing solutions for public eating places, treated dairy- and food-processing equipment and utensils; pre- and post-harvest crop uses and as a direct food additives. In addition, dietary exposures to FD&C Red No. 40 can occur as a result of its use as a color additive in foods. However, EPA did not conduct a quantitative dietary exposure assessment since no endpoint of concern for risk assessment has been identified.

2. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

FD&C Red No. 40 is used as an inert ingredient in agricultural pesticide products that could result in short- and intermediate-term residential exposure. Residential exposure can occur via dermal and inhalation routes of exposure to residential applicator. Dermal and inhalation exposure can occur from the use of consumer products and foods/food additives containing FD&C Red No. 40. Since an endpoint for risk assessment was not identified, a quantitative residential exposure assessment for FD&C Red No. 40 was not conducted.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found FD&C Red No. 40 to share a common mechanism of toxicity with any other substances, and FD&C Red No. 40 does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that FD&C Red No. 40 does not have a common mechanism of toxicity

with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

At this time, there is no concern for potential sensitivity to infants and children resulting from exposures to FD&C Red No. 40. There is no reported quantitative or qualitative evidence of increased susceptibility of rat fetuses to in utero exposure to FD&C Red No. 40 in developmental toxicity studies in rats. No quantitative or qualitative evidence of increased susceptibility has been reported following the pre/postnatal exposure to rats in 2-generation reproduction toxicity studies in rats. Given the lack of adverse toxicological effects at limit dose levels, a safety factor analysis has not been used to assess the risk. For these reasons the additional tenfold safety factor is unnecessary.

E. Aggregate Risks and Determination of Safety

In examining aggregate exposure, EPA takes into account the available and reliable information concerning exposures to pesticide residues in food and drinking water, and non-occupational pesticide exposures. Dietary (food and drinking water) and non-dietary (residential) exposures of concern are not anticipated for FD&C Red No. 40 because of its low toxicity based on animal studies showing toxicity at or above the limit dose of 1,000 mg/kg/day. Taking into consideration all available information on FD&C Red No. 40, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to FD&C Red No. 40 under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.940(a) for residues of FD&C Red No. 40 when used as an inert ingredient (colorant) in pesticide formulations applied to food contact surfaces in public eating places, dairy processing equipment and food processing equipment and utensils up to 20 ppm in antimicrobial pesticide formulations is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. EPA is establishing a limitation on the amount of FD&C Red No. 40 that may be used in pesticide formulations.

The limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any food-contact surface antimicrobial pesticide for sale or distribution with concentrations of FD&C Red No. 40 exceeding 20 ppm in the end use formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.940(a) for FD&C Red No. 40 (CAS No. 25956–17–6) when used as an inert ingredient (colorant) in pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment and food-processing equipment and utensils up to 20 ppm in end use formulation.

VII. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 30, 2014.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.940, the table in paragraph (a) is amended by alphabetically adding an entry for "FD&C Red No. 40" before the entry for "FD&C Yellow No. 5" to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * * * * * *		
FD&C Red No. 40	25956–17–6	When ready for use, the end-use concentration is not to exceed 20 ppm.
* * * * * * *		

* * * * *

[FR Doc. 2014–26526 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[DA 14–1507]

Unlicensed Personal Communications Services Devices in the 1920–1930 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises its rules. The practical effect of this decision is that applicants for certification of Unlicensed Personal Communications Service (UPCS) devices will no longer be required to be members of UTAM, Inc. (UTAM).

DATES: Effective November 7, 2014.

FOR FURTHER INFORMATION CONTACT: Patrick Forster, Senior Engineer, (202) 418–7061, Policy and Rules Division, Office of Engineering and Technology, (202) 418–2290, *Patrick.Forster@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* adopted October 20, 2014, and released October 20, 2014, DA 14–1507. The full text of this document is available on the Commission's Internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St. SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; email *FCC@BCPIWEB.COM.*

Summary of the Order

1. The *Order* revises part 15 subpart D of the Commission's rules to remove and reserve § 15.307. As a result of this decision, applicants for certification of Unlicensed Personal Communications Service (UPCS) devices will no longer be required to be members of UTAM, Inc. (UTAM). The Commission took the action to eliminate the rule without notice and comment procedures pursuant to section 553(b)(b) of the Administrative Procedures Act (5 U.S.C. 553(b)(B)).

2. Section 15.307 has served, along with other Commission actions, to ensure that UTAM is reimbursed for the costs it incurred in clearing the 1910–1930 MHz band of incumbent microwave licensees. In a letter submitted to the Commission, UTAM indicated that this objective had been met. The Commission agreed, and concluded that the rule no longer served its intended purpose. Moreover, because UTAM's board of directors had proposed to its membership a plan of dissolution and cessation of all corporate activities, the Commission anticipated that it would soon become impossible for UPCS device manufacturers to satisfy § 15.307's membership requirement.

3. In 1993, the Commission reallocated the 1910–1930 MHz band from the Private Operational Fixed Microwave Service (POFS) to UPCS use. As part of this reallocation, the Commission designated UTAM to manage the transition of the 1910–1930 MHz band from POFS to UPCS use. Under the relocation funding plan approved by the Commission, UTAM would pay to relocate or agree to share the costs to relocate incumbent services in the band, and future UPCS device manufacturers would reimburse UTAM for their share of the incurred costs. The UPCS device manufacturers would reimburse UTAM via a fee for each device sold (which UTAM subsequently eliminated), as well as a membership fee set by UTAM. To ensure that UTAM received this reimbursement, the Commission required—via § 15.307—that each application for certification of UPCS equipment be accompanied by an affidavit from UTAM certifying that the applicant was a member of UTAM.

4. In 2004, the Commission re-designated the 1910–1915 MHz and 1915–1920 MHz bands from UPCS use to Broadband PCS and Advanced Wireless Service (AWS) operations, respectively. As part of the 1910–1915 MHz band re-designation, the Commission determined that UTAM was entitled to a reimbursement from Nextel Communications, Inc. (the 1910–1915 MHz band licensee) for 25 percent—on a *pro rata* basis—of the total relocation costs it had incurred in clearing the 1910–1930 MHz band of incumbent microwave stations. In 2007, Sprint Nextel Corp. (successor to Nextel), reimbursed UTAM for these costs.

5. Similarly, as part of the 1915–1920 MHz band re-designation, the Commission determined that UTAM was entitled to a reimbursement from the future AWS licensee(s) in the 1915–1920 MHz AWS–2 band for 25 percent—on a *pro rata* basis—of the total relocation costs it had incurred in

clearing the 1910–1930 MHz band of incumbent microwave stations. On May 29, 2014, DISH, the sole licensee in the 1915–1920 MHz band, reimbursed UTAM for these costs.

6. Based on the reimbursements paid by Sprint and DISH, as well as the membership and device fees that had been paid by UPCS device manufacturers, UTAM determined that it could satisfy all of its financial obligations associated with clearing the entire 1910–1930 MHz band. Accordingly, it prepared a plan of dissolution and cessation of all corporate activities. It also asked the Commission to suspend enforcement of § 15.307 pending administrative action to eliminate the rule in its entirety.

7. The Commission found that there was good cause to eliminate the rule in its entirety. UTAM no longer needed the reimbursement funds that § 15.307 was designed to provide, continued application of the rule would impose an unnecessary financial burden on UPCS device manufacturers who may seek to develop new and innovative products, and it would no longer be possible to comply with the rule once UTAM dissolved. The Commission further determined that it could take action to eliminate the rule without notice and comment rulemaking procedures, pursuant to section 553(b)(B) of the Administrative Procedure Act. Among other things, section 553(b)(B) establishes an exception to the notice-and-comment requirement for cases in which the Commission finds good cause for concluding that notice and comment are "unnecessary." The Commission found that because § 15.307 no longer had any purpose now that the relocation reimbursement obligations have been satisfied and UTAM would be disbanding, the provisions of section 553(b)(B) were applicable to this situation.

8. The Commission removed and reserved § 15.307, effective upon publication of the *Order* in the **Federal Register**. Until that time, and effective immediately, the Commission stayed the effectiveness of the rule. The Commission took these actions under the delegated authority granted to the Office of Engineering and Technology. Thus, upon release of the *Order*, it was no longer necessary for applicants for equipment certification of UPCS devices to obtain and submit to the Commission certification of membership in UTAM pursuant to § 15.307 of our rules.

Congressional Review Act

9. Because the *Order* was adopted without notice and comment, the Regulatory Flexibility Act does not apply, *see* 5 U.S.C. 601, *et seq*. The Commission will not send a copy of the *Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the rules are of a particular applicability.

Paperwork Reduction Analysis

10. This document does not contain any new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Ordering Clauses

11. Pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the *Order* is hereby *adopted* and part 15 of the Commission's rules *is amended* as set forth in the Final Rules effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting, and Recordkeeping.

Federal Communications Commission.

Julius P. Knapp,

Chief, Office of Engineering and Technology.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

§ 15.307 [Removed and Reserved]

■ 2. Section 15.307 is removed and reserved.

[FR Doc. 2014–26429 Filed 11–6–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–XD548

Fraser River Sockeye Salmon Fisheries; Inseason Orders

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

ACTION: Temporary orders; inseason orders.

SUMMARY: NMFS publishes Fraser River salmon inseason orders to regulate treaty and non-treaty (all citizen) commercial salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2014 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing dates, times, and areas for the gear types of U.S. treaty Indian and all citizen commercial fisheries during the period the Panel exercised jurisdiction over these fisheries.

DATES: The effective dates for the inseason orders are set out in this document under the heading Inseason Orders.

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F, provide a framework for the implementation of certain regulations of the Commission and inseason orders of the Commission's Fraser River Panel for U.S. sockeye salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye tribal and non-tribal commercial fishing unless opened by Panel orders that are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations and are issued by the Regional Administrator, West Coast Region, NMFS. Official notification of these inseason actions is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1) and in 79 FR 24580 (May 1, 2014). The inseason orders are published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical.

Inseason Orders

The following inseason orders were adopted by the Panel and issued for U.S.

fisheries by NMFS during the 2014 fishing season. Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1) and in 79 FR 24580 (May 1, 2014); those dates and times are listed herein. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Fraser River Panel Order Number 2014–01: Issued 2:10 p.m., July 29, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open to drift gillnets 12 p.m. (noon), Thursday, July 31, 2014, to 12 p.m. (noon), Saturday, August 2, 2014.

Fraser River Panel Order Number 2014–02: Issued 12:45 p.m., August 1, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets 12 p.m. (noon), Saturday, August 2, 2014, to 12 p.m. (noon), Wednesday, August 6, 2014.

Fraser River Panel Order Number 2014–03: Issued 12:15 p.m., August 5, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets 12 p.m. (noon), Wednesday, August 6, 2014, to 12 p.m. (noon), Saturday, August 9, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Thursday, August 7, 2014 through 9 a.m., Saturday, August 9, 2014.

All Citizen Fishery

Area 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Saturday, August 9, 2014.

Area 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Saturday, August 9, 2014.

Area 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., Sunday, August 10, 2014.

Fraser River Panel Order Number 2014–04: Issued 12:55 p.m., August 8, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets 12 p.m. (noon), Saturday, August 9, 2014, to 12 p.m. (noon), Wednesday, August 13, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m. Sunday, August 10, 2014 through 9 a.m., Tuesday, August 12, 2014.

All Citizen Fishery

Area 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Tuesday, August 12, 2014.

Area 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Tuesday, August 12, 2014.

Area 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., Monday, August 11, 2014.

Fraser River Panel Order Number 2014–05: Issued 12:20 p.m., August 12, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets 12 p.m. (noon), Wednesday, August 13, 2014, to 12 p.m. (noon), Saturday, August 16, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m. Wednesday, August 13, 2014 through 9 a.m., Thursday, August 14, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Friday, August 15, 2014 through 9 a.m., Saturday, August 16, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Thursday, August 14, 2014.

Areas 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Thursday, August 14, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., Wednesday, August 13, 2014.

Fraser River Panel Order Number 2014–06: Issued 2:30 p.m., August 15, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets 12 p.m. (noon), Saturday, August 16, 2014, to 12 p.m. (noon), Wednesday, August 20, 2014.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Saturday, August 16, 2014 through 9 a.m., Monday, August 18, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Tuesday, August 19, 2014 through 9 a.m., Wednesday, August 20, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Monday, August 18, 2014.

Areas 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Monday, August 18, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., Monday, August 18, 2014.

Fraser River Panel Order Number 2014–07: Issued 1:35 p.m., August 19, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, August 20, 2014 through 12 p.m. (noon), Saturday, August 23, 2014.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Wednesday, August 20, 2014 through 9 a.m., Thursday, August 21, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Thursday, August 21, 2014 and Friday, August 22, 2014.

Areas 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Thursday, August 21, 2014 and Friday, August 22, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., Wednesday, August 20, 2014, Thursday, August 21, 2014, and Friday, August 22, 2014.

Fraser River Panel Order Number 2014–08: Issued 1:30 p.m., August 22, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, August 23, 2014 through 12 p.m. (noon), Wednesday, August 27, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Saturday, August 23, 2014 through 9 a.m., Monday, August 25, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Monday, August 25, 2014 and Tuesday, August 26, 2014.

Areas 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Monday, August 25, 2014 and Tuesday, August 26, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., daily from Saturday, August 23, 2014 through Tuesday, August 26, 2014.

Fraser River Panel Order Number 2014–09: Issued 1:45 p.m., August 26, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, August 27, 2014 through 12 p.m. (noon), Saturday, August 30, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Wednesday 27, 2014 through 9 a.m., Saturday, August 30, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., daily from Wednesday, August 27, 2014 through Friday, August 29, 2014.

Fraser River Panel Order Number 2014–10: Issued 1:30 p.m., August 29, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, August 30, 2014 through 12 p.m. (noon), Wednesday, September 3, 2014.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Saturday, August 30, 2014 through 9 a.m., Sunday, August 31, 2014.

Areas 6, 7, and 7A: Open for net fishing from 12:01 a.m. (midnight), Tuesday, September 2, 2014 through 9 a.m., Wednesday, September 3, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Sunday, August 31, 2014.

Areas 7 and 7A: Open to gillnets from 8 a.m. to 11:59 p.m. (midnight), Monday, September 1, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., daily from Saturday, August 30, 2014 through Tuesday, September 2, 2014.

Fraser River Panel Order Number 2014–11: Issued 1:30 p.m., September 2, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, September 3, 2014 through 12 p.m. (noon), Saturday, September 6, 2014.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Wednesday, September 3, 2014 through 9 a.m., Friday, September 5, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Friday, September 5, 2014.

Areas 7 and 7A: Open to gillnets from 8:05 a.m. to 11:59 p.m. (midnight), Friday, September 5, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., daily from Wednesday, September 3, 2014 through Friday, September 5, 2014.

Fraser River Panel Order Number 2014–12: Issued 1:30 p.m., September 5, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Saturday, September 6, 2014 through 12 p.m. (noon), Wednesday, September 10, 2014.

Areas 6, 7, and 7A: Open for net fishing from 5 a.m., Sunday, September 7, 2014 through 9 a.m., Wednesday, September 10, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Saturday, September 6, 2014.

Areas 7 and 7A: Open to gillnets from 8:10 a.m. to 11:59 p.m. (midnight), Saturday, September 6, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., daily from Saturday, September 6, 2014 through Tuesday, September 9, 2014.

Fraser River Panel Order Number 2014–13: Issued 1:15 p.m., September 9, 2014

Treaty Indian Fishery

Areas 4B, 5, and 6C: Extend for drift gillnets from 12 p.m. (noon), Wednesday, September 10, 2014 through 11:59 p.m. (midnight), Saturday, September 13, 2014.

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Wednesday, September 10, 2014 through 9 a.m., Saturday, September 13, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. to 9 p.m., Saturday, September 13, 2014.

Areas 7 and 7A: Open to gillnets from 8:20 a.m. to 11:59 p.m. (midnight), Saturday, September 13, 2014.

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., daily from Wednesday, September 10, 2014 through Friday, September 12, 2014.

Fraser River Panel Order Number 2014–14: Issued 1:30 p.m., September 12, 2014

Treaty Indian Fishery

Areas 6, 7, and 7A: Extend for net fishing from 9 a.m., Saturday, September 13, 2014 until 11:59 p.m. (midnight), Saturday, September 20, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to reefnets from 5 a.m. to 9 p.m., daily from Saturday, September 13, 2014 through Saturday, September 20, 2014.

Fraser River Panel Order Number 2014–15: Issued 4:30 p.m., September 18, 2014

Treaty Indian Fishery

Area 7A: Open to net fishing from 5 a.m., Monday, September 22, 2014 until 9 a.m., Wednesday, September 24, 2014.

All Citizen Fishery

Areas 7 and 7A: Open to purse seines from 5 a.m. until 9 p.m., Saturday, September 20, 2014.

Area 7A: Open to purse seines from 5 a.m. until 9 p.m., Sunday, September 21, 2014.

Areas 7 and 7A: Open to gillnets from 8:25 a.m. until 11:59 p.m. (midnight), Saturday, September 20, 2014.

Area 7A: Open to gillnets from 8:30 a.m. until 11:59 p.m. (midnight), Sunday, September 21, 2014.

Treaty Indian and All Citizen Fisheries

Areas 6 and 7: Relinquish regulatory control effective 11:59 p.m. (midnight), Saturday, September 20, 2014.

Area 7A: Retain regulatory control through 11:59 p.m. (midnight), Saturday, September 27, 2014.

Fraser River Panel Order Number 2014–16: Issued 2 p.m., September 22, 2014

Treaty Indian Fishery

Area 7A: Extend for net fishing from 9 a.m., Wednesday, September 24, 2014 through 11:59 p.m. (midnight), Saturday, September 27.

All Citizen Fishery

Area 7A: Open to purse seines from 5 a.m. until 9 p.m., Wednesday, September 24, 2014.

Area 7A: Open to gillnets from 8:35 a.m. until 11:59 p.m. (midnight), Wednesday, September 24, 2014.

Fraser River Panel Order Number 2014–17: Issued 2 p.m., September 25, 2014

Treaty Indian and All Citizen Fisheries

Area 7A, excluding the Apex: Relinquish regulatory control as scheduled effective 11:59 p.m. (midnight), Saturday, September 27, 2014.

Classification

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: October 29, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–26113 Filed 11–6–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130403320–4891–02]

RIN 0648–BD07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 14

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Regulatory Amendment 14 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) (Regulatory Amendment 14), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This rule changes the fishing years for greater amberjack and black sea bass, revises the commercial trip limits for gag grouper (gag) and black sea bass, and revises the recreational accountability measures (AMs) for black sea bass and vermilion snapper. The purpose of Regulatory Amendment 14 and this rule is to help achieve optimum yield (OY) and enhance socio-economic opportunities within the snapper-grouper fishery in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective December 8, 2014.

ADDRESSES: Electronic copies of the regulatory amendment, which includes an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/2014/reg_am14/index.html.*

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727–824–5305, or email: *nikhil.mehta@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On April 25, 2014, NMFS published a proposed rule for Regulatory Amendment 14 and requested public comment (79 FR 22936). The proposed rule and Regulatory Amendment 14 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Regulatory Amendment 14 and this final rule is provided below.

Management Measures Contained in This Final Rule

This final rule changes the fishing years for greater amberjack and black sea bass, revises the commercial trip limits for gag and black sea bass, and revises the recreational AMs for black sea bass and vermilion snapper. All weights described in this final rule are given in gutted weight.

Greater Amberjack Fishing Year

This final rule changes the greater amberjack fishing year of May 1 through April 30 to a fishing year of March 1 through the end of February. This fishing year change allows the commercial sector access to greater amberjack during the Lenten season, when there is an increase in demand for the species, and thus enhances the economic yield from greater amberjack harvest.

Black Sea Bass Fishing Year

This final rule changes the commercial and recreational fishing years for black sea bass from June 1 through May 31, to January 1 through December 31 for the commercial sector and April 1 through March 31 for the recreational sector. Starting the commercial fishing year on January 1 during the black sea bass pot gear closure could provide, to the extent practicable, positive socio-economic benefits to the commercial black sea bass fishers who use hook-and-line gear because they would be able to fish for black sea bass when the catch per unit effort is higher, the fish are closer to shore, and there is generally a higher price per pound for black sea bass. The action also aligns the beginning of the commercial harvest seasons for black sea bass and vermilion snapper, which are commonly caught together with hook-and-line gear, and is expected to decrease the amount of regulatory discards in the snapper-grouper fishery. In addition, changing the commercial fishing year to January 1 for the black sea bass commercial sector allows commercial fishers to harvest black sea bass with hook-and-line gear during January to April when many other snapper-grouper species such as shallow-water groupers are closed to harvest.

Changing the black sea bass recreational fishing year start date from June 1 to April 1 is expected to allow recreational fishermen throughout the Council's area of jurisdiction to have more opportunity to harvest black sea bass and vermilion snapper when harvest for both species is open, thus reducing regulatory discards of black sea bass during April and May.

Black Sea Bass Commercial Trip Limit

Currently, the trip limit for the black sea bass commercial sector for hook-and-line gear and black sea bass pots is 1,000 lb (454 kg). This final rule establishes a trip limit of 300 lb (136 kg), for the hook-and-line component of the commercial sector from January 1 through April 30 when fishing with black sea bass pots is prohibited. The hook-and-line trip limit for the remainder of the fishing year remains at 1,000 lb (454 kg). The trip limit for fishers using black sea bass pots would continue to be 1,000 lb (454 kg). A 300 lb (136 kg), black sea bass trip limit for the hook-and-line sector during the period January 1 to April 30 allows fishermen to retain marketable quantities of black sea bass when targeting vermilion snapper, thereby addressing bycatch and discard mortality issues. The 300-lb (136-kg) trip limit for black sea bass could help to extend the length of the commercial vermilion snapper fishing season, because fishers have the opportunity to harvest both black sea bass and vermilion snapper instead of just targeting vermilion snapper. The Council determined that a January 1 fishing year start date for the black sea bass commercial sector, in conjunction with a trip limit of 300 lb (136 kg) for the hook-and-line component, would allow commercial harvest of black sea bass and vermilion snapper to occur at the same time and enhance the socio-economic benefits to those utilizing the black sea bass resource.

Gag Commercial Trip Limit

This final rule revises the gag commercial trip limit from the current 1,000 lb (454 kg), to include a trip limit reduction to 500 lb (227 kg), when 75 percent of the gag commercial quota is

reached. The Council determined that this trip limit alternative best addresses the need to minimize regulatory discards of gag, extend the gag commercial fishing season, and reduce adverse socio-economic impacts to fishermen and fishing communities that utilize the gag resource, while still allowing commercial harvest to continue.

Black Sea Bass Recreational AMs

As described in Regulatory Amendment 14, this final rule revises the black sea bass recreational AMs to prevent the recreational ACL from being exceeded. The revised recreational AM is to specify the length of the recreational fishing season for black sea bass, as determined by NMFS and announced annually in the **Federal Register**, prior to the April 1 recreational fishing season start date. The fishing season starts on April 1 and ends on the date NMFS projects the recreational sector's ACL will be reached for that year. The purpose of this revised AM is to implement a more predictable recreational season length while still constraining harvest at or below the ACL to protect the stock from experiencing adverse biological consequences.

Vermilion Snapper Recreational AMs

This rule revises the recreational AM for vermilion snapper by implementing an in-season closure and modifying the ACL overage adjustment (payback) in the event an overage of the recreational ACL occurs and vermilion snapper are overfished. If recreational landings reach or are projected to reach the recreational ACL, recreational harvest is prohibited for the remainder of the fishing year. Payback of a recreational ACL overage in the following fishing year occurs if vermilion snapper are determined to be overfished and the total ACL (combined commercial and recreational ACLs) is exceeded. Unlike black sea bass, the Council determined that these revised recreational AMs for vermilion snapper that include in-season closure authority best meet the objectives of the FMP while ensuring that overfishing of vermilion snapper does not occur.

Additional Management Measure Contained in This Final Rule

Regulatory Amendment 15 to the FMP revised the AMs for gag by removing the requirement that all other South Atlantic shallow-water grouper (SASWG) are prohibited from harvest when the gag commercial ACL is met or projected to be met (78 FR 49183, August 13, 2013). However, the final rule implementing Regulatory Amendment 15 inadvertently failed to remove regulatory language within the quota closure section for gag that also referred to the associated SASWG closure. Therefore, this final rule removes the outdated language that is no longer applicable to the gag commercial ACL closure.

Comments and Responses

A total of 13 comments were received on Regulatory Amendment 14 and the proposed rule from individuals, a commercial fishing association, and a Federal agency. The Federal agency stated it had no comments on the proposed rule or Regulatory Amendment 14. Three comment submissions were unrelated to the actions contained in Regulatory Amendment 14 and one comment was in opposition to all fishing regulations in general. The commercial fishing association expressed support for the actions in Regulatory Amendment 14 except for the gag commercial trip limit reduction. One comment submission questioned how the recreational ACL is documented for black sea bass and vermilion snapper. Seven individuals submitted comments on various alternatives contained in Regulatory Amendment 14 and the proposed rule. Of these seven individuals, four submissions were in favor of the gag commercial trip limit reduction; one submission was in opposition to changing the commercial fishing year for greater amberjack; one submission was in opposition to changing the black sea bass commercial trip limit; and one submission was in opposition to changing the black sea bass commercial regulations. The comments that oppose one or more of the management measures contained in Regulatory Amendment 14 and the proposed rule are summarized and responded to below.

Comment 1: One commenter suggested that NMFS should reduce the gag commercial trip limit to 300 lb (136 kg), when 75 percent of the gag commercial quota is reached, instead of to 500 lb (227 kg). Another commenter suggested that the gag trip limit should be 500 lb (227 kg) instead of 1,000 lb (454 kg), and then reduced to 100 lb (45 kg) when 75 percent of the commercial quota is reached.

Response: NMFS disagrees that the 1,000 lb (454 kg) gag commercial trip limit should be reduced to 300 lb (136 kg) when 75 percent of the gag commercial quota is reached. NMFS also disagrees that the gag trip limit should be 500 lb (227 kg) instead of 1,000 lb (454 kg), and then reduced to 100 lb (45 kg) when 75% of the gag commercial quota is reached. Regulatory Amendment 14 analyzed alternatives with different step-down reductions to the gag 1,000 lb (454 kg) commercial trip limit, including a reduction to 300 lb (136 kg). At their September 2013 meeting, the Council discussed that the original purpose of this action, as proposed by the Council's Snapper-Grouper Advisory Panel, was to reduce discards of gag when fishermen target shallow-water groupers or other species which co-occur with gag. An additional objective was to extend the length of the gag commercial fishing season. An alternative to specify a gag trip limit of 500 lb (227 kg) that is reduced to 100 lb (45 kg) when 75 percent of the gag commercial quota is reached was not considered in Regulatory Amendment 14. However, some Council members stated that higher trip limits were needed for larger vessels, which require higher costs to operate and to fish than smaller vessels require. Because the other trip limit step-down alternatives considered are less than the preferred alternative of 500 lb (227 kg) gutted weight, these alternatives would be expected to increase the cost per landed fish, and might lower vessel profit per trip. Analyses in Regulatory Amendment 14 showed little difference in the expected length of the commercial season under the various trip limit alternatives; thus, the Council determined that reducing the gag commercial trip limit to 500 lb (227 kg) gutted weight when 75 percent of the gag commercial quota is reached, best balanced the need to minimize regulatory discards of gag and reduce adverse socio-economic impacts to fishermen and fishing communities that utilize the gag resource, while still allowing commercial harvest to continue. In general, the Council considers this step-down approach in the commercial trip limit as a temporary measure while they explore better ways to address discards, enhance vessel profitability, and achieve a longer gag fishing season.

Comment 2: NMFS should not allow commercial fishing for greater amberjack during the months of April, May, and June. Greater amberjack aggregate to spawn during these months, and a commercial closure during this period would protect the spawning stock.

Response: NMFS agrees that closing the commercial sector harvest for greater amberjack during the spawning season months of April, May, and June would provide greater protection for the greater amberjack resource. However, such a seasonal closure is not necessary for the

stock at this time because the stock is healthy and commercial spawning season harvest limitations for greater amberjack for the month of April have been in effect since 1999 (64 FR 3624, January 25, 1999). Greater amberjack are neither overfished nor undergoing overfishing and ACLs and AMs are in place to ensure that overfishing does not occur. Commercial harvest of greater amberjack did not exceed the commercial ACL during fishing years 2007/2008 through 2012/2013; however, members of the public expressed concern that commercial harvest of greater amberjack could increase in the future due to harvest restrictions on other snapper-grouper species. Revising the current greater amberjack commercial fishing year of May 1 through April 30, to a fishing year of March 1 through the end of February, could have positive biological effects to the greater amberjack resource because, if harvest were to increase, it is more likely that the commercial ACL could be reached before the beginning of the spawning season (January through June) and thus provide more protection to the species. Furthermore, changing the greater amberjack commercial fishing year could provide socio-economic benefits to fishers because even if commercial harvest were to increase in the future, beginning the fishing year in March would ensure that greater amberjack are available during the Lenten season (which usually begins in March) when there is the greatest demand for the species. Therefore, changing the fishing year balances the biological protection for the resource and the socio-economic benefits for snapper-grouper fishermen.

Comment 3: One commenter stated that none of the black sea bass commercial regulations should be changed. Another commenter indicated that the commercial trip limit for the black sea bass hook-and-line component should be 800 to 1,000 lb (362 to 453 kg), for the winter and spring months, instead of 300 lb (136 kg) for the winter and spring months of January through April. It is not cost-effective to leave the dock for only 300 lb (136 kg) of black sea bass.

Response: NMFS disagrees that there should be no change in the commercial regulations for black sea bass and disagrees that the commercial trip limit for the black sea bass hook-and-line component should be 800 to 1,000 lb (362 to 453 kg) for the months January through April.

Regulatory Amendment 14 considers a change in the commercial black sea bass fishing year and revisions to the commercial trip limit for the black sea bass hook-and-line component. The Council concluded that a change in the commercial fishing year to begin on January 1 during the black sea bass pot gear closure could provide benefits to the commercial black sea bass fishers who use hook-and-line gear because they would be able to fish for black sea bass when the catch per unit effort is higher, the fish are closer to shore, and there is generally a higher price per pound for black sea bass. In the past several years, the commercial quota has been met for black sea bass before the end of the June through May fishing year. A January 1 start date for the black sea bass commercial fishing season is expected to increase harvest opportunities for black sea bass and co-occurring species with hook-and-line gear from January to April when many other snapper-grouper species such as shallow-water groupers are closed to harvest.

A 300-lb (136-kg) commercial trip limit for the hook-and-line component during the period from January 1 to April 30 would allow fishermen to retain marketable quantities of black sea bass when targeting co-occurring species such as vermilion snapper (which are caught together with black sea bass when using hook-and-line gear) while addressing bycatch and discard mortality issues. The 300-lb (136-kg) commercial trip limit would also help to extend the length of the commercial vermilion snapper fishing season, because fishers would then have the opportunity to catch both black sea bass and vermilion snapper instead of just targeting vermilion snapper. The Council determined that a January 1 fishing year start date for the black sea bass commercial sector, in conjunction with a trip limit of 300 lb (136 kg) for the hook-and-line component, would allow commercial harvest of black sea bass and vermilion snapper to occur at the same time and enhance the socio-economic benefits to those utilizing the black sea bass resource. Additionally, 300 lb (136 kg) is considered an adequate trip limit based on public input and Council members' own experiences of fishing for black sea bass with hook-and-line gear.

Comment 4: For the revised AMs for black sea bass and vermilion snapper, how is the recreational ACL documented, and how does NMFS know when the recreational ACL has been reached?

Response: Recreational landings are collected through the Marine Recreational Information Program (MRIP), and the Southeast Region Headboat Survey. MRIP covers both coastal Atlantic states from Maine to Florida and Gulf of Mexico coastal states from Florida to Louisiana. MRIP provides estimated landings and discards for six 2-month periods (waves) each year. The survey provides estimates for three recreational fishing modes: Shore based fishing, private and rental boat fishing, and for-hire charter and guide fishing. Catch data are collected through dockside angler intercept surveys of completed, recreational fishing trips and effort data are collected using telephone surveys. The Southeast Region Headboat Survey estimates landings and discards for headboats in the U.S. South Atlantic and Gulf of Mexico from required logbooks. Landings data from MRIP and the Headboat Survey are compared to the recreational ACL. If the ACL has been met or exceeded, an AM is triggered, such as an in-season closure. If landings for either MRIP or the Headboat Survey are incomplete, projections of landings based on information from previous years are used to predict when the ACL is expected to be met.

Also, this final rule revises the AM for the black sea bass recreational sector so that the fishing season will be announced prior to the April 1 start date and the length of the season will be set to prevent the recreational ACL from being exceeded. As discussed, this final rule also revises the AMs for the vermilion snapper recreational sector. However, for vermilion snapper, when the recreational ACL is reached, or projected to be reached, the sector will close for the remainder of the fishing year (in-season closure). Additionally, if vermilion snapper commercial and recreational landings exceed both sector's combined ACL, and vermilion snapper are overfished, then during the following year, the recreational ACL will be reduced by the amount of the recreational overage in the prior year (payback).

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of South Atlantic snapper-grouper and is consistent with Regulatory Amendment 14, the FMP, the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic

issues raised by public comment, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. Some comments with indirect socio-economic implications were received and these are addressed in the comments and responses section above. No changes in the final rule were made in response to public comments.

This final rule will modify the commercial and recreational fishing years for greater amberjack from the current fishing year of May 1 through April 30 to a fishing year that begins on March 1 and goes through the last day of February; modify the recreational fishing year for black sea bass from June 1 through May 31 to a fishing year of April 1 through March 31; require as a recreational AM for black sea bass for NMFS to annually announce the recreational fishing season end date based on NMFS projections of when the recreational ACL will be caught; change the commercial fishing year for black sea bass to January 1 through December 31; revise the black sea bass commercial trip limit, for the hook-and-line component, to be 300 lb (136 kg) from January through March (when sea bass pots are prohibited); reduce the commercial trip limit for gag from 1,000 lb (454 kg) to 500 lb (227 kg), when 75 percent of the commercial ACL is projected to be met; modify the recreational AMs for vermilion snapper such that exceeding the recreational ACL will result in an in-season closure; require paybacks for the vermilion snapper recreational sector only if the vermilion snapper stock is overfished and if the total ACL (vermilion snapper commercial and recreational ACLs combined) are exceeded.

NMFS agrees that the Council's choice of preferred alternatives will best achieve the Council's objectives for Regulatory Amendment 14 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble of the proposed rule and this final rule provide a statement of the need for and objectives of this final rule, and it is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. Accordingly, this final rule does not implicate the Paperwork Reduction Act.

NMFS expects this final rule to directly affect commercial fishermen and for-hire vessel operators in the South Atlantic snapper-grouper fishery. The Small Business Administration (SBA) recently modified the small entity size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in finfish harvesting 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 its combined annual receipts are not in excess of $20.5 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is $7.5 million (NAICS code 487210, recreational industries). The SBA periodically reviews and changes, as appropriate, these size criteria. On June 12, 2014, the SBA issued a final rule revising the small business size standards for several industries, effective July 14, 2014 (79 FR 33647). That rule increased the size standard for commercial finfish harvesters from $19.0 million to $20.5 million and the size standard for for-hire vessels from $7.0 million to $7.5 million.

From 2008 through 2012, an annual average of 223 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.5 kg) of black sea bass. These vessels generated annual average dockside revenues of approximately $3.6 million (2011 dollars) from all species caught on the same trips as black sea bass, of which $918,000 (2011 dollars) were from black sea bass. Each vessel, therefore, generated an annual average of approximately $16,000 in gross revenues, of which $4,000 annually were from black sea bass. For the same period, an annual average of 252 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.5 kg) of gag. These vessels generated dockside revenues of approximately $5.7 million (2011 dollars) from all species caught on the same trips as gag, of which $1.7 million (2011 dollars) were from gag. Each vessel, therefore, generated an annual average of approximately $23,000 in gross revenues, of which $7,000 were from gag.

Additionally, an annual average of 304 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.5 kg) of greater amberjack. These vessels generated dockside revenues of approximately $5.7 million (2011 dollars) from all species caught on the same trips as greater amberjack, of which $905,000 (2011 dollars) were from greater amberjack. Each vessel, therefore, generated an annual average of approximately $23,000 in gross revenues, of which $3,000 were from greater amberjack. Also, an annual average of 229 vessels with valid Federal permits to operate in the commercial sector of the snapper-grouper fishery landed at least 1 lb (0.5 kg) of vermilion snapper. These vessels generated dockside revenues of approximately $6.2 million (2011 dollars) from all species caught on the same trips as vermilion snapper, of which $2.9 million (2011 dollars) were from vermilion snapper. Each vessel, therefore, generated an annual average of approximately $27,000 in gross revenues, of which $13,000 were from vermilion snapper. Some vessels may have caught and landed any combination of these four species (black sea bass, gag, greater amberjack, and vermilion snapper) and revenues therefrom are included in the foregoing estimates. Vessels that caught and landed any of these four species may also operate in other fisheries, the revenues of which are not known and are not reflected in these totals. Based on revenue information, all commercial vessels affected by this final rule can be considered small entities.

From 2008 through 2012, an annual average of 1,809 vessels had valid or renewable Federal permits to operate in the for-hire component of the recreational sector of the South Atlantic snapper-grouper fishery. As of July 24, 2013, 1,523 vessels held South Atlantic charter/headboat snapper-grouper permits and about 75 of those vessels are estimated to have operated as headboats in 2013. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) for charter boats are estimated to be $126,032 for Florida vessels, $53,443 for Georgia vessels, $100,823 for South Carolina vessels, and $101,959 for North Carolina vessels. For headboats, the corresponding estimates are $209,507 for Florida vessels and $153,848 for vessels in the other states. Revenue figures for states other than Florida are aggregated to avoid disclosure of confidential information. Based on these average revenue figures, all for-hire operations that would be

affected by this final rule can be considered small entities.

Because all entities expected to be affected by this rule are small entities, NMFS has determined that this final rule will affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Relative to the no action alternative, the modification to the greater amberjack commercial season is not expected to alter the length of the commercial season. NMFS projections show that if closures were to occur, they would be of about the same length for both the no action alternative and the preferred alternative. For this reason, it is unlikely that total ex-vessel revenues for the commercial sector will change. However, there is a possibility that the distribution of those revenues will change in favor of those with first access to the fishery resource, particularly if fishing closures were to occur. NMFS projections for the recreational sector show that the recreational ACL will be met at a later date under the no action alternative than under the preferred alternative. Thus, greater recreational ACL overages may be expected from the preferred alternative as there is no in-season AM for the greater amberjack recreational sector. This will result in higher profits to for-hire vessels in a current fishing year. However, the post-season AM requires that the following year's fishing season would be shortened if the recreational ACL was exceeded during the previous fishing year, resulting in revenue and profit reductions to for-hire vessels. Based on average angler trips for 2008–2012, the for-hire fleet will lose about $161,000 (2011 dollars) in annual profits, of which $160,000 (2011 dollars) will be for headboats and $1,000 (2011 dollars) for charter boats as a result of a shortened season. It cannot be ascertained if a fishing year's increased profits that will be partly due to quota overages will more than compensate for the following year's profit reductions due to fewer trips taken because of a shortened fishing season.

The economic effects of the modification to the recreational fishing year for black sea bass are uncertain. Projection models used to predict the length of the season provide relatively wide variations. Consequently, the expected effects on for-hire vessel profits will also vary widely. Based on 2008–2012 trip data, the change in the recreational black sea bass fishing year is expected to change for-hire profits anywhere from negative $636,000 to positive $167,000 (2011 dollars), depending on the model used to project the season length.

Setting the end date for the black sea bass recreational fishing season at the beginning of each fishing year will in effect set a fixed recreational fishing season for that year. Relative to the no action alternative, this alternative is likely to provide an improved economic environment for increased short-term profits for for-hire vessels, because for-hire vessel owners and operators will have more flexibility in developing better plans (*e.g.*, booking schedules) to take advantage of improved fishing opportunities. One downside of this action is that it tends to increase the likelihood of ACL overages because no fishing closure will be implemented during the fixed season. It cannot be determined at this time if a year's increased profits partly due to quota overages will more than compensate for the following year's profit reductions due to fewer trips taken because of a shortened fishing season.

Changing the commercial fishing year for black sea bass to start on January 1 effectively means that the hook-and-line component of the commercial sector will have first access to the black sea bass resource, because sea bass pots are prohibited from November 1 through April 30. In addition, the trip limit for the hook-and-line component of the commercial sector from January 1 through April 30 will be 300 lb (136 kg); in other months when commercial harvest of black sea bass is allowed, the trip limit for both the sea bass pot and hook-and-line components is maintained at 1,000 lb (454 kg). While the change in the commercial fishing year will benefit the hook-and-line component in that they could start fishing at the beginning of the fishing year, the lower trip limit during the period of January through April will increase the cost per fish harvested for that gear type. It cannot be determined at this time whether this condition will increase the profits of black sea bass hook-and-line vessels. Projections on the length of the commercial black sea bass fishing season show that, in general, fishery closures under the new fishing year will happen earlier in the year than under the no action alternative. There is then a possibility that vessel revenues will be lower under the new fishing year, and it is likely that the sea bass pot component of the commercial sector will bear a greater portion of the revenue loss because of a shorter fishing season than the hook-and-line component. The magnitude of such a loss cannot be estimated beyond stating that the revenues under this action will be lower relative to that of the no action alternative.

Reducing the commercial trip limit for gag from 1,000 lb (454 kg) to 500 lb (227 kg), when 75 percent of the commercial ACL is projected to be met will extend the length of the commercial fishing season by about 1 week. It is not known if this lengthened season will be sufficient for the gag ex-vessel price to increase. In the absence of an increased ex-vessel price, commercial revenues are unlikely to increase. Under this condition, there arises the possibility that profits per trip will decrease because the fishing cost per fish landed for those already catching above 500 lb (227 kg) will be higher. However, maintaining the trip limit at 1,000 lb (454 kg) could eventually lead to a progressive shortening of the commercial season in future years as fishermen race to harvest fish before the season closes. The reduced trip limit will likely favor those catching 300 lb (136 kg), or less, on commercial trips as they will be able to continue their usual fishing activities at relatively the same cost and profit per trip during the extended fishing season.

Modifying the recreational AM for vermilion snapper will require recreational ACL paybacks only if, in addition to the stock being overfished as in the no action alternative, the total vermilion snapper commercial and recreational ACLs are exceeded. NMFS notes that the revised AM will also provide for in-season closures as occurs in the no action alternative. Because vermilion snapper is currently neither overfished nor undergoing overfishing, the revision to the recreational AM will have no short-term economic effects.

The following discussion analyzes the alternatives that were not selected as preferred by the Council, or alternatives for which the Council chose the no action alternative.

Three alternatives, including the preferred alternative, were considered for modifying the commercial and recreational fishing years for greater amberjack. The first alternative, the no action alternative, would maintain the May 1 through April 30 commercial and recreational fishing year. The second alternative would establish a January 1 through December 31 commercial and recreational fishing year for greater amberjack. The second alternative (January 1–December 31) would allow fishermen in south Florida to harvest greater amberjack in March through May before the fish migrate north in late spring. In effect, the first alternative (May 1–April 30) would allow south Florida fishermen to have access to the fish in only 2 months each year;

whereas, fishermen in north Florida through North Carolina would have access to the fish for a much longer annual period. Thus, the Council rejected these two alternatives because the preferred alternative will allow fishermen across the South Atlantic states more equitable access to the fishery resource.

Five alternatives, including the preferred alternative, were considered for modifying the recreational fishing year for black sea bass. The first alternative, the no action alternative, would maintain the June 1 through May 31 recreational fishing year. The second alternative would establish a January 1 through December 31 fishing year; the third alternative, an October 1 through September 30 fishing year; and, the fourth alternative, a May 1 through April 30 fishing year. NMFS employed several models to project the season length for the various alternatives. Projected recreational season lengths vary widely within and across the alternative fishing years and projection models. An attempt was made to estimate for-hire profits based on projected season lengths for the various fishing year alternatives. For some models, the preferred alternative would result in higher for-hire vessel profits than any other alternatives, but for other projection models, some alternatives (*e.g.*, no action alternative) would result in higher for-hire profits than the preferred alternative. In essence, profit estimates were quite uncertain. The Council rejected all of the other fishing year alternatives because they considered them inferior to the preferred alternative in reducing regulatory discards of black sea bass. The preferred recreational fishing year of April through March will reduce the amount of regulatory discards by coinciding with the open seasons for species that are commonly caught together, such as black sea bass and vermilion snapper.

Four alternatives, including the preferred alternative, were considered for modifying the recreational AM for black sea bass. The first alternative, the no action alternative, would prohibit the harvest and retention of black sea bass if the recreational ACL is met or is projected to be met independent of the stock status, and would reduce the recreational ACL in the following fishing year by the amount of the recreational ACL overage in the prior year. The second alternative would require NMFS to annually announce the recreational fishing season end date, with the season starting on April 1 and the end date being determined by NMFS' projection of when the recreational annual catch target (ACT) would be met. The third alternative is the same as the first alternative but without the payback provision in the event of a recreational ACL overage. Comparative economic analysis of the various alternatives cannot be adequately conducted because of the interplay of such factors as an in-season AM that affects overages, paybacks in case of overages, and a better business planning environment (*e.g.*, booking trips that would not be cancelled due to a quota closure) in a given year. The first alternative would provide a business planning environment that would not be as conducive to generating higher for-hire vessel profits as the preferred alternative, but would appear to have a better chance of limiting recreational ACL overages and thus avoid a shortening of the following year's fishing season that would have adverse effects on for-hire vessel profits. The second alternative would likely result in lower for-hire profits than the preferred alternative, because using the recreational ACT for determining the end date of the black sea bass recreational fishing season would result in a shorter fishing season in any given year. The third alternative would likely result in lower for-hire vessel profits than the preferred alternative in a given year, but in the event of overages, it would likely provide higher for-hire vessel profits in the following year because it would not require any payback for recreational ACL overages. The Council selected its preferred alternative because it will tend to provide more stability to the recreational sector and/or higher for-hire vessel profits than the other alternatives.

Four alternatives, including the preferred alternative, were considered for modifying the commercial fishing year for black sea bass. The first alternative, the no action alternative, would maintain the June 1 through May 31 fishing year, with sea bass pots prohibited from November 1 through April 30, and a 1,000 lb (454 kg) trip limit for both the sea bass pot and hook-and-line components. The second alternative would differ from the no action alternative by establishing a July 1 through June 30 commercial fishing year. The third alternative would differ from the no action alternative by setting a May 1 through April 30 fishing year. In addition, three sub-alternatives, including the preferred sub-alternative, were considered for a commercial trip limit for the hook-and-line component from January 1 through April 30 coinciding with the time that sea bass pots are prohibited from harvesting black sea bass. The first sub-alternative would impose a 100 lb (45 kg) hook-and-line trip limit and the second sub-alternative, a 200 lb (90 kg) hook-and-line trip limit. These two sub-alternatives would tend to increase the cost per landed fish more than the preferred sub-alternative. The Council rejected all of the other fishing year alternatives because they were inferior to the preferred alternative in minimizing regulatory discards of black sea bass. The preferred alternative will minimize the amount of regulatory discards by allowing the harvest of black sea bass at the same time as that of co-occurring snapper-grouper species.

Two alternatives, including the preferred alternative, and five sub-alternatives, including the preferred sub-alternative, were considered for modifying the commercial trip limit for gag. Only one other alternative, the no action alternative, would retain the 1,000 lb (454 kg), trip limit for gag throughout the fishing year. The other trip limits considered to be implemented when 75 percent of the gag commercial ACL is landed were the following: 100 lb (45 kg); 200 lb (90 kg); 300 lb (136 kg); and 400 lb (180 kg). Cost per landed fish would be lower under the no action alternative than under the preferred alternative, potentially resulting in higher vessel profit per trip. The Council rejected this alternative because it would lead to a shorter fishing season for gag and thus presents a higher potential to increase discards of gag when vessels fish for co-occurring snapper-grouper species. The other trip limits are lower than the preferred alternative so they would tend to increase the cost per landed fish and might lower vessel profit per trip.

Four alternatives, including the preferred alternative, were considered for modifying the recreational AM for vermilion snapper. The first alternative, the no action alternative, would prohibit the recreational harvest of vermilion snapper after recreational landings reach or are projected to reach the recreational ACL and vermilion snapper are overfished. In addition, this alternative would require a payback equal to the amount of the recreational ACL overage if recreational landings exceed the ACL, regardless of the status of the stock. The second alternative differs from the no action alternative only by not considering the status of the stock when imposing the in-season AM. The third alternative differs from the no action alternative by not considering stock status when imposing the in-season AM and removing the payback provision. Because vermilion snapper is

no longer overfished, the various alternatives would have the same in-season economic effects. In the event of a recreational ACL overage, relative to the preferred alternative, the first and second alternatives would likely result in profit reductions because paybacks are made regardless of stock status; whereas, the third alternative would likely result in less adverse economic effects as it would not require paybacks. While the recreational sector would be economically better off in the short term under the third alternative, the Council rejected this alternative because paybacks are deemed necessary to prevent overfishing of the vermilion stock.

The Council also considered three alternatives to modify the commercial fishing season for vermilion snapper, of which they chose the no action alternative. The no action alternative would maintain the split of the commercial fishing year, with January through June as the first season and July through December as the second season. The commercial ACL is currently split equally between the two seasons. The second alternative, with three sub-alternatives, would retain the split of the fishing year, with 100 percent of the new ACL implemented through Regulatory Amendment 18 to the FMP applied to the second season (78 FR 47574, August 6, 2013). The three sub-alternatives would set the start date of the second season to either July 1, June 1, or May 1. The third alternative, with three sub-alternatives, would retain the split of the fishing year, with 25 percent of the new ACL (Regulatory Amendment 18) applied to the first season and 75 percent to the second season. The three sub-alternatives would set the start date of the second season to either July 1, June 1, or May 1. The Council chose the no action alternative as their preferred alternative because they considered it as the best choice among the fishing year alternatives to minimize regulatory discards of vermilion snapper by those that fish for co-occurring snapper-grouper species.

An item contained in this rule that is not part of Regulatory Amendment 14 is the removal of the requirement that all other SASWG are prohibited from harvest when the gag commercial ACL is met or projected to be met. This action was inadvertently left out of the final rule implementing Regulatory Amendment 15 to the FMP (78 FR 49183, August 13, 2013). The economic consequences of this action were previously analyzed in Regulatory Amendment 15.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

Black sea bass, Fisheries, Fishing, Gag, Greater amberjack, South Atlantic, Snapper-Grouper, Vermilion snapper.

Dated: November 4, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.7, paragraphs (d) and (e) are revised to read as follows:

§ 622.7 Fishing years.

* * * * *

(d) *South Atlantic greater amberjack*—March 1 through the end of February.

(e) *South Atlantic black sea bass recreational sector*—April 1 through March 31. (Note: The fishing year for the commercial sector for black sea bass is January 1 through December 31).

■ 3. In § 622.190, paragraph (a)(5) is revised and paragraph (c)(1)(iii) is removed to read as follows:

§ 622.190 Quotas.

* * * * *

(a) * * *

(5) *Black sea bass.* (i) For the 2014, 2015, and 2016 fishing years—661,034 lb (299,840 kg), gutted weight; 780,020 lb (353,811 kg), round weight.

(ii) For the 2017 fishing year and subsequent fishing years-640,063 lb (290,328 kg), gutted weight; 755,274 lb (342,587 kg), round weight.

* * * * *

■ 4. In § 622.191, paragraphs (a)(7) and (8) are revised to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(7) *Gag.* (i) Until 75 percent of the quota specified in § 622.190(a)(7) is reached—1,000 lb (454 kg), gutted weight, 1,180 lb (535 kg), round weight.

(ii) After 75 percent of the quota specified in § 622.190(a)(7) is reached or projected to be reached—500 lb (227 kg), gutted weight, 590 lb (268 kg), round weight. When the conditions in this paragraph (a)(7)(ii) have been met, the Assistant Administrator will implement this trip limit change by filing a notification with the Office of the Federal Register.

(iii) See § 622.190(c)(1) for the limitations regarding gag after the quota is reached.

(8) *Black sea bass.* (i) *Hook-and-line component.* (A) From January 1 through April 30, until the applicable quota specified in § 622.190(a)(5) is reached—300 lb (136 kg), gutted weight; 354 lb (161 kg), round weight.

(B) From May 1 through December 31, until the applicable quota specified in § 622.190(a)(5) is reached—1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight.

(ii) *Sea bass pot component.* From May 1 through October 31, until the applicable quota specified in § 622.190(a)(5) is reached—1,000 lb (454 kg), gutted weight; 1,180 lb (535 kg), round weight. See § 622.183(b)(6) regarding the November 1 through April 30 seasonal closure of the commercial black sea bass pot component of the snapper-grouper fishery.

(iii) See § 622.190(c)(1) for the limitations regarding black sea bass after the applicable quota is reached.

* * * * *

■ 5. In § 622.193, paragraphs (e)(2) and (f)(2)(i) and (ii) are revised to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(2) *Recreational sector.* The recreational ACL for black sea bass is 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013–2014, 2014–2015, and 2015–2016 fishing years and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2016–2017 fishing year and subsequent fishing years. NMFS will project the length of the recreational fishing season based on when NMFS projects the recreational ACL specified in this paragraph is expected to be met and announce the recreational fishing

season end date in the **Federal Register** prior to the start of the recreational fishing year on April 1. On and after the effective date of the recreational closure notification, the bag and possession limit for black sea bass in or from the South Atlantic EEZ is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

* * * * *

(f) * * *

(2) *Recreational sector.* (i) If recreational landings, as estimated by the SRD, reach or are projected to reach the applicable recreational ACL specified in paragraph (f)(2)(iv) of this section the AA will file a notification with the Office of the Federal Register to close the recreational sector for vermilion snapper for the remainder of the fishing year. On and after the effective date of such notification, the bag and possession limit for vermilion snapper in or from the South Atlantic EEZ is zero. This bag and possession limit also applies in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters.

(ii) If the combined vermilion snapper commercial and recreational landings exceed the combined vermilion snapper ACLs specified in paragraphs (f)(1) and (f)(2)(iv) of this section, and vermilion snapper are overfished, based on the most recent Status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACL for that following year by the amount of the recreational overage in the prior fishing year.

* * * * *

[FR Doc. 2014–26501 Filed 11–6–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130903775–4276–02]

RIN 0648–XD603

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fishery; Notification of Butterfish Quota Transfer

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS transfers quota to the 2014 butterfish domestic annual harvest allocation from the butterfish mortality cap on the longfin squid fishery in order to prevent an overage of the directed butterfish fishery. This action complies with the 2014 specifications and management measures for the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan.

DATES: Effective November 3, 2014, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, (978) 281–9195.

SUPPLEMENTARY INFORMATION: Regulations governing the butterfish fishery are found at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch (ABC), annual catch limit (ACL), domestic harvest and processing (DAH and DAP), and butterfish mortality cap on the longfin squid fishery. The 2014 butterfish DAH for the directed butterfish fishery was set as 3,200 mt, and the butterfish mortality cap on the longfin squid fishery was set at 3,844 mt (79 FR 18834, April 4, 2014). The regulations allow NMFS to transfer up to 50 percent of any unused butterfish allocation from the butterfish mortality cap allocation to the butterfish domestic annual harvest (DAH) if harvest of butterfish in the directed butterfish fishery is likely to exceed the DAH, and provided the transfer of butterfish from the butterfish mortality cap allocation does not increase the likelihood of closing the longfin squid fishery due to the harvest of the butterfish mortality cap. When such a determination is made, NMFS is required to publish a notification in the **Federal Register** to adjust the butterfish DAH and butterfish mortality cap.

NMFS has determined that only 12 percent of the butterfish mortality cap has been harvested as of October 30, 2014, that 86 percent of the butterfish DAH has been harvested, and that the butterfish mortality cap will not be exceeded if 50 percent of the allocation is transferred to the butterfish DAH. Therefore, effective immediately, 1,900 mt will be transferred from the butterfish mortality cap to the butterfish DAH in order to prevent a DAH overage, and to allow for the continued operation of the directed butterfish fishery. The adjusted butterfish mortality cap on the longfin squid fishery is 1,984 mt, and the adjusted butterfish DAH is 5,100 mt. The three-phase management system for butterfish still applies to the directed butterfish fishery, meaning that, during November and December, the fishery will move to phase 2 (i.e., the possession limit for the directed fishery will be reduced to 5,000 mt for vessels fishing with greater than 3 inch (76 mm) mesh) when the butterfish harvest reaches 82 percent of the DAH (4,182 mt). Similarly, the closure threshold for the butterfish mortality cap on the longfin squid fishery would still apply, meaning that the directed longfin squid fishery would be closed if butterfish discards reach 1,885 mt (95 percent of the 1,984 mt butterfish mortality cap).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it is impracticable and contrary to the public interest. This action increases the butterfish DAH by 1,900 mt (from 3,200 mt to 5,100 mt) through December 31, 2014. The regulations at § 648.24(c)(5) allow for a transfer of allocation from the butterfish mortality cap to the butterfish DAH to allow for efficient utilization of the butterfish resource. The butterfish fishing year extends from January 1 to December 31. Data indicate that, as of October 30, 2014, 86 percent of the butterfish DAH has been harvested. For the month of October, vessels participating in the directed butterfish fishery have been able to harvest an average of 51,000 lb (19 mt) per day, or close to 350,000 lb (131 mt) per week. The longfin squid fishery has harvested butterfish discards, which count against the butterfish mortality cap, at a very slow rate this year. As of October 30, 2014, only 12 percent of the butterfish mortality cap on the longfin squid fishery has been harvested,

meaning that just over 1 percent of the butterfish mortality cap has been harvested each month. At this rate, NMFS has projected that less than 15 percent of the current (3,884 mt) butterfish mortality cap will be harvested by December 31, 2014. If implementation of this quota transfer is delayed to solicit public comment, the increase may not be effective prior to the end of the 2014 fishing year and butterfish that is currently allocated to the longfin squid fishery may go unutilized, thereby undermining the intended economic benefits associated with this action. Transferring the allocation allows the directed butterfish fishery to continue to target butterfish while the fish are available. NMFS further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 3, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–26413 Filed 11–3–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140214138–4482–02]

RIN 0648–XD584

Fisheries of the Northeastern United States; Bluefish Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of Florida is transferring a portion of its 2014 commercial bluefish quota to the State of New York. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective November 3, 2014 through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Florida through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan, which was published in the **Federal Register** on July 26, 2000 (65 FR 45844), provided a mechanism for bluefish quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.162(e). The Regional Administrator is required to consider the criteria in § 648.162(e)(1) in the evaluation of requests for quota transfers or combinations.

Florida has agreed to transfer 250,000 lb (113,398 kg) of its 2014 commercial quota to New York. This transfer was prompted by the diligent efforts of state officials in New York not to exceed the commercial bluefish quota. The Regional Administrator has determined that the criteria set forth in § 648.162(e)(1) have been met. The revised bluefish quotas for calendar year 2014 are: Florida, 500,309 lb (226,936 kg); and New York, 1,024,579 lb (464,741 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 3, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–26412 Filed 11–3–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131115973–4885–02]

RIN 0648–BD74

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 96 to the Gulf of Alaska Fishery Management Plan; Management of Community Quota Entities

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

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to implement Amendment 96 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) and an amendment to the Pacific halibut commercial fishery regulations for waters in and off Alaska. Amendment 96 to the FMP and the regulatory amendment modify the Individual Fishing Quota Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in Waters in and off Alaska (IFQ Program). This action will remove a regulation that prohibits a Gulf of Alaska (GOA) Community Quota Entity (CQE) from transferring and holding small blocks of halibut and sablefish quota share (QS). This action will allow CQEs to acquire additional QS and facilitate CQE community resident participation in the IFQ Program. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the FMP, and other applicable law.

DATES: Effective December 8, 2014.

ADDRESSES: Electronic copies of this rule, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) (collectively, Analysis), and the proposed rule prepared for Amendment 96 and the regulatory amendment may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*. An electronic copy of the 2010 Review of the CQE Program under the Halibut and Sablefish IFQ Program prepared by the North Pacific Fishery Management Council (Council) is available from the Council Web site at *www.npfmc.org/community-quota-entity-program*.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Regulatory Authority

NMFS issues regulations to implement Amendment 96 to the FMP and revise the halibut and sablefish provisions of the CQE Program. The Council recommended and NMFS approved the FMP in 1978 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP and general regulations governing sablefish appear at 50 CFR part 679. Fishing for Pacific halibut (*Hippoglossus stenolepis*) is managed by

the International Pacific Halibut Commission (IPHC) and the Council under the Northern Pacific Halibut Act of 1982 (Halibut Act). Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Council-recommended regulations may be implemented by NMFS only after approval by the Secretary of Commerce.

Background

The Notice of Availability for Amendment 96 was published in the **Federal Register** on July 25, 2014 (79 FR 43377), with a 60-day comment period that ended September 23, 2014. The Secretary approved Amendment 96 on October 21, 2014. The Council submitted the proposed rule to NMFS, and it was published in the **Federal Register** on August 7, 2014 (79 FR 46237). The 30-day comment period on the proposed rule ended on September 8, 2014. NMFS received a total of three comment letters on Amendment 96 and the proposed rule during the comment periods. A summary of the comments and the responses by NMFS are provided under the "Comments and Responses" section of this preamble.

A detailed review of the provisions of Amendment 96, the proposed regulations, and the rationale for these regulations is provided in the preamble to the proposed rule (79 FR 46237, August 7, 2014). The proposed rule is available from the NMFS Alaska Region Web site (see **ADDRESSES**).

This final rule implements Amendment 96 and amends CQE Program regulations. Amendment 96 amends the FMP to remove a restriction that prohibits a GOA CQE from transferring and holding small blocks of sablefish QS. This final rule amends the CQE Program regulations by removing a restriction that prohibits a GOA CQE from transferring and holding small blocks of halibut QS.

The IFQ and CQE Programs

The IFQ Program is a limited access privilege program for the commercial fixed-gear halibut and sablefish (*Anoplopoma fimbria*) fisheries in the exclusive economic zone off Alaska. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific regulatory areas. Quota shares equate to individual harvesting privileges that are given effect on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a regulatory area. An explanation of the IFQ Program can be found in the final rule implementing the program (58 FR 59375, November 9, 1993).

The Council recommended the CQE Program as an amendment to the IFQ Program in 2002 (Amendment 66 to the FMP), and NMFS implemented the program in 2004 (69 FR 23681, April 30, 2004). The CQE Program provides fishing opportunities to communities in the GOA that depend on the halibut and sablefish fisheries. Another CQE Program, known as the Aleutian Islands CQE Program, provides similar opportunities to coastal communities in the Aleutian Islands (79 FR 8870, February 14, 2014). The Aleutian Islands CQE Program is not affected by this action and is not addressed further. Where the terms "CQE" or "CQE Program" are used in this preamble, they are referring to the regulations and management measures applicable to the GOA CQE Program, and not to the Aleutian Islands CQE Program.

The CQE Program allows 45 small, remote, coastal communities in the GOA to transfer and hold catcher vessel halibut and sablefish QS in specific regulatory areas (see Table 21 to Part 679). The CQE is the holder of the QS and is issued the IFQ annually by NMFS. The CQE leases the IFQ to individual GOA community residents. The program's structure promotes community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries. Long-term retention of QS by the CQE creates a permanent asset for the community to use. Both CQE- and non-CQE-held QS provide community residents fishing access that promotes the economic health of communities. The final rule implementing the CQE Program describes the CQE Program objectives and provisions (69 FR 23681, April 30, 2004).

Several IFQ Program provisions apply to CQE Program participants. These provisions include regulatory area and vessel size categories; QS use caps; and QS blocks. A detailed discussion of these provisions and others that restrict CQE transfer and holding of QS is provided in the proposed rule preamble for this action (79 FR 46237, August 7, 2014) and in the final rule implementing the CQE Program (69 FR 23681, April 30, 2004). Except for the small block restrictions that this final rule will revise, these QS use provisions will continue to apply to the CQE program participants. For background purposes, a summary of the QS use provisions follows.

IFQ Regulatory Area and Vessel Size Categories

Fixed-gear halibut and sablefish QS is specific to regulatory area and vessel size category. In the GOA there are three IPHC halibut regulatory areas—Areas 2C (Southeast Alaska), 3A (Central Gulf of Alaska), and 3B (Western Gulf of Alaska)—and four sablefish regulatory areas: Southeast (SE), West Yakutat (WY), Central GOA (CG), and Western GOA (WG). Each QS is assigned to a vessel category based upon the size of the vessel from which IFQ halibut and sablefish may be harvested and/or processed (see regulations at § 679.40(a)(5)). Halibut QS and its associated IFQ are assigned to one of four vessel categories in each regulatory area: Freezer (catcher/processor) category (category A); catcher vessel greater than 60 ft. length overall (LOA) (category B); catcher vessel 36 ft. to 60 ft. LOA (category C); and catcher vessel 35 ft. LOA or less (category D). Sablefish QS and its associated IFQ are assigned to one of three vessel categories in each regulatory area: Freezer (catcher/processor) category (category A); catcher vessel greater than 60 ft. LOA (category B); and catcher vessel 60 ft. LOA or less (category C).

CQEs may obtain by transfer and hold certain vessel categories of QS in specified areas in order to facilitate local support of community fishing operations (see § 679.40 and Table 21 to Part 679). CQEs may obtain by transfer and hold sablefish QS in all IFQ regulatory areas and vessel categories. However, CQEs are restricted with respect to the IFQ regulatory area(s) and vessel category of halibut QS they may transfer and hold. A detailed explanation of the IFQ regulatory area(s) and vessel category of halibut QS a CQE can transfer and hold is provided in the proposed rule for this action (79 FR 46237, August 7, 2014).

The CQE Program authorizes CQEs to obtain by transfer and hold catcher vessel QS: Category B, C, and D halibut QS, with area-specific limitations for category D halibut QS; and category B and C sablefish QS. However, the vessel size categories do not apply to IFQ derived from QS held by a CQE, with an exception for category D halibut QS in Area 3A. The prohibition on CQEs' transfer and holding of category D halibut QS in Area 2C, the limitation on the amount of category D halibut QS that an Area 3A CQE may transfer and hold, and the requirement that IFQ derived from Area 3A category D QS must (among other restrictions) be fished on a category D vessel are discussed in more detail in the

preamble to the proposed rule for this action (79 FR 46237, August 7, 2014). These limitations were intended to balance the Council's objective for providing CQEs with increased opportunities to acquire halibut QS with its objective to limit potential competition for category D halibut QS between non-CQE and CQE QS holders. Vessel category D halibut QS is generally the least expensive category of halibut QS because non-CQE IFQ derived from category D QS must be used on the smallest category of catcher vessel. It is often transferred and held by smaller operations or by new entrants to the IFQ fisheries.

CQE Program QS Use Caps

Individual community use caps limit the amount of halibut QS and sablefish QS that each CQE may transfer and hold on behalf of a community. The individual community cap is limited to the individual IFQ Program use caps. Each GOA CQE is limited to transferring and holding a maximum of 1 percent of the Area 2C halibut QS (see regulations at § 679.42(f)(2)(i)) and a maximum of 0.5 percent of the combined Area 2C, 3A, and 3B halibut QS (see regulations at § 679.42(f)(2)(ii)). Each GOA CQE also is limited to transferring and holding a maximum of 1 percent of the Southeast sablefish QS (see regulations at § 679.42(e)(5)) and a maximum of 1 percent of all combined sablefish areas QS (see regulations at § 679.42(e)(4)(i)).

In addition to individual community use caps, cumulative community use caps limit the amount of halibut QS and sablefish QS that all CQE eligible communities within an IFQ regulatory area can transfer and hold. The cumulative community use caps limit all CQEs in the GOA to a maximum of 21 percent of the total halibut QS pool (see regulations at § 679.42(f)(5)) and a maximum of 21 percent of the total sablefish QS pool (see regulations at § 679.42(e)(6)) in each IFQ regulatory area in the GOA.

QS Blocks

The IFQ Program initially issued QS in blocks. A block is a consolidation of QS units that cannot be subdivided upon transfer (see regulations at § 679.41(e)(1)). One of the primary purposes of QS blocks and the subsequent amendments to the block regulatory provisions was to conserve small blocks of QS that could be transferred at a relatively low cost by crew members and new entrants to the IFQ fisheries. The IFQ Program incorporates a "sweep-up" provision to allow very small blocks of QS to be permanently consolidated, up to specified limits, so as to be practical to fish (see regulations at §§ 679.41(e)(2) and (e)(3)).

QS Block Use Cap

A block use cap restricts how many blocks of QS an individual can transfer and hold. The purpose of this cap is to limit the consolidation of blocked QS and to ensure that smaller aggregate units would be available on the market, thereby maintaining the diversity in operation types that exist in more remote coastal communities.

The IFQ Program also limits the number of blocks a CQE may transfer and hold. CQEs may transfer and hold up to a maximum of 10 blocks of halibut QS and 5 blocks of sablefish QS in each GOA regulatory area (see regulations at § 679.42(g)(1)(ii)). These limits on CQE block holdings and the limit on where CQEs can hold QS restrict CQEs to 20 halibut QS blocks (10 blocks in each of two regulatory areas) and 20 sablefish QS blocks (5 blocks in each of four regulatory areas).

Minimum Block Size

During development of the CQE Program, the Council and NMFS determined that if no limit on the acquisition of blocked QS was established, then gains in CQE holdings could reflect losses of QS holdings among residents of the same CQE communities. Therefore, CQEs were restricted from transferring or holding blocked QS of less than a minimum size to preserve fishing opportunities for new entrants in certain regulatory areas.

CQE program regulations prohibit CQEs from transferring and holding a QS block that is less than the "sweep up" limit, or the number of QS units initially issued as blocks that could be combined to form a single block (see regulations at §§ 679.41(e)(4) and (e)(5)). Quota share blocks that are less than or equal to the "sweep up" limit are known as "small blocks." The amount of QS units that comprise a small block in each IFQ regulatory area in the GOA is specified for the halibut fishery (see regulations at § 679.41(e)(3)) and for the sablefish fishery (see regulations at § 679.41(e)(2)). The CQE Program regulations do not prohibit CQEs in Area 3B from transferring or holding small blocks of halibut QS. Fewer small blocks exist in Area 3B and few new entrants in Area 3B have sought these small blocks of halibut QS (69 FR 23681, April 30, 2004).

Actions Implemented by This Final Rule

This final rule amends the FMP and halibut and sablefish CQE regulations to remove the restriction on CQEs' ability to purchase and use small blocks of halibut and sablefish QS less than or equal to the sweep-up limit currently specified in regulations at §§ 679.41(e)(5) and 679.41(e)(4), respectively. The proposed rule preamble provides a detailed description of the rationale for removing the regulation prohibiting a GOA CQE from transferring and holding small blocks of halibut QS (79 FR 46237, August 7, 2014).

Under this final rule, all CQEs in the GOA may receive by transfer any size block of halibut and sablefish QS to hold for use by eligible community members. CQEs will be able to transfer similar sized blocks of QS in the market place as individual non-CQE QS holders. The objectives of this final rule are to provide CQE communities in the GOA with increased opportunity to transfer and hold QS and sustain participation of CQE community residents in the IFQ halibut and sablefish fisheries.

This final rule also updates Table 21 to Part 679 to clarify the category of halibut QS (A, B, C and D) and IFQ regulatory area of the QS that a CQE can transfer by area. This revision to Table 21 to Part 679 provides a clear and more comprehensive summary of CQE harvesting privileges.

Effects of This Final Rule

A description of the anticipated effects of this action is included in the preamble to the proposed rule and is summarized here. This final rule provides additional opportunities for CQEs to transfer and hold QS, and NMFS expects it will not adversely affect the ability of non-CQE fishery participants to transfer and hold small blocks of QS. In evaluating this action, the Council and NMFS considered the current participation of CQE and non-CQE QS holders in the IFQ fishery, and the potential impact on QS access and markets. The Council and NMFS determined that removing the small block restriction from the CQE Program should improve the ability of CQEs to obtain the most affordable blocks of QS without negatively impacting the ability of non-CQE fishery participants to obtain similar size blocks of QS. See the proposed rule preamble and section 2.7.2 of the Analysis for additional detail (see **ADDRESSES**).

Analysis of the percent of blocked and unblocked QS in 2013 (the year of the most recent available data) indicates that the percentage of small block QS relative to the total amount of QS in the GOA IFQ regulatory areas is greater for halibut (11.3 percent of the total Area

2C and Area 3A halibut QS) than sablefish (3.7 percent of the total SE., WY, CG, WG sablefish QS). Therefore, while this action will impact sablefish QS holders, it likely will have a greater impact on halibut QS holders. As described in the preamble to the proposed rule, section 2.7.2.1 of the Analysis considers the maximum potential impacts of the action, which assumes that all eligible communities form CQEs and secure funding to transfer all of the newly available small blocks of QS, up to CQE Program limits described above and in regulations at §§ 679.41 and 679.42. The Analysis indicates this outcome is unlikely given reasonably foreseeable trends in QS holdings by CQEs.

Analysis of the amount of small block QS by regulatory area in 2013 indicates that cumulative use caps on CQE QS ownership will not constrain the maximum potential transfer of QS by CQEs. The more likely constraint on CQE transfer and holding of QS will be the limit on the number of blocks that a CQE can transfer and hold in any one regulatory area (10 halibut blocks and 5 sablefish blocks). Even at maximum CQE participation, QS block limits and the reservation of a limited amount of Area 3A D share QS for purchase by CQEs representing communities in Area 3A will prevent CQEs from collectively acquiring all small block halibut QS made available under this action. Thus, the Council and NMFS determined that small block halibut QS will continue to be available to non-CQE participants in the IFQ halibut fishery under this final rule. See section 2.7.2.1 of the Analysis for additional detail.

For sablefish, under allowable block limits, CQEs will be able collectively to transfer and hold all of the available sablefish small block QS in each IFQ regulatory area. Given the financial barriers to CQE transfers of QS described in the Analysis and in the preamble to the proposed rule, the Council and NMFS determined it is unlikely that CQEs will transfer the maximum amount of small block sablefish QS made available by this action. Thus, small block sablefish QS will continue to be available to non-CQE participants in the IFQ sablefish fishery under this final rule. See sections 2.6.3.1 and 2.7.2.1 of the Analysis for additional detail.

Although this action allows CQEs to transfer and hold small blocks of A share halibut and sablefish QS, the Council and NMFS anticipate that CQE purchases of A share QS will be limited. Because IFQ derived from A share halibut and sablefish QS may be caught and processed at sea, A share QS is typically priced much higher than all other QS categories. In addition, the total amount of A share QS issued is small relative to all other categories of QS. Therefore, the potential impact of allowing CQEs to purchase small blocks of A share QS on new entrants, small-boat operations and CQE fishery participants will be minimal under this final rule. See sections 2.6.3.1 and 2.7.2.1 of the Analysis for additional detail.

To date, CQEs have transferred and held a limited amount of QS that likely has not negatively impacted non-CQE fishery participants' ability to acquire QS in the open market. Transferring and holding small block QS will benefit CQEs, their community members, and future community members, who tend to rely on these restricted blocks of mainly small vessel category QS. Allowing CQEs to transfer and hold small block QS could also enhance a CQE's ability to keep QS in remote communities and create some operational efficiencies that provide a net benefit to both the CQEs and their community residents.

Changes From the Proposed Rule

There are no changes to the proposed regulations (79 FR 46237, August 7, 2014).

Comments and Responses

During the public comment period on the Notice of Availability for Amendment 96 and the proposed rule to revise CQE program regulations, NMFS received three comment letters. Two letters from members of the public did not address the proposed action. These letters expressed concerns about fishery management policies that are outside the scope of this action. The third comment letter expressed concerns about and did not support Amendment 96 and the proposed rule. The letter was submitted by an organization representing non-CQE IFQ Program participants and contained six comments. NMFS' responses to the public comments on Amendment 96 and the proposed rule are presented below. No changes were made to this final rule in response to the comment letters received.

Comment 1: The commenter states that Amendment 96 violates National Standard 4 of the Magnuson-Stevens Act, which specifies that conservation and management measures shall not discriminate between residents of different states and that any allocation of fishing privileges must be fair and equitable. Amendment 96 benefits CQEs and residents of CQE communities at the expense of non-residents of Alaska that participate in the IFQ fishery. This is unfair, discriminatory, and contrary to the requirements of National Standard 4.

Response: NMFS disagrees that Amendment 96 violates National Standard 4 of the Magnuson-Stevens Act. The Council and NMFS have determined that Amendment 96 is consistent with the requirements of the Magnuson-Stevens Act. The CQE Program was established to allow a group of non-profit entities to hold QS on behalf of residents of specific small, geographically isolated, rural communities located adjacent to the coast of the GOA with a historical link to the halibut and sablefish fisheries. Communities that do not meet the eligibility criteria may not participate in the program and do not benefit from the CQE Program. Communities that are excluded from the CQE Program include Alaska and non-Alaska communities. Therefore, this action is not predicated on an effort to discriminate between residents of different states.

Amendment 96 removes a prohibition on CQEs' transferring and holding small blocks of QS. Non-CQE participants in the IFQ Program are not subject to this prohibition, so this action is not predicated upon any effort to unfairly advantage CQEs.

As described in the proposed rule preamble (79 FR 46237, August 7, 2014) and in section 2.2 of the Analysis, Amendment 96 and this final rule promote the Council's objective to provide an opportunity for CQE communities to acquire additional QS and facilitate sustained participation by CQE community residents in the IFQ Program. Since the inception of the IFQ Program, the number of resident halibut and sablefish QS holders has declined substantially in CQE communities. This transfer of QS and the associated fishing effort from CQE communities has limited the ability of residents to locally transfer and hold QS and reduced the diversity of fisheries to which fishermen in these communities have access (see section 2.6.1.2 of the Analysis). Fisheries participation by CQE community residents may also be limited because these individuals live in small, remote coastal communities and have a higher cost of participation than individuals living in larger communities with road access to supplies and markets (see section 2.6.3 of the Analysis). The Council and NMFS intend for Amendment 96 and this final rule to improve the ability of CQEs to obtain the most affordable blocks of QS and lease annual IFQ to community residents without negatively impacting the ability of non-CQE fishery

participants to obtain similar size blocks of QS. Also see the response to comment 3.

Comment 2: The commenter states that the Council's recommendation of Amendment 96 without considering their proposal is unfair and discriminatory. In February 2013, the commenter submitted a proposal to the Council that was similar to Amendment 96. The commenter proposed increasing the small block QS transfer and holding limits that apply to non-CQE participants in the IFQ Program. The Council denied the proposal and referred it to the IFQ Committee for consideration.

Response: The Council did not deny the commenter's proposal to increase the amount of small block QS that may be transferred and held by non-CQE fishery participants, but referred the proposal to its IFQ Committee for review and discussion (see the minutes of the February 2013 Council meeting at *http://www.npfmc.org/wp-content/PDFdocuments/minutes/213Council.pdf*.). NMFS notes that referral of the commenter's proposal to the IFQ Committee is consistent with the established Council process for addressing proposed revisions to the IFQ Program. Under its long-established process, the Council accepts proposals from the public until a scheduled date prior to convening the IFQ Committee. The Council's IFQ Committee plays a significant role in reviewing proposals and developing recommendations to the Council for improvements to the IFQ Program. The IFQ Committee is a Council advisory body comprised of participants in the IFQ Program. The Council relies on the committee to review and prioritize the large numbers of proposals to revise the components of the IFQ Program that it receives each year. For additional detail on the Council's process for reviewing the IFQ Program, see the NMFS Web site at *https://alaskafisheries.noaa.gov/ram/ifq/ifqpaper.htm*. NMFS has determined that Amendment 96 and this final rule are consistent with the Magnuson-Stevens Act and do not unfairly disadvantage or discriminate against non-CQE participants in the IFQ program. See the response to Comment 1.

Comment 3: The commenter states that CQEs have an unfair financial advantage compared to non-CQE participants in the IFQ Program. CQEs are tax-exempt and can retain more revenue from their fishing activities than IFQ program participants who must pay taxes. The commenter is also aware of efforts to establish a low interest loan program for CQEs to purchase halibut and sablefish QS. The tax-exempt status of CQEs and the potential loan program discriminate against non-CQE fishermen and make it difficult for them to purchase QS.

Response: NMFS disagrees that that CQEs have an unfair financial advantage compared to non-CQE participants in the IFQ Program. Section 2.6.3.4 in the Analysis and the proposed rule preamble describe that CQEs have had significant difficulties obtaining financing to transfer and hold QS, and that these difficulties have created a barrier to participation in the CQE Program. The Analysis describes that at prevailing QS prices, it is difficult or infeasible for CQEs to transfer and hold QS because they do not generally have assets to offer as collateral for a loan. In addition, the administrative cost necessary to establish and support the CQE organization likely makes it more difficult for a CQE to obtain financing to transfer and hold QS than for a non-CQE fishery participant who does not incur these administrative costs. Because CQEs hold QS and lease annual IFQ to local residents, there is a layer of both administrative cost and fiduciary responsibility that has made it difficult for CQEs to access funding sources to transfer and hold QS. The administrative overhead for a CQE includes arranging and maintaining financing for the QS, negotiating transfers of QS, developing and administering the criteria for distributing IFQ among potential lessees, and submitting annual reports to NMFS detailing its activities. As described in the Analysis, the prevailing price of QS has been sufficiently high that CQEs have not been able to afford the administrative costs, while leasing the shares to community residents at a reasonable rate, and still have funds remaining for debt repayment. This information provides strong evidence that CQEs do not have a financial advantage over non-CQE fishery participants.

The Council and NMFS intend for this final rule to improve the ability of CQEs to transfer and hold QS by removing the prohibition on CQEs' holding small block QS. Removing this prohibition will provide CQEs with the opportunity to transfer and hold QS that is available at a lower cost, and therefore will be more affordable for CQEs.

As described in section 2.7.2 of the Analysis and in the preamble to the proposed rule, NMFS anticipates that Amendment 96 and this final rule will not adversely affect the ability of non-CQE participants to transfer and hold small blocks of QS. NMFS expects that this final rule may allow some redistribution of QS because it is intended to have distributional effects among QS holders by promoting the transfer of QS from existing QS holders to the CQE. However, based upon the Analysis, the Council and NMFS anticipate this final rule may provide additional opportunity for CQEs to transfer and hold more affordable QS without negatively impacting non-CQE participants in the IFQ Program (see section 2.7.3 of the Analysis for additional detail).

Section 2.7.2.4 of the Analysis and the proposed rule preamble note that removing the prohibition on CQEs purchasing small blocks of halibut and sablefish QS could create the potential for greater competition in the market for purchasing QS, which could result in higher QS prices. However, the Analysis notes that such increases in QS prices would occur only if CQEs can afford to pay as much or more for small block QS than non-CQE fishery participants. As described above and in section 2.6.3.4 of the Analysis, the difficulties that CQEs have faced in obtaining financing to transfer and hold QS are unlikely to change under Amendment 96 and this final rule. Therefore, the Council and NMFS determined it is unlikely that CQEs will accrue the financial assets to transfer a quantity of QS that would have a significant impact on QS price or on the ability of non-CQE fishery participants' to transfer and hold QS.

Several other factors are also likely to limit the impact of this final rule on non-CQE fishery participants. The most important factors are (1) a CQE must receive QS by transfer on the open market from a willing seller, (2) the amount of small block QS made available to CQEs through this final rule is limited to 11.3 percent of the combined halibut QS pool for Areas 2C and 3A, and 3.7 percent of the combined sablefish QS pool for the SE., WY, CG, and WG areas (see section 2.7.2.1 in the Analysis), and (3) each CQE will be subject to existing restrictions for CQEs on transferring and holding QS that are specified in regulation. Section 2.7.2.1 in the Analysis and the proposed rule preamble note that these restrictions include regulatory area designations applicable to all QS holders, individual and cumulative QS use caps specific to CQEs, a prohibition on CQEs transferring and holding category D halibut QS in Area 2C, a limitation on the amount of category D halibut QS that a CQE in Area 3A may transfer and hold, and the requirement that IFQ derived from Area 3A category D QS must (among other restrictions) be

fished on a category D vessel. Therefore, NMFS does not anticipate that this final rule will negatively impact the ability of non-CQE fishery participants to transfer and hold small blocks of QS. NMFS has determined that Amendment 96 and this final rule are consistent with the Magnuson-Stevens Act and do not unfairly disadvantage or discriminate against non-CQE participants in the IFQ program. See the response to Comment 1.

NMFS notes that development of a loan program for CQEs to transfer and hold QS is outside NMFS' authority and the scope of this action. The final rule implementing the CQE Program describes that the Council and NMFS have determined that a non-profit entity is the appropriate type of entity to transfer and hold halibut and sablefish QS on behalf of CQE communities (69 FR 23681, April 30, 2004). The decision to grant non-profit organizations tax-exempt status is based on State of Alaska law and is outside NMFS's authority and the scope of this action.

Comment 4: The commenter notes that the proposed rule states that the CQE program is essential to the survival of small Alaska communities because members of these communities either sold their initially issued QS or moved from their communities. The proposed rule also suggests that CQEs will offer "favorable lease terms as compared to the open market." The commenter disagrees with these assertions. The CQE program will not address the issue of initial recipients selling their QS and moving from communities. The price of QS will rise and fall with the demands of the open market and a CQE cannot change this by offering favorable lease rates to community residents.

Response: The final rule implementing the GOA CQE Program (69 FR 23681, April 30, 2004) and the proposed rule to implement Amendment 96 (79 FR 46237, August 7, 2014) describe that the Council and NMFS have determined that the CQE Program promotes community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries. The Council and NMFS recognize that significant barriers exist to CQEs obtaining financing to transfer and hold QS and these barriers have limited participation in the program. Amendment 96 and this final rule are intended to provide an opportunity for increased participation in the CQE program. The amendment allows CQEs to transfer and hold small block QS, which is generally available at a lower price than larger QS blocks or unblocked QS (see section 2.6.2 in the Analysis for additional detail).

Residents of CQE communities who lease QS are likely to pay a lower rate to lease IFQ from a CQE than they would pay to lease IFQ from a non-CQE QS holder. Section 2.7.1.4 in the Analysis describes that the two currently active CQEs lease IFQ to community residents at a 45-percent rate, meaning that the CQE recovers 45 percent of the gross fishing revenue. The CQEs use these funds to repay the debt from purchasing QS and cover administrative costs, and may use some of the funds to transfer and hold additional QS in the future. NMFS cannot compare this 45-percent rate to the terms offered in private IFQ leases, since private parties do not submit lease data to NMFS, but it is likely that CQEs are offering favorable lease terms in relation to the market average. Based on this information, the Council and NMFS have determined that Amendment 96 and this final rule may enhance the ability of CQEs to transfer and hold QS for the long-term benefit of community residents. Also see the response to Comment 3.

Comment 5: The commenter states that individuals who are not eligible to lease IFQ from a CQE would be disadvantaged compared to fishermen harvesting CQE-held IFQ because those fishermen are subject to less restrictive regulations. For example, CQE fishery participants are exempt from the requirement to harvest IFQ on a vessel that corresponds to the vessel size category of the IFQ. In addition, CQEs must hire skippers to harvest annual IFQ. Non-CQE fishery participants are no longer allowed to hire a skipper without additional restrictions.

Response: The final rule implementing the GOA CQE Program (69 FR 23681, April 30, 2004) and the proposed rule to implement Amendment 96 (79 FR 46237, August 7, 2014) describe that the Council and NMFS have identified specific objectives for the CQE Program and rationale for specific provisions that result in different requirements for CQE and non-CQE participants in the IFQ fisheries (see sections 2.6.1.2 and 2.6.2 in the Analysis for additional detail). These fishery provisions and requirements are consistent with the goals for the IFQ Program (58 FR 59375, November 9, 1993). NMFS has determined that this final rule meets the Council's objective to provide CQE communities in the GOA with long-term opportunities to access the halibut and sablefish fisheries, is consistent with the goals for the IFQ Program, and is not likely to have significant effects on individual participants in the IFQ fisheries or residents of non-CQE communities.

In recommending Amendment 96, the Council and NMFS balanced the objective of promoting community access to QS and IFQ with the intent to maintain entry-level opportunities for fishermen residing in other fishery-dependent communities, consistent with the goals of the IFQ Program. This final rule allows IFQ derived from category B and C catcher vessel share QS held by a CQE to be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived (see § 679.42(a)(2)(iii)). As described in section 2.6.1.2 of the Analysis and the final rule implementing the CQE Program, allowing IFQ derived from category B and C catcher vessel share QS held by a CQE to be fished from a vessel of any size facilitates the use of IFQ on the wide range of vessel types that fish in GOA communities.

NMFS notes that the CQE Program does not provide this flexibility for CQEs holding category D catcher vessel QS in Area 3A. Regulations at § 679.42(a)(2)(iii) specify that IFQ derived from category D catcher vessel QS held by a CQE must be fished on a category D vessel (35 ft. LOA or less), consistent with requirements for non-CQE QS holders. The Council and NMFS determined that CQEs should be subject to the same rules as other QS holders participating in the IFQ Program with regard to the use of category D catcher vessel QS in Area 3A. The comment refers to IFQ Program regulations that require, with some exceptions, a catcher vessel QS holder to be onboard the vessel during harvest and offloading of IFQ derived from their QS. As described in the final rule to implement the IFQ Program, this requirement at § 679.42(c) is intended to promote stewardship by providing active fishermen with a vested interest in the long-term productivity of the halibut and sablefish resources. CQE community fishermen do not hold QS but instead are allowed to lease IFQ derived from CQE-held QS. This final rule maintains regulations at § 679.42(c) and § 679.42(i)(5) that require that during harvest and offloading, the lessee must be onboard the vessel fishing the IFQ leased from the CQE, consistent with the owner onboard objective for the IFQ Program. The regulations at § 679.42(i)(5) specify that an individual who receives IFQ derived from QS held by a CQE may not designate a hired master to fish the community IFQ; the individual must be on board the vessel when the IFQ is being fished.

Individuals who hold leases of IFQ from a CQE are considered IFQ permit holders and are subject to the regulations that govern other IFQ permit holders.

Comment 6: A CQE is allowed to lease its IFQ and is able to benefit from QS through multiple generations. A non-CQE QS holder's beneficiaries do not receive the long-term benefit of the QS after the death of the non-CQE QS holder. The non-CQE QS holder's beneficiary may only lease the resulting IFQ for three years and after that time, the beneficiary must meet the eligibility requirements to hold QS and must be onboard the vessel when the IFQ is harvested, or they must transfer the QS. The commenter states that this is unfair to non-CQE fishery participants, will reduce the amount of QS on the market, and lead to higher QS purchase prices.

Response: The commenter is correct that a CQE could lease IFQ to multiple generations of CQE community fishermen. NMFS notes this is consistent with the CQE Program objective to provide CQE community residents with long-term opportunities to access the halibut and sablefish fisheries, as described in the proposed rule, in section 2.6.1.2 of the Analysis, and in the final rule implementing the CQE Program (69 FR 23681, April 30, 2004).

The commenter contrasts the CQE Program objective to promote long-term QS holdings by the community entity with regulations at § 679.41(k) that impose a limit on the amount of time a non-CQE QS holder's beneficiary may hold the QS after the non-CQE QS holder's death, if the beneficiary is not otherwise eligible to hold QS under IFQ Program requirements at § 679.41(d).

As described in the response to Comment 4, the Council and NMFS have determined that the CQE Program structure promotes community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries. To meet the objectives for the CQE Program, the Council and NMFS have developed different requirements for CQE and non-CQE participants in the IFQ fisheries (see the response to Comment 5). NMFS has determined that Amendment 96 and this final rule meet the Council's objective to provide the CQE communities with long-term opportunities to access the halibut and sablefish IFQ fisheries, is consistent with the goals for the IFQ Program, and is not likely to have significant effects on individual participants in the IFQ fisheries or residents of non-CQE communities.

Section 2.6.3.1 of the Analysis and the proposed rule preamble for this action (79 FR 46237, August 7, 2014) indicate that this action is not expected to result in increased demand for QS or a higher price for QS. These impacts have not been observed in the past and are not likely to occur in the future, given the present constraints on CQE access to investment capital and the range of other factors that also influence QS prices (see the response to Comment 3). Therefore, NMFS does not consider existing and potential future non-CQE QS holders to be significantly impacted by this action.

Classification

The Administrator, Alaska Region, NMFS determined that Amendment 96 to the FMP is necessary for the conservation and management of the sablefish IFQ and CQE fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the regional council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The final action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters off Alaska.

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

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall also explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the proposed and final rules. Copies of these rules are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) is required by the Regulatory Flexibility Act (RFA). This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) prepared for the proposed rule and addresses the applicable requirements of section 604 of the RFA. The IRFA was summarized in the "Classification" section of the preamble to the proposed rule.

Analytical requirements for the FRFA are described in the RFA, sections 604(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The "universe" of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment is considered the universe for purposes of this analysis.

In preparing an FRFA, an agency may provide either a quantifiable or

numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Rule

The objectives of this final rule are to provide CQE communities in the GOA with increased opportunity to transfer and hold QS and sustain participation of CQE community residents in the IFQ halibut and sablefish fisheries. An explanation of the need for this final rule is described in preamble of this rule and is not repeated here. This information also was described in detail in the preamble to the proposed rule (79 FR 46237, August 7, 2014).

Comments on the IRFA

NMFS published the proposed rule on August 7, 2014 (79 FR 46237), with comments invited through September 8, 2014. NMFS received three comment letters from the public on Amendment 96 and the proposed rule. None of these comments specifically addressed the IRFA, but Comments 3, 4, 5 and 6 expressed concerns about the potential impacts of allowing CQEs in the GOA to transfer and hold small blocks of QS on non-CQE participants in the halibut and sablefish IFQ fisheries. NMFS' responses to these comments explain that the Council and NMFS considered the potential impacts of Amendment 96 and the final rule on participants in the halibut and sablefish fisheries and determined that it is unlikely to have negative impacts on non-CQE participants in the halibut and sablefish fisheries. Several provisions of the CQE Program, including QS blocks and QS use limits, restrict the amount of total QS that a CQE may obtain by transfer and hold. NMFS has determined that this final rule balances the objectives of the action with consideration of the impacts on non-CQE participants in the halibut and sablefish fisheries.

No comments on the proposed rule were filed with NMFS by the Chief Counsel for Advocacy of the Small Business Administration.

Number and Description of Directly Regulated Small Entities

The determination of the number and description of small entities regulated by this action is based on small business standards established by the Small Business Administration (SBA). On June 12, 2014, the SBA issued a final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33647, June 12, 2014). The rule increased the size standard for Finfish Fishing from $19.0 to 20.5 million. The new size standards were used to prepare the FRFA for this action.

At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ Program that are "small" based on SBA guidelines, nor the number that will be adversely impacted by the present action. This FRFA therefore assumes that all directly regulated operations are small.

The action applies to 45 CQEs that are considered small entities under the RFA (Section 601(3)). The CQEs qualify as small not-for-profit organizations that are not dominant in their field. CQEs represent small communities that directly benefit from this action. Each of the communities qualifies as a small entity under the RFA since they are governments of towns or villages with populations less than 50,000 people. The CQE obtains by transfer and holds QS and makes the resulting IFQ available by lease to eligible harvesters that are community residents. Those harvesters are required to make a series of reports and declarations to NMFS in order to be found eligible to participate. Therefore, those harvesters are directly regulated small entities, although their number is unknown at this time. No adverse economic impact on community residents is expected under this action. Further, NMFS anticipates that any economic impacts accruing from the action to these small entities will be beneficial because their access to the IFQ halibut and sablefish fisheries will be improved.

Existing individual halibut and sablefish QS holders and new entrants to the IFQ fishery have potential to be impacted by this action, but are not directly regulated by this final rule. Currently, there are 2,565 unique halibut QS holders and 845 unique sablefish QS holders across all regulatory areas. These entities and future fishery entrants, of which the number is unknown, could potentially be impacted by this action. The most likely impact on these entities will occur if CQE transfer of QS results in a significant increase in the price for QS. The Analysis indicates this impact has not been observed in the past and is not likely to occur in the future, given the present constraints on CQE access to investment capital and the range of other factors that also influence QS prices (see section 2.6.3.1 of the Analysis). Therefore, existing and potential future non-CQE QS holders are not considered to be directly regulated by this action and are not further analyzed in this FRFA.

Recordkeeping and Reporting Requirements

Implementation of this final rule will not change the recordkeeping or reporting requirements of the community residents that lease IFQ from GOA CQEs or the vessels they use to participate in the IFQ fisheries. No additional recordkeeping or reporting by directly regulated entities will be required by this action.

Description of Significant Alternatives to the Final Rule That Minimize Adverse Impacts on Small Entities

The FRFA also requires a description of any significant alternatives to the rule that accomplish the stated objectives, are consistent with applicable statutes, and that minimize any significant economic impact of the final rule on small entities. The suite of potential actions includes two alternatives and associated options. A detailed description of these alternatives and options is provided in section 2.7 of the Analysis.

The significant alternative to the final action is the status quo alternative (Alternative 1). Alternative 1 does not have adverse economic impacts on CQEs or the resident QS holders in the CQE qualifying communities, which are the small entities directly regulated by this action. Alternative 1 does not meet the objectives of the action to promote more CQE access to QS and facilitate the sustained participation by CQE community residents in the IFQ Program. The preferred alternative implemented by this final rule, Alternative 2, is less restrictive on CQEs than Alternative 1, and is the least burdensome of the available alternatives for directly regulated small entities. Alternative 2 specified three options that allow CQEs to transfer and hold any size block of QS from any QS holder or a subset of QS holders depending on the option and determined by the location of the QS holder's residence.

The Council selected the least restrictive option under Alternative 2 (Option 1) that allows CQEs to transfer and hold any size block of halibut or sablefish QS. This option is the least burdensome on directly regulated small entities of all of the options considered, and minimizes any significant adverse economic impact. Allowing CQEs to transfer and hold any size block of QS should benefit their community members and future community members. Unrestricted transfer of blocked QS should enhance the CQE's ability to keep QS in remote

communities and as a result provide for active participation of the CQE and community residents in the halibut and sablefish fisheries in the future. By increasing their QS holdings under this action, CQEs provide fishery access through leasing to community residents who are new entrants to the fishery or who currently fish small QS holdings and wish to increase their participation. Increased QS availability to CQEs under this action provides some operational efficiency and results in a net benefit to both the CQEs and their community residents.

Option 2 allows CQE communities to transfer and hold any size block of halibut and sablefish QS from residents of any CQE community. Option 2 was not selected because it greatly limited the potential number of small blocks available to CQEs. Option 2 is more burdensome on directly regulated CQEs than Option 1.

Option 3 allows CQE communities to transfer and hold any size block of halibut and sablefish QS from residents of their CQE community, but not from any non-resident. Option 3 was not selected because it significantly limited the potential number of small blocks available to CQEs and the number of CQEs that could transfer small block QS. Option 3 is more burdensome on directly regulated CQEs than either Option 1 or 2. The Analysis did not identify any other alternatives that more effectively meet the RFA criteria to minimize adverse economic impacts on directly regulated small entities.

Collection of Information Requirements

This rule contains no collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: October 30, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

§ 679.41 [Amended]

■ 2. In § 679.41, remove paragraphs (e)(4) and (e)(5).

■ 3. Revise Table 21 to Part 679 to read as follows

Table 21 to Part 679 – Eligible Communities, Halibut IFQ Regulatory Area Location, Community Governing Body That Recommends the CQE, and the Fishing Programs and Associated Areas Where a CQE Representing an Eligible Community May Be Permitted To Participate.

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory area and vessel category				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Adak	4B	City of Adak				All		X				
Akhiok	3A	City of Akhiok.		All	All		X			7	2	
Angoon	2C	City of Angoon.	A,B,C	A,B,C			X		4			
Chenega Bay	3A	Chenega IRA Village.		All	All		X			7	2	
Chignik	3B	City of Chignik.		A,B,C	All		X				3	
Chignik Lagoon	3B	Chignik Lagoon Village Council.		A,B,C	All		X				4	
Chignik Lake	3B	Chignik Lake Traditional Council.		A,B,C	All		X				2	
Coffman Cove	2C	City of Coffman Cove.	A,B,C	A,B,C			X		4			
Cold Bay	3B	City of Cold		A,B,C	All		X					2

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory area and vessel category				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
		Bay.										
Craig	2C	City of Craig.	A,B,C	A,B,C			X					
Edna Bay	2C	Edna Bay Community Association.	A,B,C	A,B,C			X		4			
Elfin Cove	2C	Community of Elfin Cove.	A,B,C	A,B,C			X					
Game Creek	2C	N/A.	A,B,C	A,B,C			X		4			
Gustavus	2C	Gustavus Community Association.	A,B,C	A,B,C			X					
Halibut Cove	3A	N/A.		All	All		X			7	2	
Hollis	2C	Hollis Community Council.	A,B,C	A,B,C			X		4			
Hoonah	2C	City of Hoonah.	A,B,C	A,B,C			X		4			
Hydaburg	2C	City of Hydaburg.	A,B,C	A,B,C			X		4			
Ivanof Bay	3B	Ivanof Bay Village Council.		A,B,C	All		X					2

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory area and vessel category				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Kake	2C	City of Kake.	A,B,C	A,B,C			X		4			
Karluk	3A	Native Village of Karluk.		All	All		X			7	2	
Kasaan	2C	City of Kasaan.	A,B,C	A,B,C			X		4			
King Cove	3B	City of King Cove.		A,B,C	All		X					9
Klawock	2C	City of Klawock.	A,B,C	A,B,C			X		4			
Larsen Bay	3A	City of Larsen Bay.		All	All		X			7	2	
Metlakatla	2C	Metlakatla Indian Village.	A,B,C	A,B,C			X		4			
Meyers Chuck	2C	N/A.	A,B,C	A,B,C			X		4			
Nanwalek	3A	Nanwalek IRA Council.		All	All		X			7	2	
Naukati Bay	2C	Naukati Bay, Inc.	A,B,C	A,B,C			X		4			
Old Harbor	3A	City of Old Harbor.		All	All		X			7	5	
Ouzinkie	3A	City of Ouzinkie.		All	All		X			7	9	

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory area and vessel category				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Pelican	2C	City of Pelican.	A,B,C	A,B,C			X		4			
Perryville	3B	Native Village of Perryville.		A,B,C	All		X					2
Point Baker	2C	Point Baker Community.	A,B,C	A,B,C			X		4			
Port Alexander	2C	City of Port Alexander.	A,B,C	A,B,C			X		4			
Port Graham	3A	Port Graham Village Council.		All	All		X			7	2	
Port Lions	3A	City of Port Lions.		All	All		X			7	6	
Port Protection	2C	Port Protection Community Association.	A,B,C	A,B,C			X		4			
Sand Point	3B	City of Sand Point.		A,B,C	All		X					14
Seldovia	3A	City of Seldovia.		All	All		X			7	8	
Tatitlek	3A	Native Village of Tatitlek.		All	All		X			7	2	

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory area and vessel category				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Tenakee Springs	2C	City of Tenakee Springs.	A,B,C	A,B,C			X		4			
Thorne Bay	2C	City of Thorne Bay.	A,B,C	A,B,C			X		4			
Tyonek	3A	Native Village of Tyonek.		All	All		X			7	2	
Whale Pass	2C	Whale Pass Community Association.	A,B,C	A,B,C			X		4			
Yakutat	3A	City of Yakutat.		All	All		X			7	3	

N/A means there is not a governing body recognized in the community at this time.
CHPs are Charter halibut permits.
All means category A, B, C, and D quota share.

[FR Doc. 2014–26466 Filed 11–6–14; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 216
Friday, November 7, 2014

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

DEPARTMENT OF ENERGY

10 CFR Part 429

[Docket Number EERE–2011–BT–TP–0042]

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Residential and Commercial Water Heaters; Air-Conditioning, Heating, & Refrigeration Institute Petition for Repeal

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Petition for repeal; request for comments.

SUMMARY: The Department of Energy (DOE) received a petition from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), requesting that DOE repeal certain parts of the final rule for test procedures for residential and commercial water heaters published in the **Federal Register** on July 11, 2014. Specifically, AHRI sought repeal of amendments made to the test procedure final rule that address the rated volume of residential storage water heaters. AHRI stated that these amendments in effect increase the stringency of the applicable minimum standards for residential water heaters in violation of the statute, are unnecessary to develop a uniform energy descriptor, and do not coincide with industry practice. DOE seeks comment on whether to grant the petition and proceed with a rulemaking on this matter.

DATES: Any comments must be received by DOE not later than January 6, 2015.

ADDRESSES: Comments must be submitted, identified by docket number EERE–2011–BT–TP–0042, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: HeatingProducts-2011-TP-0042@ee.doe.gov.* Include either the docket number EERE–2011–BT–TP–0042, and/or "AHRI Petition" in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, Room 1J–018, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue SW., Washington, DC 20585–0121.

5. *Instructions:* All submissions received must include the agency name and docket number for this proceeding. Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* In addition, electronic copies of the Petition are available online at at the following URL address: *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-TP-0042-0083*

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 287–1692, or *email: john.cymbalsky@ee.doe.gov*; Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8145, *email: Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., provides among other things that, "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." (5 U.S.C. 553(e)). The U.S. Department of Energy (DOE) received a petition from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) dated September 29, 2014, requesting that DOE repeal certain parts of the rule for efficiency test procedures for residential and commercial water heaters published in the **Federal Register** on July 11, 2014. 79 FR 40542 (July 11, 2014), Docket No. EERE–2011–BT–TP–0042–0082 "the water heater test procedure", or, in context, "the test procedure".

Specifically, AHRI sought repeal of amendments made to §§ 429.17 and 428.134 of the test procedure final rule that address the rated volume of residential storage water heaters. AHRI stated that these amendments in effect increase the stringency of the applicable minimum standards for residential water heaters in violation of 42 U.S.C 6293; are not necessary to satisfy DOE's obligation to develop a uniform efficiency descriptor for residential and commercial water heaters, as required by the American Energy Manufacturing Technical Corrections Act (AEMTCA) of 2012; do not address any efficiency performance issue for water heaters; were not developed to respond to any problem that was identified by commenters during the rulemaking, and do not coincide with industry practice. AHRI believes that the Federal Trade Commission should be involved in the development of an alternative solution, and that one option that should be considered is use of the FTC EnergyGuide label, which will be undergoing significant changes next year to reflect the ratings based on the use of the Universal Efficiency Descriptor test procedure. In promulgating this petition for public comment, DOE seeks views on whether to grant the petition and undertake a rulemaking to consider the proposals contained in the petition. By seeking such comment, DOE takes no position at this time on the merits of the suggested rulemaking.

Issued in Washington, DC, on October 30, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

AHRI PETITION

Before the

United States Department of Energy

Office of Energy Efficiency and Renewable Energy

In the Matter of: Docket No. EERE–2011–BT–TP–0042–0082, RIN: 1904–AC53, Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Residential and Commercial Water Heaters; Final Rule.

10 CFR Part 429

Petition for Reconsideration

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) [1] respectfully requests that the Department of Energy (DOE) repeal certain parts of the rule for efficiency test procedures for residential and commercial water heaters published in the **Federal Register** on July 11, 2014. 79 Fed. Reg. 40542 (July 11, 2014).

AHRI seeks repeal of the test procedure final rule [2] solely in regards to amendments made to Sections 429.17 and 429.134 that address the rated volume of residential storage water heaters. The amendment to 429.17(a)(ii)(C) requires that the rated volume value must be the mean of the storage volumes measured on the units that were tested to establish the model's ratings. The amendment to 429.134(d)(2) makes the rated volume subject to DOE's enforcement provisions. These amendments in effect increase the stringency of the applicable minimum efficiency standards for residential gas, electric, and oil storage water heaters in violation of 42 U.S.C. § 6293(e). They also were not necessary to satisfy DOE's obligation to develop a uniform efficiency descriptor for residential and commercial water heaters, as required by the American Energy Manufacturing Technical Corrections Act (AEMTCA) of 2012; they do not address any efficiency performance issue for water heaters; and they were not developed to respond to any problem that was identified by commenters during the rulemaking. AHRI and its members have worked diligently over the last fifty years to improve the energy efficiency of HVACR and Water Heating equipment. It is only out of concern for the applicability of increased efficiency standards through the test procedure amendment, and the alteration of industry practice and the scope of DOE's regulatory authority over the past 25 years, that AHRI respectfully seeks repeal of the referenced provisions of the test procedure final rule.

At the December 6, 2013, public hearing for this rulemaking, DOE presented data that showed the average rated storage volume of 19 electric water heaters was 9.4% higher than measured and the average rated storage volume of 44 gas water heaters was 4.8% higher than measured. From the perspective of the rated volume, the measured volume of the electric water heaters averaged about 8.6% less than the rated volume and the measured volume of the gas water heaters averaged about 4.6% less than the rated volume. At that meeting and in the comments we submitted on January 4, 2014, we provided information explaining why this data was neither unusual nor alarming. We noted that the relationship of measured volume and rated volume is addressed by the applicable national, consensus water heater standards. These standards address safety and other aspects of residential water heater models. The system of building code regulations in the U.S., along with other demands of the market, create a situation that makes compliance with these standards mandatory for any residential water heater intended to be sold and installed in the U.S.

The standard for residential electric water heaters, UL 174 requires the following:

33 Water Capacity Test

33.1 The actual water capacity of a water heater shall be no less than 90 percent of the marked rated capacity.

33.2 Unless the actual capacity of a water tank is known, or is obviously 90 percent or more of the rated capacity, the tank capacity is to be measured by any convenient means.

The standard for residential type gas storage water heaters, American National Standard Z21.10.1,[3] requires the following:

2.26 Capacities of Storage Vessels

The storage vessel capacity shall be within ± 5.0 percent of the manufacturer's rated capacity.

Method of Test

The storage capacity shall be determined by weighing the system when dry and empty and reweighing it when full or by filling the system with water, the weight of which has been predetermined. The capacity shall then be computed in gallons and compared with the manufacturer's rated capacity.

Accordingly, the data presented by DOE is in conformance with industry practice consistent with the requirements of the applicable national standards. This practice has been in place for at least the past 50 years. If there were a real concern that this typical difference between the measured volume and the rated volume impacted the minimum efficiency standards or consumer information, that concern would have evidenced itself already.

The requirements noted above existed in the applicable water heater standards when the first minimum energy factor (EF) standards for residential water heaters were established by the National Appliance Energy Conservation Act of 1987. We can attest with absolute certainty that those minimum EF standards were developed with full knowledge of the relationship of measured and storage volume for those water heaters. The data from DOE's test, when properly considered in terms of the relationship of how the measured volume compares to the rated volume, reflects what is, and has been, the standard practice for residential storage water heaters for more than 40 years. The measured volume is lower than the rated volume. That relationship has not changed significantly in all those years. The test procedure established in this rulemaking does not change the situation at all. As DOE validated, the measured volumes of storage water heaters are consistently complying with the requirements of the nationally recognized standards. Manufacturers are not overstating the rated volume so that the minimum energy factor requirement for that model would be lower.

In this rulemaking, DOE clearly knew that the measured volume of residential electric water heaters was somewhere around 9% less than the rated volume and the measured volume of residential gas water heaters was somewhere around 4.5% less than the rated volume. These results reflect the respective requirements for electric and gas water heaters specified in the national consensus standards cited above. Recognizing that in an enforcement situation manufacturers still need some margin to address test variability, the requirement of 429.17(a)(ii)(C) will have the effect of lowering the rated volume of every electric storage water heater by 10% and lowering the rated volume of every gas and oil storage water heater by 5%. Manufacturers cannot feasibly redesign their products to make the measured volume match the current rated volume values. Any such redesign is precluded by the efficiency standards

[1] AHRI is the trade association representing manufacturers of air conditioning, heating, commercial refrigeration, and water heating equipment. AHRI's 320 member companies employ approximately 130,000 men and women in the United States. The total value of member shipments by these companies is over $20 billion annually. AHRI's water heater manufacturer members account for essentially all residential storage water heaters and well over 90% of all residential water heaters sold and installed in the U.S.

[2] The Administrative Procedure Act (APA), 5 U.S.C. § 553, requires that "each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." (5 U.S.C. § 553(e)). This right is necessary to protect interested parties from rulemakings that may be in error, that exceed statutory authority, or are otherwise invalid. AHRI is not asking DOE to repeal any energy efficiency standard that would fall within 42 U.S.C. § 6295(o)(1), but to correct an error in the final rule addressing the test procedure. 42 U.S.C. § 6293(b)(2).

[3] The preface for ANSIZ21.10.1 states "This publication represents a basic standard for safe operation, substantial and durable construction, and acceptable performance of storage gas water heaters. . ."

which already require several inches of insulation around the tank. A larger tank with the same amount of insulation will produce models that are either too wide to fit through standard doorways or too tall to fit into existing installation spaces. Furthermore, the cost to spend the time and money to redesign and test models just for a cosmetic change is prohibitive.

The impact and change to the efficiency standards for existing products is illustrated in the table below, which shows: 1) The rated volume sizes that make up a manufacturer's line of residential water heaters; 2) the new rated volume that will be required to comply with 429.17(a)(ii)(C); 3) the current minimum EF requirement for each of these sizes using the respective rated volume values; and 4) the revised minimum EF requirement going into effect on April 16, 2015, for each of these sizes using the respective rated volume values. The bolded values show the higher minimum standards that result from the amendments addressing the rated volume. (Note, recognizing DOE's certification and enforcement provisions, the "New DOE" rated volumes are rounded to whole integer values.)

GAS STORAGE WATER HEATERS

Rated volume (G)		Current Federal minimum EF ≥.67–.0019V		Revised Federal minimum EF ≥.675–.0015V	
Current	New DOE	Current	New DOE	Current	New DOE
30	28	.61	.62	.63	.63
40	38	.59	.60	.62	.62
50	47	.58	.58	.60	.60
>55	>55	EF ≥.67–.0019V		EF ≥.8012–.00078V	
65	62	.55	.55	.75	.75
75	71	.53	.53	.74	.75

ELECTRIC STORAGE WATER HEATERS

Rated volume (G)		Current Federal minimum EF ≥.97–.00132V		Revised Federal minimum EF ≥.96–.0003V	
Current	New DOE	Current	New DOE	Current	New DOE
30	27	.93	.93	.95	.95
40	36	.92	.92	.95	.95
50	45	.90	.91	.95	.95
>55	>55	.97–.00132V		2.057–.00113V	
65	58	.88	.89	1.98	1.99
80	72	.86	.88	1.97	1.98
100	90	.84	.85	1.94	1.96
119	107	.81	.83	1.92	1.94

OIL STORAGE WATER HEATERS

Rated volume (G)		Current Federal minimum EF ≥.97–.00132V		Revised Federal minimum EF ≥.96–.0003V	
Current	New DOE	Current	New DOE	Current	New DOE
30	28	.53	.54	.62	.63
50	47	.50	.50	.59	.59

The tables above clearly illustrate that implementation of the new 429.17(a)(ii)(C) amendment increases the current and upcoming revised federal minimum efficiency requirements for several sizes of residential storage water heaters. Furthermore, this change, if applied to the current standards, makes the subset of models in these sizes that are rated at the current minimum EF, now non-compliant with the federal standard.

The July 11, 2014, final rule established a uniform efficiency descriptor and associated test procedure for water heaters. Although the storage volume must be measured for purposes of the test, the value of the rated volume has no bearing on the calculations that determine the efficiency using this test procedure. The applicable provisions of AEMTCA make no mention of regulating the rated volume nor were any comments submitted during the rulemaking process raising this as an issue requiring DOE action. These amendments attached to the UED test procedure rule are unrelated and unnecessary issues that were generated by DOE without any external request or justification. In the final rule notice DOE plainly states its purpose for these amendments: "DOE seeks to eliminate any potential incentives for manufacturers to continue the current practice of exaggerating the storage volume of water heaters currently on the market by inflating the rated volume as compared to the actual measured volume." If, in fact, the rated volume of storage water heaters was an issue, it would be a consumer disclosure or

labeling issue, and the appropriate action would be proposal of a consumer protection or product advertising rule by a Federal agency responsible for such matters. It is inappropriate and outside the scope of DOE's statutory authority in a regulation covering water heater efficiency test procedures. Furthermore, casting a practice that has been in place for more than 50 years, and codified in the related water heater national standards as an "exaggeration of storage volume" and judging manufacturers as "inflating the rated volume" indicate a bias on DOE's part that is unwarranted and unrelated to DOE's role of developing test procedures and efficiency standards.

In the final rule notice, DOE stated that the efficiency of a water heater is related to the rated storage volume. Thus, it is within DOE's authority to regulate. That statement is incorrect and cannot be used to attempt to justify this action as within DOE's authority. It has long been recognized that the rated storage volume has no direct effect on how efficiently a given model of water heater operates and that the volume of the storage tank cannot be used as the metric to represent the water heater's hot water delivery capability. Since the very first federal efficiency test procedures for residential water heaters developed in the late 1970s, the measure of a storage water heater's efficiency has been energy factor (EF). The measure of the storage water heater's performance, generally referred to as capacity, is the first hour rating (FHR). The first hour rating of a storage water heater is a combination of the volume of water in the storage tank, the input rate of the model, and how efficiently energy is transferred to the water in the tank. When the first hour rating test is conducted on a unit, the actual volume of the tank, not the rated volume, contributes to the final measured result. As a an example, when properly sized the hot water needs of a particular household may be met by a gas model that has a rated volume of 40 or 50 gallons or an electric model that has a rated volume of 50 or 65 gallons or a gas instantaneous (tankless) model, which has no storage volume. Additionally the residential water heater sizing specifications in the national model plumbing codes use the FHR, not the rated volume, as the basis for selecting the properly sized storage water heater for a given installation. This information illustrates why the first hour rating is the appropriate metric to represent a storage water heater's ability to deliver hot water and how it has been used in the field for many years. The EF and FHR have been and continue to be the two certified values for storage water heaters measured by the test procedure. There have not been any issues in the field related to the relationship between the rated and measured volume.

It is correct that the rated storage volume is used in the equations that establish the specific EF minimum requirement for a given size storage water heater. However, that is the minimum efficiency standard that a residential storage water heater model must meet. It is not the efficiency of the water heater model. As illustrated by our most critical point, DOE has appeared to have missed that distinction. If every storage water heater model currently on the market today were to have its rated volume lowered to comply with the amendments in this final rule, there would be no change to the efficiency of any one of those models. Likewise, there would be no energy savings achieved by those new rated volume values.

As we have illustrated, the value of the rated volume does influence the minimum EF standard. A higher rated volume does result in a lower EF requirement. The theoretical possibility that a rated volume would be overstated to get a lower minimum EF requirement has existed since the first NAECA standards went into effect in 1990. In our comments, we explained how this possibility has never occurred. DOE acknowledged this in the final rule notice. An examination of the influence of federal efficiency standards on rated volume shows an effect opposite to the concern of "higher" rated volume values. The following table shows the typical rated volumes for a manufacturer's standard product line of gas and electric water heaters in 1990 and today. In a number of cases, the rated volumes have decreased. This is a direct consequence of adding more insulation to a model whose outside diameter cannot change for practical installation concerns. The remaining option is to make the diameter of the storage water tank smaller. Since the measured volume is smaller, compliance with the applicable standard requires the rated volume to be lowered. There are no rated volumes that increased.

Gas rated volume		Electric rated volume	
1990	2014	1990	2014
30	30	30	**27/30
40	40	40	38/40
50	50	52	47/50
	*65	66	65
75	75	82	80
		***100	100
		120	119

*This model size did not exist in 1990. It is a downsized version of the historical 75 gallon model.

**The listing of two sizes indicates that both sizes are in the product line.

***Only some manufacturers offer this model size.

Even though the other standards requirements and market influences, which made the possibility of overstated rated volumes unrealistic, have remained the same for 40 years, DOE attempts to justify this punitive measure because of a desire to rule out this possibility in the future. That reasoning ignores the fact that the "future" minimum efficiency standards that go into effect on April 16, 2015, are an overwhelmingly compelling incentive to not "inflate" the rated volume of a residential storage water heater above 55 gallons. The minimum efficiency requirements for models above 55 gallons are significantly more stringent than those for models less than 55 gallons. Furthermore, for electric storage water heaters 55 gallons or smaller the revised minimum EF standard is the same; i.e .95, for all rated volume sizes.

Recognizing the significance of this change and the process by which it was effected, we request immediate action to repeal the amendments involving the certification and enforcement of rated volume values. AHRI will work with DOE to develop an alternative solution to the concern that an overstated rated volume, outside the requirements of the national consensus water heater standards could lower the minimum EF requirement for a particular model of storage water heater. As we have noted, this is fundamentally a consumer disclosure or labeling issue. Accordingly we believe that the Federal Trade Commission should be involved in the development of an alternative solution and that one option that should be considered is use of the FTC EnergyGuide label, which will be undergoing significant changes next year to reflect the ratings based on the use of the Universal Efficiency Descriptor test procedure.

Respectively Submitted,

Frank A. Stanonikm,
Chief Technical Advisor.

Dated: September 29, 2014

[FR Doc. 2014–26398 Filed 11–6–14; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Chapter I

RIN 3245–AG64

Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Policy Directives; Data Rights; Phase III Award Preference; Other Clarifying Amendments

AGENCY: Small Business Administration.

ACTION: Advanced Notice of Policy Directive Amendments; request for comments

SUMMARY: The Small Business Administration (SBA) seeks comments from the public on two key areas of the SBIR and STTR Policy Directives that the SBA is considering revising: SBIR and STTR data rights, and the Government's responsibilities with respect to SBIR and STTR Phase III awards. The SBA intends to provide greater clarity and detail on these issues in the Policy Directives.

DATES: Comments must be received on or before January 6, 2015.

ADDRESSES: You may submit comments, identified by RIN 3245–AG64, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Email: *technology@sba.gov*. Include RIN 3245–AG64 in the subject line of the message.
- Mail/Hand Delivery/Courier: Edsel Brown, Office of Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Edsel Brown Jr., Assistant Director, Office of Technology, Office of Innovation and Investment, (202) 205–6450 or at *technology@sba.gov*.

SUPPLEMENTARY INFORMATION: On August 6, 2012, SBA published a final SBIR Policy Directive at 77 FR 46806, and a final STTR Policy Directive at 77 FR 46855 (both available at *www.sbir.gov*), implementing the various provisions of the National Defense Authorization Act for Fiscal Year 2012 (Defense Authorization Act), Public Law 112–81, 125-Stat. 1298, related to the SBIR and STTR programs. These provisions were specifically enacted in Section 5001, Division E of the Defense Authorization Act, the SBIR/STTR Reauthorization Act of 2011 (Reauthorization Act), which amended the Small Business Act and made several amendments to the SBIR and STTR Programs. Subsequent to the publication of the SBIR and STTR final directives SBA issued clarifying amendments on January 8, 2014 at 79 FR 1303 (SBIR) and 79 FR 1309 (STTR).

In the notices of the final directives, SBA stated it intended to update the directives on a regular basis and to restructure and reorganize the directives, as well as address certain policy issues (*e.g.*, those concerning data rights). At this time, SBA intends to revise the SBIR and STTR policy directives to provide greater clarification of SBIR and STTR data rights and the issues related to SBIR and STTR Phase III work. SBA intends this clarification to provide additional guidance to agencies regarding the implementation of the programs, additional policy language to inform regulatory texts in the Federal Acquisition Regulation and agency supplemental regulations, and useful information for SBIR/STTR awardee and applicant firms.

Although the SBIR and STTR Policy Directives are intended for use by the SBIR and STTR participating agencies, SBA believes that public input from all parties involved in the program would be invaluable. Therefore, before proceeding with proposed changes, SBA would like to know from the public if there are specific concerns that SBA should address when clarifying program policy in these identified areas.

1. SBIR/STTR Data Rights

The Small Business Act provides for SBIR and STTR awardees to receive certain data rights. *See e.g.* 15 U.S.C. 638(j)(1)(B)(v) ("retention of rights in data generated in the performance of the contract by the small business concern;"); *id.* at 638(j)(2)(A) and 638(p)(2)(B)(v) ("retention by a small business concern of the rights to data generated by the concern in the performance of an [SBIR or STTR] award for a period of not less than 4 years;"). SBA's Policy Directives also explain that agencies must protect from disclosure and non-governmental use all SBIR/STTR technical data developed from work performed under an SBIR or STTR funding agreement for a period of not less than four years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded SBIR/STTR Phase III) unless the agency obtains permission to disclose such SBIR or STTR technical data from the awardee or applicant. See SBIR and STTR Policy Directives, section 8(b)(2).

SBA has heard from small businesses that SBIR and STTR data has been disclosed to large contractors in procurement specifications, solicitations, or through reverse engineering. SBA has also received reports that Government contractors have been unaware that SBIR and STTR awards have special features with regard to data rights. SBA intends to address these issues by clarifying the language on data rights in the policy directives. SBA specifically requests comments on the following:

- The extent to which the awardee owns the data it generates in performance of an award.
- The Government's obligations to protect SBIR/STTR data from disclosure for at least four years following the delivery of the last deliverable of an SBIR/STTR award.
- During the protection period, the Government's right to access, review and evaluate SBIR/STTR data, but not to modify the data.
- After the protection period expires, the Government's right to use and disclose the data solely on behalf of the government, which means that the government may use and disclose data for competitive procurements (with non-disclosure agreements) but cannot use the data for commercial (non-governmental) purposes.
- Possible discrepancies between current FAR and agency supplemental regulations and SBA's SBIR/STTR Policy Directives.
- The feasibility and helpfulness of a short form data rights option (especially for grant agencies). Such a short form would be a simple agreement stating that the Government receives essentially no rights to SBIR/STTR technical data. The simplified data rights option would be for any agency or specific award.

2. SBIR/STTR Phase III Policy

The Small Business Act, as implemented by the SBIR and STTR Policy Directives at section 4(c), states that a Phase III award is one that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program—

- in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; or
- for which awards from non-SBIR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or merit-based selection procedures;

15 U.S.C. 638(e)(4)(C); *see* also, *id.* at 638(e)(6)(C).

If the government is interested in pursuing further work that was performed under an SBIR or STTR award, the government must, to the extent practicable, pursue that work with the SBIR or STTR awardee that performed the earlier work.

In the program's recent reauthorization legislation, Congress added the following language to the Small Business Act reinforcing the responsibility of the government to pursue such work with the awardee firm:

PHASE III AWARDS.—To the greatest extent practicable, Federal agencies and Federal prime contractors shall issue Phase III awards relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.

Id. at 638(r)(4).

SBA is concerned that there is ambiguity or misunderstanding about how this policy governing Phase III awards should be implemented. Agencies and awardee firms may disagree as to whether new work qualifies as SBIR/STTR Phase III work. Additionally, even if there is agreement that the follow-on work is Phase III work, there may be disagreement as to how the agency is required to show preference to the SBIR/STTR awardee for the Phase III work.

One question that has been raised is whether preference for the Phase III work can be shown within a competitive solicitation. Another question is how such preference can or should be shown if the SBIR or STTR awardee would perform the Phase III work as a subcontractor to a prime federal contractor. Finally, there may be uncertainty about the steps that should be taken when applying the preference.

SBA intends to revise the language in the Policy Directives to clarify these issues, that is, the responsibility of agencies with regard to Phase III work and processes that can be used when determining the appropriate actions in Phase III cases. To help in the development of the revised policy guidance, SBA requests comments on the following:

- Whether SBA should define "to the greatest extent practicable" with respect to when agencies shall issue these Phase III awards; and if so, how the phrase should be defined.
- Whether, if the agency elects not to issue a Phase III sole source award to the SBIR or STTR Phase II awardee for follow-on Phase III work, there are other ways the agency could meet this statutory requirement.
- Whether an SBIR or STTR awardee can receive the required Phase III preference within a full and open competition.
- Whether the policy directive should outline the steps an agency must take in deciding or understanding when the Phase III preference applies.

Authority: 15 U.S.C. 638

Dated: September 15, 2014.

Javier E. Saade,

Associate Administrator, Office of Investment and Innovation.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–26583 Filed 11–6–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0755; Directorate Identifier 2014–NM–080–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, Model 757 airplanes, Model 767 airplanes, and Model 777 airplanes. This proposed AD results from fuel system reviews conducted by the manufacturer. This proposed AD would require an inspection to determine if certain spar-mounted motor-operated valve actuators for the spar-mounted fuel valves are installed, and replacement of any affected actuators. We are proposing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by December 22, 2014.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0755; 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: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2014–0755; Directorate Identifier 2014–NM–080–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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this

rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 (66 FR 23086, May 7, 2001) requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce 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.

We are proposing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the actuator shaft, which could result in fuel tank explosions and consequent loss of the airplane.

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 an inspection to determine whether any spar-mounted motor-operated valve (MOV) actuators for the spar-mounted fuel valves having part number (P/N) MA20A1001–1 (S343T003–39) are installed, and replacement of any affected actuator with a serviceable, FAA-approved MOV actuator other than one having P/N MA20A1001–1 (S343T003–39).

Costs of Compliance

We estimate that this proposed AD affects 2,140 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
Inspection to determine part number.	1 work-hour × $85 per hour = $85	$0	$85	$181,900

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace actuator	1 work-hour × $85 per hour = $85 per actuator	$5,000 per actuator	$5,085 per actuator.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0755; Directorate Identifier 2014–NM–080–AD.

(a) Comments Due Date

We must receive comments by December 22, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category.

(1) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes.

(2) Model 757–200, –200PF, –200CB, and –300 series airplanes.

(3) Model 767–200, –300, –300F, and –400ER series airplanes.

(4) Model 777–200, –200LR, –300, –300ER, and –777F series airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel Selector/Shut-off Valve.

(e) Unsafe Condition

This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical energy from lightning, hot shorts, or fault current from entering the fuel tank through the actuator shaft, which 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) Inspection To Determine Part Number

Within 60 months after the effective date of this AD: Do an inspection to determine whether any motor-operated shutoff valve (MOV) actuators having part number (P/N) MA20A1001–1 (S343T003–39) for the fuel tanks or fuel feed system are installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the actuator can be conclusively determined from that review.

(h) Replacement

If, during the inspection required by paragraph (g) of this AD, any MOV actuator having (P/N) MA20A1001–1 (S343T003–39) for the fuel tanks is installed: Within 60 months after the effective date of this AD, replace the affected MOV actuator with a serviceable, FAA-approved MOV actuator other than one having P/N MA20A1001–1 (S343T003–39).

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an MOV actuator having part number MA20A1001–1 (S343T003–39) on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6509; fax: 425–917–6590; email: *rebel.nichols@faa.gov.*

Issued in Renton, Washington, on October 30, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–26534 Filed 11–6–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

[Docket No. MSHA–2014–0009]

RIN 1219–AB72

Criteria and Procedures for Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings; close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold two public hearings on the Agency's proposed rule for Criteria and Procedures for Assessment of Civil Penalties.

DATES: MSHA will hold public hearings on December 4, 2014, and December 9, 2014, at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this document. Post-hearing comments must be received or postmarked by midnight Eastern Time on January 9, 2015.

ADDRESSES: Submit comments, informational materials, and requests to speak, identified by RIN 1219–AB72 or Docket No. MSHA–2014–0009, by one of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-Mail: zzMSHA-comments@dol.gov.* Include RIN 1219–AB72 or Docket No. MSHA–2014–0009 in the subject line of the message.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.
- *Fax:* 202–693–9441.

Instructions: All submissions must include "MSHA" and "RIN 1219–AB72" or "Docket No. MSHA–2014–0009." Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change to *http://www.regulations.gov* and *http://www.msha.gov/currentcomments.asp,* including any personal information provided. For additional instructions for participation in Public Hearings on this rulemaking, see the "Public Hearings" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* or *http://www.msha.gov/currentcomments.asp.* To read background documents, go to *http://www.regulations.gov.* Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk on the 21st floor.

Email notification: To subscribe to receive an email notification when MSHA publishes rules, program information, instructions, and policy, in the **Federal Register**, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

On July 31, 2014, (79 FR 44494), MSHA published a proposed rule, to amend its civil penalty regulation to simplify the criteria, which will promote consistency, objectivity, and efficiency in the proposed assessment of civil penalties and facilitate the resolution of enforcement issues. The proposal would place a greater emphasis on the more serious safety and health conditions and provide improved safety and health for miners. MSHA is also proposing alternatives that would address the scope and applicability of its civil penalty regulation.

The comment period was scheduled to close on September 29, 2014. MSHA extended the comment period until December 3, 2014 (79 FR 55408) in response to commenters.

II. Public Hearings

In response to requests from the public, MSHA will hold two public hearings on the proposed rule to provide the public an opportunity to present their views on this rulemaking. The public hearings will begin at 9 a.m. and end no later than 5 p.m., or earlier if the last person presenting testimony has spoken. MSHA is holding the hearings on the following dates at the locations indicated:

Date	Location	Contact No.
Thursday, December 4, 2014	Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, 25th Floor, Arlington, VA 22209–3939.	202–693–9440
Tuesday, December 9, 2014	Courtyard by Marriott Denver Downtown, 934 16th Street, Denver, CO 80202	303–571–1114

The hearings will begin with an opening statement from MSHA, followed by oral presentations from members of the public. Persons do not have to make a written request to speak; however, MSHA will give priority to persons who have notified us, in advance, of their intent to speak and will provide others an opportunity to present oral testimony if time allows. Persons and organizations wishing to speak are encouraged to notify MSHA in advance for scheduling purposes. MSHA requests that parties making presentations at the hearings submit them no later than five days prior to the hearing. Testimony, presentations, and accompanying documentation will be included in the rulemaking record.

The hearings will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply. The hearing panel may ask questions of speakers and speakers may ask questions of the hearing panel. Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcripts will be available to the public on *http://www.regulations.gov* and on MSHA's Web site at *http://www.msha.gov/tscripts.htm.*

Dated: November 3, 2014.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2014–26406 Filed 11–6–14; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0706; FRL–9919–03–OAR]

RIN 2060–AP06

Standards of Performance for Grain Elevators

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the period for providing public comments on the July 9, 2014, proposed rule titled "Standards of Performance for Grain Elevators" is being extended an additional 45 days.

DATES: The public comment period for the proposed rule published July 9, 2014 (79 FR 39241), and initially extended by 30 days on September 16, 2014 (79 FR 55413), is being extended an additional 45 days to December 22, 2014, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (79 FR 39241) for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. The EPA has established the official public docket for this rulemaking under Docket No. EPA–HQ–OAR–2010–0706.

World Wide Web. The EPA Web site containing information for this rulemaking is: *http://www.epa.gov/ttn/atw/nsps/grain/genspspg.html.*

FOR FURTHER INFORMATION CONTACT: Mr. William Schrock, Natural Resources Group (E143–03), Sector Policies and Programs Division, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5032; fax number (919) 541–3470; and email address: *schrock.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

The EPA is extending the public comment period for an additional 45 days. The public comment period will end on December 22, 2014, rather than November 6, 2014. This will ensure that the public has sufficient time to review and comment on all of the information available, including the proposed rule and other materials in the docket.

Dated: November 3, 2014.

Mary E. Henigin,

Acting Director for Office of Air Quality Planning and Standards.

[FR Doc. 2014–26524 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0540; FRL–9918–69]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals In or On Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before December 8, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0540, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

PP 3E8182. Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, Fosetyl-Al, aluminum tris (O-ethyllphosphanate) in or on Pepper/Eggplant, subgroup 8–10B and Non-bell (chili) pepper dried fruits at 0.01 parts per million (ppm). An adequate enforcement method is used to measure and evaluate the chemical aluminum tris (O-ethylphosphanate).

Authority: 21 U.S.C. 346a.

Dated: October 29, 2014.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2014–26527 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 493

[CMS–3271–P]

RIN 0938–AS04

Clinical Laboratory Improvement Amendments (CLIA); Fecal Occult Blood (FOB) Testing

AGENCY: Centers for Medicare & Medicaid Services (CMS); Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Clinical Laboratory Improvement Amendments (CLIA) regulations to clarify that the waived test categorization applies only to non-automated fecal occult blood tests. In addition, the proposed rule would remove the hemoglobin by copper sulfate method from the list of waived tests if commenters confirm that the method is no longer used.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 6, 2015.

ADDRESSES: In commenting, please refer to file code CMS–3271–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3271–P, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3271–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, CDC, (404) 498–2280. Judith Yost, CMS, (410) 786–3531.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

The Clinical Laboratory Improvement Amendments of 1988 (CLIA) (section 353 of the Public Health Service Act, codified at 42 U.S.C. 263a) requires any facility performing examinations of human specimens (for example, tissue, blood, and urine) for diagnosis, prevention, or treatment purposes to be certified by the Secretary of the Department of Health and Human Services (HHS). The objective of the CLIA program is to ensure accurate and reliable laboratory testing. The Centers for Medicare & Medicaid Services (CMS) is responsible for the administration of CLIA. The Centers for Disease Control and Prevention (CDC) provides scientific and technical support/consultation to HHS/CMS. The Food and Drug Administration (FDA) is responsible for test categorization.

To enroll in the CLIA program, laboratories must first register by completing an application; pay applicable certificate fees; be surveyed, if applicable; and become certified. CLIA fees are based on the type of certificate requested by the laboratory (that is, waived, provider-performed microscopy (PPM), accreditation, or compliance) and, for laboratories that perform moderate and high complexity testing, the annual volume and types of testing performed. Waived and PPM laboratories may apply directly for their certificates, as they are not subject to routine surveys.

To receive a certificate of waiver (COW) under CLIA, a laboratory must only perform tests listed as waived in the CLIA regulations at 42 CFR 493.15(c) (for example, blood glucose by glucose monitoring devices cleared by the FDA for home use) or tests which the FDA has determined to be waived because they are simple with an insignificant risk of error. Waived tests are exempt from most CLIA requirements, and the laboratories that perform them receive no routine surveys.

Waived laboratories must meet only the following requirements under CLIA:

- Enroll in the CLIA program;
- Pay applicable certificate fees biennially; and
- Follow manufacturers' test instructions.

Since the implementation of the CLIA program in 1992, the types of tests waived under CLIA have increased from 8 to currently119 tests; consequently, the percentage of laboratories issued a COW has grown significantly from 20 percent to almost 70 percent of the approximate 230,000 laboratories enrolled.

Dipstick or tablet reagent urinalysis (non-automated) and fecal occult blood (FOB) are two of the original 8 waived tests published in the **Federal Register** in 1992, listed at 42 CFR 493.15(c)(1) and (c)(2). The regulation specifies that waived test status is applicable to the "non-automated" dipstick or tablet reagent urinalysis, but it does not specify "non-automated" for FOB tests. At the time the regulation was adopted, the FOB was a manual or non-automated test method. However, there are automated FOB analyzers that use complex and sophisticated technology, which do not meet the CLIA criteria for waiver and, therefore, should not be waived. It, therefore, is important to clarify these tests are not included in the list of tests waived in the CLIA regulations. As a result, we propose to revise the current regulation at § 493.15(c)(2) to clarify that only non-automated FOB tests are automatically waived by regulation.

Furthermore, since the development and proliferation of the waived test for hemoglobin by single analyte instruments with self-contained or component features, as described at § 493.15(c)(9), it is our understanding that the non-automated hemoglobin by copper sulfate method at § 493.15(c)(6) may no longer be in use. Therefore, we are soliciting comments to determine if the waived test at § 493.15(c)(6) Hemoglobin—copper sulfate—non-automated is still in use. If comments support the premise that this test is not in use, we propose to remove the test from the regulation.

II. Provisions of the Proposed Regulations

We propose to revise § 493.15(c)(2) by adding the words "non-automated" following "fecal occult blood." This change would clarify the categorization of the more complex automated FOB analyzers.

In addition, we propose to remove the hemoglobin by copper sulfate method from the list of waived tests at § 493.15(c)(6) if commenters confirm that the method is no longer used.

Finally, we propose to renumber the remaining paragraphs if § 493.15(c)(6) is removed.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, September 19, 1980), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach this economic threshold and thus is not considered a major rule.

This proposed rule would amend the CLIA regulations at 42 CFR 493.15(c)(2) to clarify that only non-automated FOB tests are specifically waived by regulation. Automated test systems that detect FOB would, therefore, be subject to test categorization by the FDA as moderate or high complexity as described in § 493.17. These test systems would only be considered for waiver approval if the manufacturer submits a waiver application to FDA demonstrating the particular test system meets the statutory waiver criteria of being simple and having an insignificant risk by the user of an erroneous result.

As of April 5, 2013, the FDA CLIA test categorization database includes 111 FOB test systems. Two of these test systems are automated and are categorized by the FDA as moderate (non-waived) complexity; all others are waived non-automated methods (*http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfCLIA/search.cfm*). However, because of the language in the current regulation governing FOB, it could be construed that automated FOB test systems are available for use by laboratories with a COW. If this proposed rule is finalized, these two automated test systems and any automated FOB systems that are developed in the future, will not be available for use by a laboratory with a COW under § 493.15(c)(2). This means that testing sites using one or both of the two automated test systems noted above (that are categorized as moderate complexity tests) would be impacted by this rule if they are currently operating under a COW. Due to the low number of automated analyzers for FOB testing distributed in the United States, we estimate that less than 10 laboratories would be impacted by this proposed regulatory change.

Furthermore, our second proposal, the removal of the provision governing hemoglobin by the copper sulfate method at § 493.15 (c)(6) is not expected to affect any laboratories, as we believe that it is no longer in use. Therefore, we believe the proposed regulatory changes outlined in this proposed rule would have little or no economic impact if they were to be finalized, and would not reach the economic threshold to be considered a major rule. We welcome comments and supporting data regarding the potential impact of this change.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and states are not included in the definition of a small entity. We believe approximately 73 percent of United States medical laboratories qualify as small entities based on their nonprofit status as reported in the American Hospital Association Fast Fact Sheet, updated January 3, 2013 (*http://www.aha.org/research/rc/stat-studies/fast-facts.shtml*). However, as previously described, due to the low number of automated analyzers distributed in the United States, we estimate that less than 10 laboratories would potentially be impacted by this regulatory change. As its measure of significant economic impact on a substantial number of small entities,

HHS uses a change in revenue of more than 3 to 5 percent. We do not believe that this threshold would be reached by the requirements in this proposed rule because very few small entities would be subject to the provisions in this proposed rule.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We do not expect this proposed rule, if finalized, would have a significant impact on a substantial number of small rural hospitals. The changes proposed in this rule would apply only to the laboratories previously described, which do not include any small rural hospitals at this time. Thus, an analysis under section 1102(b) of the Act is not required for this rulemaking.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This proposed rule would not impose any mandates on state, local, or tribal governments. The impact on the private sector would be less than the threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this proposed regulation would not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

For reasons listed above, we believe this regulatory change would result in little or no economic impact. This proposed rule does not reach the economic threshold and thus is not considered a major rule. We are requesting comments and additional data to assist us in making a more thorough and accurate prediction of impact in the final rule.

List of Subjects in 42 CFR Part 493

Administrative practice and procedure, Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 493 as set forth below:

PART 493—LABORATORY REQUIREMENTS

■ 1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11) through 1395x(s)(16)), and the Pub. L. 112–202 amendments to 42 U.S.C. 263a.

■ 2. Section 493.15 is amended by—

■ A. Revising paragraph (c)(2).

■ B. Removing paragraph (c)(6).

■ C. Redesignating paragraphs (c)(7) through (c)(9) as paragraphs (c)(6) through (c)(8).

The revision reads as follows:

§ 493.15 Laboratories performing waived tests.

* * * * *

(c) * * *

(2) Fecal occult blood-non-automated;

* * * * *

Dated: June 18, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 18, 2014.

Thomas R. Frieden,

Director, Centers for Disease Control and Prevention, Administrator, Agency for Toxic Substances and Disease Registry.

Dated: September 18, 2014.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2014–26559 Filed 11–6–14; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 79, No. 216
Friday, November 7, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Guidelines for Designating Biobased Products for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of request for extension of a currently approved information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Department of Agriculture, Office of Procurement and Property Management, is hereby requesting an extension of a currently approved information collection, Guidelines for Designating Biobased Products for Federal Procurement.

DATES: Comments received by January 6, 2015 will be considered.

ADDRESSES: You may submit comments by any of the following methods. All submissions received must include the agency name. Also, please identify submittals as pertaining to the "Notice of Request for Extension of a Currently Approved Information Collection."

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: biopreferred@usda.gov.* Include "Notice of Request for Extension of a Currently Approved Information Collection" on the subject line. Please include your name and address in your message.
- *Mail/commercial/hand delivery:* Mail or deliver your comments to: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024.
- Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact the USDA TARGET Center at (202)720–2600 (voice) and (202)690–0942 (TTY).

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidelines for Designating Biobased Products for Federal Procurement.

OMB Control Number: 0503–0011.

Type of Request: Extension of a currently approved information collection.

Abstract: The USDA BioPreferred Program provides that qualifying biobased products that fall under product categories (generic groups of biobased products) that have been designated for preferred procurement by rule making are required to be purchased by Federal agencies in lieu of their fossil energy-based counterparts, with certain limited exceptions. Further, USDA is required by section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 and the Agricultural Act of 2014, to provide certain information on qualified biobased products to Federal agencies. To meet these statutory requirements, USDA will gather that information from manufacturers and vendors of biobased products. The information sought by USDA can be transmitted electronically using the Web site *http://www.biopreferred.gov.* If for any reason the requested information cannot be electronically transmitted, USDA will provide technical assistance to support the transmission of information to USDA. The information collected will enable USDA to meet statutory information requirements that will then permit USDA to designate product categories for preferred procurement under the BioPreferred Program. Once product categories are designated, manufacturers and vendors of qualifying biobased products that fall under these designated product categories will benefit from preferred procurement by Federal agencies.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Respondents: Manufacturers and vendors of biobased products.

Estimated Annual Number of Respondents: 220.

Estimated Number of Responses per Respondent: One per manufacturer or vendor.

Estimated Total Annual Burden on Respondents: 8,800 hours, one time only. Manufacturers and vendors are asked to respond only once. Therefore, there is no ongoing annual paperwork burden on respondents.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 29, 2014.

Gregory L. Parham,

Assistant Secretary For Administration, U.S. Department of Agriculture.

[FR Doc. 2014–26458 Filed 11–6–14; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0037]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a meeting of the

full Committee by an audio conference call that is open to the public on November 17, 2014. The Committee will continue its discussions on (1) microbiological criteria as indicators of poor process control or insanitary conditions, and (2) control strategies for reducing foodborne transmission of Norovirus infections. After further discussion the committee plans to adopt its final recommendations.

DATES: The full Committee will hold a meeting by telephone conference on Monday, November 17, 2014, from 2:00 p.m. to 5:00 p.m. EST.

ADDRESSES: The November 17, 2014, meeting will be held by telephone. Please contact Karen Thomas-Sharp at the address below to register for the meeting: USDA, FSIS, Office of Public Health Science, Stop 3777, Patriots Plaza 3, Floor 9–47, 1400 Independence Avenue SW., Washington, DC 20250, or by phone (202) 690–6620, fax (202) 690–6334, or email: *Karen.thomas-sharp@fsis.usda.gov*.

All documents related to the full Committee meeting will be available for public inspection in the FSIS Docket Room, USDA, at Patriots Plaza 3, 355 E. Street SW., Room 8–164, Washington, DC 20250 between 8:30 a.m. and 4:30 p.m., Monday through Friday, as soon as they become available. The NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notices*.

FSIS will finalize the agenda on or before the meeting and post it on the FSIS Web page at *http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings*. Please note that the meeting agenda is subject to change due to the time required for Committee discussions; thus, sessions could end earlier or later than anticipated. Please plan accordingly if you would like to attend or participate in a public comment period.

The official meeting minutes of the November 17, 2014 full Committee meeting, when they become available, will be kept in the FSIS Docket Room at the above address and will also be posted on *http://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/nacmcf/meetings/nacmcf-meetings*.

FOR FURTHER INFORMATION CONTACT: Persons interested in registering to attend the meeting, making a presentation, submitting technical papers, or providing comments at the November 17, 2014 plenary session should contact Karen Thomas-Sharp, phone (202) 690–6620, fax (202) 690–6334, email: *Karen.thomas-sharp@fsis.usda.gov* or at the mailing address above. Persons requiring special accommodations for this phone conference (voice and TTY) should notify Ms. Thomas-Sharp by November 10, 2014.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for foods, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The charter for the NACMCF is available on the FSIS Web page at *http://www.fsis.usda.gov/wps/portal/fsis/topics/data-collection-and-reports/nacmcf/committee-charter/charter*.

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply, including development of microbiological criteria, as well as the review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides scientific advice and recommendations to the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Departments of Commerce and Defense.

Mr. Brian Ronholm, Deputy Under Secretary for Food Safety, USDA, is the Committee Chair; Mr. Michael Landa, Acting Director of the Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair; and Dr. James Rogers, FSIS, is the Executive Secretary.

Meeting Agenda

At its November 17, 2014, meeting, the full Committee will continue discussions on:

Microbiological criteria as indicators of poor process control or insanitary conditions, and

Control strategies for reducing foodborne transmission of Norovirus infections.

The Committee took up the first topic in response to a Department of Defense (DoD) request for guidance on refined microbiological and other possible criteria for better evaluating process control and insanitary conditions at food production facilities.

The second topic responds to a request for guidance on a unified approach to reducing illness from human noroviruses (HuNoVs). FSIS, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the DoD Veterinary Services Activity (DoDVSA) all sought this guidance.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials reviewed and considered by the full Committee of NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full Committee meeting. Further, FSIS intends to make these materials available in electronic format on the FSIS Web page (*www.fsis.usda.gov*), as well as in hard copy format in the FSIS Docket Room. FSIS will make the materials available at the start of the full Committee meeting if there is sufficient time in advance to do so.

Disclaimer: NACMCF documents and comments posted on the FSIS Web site are electronic conversions from a variety of source formats. In some cases, document conversion may result in character translation or formatting errors. The original document is the official, legal copy.

In order to meet the electronic and information technology accessibility standards in Section 508 of the Rehabilitation Act, NACMCF may add alternate text descriptors for non-text elements (graphs, charts, tables, multimedia, etc.). These modifications only affect the Internet copies of the documents.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS Docket Room.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/federal-register-notices*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked

to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service*. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement
USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf*, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on November 4, 2014

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2014–26517 Filed 11–6–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[10/23/2014 through 11/03/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Lion Brothers Company, Inc ..	10246 Reisterstown Road, Owings Mill, MD 21117.	10/21/2014	The firm manufactures embroidered patches and emblems.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: November 3, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–26490 Filed 11–6–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–79–2014]

Foreign-Trade Zone (FTZ) 21—Charleston, South Carolina; Notification of Proposed Export Production Activity; Crescent Dairy and Beverages (Milk-Based Infant Formula and Fluid Milk Beverages); Walterboro, South Carolina

The South Carolina State Ports Authority, grantee of FTZ 21, submitted a notification of proposed export production activity to the FTZ Board on behalf of Crescent Dairy and Beverage (CDB), located in Walterboro, South Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on November 3, 2014.

The CDB facility is located within Site 26 of FTZ 21. The activity at the facility would involve the production of milk-based infant formula, reconstituted fluid milk, and fluid milk beverages for export (no shipments for U.S. consumption would occur). Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CDB from customs duty payments on the foreign status materials used in export production. The foreign-origin materials to be used in the export production are whole milk powder (duty rate: 68¢/kg), nonfat dry (powdered) milk (33¢/kg), and powdered milk protein concentrate (37¢/kg). Customs duties also could possibly be deferred or reduced on foreign status production equipment or the foreign materials scrapped or destroyed under U.S. Customs and Border Protection procedures.

Public comment is invited from interested parties. Submissions shall be

addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is December 17, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: November 3, 2014.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2014–26514 Filed 11–6–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Lisong Ma, a/k/a Ma Li, Inmate Number—80644–053, Moshannon Valley, Correctional Institution, 555 Geo Drive, Philipsburg, PA 16866; Order Denying Export Privileges

On May 27, 2014, in the U.S. District Court for the Eastern District of New York, Lisong Ma a/k/a Ma Li ("Ma") was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) ("IEEPA"). Specifically, Ma knowingly, intentionally, and willfully attempted to export from the United States to China one or more spools of Toray type T–800–HB12000–50B carbon fiber, without first having obtained the required license from the Department of Commerce. Ma was sentenced to 46 months in prison and a $100 assessment.

Section 766.25 of the Export Administration Regulations ("EAR" or "Regulations")[1] provides, in pertinent part, that "[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act ("EAA"), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778)." 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security ("BIS") licenses previously issued in which the person had an interest in at the time of his conviction.

BIS has received notice of Ma's conviction for violating IEEPA, and in accordance with Section 766.25 of the Regulations, BIS has provided notice and an opportunity for Ma to make a written submission to BIS. BIS has not received a submission from Ma.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Ma's export privileges under the Regulations for a period of 10 years from the date of Ma's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Ma had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

First, from the date of this Order until May 27, 2024, Lisong Ma, a/k/a Ma Li, with a last known address of Inmate Number—80644–053, Moshannon Valley, Correctional Institution, 555 Geo Drive, Philipsburg, PA 16866, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Ma by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2014). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) ("EAA"). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2014 (79 Fed. Reg. 46959 (August 11, 2014)), has continued the Regulations in effect under IEEPA.

Fourth, in accordance with Part 756 of the Regulations, Ma may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to the Ma. This Order shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 27, 2024.

Issued this 31st day of October, 2014.

Karen H. Nies-Vogel,

Acting Director, Office of Exporter Services.

[FR Doc. 2014–26492 Filed 11–6–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 7, 2014.

SUMMARY: On June 12, 2014, the Department of Commerce ("Department") published the preliminary results of antidumping duty new shipper reviews of multilayered wood flooring ("MLWF") from the People's Republic of China ("PRC").[1] We invited interested parties to comment on our preliminary results. Following our analysis of the comments, we made no changes to our preliminary margin calculations for new shippers Dalian Huade Wood Product Co., Ltd. ("Huade"), Linyi Bonn Flooring Manufacturing Co., Ltd. ("Bonn Flooring"), and Zhejiang Fuerjia Wooden Co., Ltd. ("Fuerjia"), and we continue to find that Huade, Bonn Flooring, and Fuerjia did not make sales of subject merchandise at less than normal value.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or James Martinelli, 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) 482–4162 or (202) 482–2923, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The Department published the *Preliminary Results* on June 12, 2014.[2] On July 14, 2014, The Coalition for American Hardwood Parity ("CAHP") submitted its case brief, and on July 21, 2014, Bonn Flooring submitted a rebuttal brief.

Period of Review

The period of review ("POR") for Bonn Flooring and Fuerjia is December 1, 2012 through May 31, 2013. The POR for Huade is December 1, 2012 through June 30, 2013.[3] Huade's sale of subject merchandise was made during the POR specified by the Department's regulations, but the shipment entered within thirty days after the end of that POR. When the sale of the subject merchandise occurs within the POR specified by the Department's regulations, but the entry occurs after the POR, the specified POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations.[4] This POR corresponds to the period from the date of suspension of liquidation to the end of the month immediately preceding the first semiannual anniversary month pursuant to 19 CFR 351.214(g)(1)(ii)(B).

Scope of the Order

The merchandise covered by the order includes MLWF, subject to certain exceptions.[5] The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; and 4418.72.9500; and 9801.00.2500.

The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these new shipper reviews are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can

[1] *See Multilayered Wood Flooring From the People's Republic of China; Preliminary Results of Antidumping Duty New Shipper Reviews; 2012–2013,* 79 FR 33723 (June 12, 2014) ("*Preliminary Results*").

[2] Also adopted as part of the preliminary results was the Memorandum to Paul Piquado entitled "Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Multilayered Wood Flooring from the People's Republic of China," dated June 6, 2014 ("Preliminary Decision Memorandum").

[3] *See Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping New Shipper Reviews; 2012–2013,* 78 FR 46318 (July 31, 2013) for an explanation of the different PORs.

[4] *See* 19 CFR 351.214(f)(2)(ii).

[5] For a complete description of the Scope of the Order, *see* Memorandum to Ronald K. Lorentzen entitled "Issues and Decision Memorandum for the Final Results in the Antidumping Duty New Shipper Review, 2012–2013: Multilayered Wood Flooring from the People's Republic of China," dated November 3, 2014 ("Issues and Decision Memorandum").

be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results Margin

The Department finds that the following weighted-average dumping margin exists:

Exporter	Producer	Weighted-average dumping margin (percent)
Dalian Huade Wood Product Co., Ltd	Dalian Huade Wood Product Co., Ltd	0.00
Linyi Bonn Flooring Manufacturing Co., Ltd	Linyi Bonn Flooring Manufacturing Co., Ltd	0.00
Zhejiang Fuerjia Wooden Co., Ltd	Zhejiang Fuerjia Wooden Co., Ltd	0.00

Disclosure

We intend to disclose to parties the calculations performed in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries that were not reported in the U.S. sales databases submitted by the companies individually examined during these reviews, the Department will instruct CBP to liquidate such entries at the NME-wide rate.[6]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the "Act"): (1) For the exporter/producer combinations listed above, the cash deposit rate will be 0.00 percent and (2) for subject merchandise exported by Bonn Flooring, Fuerjia, or Huade but not self-produced by the respective exporters, the cash deposit rate will be the PRC-wide rate of 58.84 percent.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these PORs. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of business proprietary information ("BPI") disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern BPI in this segment of the proceeding. Timely notification of 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 determination is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: October 31, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—Issue for Final Results

Summary
Background
Scope of the Order
List of Abbreviations and Acronyms
Discussion of the Issue
Issue: Selection of Surrogate Value for Bonn Flooring's Face Veneers
Recommendation

[6] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Table of Shortened Citations

[FR Doc. 2014–26561 Filed 11–6–14; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on certain helical spring lock washers (HSLW) from the People's Republic of China (PRC). The period of review (POR) is October 1, 2012, through September 30, 2013. This review covers three exporters of subject merchandise, Jiangsu RC Import & Export Co., Ltd. (Jiangsu RC), Suzhou Guoxin Group Wang Shun Imp. and Exp. Co., Ltd. (Guoxin), and Winnsen Industry Co., Ltd. (Winnsen).

We preliminarily determine that Jiangsu RC made sales of subject merchandise to the United States at prices below normal value (NV). Guoxin ceased participating in this review, and, thus, we preliminarily determine it is not eligible for a separate rate and it remains part of the PRC-wide entity. In addition, we are not rescinding the review with respect to Winnsen (see "Intent Not to Rescind in Part," *infra*). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* November 7, 2014.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Sergio Balbontin, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, Department of

Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1785 or (202) 482–6478, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is HSLWs. The product is currently classified under subheading 7318.21.0000, 7318.21.0030, and 7318.21.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum, dated concurrently with and hereby adopted by this notice.[1]

Intent Not To Rescind Review in Part

We received a timely request for withdrawal of the administrative review request for Winnsen, and there is no other review request outstanding for that company. For a company named in the initiation notice for which a review request has been withdrawn (in this case, Winnsen), but which has not previously received separate rate status, the Department's practice is to refrain from rescinding the review with respect to that company at the preliminary results. While Winnsen's request for review was timely withdrawn, Winnsen remains part of the PRC-wide entity, which is under review.

Preliminary Determination To Deny Guoxin a Separate Rate

Taicang Zhongbo Railway Fastening Co., Ltd. (Zhongbo), the manufacturer of subject merchandise exported by Guoxin, informed the Department that Guoxin was no longer participating in this administrative review. Accordingly, we preliminarily determine that Guoxin is not entitled to a separate rate as the Department cannot verify any of the information submitted on the record.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (Act). For a full description of the methodology underlying our conclusions, please see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists:

Exporter	Weighted-average dumping margin
Jiangsu RC Import & Export Co., Ltd	135.51
PRC-Wide Rate	128.63

Disclosure and Public Comment

The Department intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[2] Interested parties may submit case briefs no later than 30 days after the date of publication of the preliminary results.[3] Rebuttals to case briefs may be filed no later than five days after the deadline for filing case briefs and all rebuttal comments must be limited to comments raised in the case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[5] Case and rebuttal briefs must be filed electronically via IA ACCESS.[6]

Any interested party may request a hearing within 30 days of publication of this notice.[7] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[8]

The Department intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuing the final results of review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[9] The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

For individually examined respondents whose weighted-average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, we will calculate importer-specific (or customer-specific) *ad valorem* (or per-unit) assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value (or quantity) of those sales in accordance with 19 CFR 351.212(b)(1). Specifically, the Department will apply the assessment rate calculation method adopted in *Final Modification for Reviews*.[10] Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[11]

On October 24, 2011, the Department announced a refinement to its assessment practice in NME cases.[12] Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will

[1] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: Helical Spring Lock Washers from the People's Republic of China; 2012–2013," dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* 19 CFR 351.224(b).

[3] *See* 19 CFR 351.309(c)(ii).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

[6] *See* 19 CFR 351.303(b).

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.310(d).

[9] *See* 19 CFR 351.212(b)(1).

[10] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8103 (February 14, 2012) (*Final Modification for Reviews*).

[11] *See* 19 CFR 351.106(c)(2).

[12] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

instruct CBP to liquidate such entries at the PRC-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) The cash deposit rate for Jiangsu RC, which has a separate rate, will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity (128.63 percent); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

[13] *Id.*

Dated: October 31, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
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[FR Doc. 2014–26542 Filed 11–6–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. The period of review (POR) is October 1, 2012 through September 30, 2013. The review was initiated at the request of Deacero S.A. de C.V. and Deacero USA, Inc. (collectively "Deacero").[1] We preliminarily find that during the POR, Deacero made sales of subject merchandise at less than normal value (NV) during the POR. Interested parties are invited to comment on these preliminary results.

If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. *See* "Preliminary Results of Review" section of this notice.

[1] *See* Deacero's October 31, 2013, letter to the Department.

DATES: *Effective Date:* November 7, 2014.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–1009.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2013, the Department published in the **Federal Register** the notice of "Opportunity to Request Administrative Review" of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico, for the period of October 1, 2012 through September 30, 2013.[2] On December 3, 2013, the Department published the notice of initiation of this antidumping duty administrative review with respect to Deacero.[3]

Scope of the Order

The merchandise subject to this order is carbon and certain alloy steel wire rod. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.91.3000, 7213.91.3010, 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3090, 7213.91.3091, 7213.91.3092, 7213.91.3093, 7213.91.4500, 7213.91.4510, 7213.91.4590, 7213.91.6000, 7213.91.6010, 7213.91.6090, 7213.99.0030, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0000, 7227.20.0010, 7227.20.0020, 7227.20.0030, 7227.20.0080, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6020, 7227.90.6030, 7227.90.6035, 7227.90.6050, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, 7227.90.6080, and 7227.90.6085 of the HTSUS. Although the HTS numbers are provided for convenience and customs purposes, the written product description, available in *Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and*

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 60847) (October 1, 2013).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 72630 (December 3, 2013).

Ukraine, 67 FR 65945 (October 29, 2002),[4] remains dispositive.

On October 1, 2012, the Department published *Carbon and Certain Alloy Steel Wire Rod From Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*.[5] The Department found that shipments of wire rod with an actual diameter of 4.75 mm to 5.00 mm produced in Mexico and exported to the United States by Deacero constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export prices are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, please see the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of 2012/13 Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico" (Preliminary Decision Memorandum), dated concurrently with these preliminary results and hereby adopted by this notice. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov*, and it is available to all parties in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for the POR is as follows:

Producer/Exporter	Weighted-average dumping margin (percent)
Deacero S.A. de C.V	0.59

Assessment Rate

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Deacero reported the name of the importer of record and the entered value for all of its sales to the United Stated during the POR. If Deacero's weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.5 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[6] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Deacero will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.11 percent, the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[8] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised

[4] *See* Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 65945, (October 29, 2002).

[5] *See Carbon and Certain Alloy Steel Wire Rod From Mexico: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 59892 (October 1, 2012).

[6] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

[7] *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55800 (August 30, 2002).

[8] *See* 19 CFR 351.224(b).

in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[10] Case and rebuttal briefs must be filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time in order for it to have been submitted timely on that day.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via IA ACCESS within 30 days after the date of publication of this notice.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised by the parties in any written briefs, not later 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

Dated: October 31, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of Methodology
   a. Universe of Sales
   b. Fair Value Comparisons
   c. Product Comparisons
   d. Date of Sale
   e. U.S. Price
   f. Normal Value
   g. Affiliated Respondents
   h. Cost of Production Analysis
   i. Currency Conversion
5. Conclusion

[FR Doc. 2014–26424 Filed 11–6–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD572

Availability of Report: California Eelgrass Mitigation Policy and Implementing Guidelines

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

ACTION: Notice of availability.

SUMMARY: NMFS is issuing this notice to provide the final California Eelgrass Mitigation Policy (CEMP) and Implementing Guidelines by NMFS West Coast Region (WCR) to agencies and the public to ensure there is a clear and transparent process for developing eelgrass mitigation recommendations. The intent of the CEMP is to help ensure consistent, effective, and appropriate mitigation of unavoidable impacts to eelgrass habitat throughout California. It is anticipated that the adoption and implementation of this policy will provide for enhanced success of eelgrass mitigation in California. The CEMP and Implementing Guidelines, responses to comments received on the draft CEMP, and other supporting documents are available at *http://wcr.nmfs.noaa.gov/habitat/* or by calling the contact person listed below or by sending a request to *Korie.Schaeffer@noaa.gov*. Please include appropriate contact information when requesting the documents.

FOR FURTHER INFORMATION CONTACT: Korie Schaeffer, at 707–575–6087.

SUPPLEMENTARY INFORMATION: Eelgrass species are seagrasses that occur in the temperate unconsolidated substrate of shallow coastal environments, enclosed bays, and estuaries. California supports dynamic eelgrass habitats that range in extent from less than 11,000 acres to possibly as much as 15,000 acres statewide. While among the most productive of habitats, the overall low statewide abundance makes eelgrass one of the rarest habitats in California. Seagrass habitat has been lost from temperate estuaries worldwide (Duarte 2002, Lotze *et al.* 2006, Orth *et al.* 2006). While both natural and human-induced mechanisms have contributed to these losses, impacts from human population expansion and associated pollution and upland development is the primary cause (Short and Wyllie-Echeverria 1996). Human activities that affect eelgrass habitat distribution and abundance, including, but not limited to, urban development, harbor development, aquaculture, agricultural runoff, effluent discharges, and upland land use associated sediment discharge (Duarte 2008) occur throughout California. The importance of eelgrass both ecologically and economically, coupled with ongoing human pressure and potentially increasing degradation and losses associated with climate change, highlight the need to protect, maintain, and where feasible, enhance eelgrass habitat.

Eelgrass warrants a strong protection strategy because of the important biological, physical, and economic values it provides, as well as its importance to managed species under the Magnuson Stevens Fishery Conservation and Management Act. NMFS developed the CEMP and Implementing Guidelines to establish and support a goal of protecting this resource and its habitat functions, including spatial coverage and density of eelgrass habitats. The CEMP includes NMFS' policy to recommend no net loss of eelgrass habitat function in California. For all of California, compensatory mitigation should be recommended for the loss of existing eelgrass habitat function, but only after avoidance and minimization of effects to eelgrass have been pursued to the maximum extent practicable. Our approach is congruous with the approach taken in the federal Clean Water Act guidelines under section 404(b)(1) (40 CFR part 230). In absence of a complete functional assessment, eelgrass distribution and density should serve as a proxy for eelgrass habitat function. Compensatory mitigation options include comprehensive management plans, in-kind mitigation,

mitigation banks and in-lieu-fee programs, and out-of-kind mitigation.

Further, it is the intent of this policy to ensure that there is no net loss of habitat functions associated with delays in establishing compensatory mitigation. This is to be accomplished by creating a greater amount of eelgrass than is lost, if the mitigation is performed contemporaneously or after the impacts occur. To achieve this, NMFS, in most instances, should recommend compensatory mitigation for vegetated and unvegetated eelgrass habitat is successfully completed at a ratio of at least 1.2:1 mitigation area to impact area.

Vegetated shallows that support eelgrass are also considered special aquatic sites under the 404(b)(1) guidelines of the Clean Water Act (40 CFR 230.43). Pursuant to the MSA, eelgrass is designated as an essential fish habitat (EFH) habitat area of particular concern (HAPC) for various federally-managed fish species within the Pacific Coast Groundfish Fishery Management Plan (FMP) (PFMC 2008). An HAPC is a subset of EFH that is rare, particularly susceptible to human-induced degradation, especially ecologically important, and/or located in an environmentally stressed area (See 50 CFR 600. 815(a)(8)).

This policy and guidelines support but do not expand upon existing NMFS authorities under the MSA, the Fish and Wildlife Coordination Act (FWCA), and the National Environmental Policy Act (NEPA). Pursuant to the EFH provisions of the MSA, FWCA, and NEPA, NMFS annually reviews and provides recommendations on numerous actions that may affect eelgrass resources throughout California. Section 305(b)(1)(D) of the MSA requires NMFS to coordinate with, and provide information to, other federal agencies regarding the conservation and enhancement of EFH. Section 305(b)(2) requires all federal agencies to consult with NMFS on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Under section 305(b)(4) of the MSA, NMFS is required to provide EFH Conservation Recommendations to federal and state agencies for actions that would adversely affect EFH (50 CFR 600.925). NMFS makes its recommendations with the goal of avoiding, minimizing, or otherwise compensating for adverse effects to NMFS trust resources. When impacts to NMFS trust resources are unavoidable, NMFS may recommend compensatory mitigation to offset those impacts. In order to fulfill its consultative role, NMFS may also recommend, among other things, the development of eelgrass habitat distribution maps, eelgrass surveys and survey reports, mitigation plans and implementation reports, and monitoring programs and reports.

The CEMP and Implementing Guidelines will serve as the guidance for staff and managers within NMFS WCR for developing recommendations concerning eelgrass issues through EFH and FWCA consultations and NEPA reviews throughout California. It is also contemplated that this policy inform WCR's position on eelgrass issues in other roles as a responsible, advisory, or funding agency or trustee. Finally, pursuant to NMFS obligation to provide information to federal agencies under section 305(b)(1)(D) of the MSA, this policy serves that role by providing information intended to further the conservation and enhancement of EFH. Should this policy be inconsistent with any formally-promulgated NMFS regulations, those formally-promulgated regulations will supplant any inconsistent provisions of this policy. As all mitigation will be decided on a case by case basis, circumstances may exist where NMFS WCR staff will need to modify or deviate from the recommendations discussed in the CEMP Implementing Guidelines.

While many of the activities impacting eelgrass are similar across California, eelgrass stressors and growth characteristics differ between southern California (U.S./Mexico border to Pt. Conception), central California (Point Conception to San Francisco Bay entrance), San Francisco Bay, and northern California (San Francisco Bay to the California/Oregon border). The amount of scientific information available to base management decisions on also differs among areas within California, with considerably more information and history with eelgrass habitat management in southern California than the other regions. Gaps in region-specific scientific information do not override the need to be protective of all eelgrass while relying on the best information currently available from areas within and outside of California. Although the primary orientation of this policy is toward statewide use, specific elements of this policy may differ between southern California, central California, northern California and San Francisco Bay.

Dated: October 27, 2014.

Sean Corson,

Acting Deputy Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2014–26467 Filed 11–6–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD606

New England Fishery Management Council; Public Hearings

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

ACTION: Notice; public hearings.

SUMMARY: The New England Fishery Management Council (Council) will hold twelve public hearings to solicit Public comments on Draft Omnibus Habitat Amendment 2 to the Habitat Fishery Management Plan (FMP).

DATES: Written Public comments must be received on or before 5 p.m. EST, Thursday, January 8, 2015. These meetings will be held in November and December of 2014 as well as January, 2015. For specific dates and times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The Public hearing document can be obtained by contacting the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

Meeting addresses: The meetings will be held in Portsmouth, NH; Plymouth, MA; Warwick, RI; Riverhead, NY; Cape May, NJ; Baltimore, MD; New Bedford, MA; Gloucester, MA; Newport News, VA; Brewer, ME; Portland, ME and there will also be an opportunity for the public to participate in a Webinar. For specific locations, see **SUPPLEMENTARY INFORMATION.**

Public comments: Mail to John Bullard, Regional Administrator, National Marine Fisheries Service, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "OA2 DEIS Comments". Comments may also be sent via fax to 978–281–9207 or submitted via email to *nmfs.gar.OA2.DEIS@noaa.gov* with "OA2 DEIS Comments " in the subject line.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The agendas for the following twelve hearings are as follows: New England Council staff will brief the public on the Omnibus Habitat Amendment 2 before opening each hearing for public comments. The public hearing schedule is as follows:

Public Hearings: Locations and Schedules

1. *Monday, November 24, 2014 from 6–8 p.m.;* Sheraton Harborside, 250 Market Street, Portsmouth, NH, 03801; telephone: (603) 431–2300.
2. *Tuesday, November 25, 2014 from 6–8 p.m.;* Radisson Hotel, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900.
3. *Tuesday, December 2, 2014 from 6–8 p.m.;* Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.
4. *Thursday, December 4, 2014 from 6–8 p.m.;* Hotel Indigo, 1830 West Main St., Rte. 25, Riverhead, NY 11901; telephone: (631) 369–2200.
5. *Friday, December 5, 2014 from 6–8 p.m.;* Grand Hotel, 1045 Beach Avenue, Cape May, NJ 08204; telephone: (609) 884–5611.
6. *Tuesday December 9, 2014 from 10 a.m.–11:45 a.m.;* Royal Sonesta, 550 Light Street, Baltimore, MD 21202; telephone: (410) 234–0550.
7. *Tuesday, December 16, 2014 from 6–8 p.m.;* Fairfield Inn & Suites, 185 MacArthur Drive, New Bedford, MA 02740; telephone: (774) 634–2000.
8. *Wednesday, December 17, 2014 from 6–8 p.m.;* MA DMF Annisquam Station, 30 Emerson Avenue, Gloucester, MA 01930; telephone: (978) 282–0308.
9. *Thursday, December 18, 2014 from 6–8 p.m.;* Hilton Garden Inn, 180 Regal Way, Newport News, VA 23602; telephone: (757) 947–1080.
10. *Monday, January 5, 2015 from 3 p.m.–5 p.m.;* Webinar, Reserve your online seat: *https://www4.gotomeeting.com/register/278328207* or Call in: Toll: +1 (646) 307–1706; Access Code: 911–628–108.
11. *Tuesday, January 6, 2015 from 6–8 p.m.;* Jeff's Catering and Event Center, 15 Littlefield Road, Brewer, ME 04412; telephone: (207) 989–1811.
12. *Wednesday, January 7, 2015 from 6–8 p.m.;* Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**), at least 5 working days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 4, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–26489 Filed 11–6–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletion from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service from the Procurement List previously provided by such agency.

DATES: *Effective Date:* 12/8/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 10/3/2014 (79 FR 59750–59751), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.
2. The action will result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Work Lamp

NSN: 6230–00–NIB–0060—Extendable, Torch Style, Rubber Grip, LED, Rechargeable.
NSN: 6230–00–NIB–0061—Baton Style, Rubber Grip, LED, Rechargeable.
NSN: 6230–00–NIB–0062—Aluminum Frame, Superbright, COB LED, Rechargeable.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
Coverage: B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Sweatshirt, Physical Fitness, USMC, Unisex, Long Sleeve

NSN: 8415–00–SAM–3800—Black, Size X-Large.
NSN: 8415–00–SAM–3801—Black, Size Small.
NSN: 8415–00–SAM–3802—Black, Size Medium.
NSN: 8415–00–SAM–3803—Black, Size Large.
NSN: 8415–00–SAM–3804—Black, Size X-Large.
NSN: 8415–00–SAM–3805—Maroon, Size Small.
NSN: 8415–00–SAM–3806—Maroon, Size Medium.
NSN: 8415–00–SAM–3807—Blue, Size Medium.
NSN: 8415–00–SAM–3808—Yellow, Size Medium.
NSN: 8415–00–SAM–3809—Yellow, Size Small.
NSN: 8415–00–SAM–3810—Yellow, Size Large.
NSN: 8415–00–SAM–3811—Green, Size Medium.
NSN: 8415–00–SAM–3812—Red, Size Small.
NSN: 8415–00–SAM–3813—Red, Size Medium.
NSN: 8415–00–SAM–3814—Red, Size Large.
NSN: 8415–00–SAM–3815—Blue, Size Small.

T-Shirt, Mesh, Physical Fitness, USMC, Unisex, Short Sleeve

NSN: 8415–00–SAM–3771—Gold, Size Small.

NSN: 8415–00–SAM–3772—Gold, Size Medium.
NSN: 8415–00–SAM–3773—Gold, Size Large.
NSN: 8415–00–SAM–3774—Gold, Size X-Large.
NSN: 8415–00–SAM–3775—Blue, Size Small.
NSN: 8415–00–SAM–3776—Blue, Size Medium.
NSN: 8415–00–SAM–3777—Blue, Size Large.
NSN: 8415–00–SAM–3778—Blue, Size X-Large.
NSN: 8415–00–SAM–3779—Maroon, Size X-Small.
NSN: 8415–00–SAM–3780—Maroon, Size Small.
NSN: 8415–00–SAM–3781—Maroon, Size Medium.
NSN: 8415–00–SAM–3782—Red, Size Small.
NSN: 8415–00–SAM–3783—Red, Size Medium.
NSN: 8415–00–SAM–3784—Red, Size Large.
NSN: 8415–00–SAM–3785—Red, Size X-Large.
NSN: 8415–00–SAM–3786—Gray, Size Small.
NSN: 8415–00–SAM–3787—Gray, Size Medium.
NSN: 8415–00–SAM–3788—Gray, Size Large.
NSN: 8415–00–SAM–3789—Green, Size X-Small.
NSN: 8415–00–SAM–3790—Green, Size Small.
NSN: 8415–00–SAM–3791—Green, Size Medium.
NSN: 8415–00–SAM–3792—Green, Size Large.
NSN: 8415–00–SAM–3793—Black W/ Weapons Logo, Size Small.
NSN: 8415–00–SAM–3794—Black W/ Weapons Logo, Size Medium.
NSN: 8415–00–SAM–3795—Black W/ Weapons Logo, Size Large.
NSN: 8415–00–SAM–3796—Gray, Size X-Small.
NSN: 8415–00–SAM–3797—Black W/Drill Instructor Logo, Small.
NSN: 8415–00–SAM–3798—Black W/Drill Instructor Logo, Medium.
NSN: 8415–00–SAM–3799—Black W/Drill Instructor Logo, Large.
NPA: Beaufort Vocational Rehabilitation Center, Beaufort, SC.
Contracting Activity: Department of the Navy, Commanding General, Marine Corps Recruiting Depot, Parris Island, SC.
Coverage: C-List for 100% of the requirement of the U.S. Marine Corps Parris Island Recruiting Depot, as aggregated by the Commanding General, U.S. Marine Corps Parris Island Recruiting Depot, Parris Island, SC.

Service

Service Type/Locations: Custodial Service.
Architect of the Capitol, Dirksen Senate Office Building, 1st and C Streets NE, Washington, DC.
Hart Senate Office Building, 2nd and C Streets NE, Washington, DC.
Russell Senate Office Building, 1st and Constitution Avenue NE, Washington, DC.
NPA: Davis Memorial Goodwill Industries, Washington, DC.
Contracting Activity: Architect of the Capitol, U.S. Capitol Building, Washington, DC.

Deletion

On 10/3/2014 (79 FR 59750–59751), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing a small entity to provide the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial Service.
Department of Agriculture, Kootenai National Forest, Libby Ranger Station, Libby, MT.
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, CA.
Contracting Activity: Department of Agriculture, Procurement Operations Division, Washington, DC.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2014–26482 Filed 11–6–14; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must Be Received on Or Before: 12/8/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

Addition

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following service is proposed for addition to the Procurement List for provision by the nonprofit agency listed:

Service

Service Type/Location: Custodial Service, US Army Engineer District, Wilmington District, Engineer Repair Yard, 232 Battleship Road, Wilmington, NC.
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC.
Contracting Activity: Dept of the Army, W074 ENDIST WILMINGTON, Wilmington, NC.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2014–26483 Filed 11–6–14; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number 2014–0036]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by December 8, 2014.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and related clauses in Part 252.216; OMB Control Number 0704–0259.

Type of Request: Extension.

Number of Respondents: 258.

Responses per Respondent: Approximately 7.55.

Annual Responses: 1,949.

Average Burden per Response: 4 hours.

Annual Burden Hours: 7,844.

Frequency: On occasion.

Needs and Uses: The clauses at DFARS 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products; DFARS 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, and DFARS 252.216–7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2014–26574 Filed 11–6–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: A meeting involving members of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) in connection with the IEA's Emergency Disruption Simulation Exercise (ERE7) will be held on November 17 and 18, 2014, at the OECD Conference Centre, 2 rue André-Pascal, 75016 Paris, France. The purpose of this notice is to permit participation in ERE7 by U.S. company members of the IAB.

DATES: November 17–18, 2014.

ADDRESSES: 2 rue André-Pascal, Paris, France.

FOR FURTHER INFORMATION CONTACT: Diana D. Clark, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–3417.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

The ERE7 sessions will be held from 9:30–5:30 p.m. on November 17, and from 9:30 a.m. to 3:30 p.m. on November 18. The purpose of ERE7 is to train IEA Government delegates in the use of IEA emergency response procedures by reacting to a hypothetical oil supply disruption scenario.

The agenda for ERE7 is under the control of the IEA. ERE7 will involve break-out groups, the constitution of which is under the control of the IEA. The IEA anticipates that individual break-out groups will not include multiple IAB or Reporting Company representatives that would qualify them as separate "meetings" within the meaning of the Voluntary Agreement and Plan of Action to Implement the International Energy Program. It is expected that the IEA will adopt the following agenda:

Day 1

I. *Training Session*
1. Welcome to ERE7.
2. Overview of IEA emergency response policies.
3. Oil market basics.
4. IEA emergency response process.
5. Media perspective.
6. Introduction of previous ERE scenario.
7. Analysis of previous ERE scenario.

II. *Supply Disruption Scenario 1*
1. Scenario 1 introduction and break-out session.
2. Scenario 1 plenary session.

Day 2

III. *Supply Disruption Scenario 2*
1. Scenario 2 introduction and break-out session.
2. Scenario 2 plenary session.

IV. *Supply Disruption Scenario 3*
1. Scenario 3 introduction and break-out session.
2. Scenario 2 plenary session.
3. Round-up and concluding remarks.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Markets (SOM); representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the Governmental Accountability Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, DC, November 3, 2014.

Diana D. Clark,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 2014–26495 Filed 11–6–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board; Amendment

AGENCY: U.S. Department of Energy.

ACTION: Designation of Performance Review Board Standing Register.

SUMMARY: The Department of Energy (DOE) published a notice in the **Federal Register** on October 8, 2014, (79 FR 60845) listing the names of the Performance Review Board Standing Register. This document amends that notice by removing the name of Sarah Gamage and adding in its place, the

name of Sharlene Weatherwax. DOE also published a correction notice on October 27, 2014 (79 FR 63915). Also added are the new names listed below as alternates for the Performance Review Board Standing Register.

DATES: This appointment is effective as of September 30, 2014.

Campagnone, Mari-Jo
Grose, Amy
Horton, Linda
Livengood, Joanna
Lockwood, Andrea
Rasar, Kimberly

Issued in Washington, DC, on November 3, 2014.

Tonya M. Mackey,

Director, Office of Executive Resources.

[FR Doc. 2014–26502 Filed 11–6–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. UL14–01–000, DI15–01–000]

Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene; Horseshoe Bend Ranch, Inc.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order

b. *Docket Nos.:* UL14–01–000 and DI15–01–000

c. *Date Filed:* October 8, 2014

d. *Applicant:* Horseshoe Bend Ranch, Inc.

e. *Name of Project:* Horseshoe Bend Water Turbine Project

f. *Location:* The existing Horseshoe Bend Water Turbine Project will be located on Billy Creek, a tributary of the Salmon River, near the town of Cottonwood, Idaho County, Idaho, affecting T. 31N, R. 02W and R. 03W, S. 25 and 31, Boise Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b) (2012).

h. *Applicant Contact:* George E. Shroyer, Jr., Horseshoe Bend Ranch, Inc., 1910 Chapel Drive, Philomath, OR 97370; telephone: (541) 929–3308; Email address: *Gopherhunter8@gmail.commailto: mpdpe@aol.com*

i. *FERC Contact:* Any questions on this notice should be addressed to Jennifer Polardino, (202) 502–6437, or Email address: *Jennifer.Polardino@ferc.gov*

j. *Deadline for filing comments, protests, and/or motions is:* 30 days from the issuance of this notice by the Commission.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) (2014) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket numbers (DI15–01–000 and UL14–01–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The existing 7.5-kilowatt run-of-river Horseshoe Bend Water Turbine Project consists of: (1) A two to three-foot-high dam on Billy Creek, a tributary of the Salmon River; (2) a 6-inch-diameter pipe which transfers water from a reservoir which holds 2,000 gallons of water to a holding tank; (3) a 6-inch-diameter overflow pipe which diverts water from the holding tank into Billy Creek; (4) a 3 to 4-inch diameter, 3,800-foot-long penstock; (5) a turbine rated at 400 feet of net head coupled to a generator with an average flow of .37 cubic feet per second; (6) a 6-inch-diameter tailrace which returns water back into Billy Creek; (7) and appurtenant facilities. The project intake starts on the applicant's property and continues through lands owned by the State of Idaho and the Bureau of Land Management.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–26506 Filed 11–6–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–8–000]

Notice of Application; Northwest Pipeline Company, LLC

Take notice that on October 27, 2014, Northwest Pipeline Company, LLC (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations to construct and operate its Kalama Lateral Project (Project), located in Cowlitz County, Washington. The proposed Project consists of the installation of approximately 3.1 miles of 24-inch diameter pipeline, metering facilities, and miscellaneous appurtenances. The Project is designed to provide 320,000 dekatherms per day of natural gas to a proposed Methanol Plant located within the north industrial area of the Port of Kalama, in Cowlitz County, Washington, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Pam Barnes, Project Manager-Business Development, (801) 584–6857, or by email at *pam.j.barnes@williams.com*, or Teresa Silcox Torrey, Assistant General Counsel, (801) 584–7051, or by email at *Teresa.s.torrey@williams.com*. All persons located at Northwest Pipeline, LLC, 295 Chipeta Way, Salt Lake City, Utah 84108.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: November 24, 2014.

Dated: November 3, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–26505 Filed 11–6–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9918–29]

Access to Confidential Business Information by Several Student Services Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is continuing to authorize Student Services Contractors access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI). Original notice of this access was published in the **Federal Register** on May 18, 2012.

DATES: Access to the confidential data began on April 30, 2012.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; email address: *sherlock.scott@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

Under a variety of EPA contracts, Student Services Contractors are continuing to assist the Office of Science Policy (OSP), Office of Research and Development (ORD) in research on the impact of hydraulic fracturing on drinking water resources. This includes analysis of data from nine hydraulic fracturing companies and nine well owner/operators. In time other Student Services Contractors will be involved in this activity under different contract order numbers. Original notice of this type access was published in the **Federal Register** on May 18, 2012 (77 FR 29635; FRL–9349–8). No further notice will be given for these entities'/persons' clearances.

In accordance with 40 CFR 2.306(j), EPA has determined that Student Services Contractors required access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Student Services Contractors' personnel were given access to information submitted to EPA under all sections of TSCA. Some of the information may have been claimed or determined to be CBI.

EPA is issuing this notice again to inform all submitters of information under all sections of TSCA that EPA has provided Student Services Contractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract is taking place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual* and, as required for successful performance of this contract, other authorized locations.

Access to TSCA data, including CBI, under these contracts will continue until December 31, 2016.

Student Services Contractors' personnel have signed nondisclosure agreements and were briefed on appropriate security procedures before they were permitted access to TSCA CBI. All Student Services Contractors personnel will comply with TSCA CBI access requirements before being given access to these materials.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: October 29, 2014.

Pamela S. Myrick,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2014–26525 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9017–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements
Filed 10/27/2014 Through 10/31/2014
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140314, Draft EIS, HUD, CA, Potrero HOPE SF Master Plan Project, Comment Period Ends: 12/22/2014, Contact: Eugene Flannery 415–701–5598.

EIS No. 20140315, Final Supplement, BLM, AK, Alpine Satellite Development Plan for the Proposed Greater Mooses Tooth One Development Project, Review Period Ends: 12/08/2014, Contact: Bridget Psarianos 907–271–4208.

EIS No. 20140316, Second Draft Supplement, BOEM, AK, Chukchi Sea Planning Area, Oil and Gas Lease Sale 193, Comment Period Ends: 12/22/2014, Contact: Michael Routhier 907–334–5200.

EIS No. 20140317, Final EIS, USACE, AL, Update of the Water Control Manual for the Alabama-Coosa-Tallapoosa River Basin in Georgia and Alabama, Review Period Ends: 12/08/2014, Contact: Lewis Sumner 251–694–3857.

EIS No. 20140318, Draft EIS, USFS, CA, Green-Horse Habitat Restoration and Maintenance Project, Comment Period Ends: 12/22/2014, Contact: Jason Fallon 530–242–5557.

EIS No. 20140319, Draft EIS, USFWS, CA, Measure M Natural Community Conservation Plan/Habitat Conservation Plan, Comment Period Ends: 01/29/2015, Contact: Jonathan Snyder 760–431–9440.

EIS No. 20140320, Final Supplement, FTA, CA, Mid-Coast Corridor Transit Project/Record of Decision, Contact: Alexander Smith 415–744–3133. Under MAP 21 Section 1319, FTA has issued a Final EIS and ROD. Therefore, the 30-day review/wait period under NEPA does not apply to the above action.

Amended Notices

EIS No. 20140264, Draft Supplement, FHWA, IL, US 30 (FAP 309), From IL–136 to IL–40, Comment Period Ends: 11/10/2014, Contact: Catherine A. Batey 217–492–4640. Revision to the FR Notice Published 09/19/2014; Extending Comment Period from 11/03/2014 to 11/10/2014.

EIS No. 20140281, Second Draft Supplement, FHWA, AK, Juneau Access Improvements Project, Comment Period Ends: 11/25/2014, Contact: Tim Haugh 907–586–7418. Revision to the FR Notice Published 09/26/2014; Extending Comment Period from 11/10/2014 to 11/25/2014.

Dated: November 4, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–26532 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9918–92–Region–6]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the EXPLO Systems, Inc., Superfund Site ("Site"), generally located on a portion of Camp Minden, Webster Parrish, Louisiana.

This Settlement Agreement provides for the performance of a removal action by Settling Respondent, the payment of certain response costs incurred by Settling Respondent by the Settling Federal Agency, and the payment of certain response costs incurred by the United States, by the Settling Respondent at or in connection with the Site.

For thirty (30) days following the date of publication of this notice, the U.S. Environmental Protection Agency ("Agency") will receive written comments solely on the Agency's cost recovery component, at Paragraphs 38.a and 38.1a, of this Settlement Agreement. The Agency may withhold consent from or seek to modify the Agency's cost recovery component, at Paragraphs 38.a and 38.1a, of the Settlement Agreement, if comments received disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before December 8, 2014.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Cynthia Brown at 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–7480. Comments should reference the EXPLO Systems, Inc., Superfund Site, Camp Minden, Webster Parrish, Louisiana, and EPA Docket Number 06–08–14, and should be addressed to Cynthia Brown at the address listed above.

FOR FURTHER INFORMATION CONTACT: George Malone, Assistant Regional Counsel, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8030.

Dated: October 22, 2014.

James McDonald,

Acting Regional Administrator.

[FR Doc. 2014–26450 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9918–91–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: *Sierra Club* v. *McCarthy,* Case No. 1:14–cv–00833–ESH (D.D.C.). On May 20, 2014, Plaintiff filed a complaint which alleged that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), failed to perform her nondiscretionary duty to take action on a number of Texas state implementation plan ("SIP") submissions for the Dallas/Ft. Worth nonattainment area to address the 1997 8-hour ozone NAAQS within one year of the date the submissions were deemed complete by operation of law. These SIP submissions include a demonstration of attainment, reasonably available control technology ("RACT") requirements for volatile organic compounds ("VOCs") and nitrogen oxides ("NO_X"), and provisions for reasonable further progress ("RFP") toward attainment. Plaintiff's complaint also alleged that the Administrator failed to perform a nondiscretionary duty to determine whether the Dallas/Ft. Worth area attained the 1997 8-hour ozone NAAQS by the June 15, 2013 attainment date and to reclassify the area accordingly. The proposed consent decree would establish deadlines for EPA to take these actions.

DATES: Written comments on the proposed consent decree must be received by December 8, 2014.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2014–0815, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kaytrue Ting, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–6380; fax number: (202) 564–5603; email address: *ting.kaytrue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Sierra Club seeking to compel the Administrator to take action under CAA sections 110(k), 179(c)(1)–(2) and 181(b)(2)(A)–(B). Under the terms of the proposed consent decree, EPA would agree to sign one or more notices of final rulemaking to approve or disapprove, in whole or in part, the Texas SIP submissions for the Dallas/Ft. Worth 1997 8-hour ozone nonattainment area identified in Attachment A of the consent decree, including: NO_X and VOC RACT provisions by July 31, 2015; an ozone attainment demonstration by August 31, 2015; and the remaining SIP submissions identified by Plaintiff, including RFP provisions, by December 15, 2014. The proposed consent decree also provides that not later than fifteen days after the entry of the consent decree, EPA would agree to sign a notice containing the Administrator's proposed determination of whether Dallas/Ft. Worth attained the 1997 8-hour ozone NAAQS by the applicable attainment date. The proposed consent decree further provides that not later than 180 days after publication of the proposed determination of whether Dallas/Ft. Worth attained the 1997 ozone NAAQS by the applicable attainment date, EPA would agree to sign a notice containing the Administrator's final determination of whether Dallas/Ft. Worth attained by

the applicable attainment date. EPA would not be obligated to make a final determination of whether Dallas/Ft. Worth attained the 1997 8-hour ozone NAAQS if the area is redesignated to attainment or if a final rulemaking revoking the 1997 ozone NAAQS becomes effective. Under the terms of the proposed consent decree, EPA will deliver notice of the above actions to the Office of the Federal Register for review and publication within 3 business days of issuance or signature. In addition, the proposed consent decree indicates that EPA agrees that Sierra Club is entitled to recover its costs of litigation pursuant to 42. U.S.C. 7604(d) for work incurred prior to the lodging of the consent decree.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by EPA–HQ–OGC–2014–0815) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center 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 OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov*. You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *www.regulations.gov*, your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 29, 2014.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2014–26449 Filed 11–6–14; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2014–6011]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form will enable Ex-Im Bank to identify the specific details of the proposed co-financing transaction between a U.S. exporter, Ex-Im Bank, and a foreign export credit agency; the information collected includes vital facts such as the amount of U.S.-made content in the export, the amount of financing requested from Ex-Im Bank, and the proposed financing amount from the foreign export credit agency. These details are necessary for approving this unique transaction structure and coordinating our support with that of the foreign export credit agency to ultimately complete the transaction and support U.S. exports—and U.S. jobs. The form can be viewed at: *http://www.exim.gov/pub/pending/eib11–04.pdf.*

DATES: Comments should be received on or before January 6, 2015, 2014 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* (EIB:11–04) or by

mail to Ms. Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB11–04, Co-Financing with Foreign Export Credit Agency.

OMB Number: 3048–0037.

Type of Review: Regular.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public:

This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 60.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 15 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 15 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $637.50 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $765.

Toya Woods,

Office of the Chief Information Officer, Records Management Division.

[FR Doc. 2014–26497 Filed 11–6–14; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0755]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 6, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0755.

Title: Sections 59.1 through 59.4, Infrastructure Sharing.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 75 respondents; 1,125 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Section 259 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,025 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such data under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The three reporting and third party disclosure requirements are under section 259 of the Communications Act of 1934, as amended. They are (1) filing of tariffs, contracts or arrangements; (2) information concerning deployment of new services and equipment; and (3) notice upon termination of section 259 agreements. The information collections by the Commission under the requirement that incumbent local exchange carriers (ILECs) file any tariffs, contracts and agreements for infrastructure sharing will be made available for public inspection. Incumbent LECs will provide timely information on planned deployments of new services and equipment to third parties (qualifying carriers). And, incumbent LECs will furnish third parties (qualifying carriers) with 60 day notice prior to termination of a section 259 sharing agreement to protect customers from sudden changes in service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary, Office of the Managing Director.

[FR Doc. 2014–26488 Filed 11–6–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10440, Alabama Trust Bank, National Association Sylacauga, Alabama

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Alabama Trust Bank, National Association, Sylacauga, Alabama ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Alabama Trust Bank, National Association on May 18, 2012. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose.

Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: November 3, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–26435 Filed 11–6–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2014–26081) published on pages 65213 and 65214 of the issue for Monday, November 3, 2014.

Under the Federal Reserve Bank of Kansas City heading, the entry for *Otten Holdings, LLC and FEO Investments, Inc.,* is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Otten Holdings, LLC and FEO Investments, Inc.,* both in Norfolk, Nebraska; to acquire 100 percent of the voting shares of First National Agency, Inc., and thereby indirectly acquire First Nebraska Bank of Wayne, both in Wayne, Nebraska.

Comments on this application must be received by November 28, 2014.

Board of Governors of the Federal Reserve System, November 4, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–26485 Filed 11–6–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9360]

Ferrellgas Partners, L.P.; Ferrellgas, L.P., Also Doing Business as Blue Rhino; AmeriGas Partners, L.P., Also Doing Business as AmeriGas Cylinder Exchange; and UGI Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in this matter settle alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the administrative complaint issued by the Commission and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before December 2, 2014.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/amerigasbluerhinoconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "In the Matter of AmeriGas and Blue Rhino—Consent Agreement; Docket No. 9360" on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/amerigasbluerhinoconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write "In the Matter of AmeriGas and Blue Rhino—Consent Agreement; Docket No. 9360" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex 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: Eric Edmondson, FTC Western Region, San Francisco, (415–848–5179), 901 Market Street, Suite 570, San Francisco, CA 94103.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 3.25(f), 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have 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 agreements, and the allegations in the complaint. An electronic copy of the full text of each consent agreement package can be obtained from the FTC Home Page (for October 31, 2014), 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 December 2, 2014. Write "In the Matter of AmeriGas and Blue Rhino—Consent Agreement; Docket No. 9360" 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

[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

Continued

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/amerigasbluerhinoconsent* 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 "In the Matter of AmeriGas and Blue Rhino—Consent Agreement; Docket No. 9360" 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. 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 December 2, 2014. 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

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has accepted, subject to final approval, agreements containing proposed consent orders ("Consent Agreements") resolving an administrative complaint issued by the Commission on March 27, 2014. The FTC accepted a consent agreement from Respondents AmeriGas Partners, L.P., also doing business as AmeriGas Cylinder Exchange, and UGI Corporation (collectively "AmeriGas") and a separate consent agreement from "Blue Rhino" Respondents Ferrellgas Partners, L.P. and Ferrellgas, L.P., also doing business as Blue Rhino (collectively "Blue Rhino"). AmeriGas and Blue Rhino are referred to collectively herein as "Respondents." The complaint charges that AmeriGas and Blue Rhino violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by colluding to push Walmart, a key customer, to accept a reduction in the amount of propane in the propane exchange tanks each sold to Walmart.

Under the terms of the Consent Agreements, AmeriGas and Blue Rhino are prohibited from agreeing with any competitor in the propane tank exchange business to modify fill levels or otherwise fix the prices of exchange tanks, or to coordinate communications with customers. Each is also required to maintain an antitrust compliance program.

The Commission believes that the terms of the proposed orders contained in the Consent Agreements will resolve the competitive issues described in the complaint. The Consent Agreements have been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreements and any comments received, and will decide whether it should withdraw from the Consent Agreements or make final the proposed orders contained in the Consent Agreements.

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment concerning the proposed orders. It is not intended to constitute an official interpretation of the proposed Consent Agreements and the accompanying proposed orders or in any way to modify their terms.

The Consent Agreements are for settlement purposes only and do not constitute an admission by either Respondent that it has violated the law, or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

II. The Complaint

The following allegations are taken from the complaint and publicly available information.

A. Background

Blue Rhino and AmeriGas control approximately 80 percent of the market for propane exchange tanks. These tanks are portable, steel tanks, prefilled with propane, primarily used for propane barbeque grills and patio heaters. There are no widely used substitutes for exchange tanks that provide a similar ease of use. Consumers typically purchase these prefilled tanks at home improvement stores, hardware stores, mass merchandisers, supermarkets, convenience stores, and gas stations.

To compete effectively to serve national retailers, including mass merchandisers such as Walmart, The Home Depot, and Lowe's, propane exchange tank manufacturers must have access to refurbishing and refilling facilities located throughout the United States.[2] AmeriGas and Blue Rhino are the only manufacturers who can supply exchange tanks to large national retailers, except on a limited basis.

B. Challenged Conduct

In 2008, Blue Rhino and AmeriGas each decided to implement a price increase by reducing the amount of propane in their exchange tanks from 17 pounds to 15 pounds, without a corresponding decrease in the wholesale price. Blue Rhino publicly announced its fill reduction plan on June 25, 2008. AmeriGas publicly announced its fill reduction plan on July 10, 2008. The FTC's complaint does not allege that Respondents' initial decision to reduce fill levels to 15 pounds was the result of an agreement between the parties.

Walmart purchases tanks from both Blue Rhino and AmeriGas and initially refused to accept the planned fill reduction. Blue Rhino and AmeriGas understood they could not sustain the fill reduction unless it was accepted by Walmart. Blue Rhino's customer Lowe's accepted the fill reduction only on the condition that all of Blue Rhino's other customers, including Walmart, also accept the fill reduction within a short period of time. Faced with resistance from Walmart, Blue Rhino and AmeriGas colluded by secretly agreeing that neither would deviate from their proposal to reduce the fill level to Walmart.

On or about July 10, 2008, and continuing for three months thereafter, Blue Rhino and AmeriGas sales executives communicated repeatedly with each other regarding the status of their respective efforts to persuade Walmart to accept the fill reduction. The secret agreement between Blue Rhino and AmeriGas that neither would deviate from their proposal to Walmart

comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] As described in the complaint, Respondents have entered into a number of "co-packing" agreements, pursuant to which one of the Respondents processes and refills propane exchange tanks for the other Respondent at certain of their processing plants.

when faced with resistance from Walmart, and their combined efforts to push Walmart to promptly accept the fill reduction had the effect of raising the price per pound of propane to Walmart and likely to the ultimate consumers.

The Complaint alleges that this agreement violated Section 5 of the FTC Act by unreasonably restraining trade and constituting an unfair method of competition. The agreement alleged in the Complaint is *per se* unlawful.[3]

III. The Proposed Orders

The proposed orders are designed to remedy the unlawful conduct charged against the Respondents in the complaint and to prevent future unlawful conduct. The proposed orders, although entered into separately with AmeriGas and Blue Rhino, are identical in all material respects. Paragraph II of the proposed orders contains two key prohibitions. The first, contained in Paragraph II.A., bars Respondents from soliciting, offering, participating in, or entering into any type of agreement with any competitor in the propane exchange business to modify the fill level, or maintain, stabilize, or otherwise fix the price of propane exchange tanks. In addition, it prohibits Respondents from coordinating communications to customers or competitors.

The second, contained in Paragraph II.B., prevents Respondents from sharing competitively sensitive non-public information with competitors except in identified circumstances. Respondents may exchange limited information needed to negotiate and fulfill the terms of refilling agreements. The proposed orders allow this information sharing because transporting exchange tanks is a significant expense and co-packing agreements may lower the cost of serving customers located farther away from filling facilities.

The proposed orders also allow Respondents to share information with competitors as part of legally supervised due diligence or to participate in a joint venture. However, Respondents are prohibited from sharing highly sensitive information, such as future pricing and marketing plans, with employees whose duties include pricing, sales and marketing of exchange tanks. Further, Respondents are permitted to share confidential information with competitors to respond to health, safety, emergency or regulatory matters. Finally, Respondents can participate in industry-wide data exchange or market research so long as a third party collects the data and only disseminates data that are at least three months old and aggregated from a significant portion of the propane exchange industry.

Paragraph III of the proposed orders requires that Respondents establish and maintain antitrust compliance programs for their propane tank exchange business in the United States and identifies the requirements for that program. The remaining provisions of the proposed orders contain reporting and compliance requirements commonly found in FTC competition orders.

Pursuant to FTC policy regarding the term for competition orders, the proposed orders will expire in 20 years.

By direction of the Commission, Commissioner Ohlhausen dissenting, and Commissioner McSweeny not participating.

Donald S. Clark,

Secretary.

Statement of Chairwoman Edith Ramiez and Commissioner Julie Brill

The Commission is issuing for public comment two identical proposed Orders that would resolve allegations that AmeriGas and Blue Rhino entered into an unlawful agreement that neither would deviate from its plan to reduce the amount of propane in prefilled propane exchange tanks sold to Walmart. The Commission commenced administrative litigation in this matter on March 27, 2014; AmeriGas and Blue Rhino have now agreed to settle the case. The proposed Orders will prevent the parties from engaging in collusive conduct with rivals in the future. Each respondent is prohibited from agreeing with any competitor in the propane tank exchange business to modify fill levels or otherwise to fix the price of exchange tanks, or to exchange competitively sensitive information. In addition, each respondent is required to maintain an antitrust compliance program.

Propane exchange tanks are a staple in the backyards of American consumers. The collusive agreement, as alleged, was facially anticompetitive and had the effect of raising the price per pound of propane exchange tanks to Walmart and likely ultimate consumers in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Our action today thus provides important relief to American consumers and sends a clear signal to the marketplace that anticompetitive collusion will not be tolerated.

AmeriGas and Blue Rhino are the two largest suppliers of propane exchange tanks in the United States, together controlling approximately 80 percent of the market. No other competitor serves more than nine percent of the market or is capable of serving large national retailers, such as Walmart and Lowe's. As detailed in the Commission's Complaint, in 2008, AmeriGas and Blue Rhino faced rapidly increasing input costs. To offset these rising costs, AmeriGas and Blue Rhino each decided to reduce the fill level in their propane exchange tanks from 17 to 15 pounds—without a corresponding price decrease. This effectively increased the per unit price of the propane by 13 percent.

Walmart rejected proposals from both AmeriGas and Blue Rhino to reduce the propane fill levels; Walmart's buyer viewed each proposal as a price increase to which Walmart was not willing to agree. Although Blue Rhino's largest customer, Lowe's, accepted the fill reduction, it did so on the express condition that all of Blue Rhino's customers (including Walmart) also accept the fill reduction promptly. Blue Rhino and AmeriGas understood that they could not sustain the fill reduction across the industry unless it was accepted by Walmart.

The Commission's Complaint does not allege that the Respondents' initial decisions to reduce fill levels to 15 pounds were the result of an agreement. However, the Complaint alleges that thereafter, in light of Walmart's continued resistance to the reduction, and the risk that other customers would also demand to return to 17-pound tanks, AmeriGas and Blue Rhino agreed that neither would accede to pressure from Walmart. Faced with this united front, Walmart capitulated to the sellers' demand. This subsequent agreement to act in concert in negotiations with Walmart is the basis for the Commission's challenge.

The investigation revealed ample evidence to provide us with a reason to believe that AmeriGas and Blue Rhino entered into an unlawful agreement.[1]

[3] *See, e.g., United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 223–24, n.59 (1940) (agreements among horizontal competitors to buy surplus gasoline on spot market to prevent prices from falling sharply held *per se* illegal, even though there was no agreement on price to be maintained; agreements to raise, lower, stabilize, or otherwise restrain price competition are summarily condemned as *per se* illegal under Section 1 of the Sherman Act.); *Catalano, Inc.* v. *Target Sales, Inc.*, 446 U.S. 643 (1980) (*per curiam*) (agreement among horizontal competitors to eliminate a form of short-term credit was tantamount to an agreement to eliminate discounts and held *per se* illegal as price fixing); *Nat'l Macaroni Mfrs. Ass'n* v. *FTC*, 65 F.T.C. 583, 612 (1964), *enforced*, 345 F.2d 421 (7th Cir. 1965) (agreement between competitors to reduce the percentage of more expensive and higher quality durum wheat and increase the percentage of less expensive and lower quality farina wheat for pasta held *per se* illegal).

[1] In the Matter of Ferrellgas Partners, L.P., et al., FTC Docket No. 9360, Complaint (Mar. 27, 2014), *available at www.ftc.gov/system/files/documents/cases/140401amerigascomplaint.pdf.*

For example, AmeriGas and Blue Rhino executives spoke frequently in the days leading up to Walmart's decision to accept the fill reductions, and at one point a frustrated AmeriGas Director of National Accounts suggested to Blue Rhino that it was time for them to issue an ultimatum to Walmart.[2] Blue Rhino's Vice President of Sales responded by urging AmeriGas to "hang in there" as Blue Rhino continued to negotiate with Walmart.[3]

Reducing the volume of propane gas in a tank while keeping the price constant is equivalent to a per unit price increase. Indeed, that is how Walmart understood the fill reduction. The joint strategy therefore entails a restriction on price competition and does not present any new or novel theory of liability.[4] It does not matter that the Complaint does not allege that AmeriGas and Blue Rhino agreed to keep their respective prices to Walmart constant, or that Walmart may have been free to negotiate prices with the parties, as noted in Commissioner Ohlhausen's dissent. The law is clear that price fixing agreements "may or may not be aimed at complete elimination of price competition" [5] and are unlawful in either instance because of the enormous threat they pose to the free market.[6] There is also no reasonable procompetitive justification for the alleged agreement, particularly since it was directed to a significant customer whose refusal to accept the proposal had the potential to cause the firms' fill reduction plans to unravel. The agreement thus amounts to a *per se* unlawful naked restraint on price competition.[7] As Judge Posner explained in *In re Sulfuric Acid Antitrust Litigation,* "[t]he per se rule is designed for cases in which experience has convinced the judiciary that a particular type of business practice has no (or trivial) redeeming benefits ever." [8]

Whether the initial decision to reduce fill levels was the result of independent decision-making has no bearing on the unlawfulness of the parties' subsequent agreement to maintain a united front with respect to Walmart.[9] In addition, Walmart's position as the "largest propane exchange tank retailer in the United States" [10] does not protect it from coercion. Even a power buyer like Walmart is vulnerable when its only two suppliers for a product have secretly agreed not to deviate from a proposed price increase.

We continue to believe that pursuing this case was in the public interest. Contrary to Commissioner Ohlhausen's dissent, the private settlements that Blue Rhino and AmeriGas entered into resulted in very little benefit to consumers. While the settlement amounts in the private litigation noted by Commissioner Ohlhausen may superficially sound impressive, the vast majority of the *actual* funds distributed covered Plaintiffs' attorneys' fees, *cy pres* payments and administrative fees and expenses, with only a trivial amount disbursed to consumers. The proposed Orders will benefit consumers by prohibiting conduct that could lead to future agreements on price or other competitive terms.

Dissenting Statement of Commissioner Maureen K. Ohlhausen

I voted against the issuance of the Part III complaint against AmeriGas and Blue Rhino last March, and I now dissent from the consent agreement proposed by the Commission. I write briefly to explain my opposition to the majority's pursuit and now settlement of this novel, unwarranted enforcement action.

Neither the theory advanced by the staff and ultimately adopted by the Commission nor the evidence offered in support thereof convinced me that there was reason to believe the parties had restrained competition in violation of Section 5 of the FTC Act. In my view, the allegations in this case—that the parties "colluded by secretly agreeing to maintain a united front to push their joint customer, Walmart, to accept the [propane tank] fill reduction" [1]—fit poorly, at best, in the Section 1 case law. I am not aware of any Section 1 case that involved an alleged agreement among competitors to coerce a single customer to accept a decrease in product size that the competitors had pursued independently and that in no way precluded independent negotiation of the product's price between each competitor and the customer. I simply "have never seen or heard of an antitrust case quite like this." [2]

One of my several concerns at the time the complaint issued was that the Walmart-as-lynchpin theory would effectively collapse into one in which the Commission was challenging the independently decided fill reduction.[3] The Commission, however, obviously did not have sufficient evidence to pursue that more direct case.

Even more troubling, the majority's treatment of the alleged conduct as per

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[2] Complaint ¶ 50.

[3] *Id.*

[4] *Cf. Catalano, Inc.* v. *Target Sales, Inc.,* 446 U.S. 643, 648 (1980) (*per curiam*) (agreement among horizontal competitors to eliminate a form of short-term credit was tantamount to an agreement to eliminate discounts and held *per se* illegal as price fixing even though there was no agreement on actual price); *U.S.* v. *Socony-Vocuum Oil Co.,* 310 U.S. 150, 223–24, n.59 (1940) (agreements among horizontal competitors to buy surplus gasoline on spot market to prevent prices from falling sharply held *per se* illegal, even though there was no agreement on price to be maintained).

[5] Socony-Vacuum Oil, 310 U.S. at 224 n.59. *See also F.T.C.* v. *Superior Court Triol Lawyers Ass'n,* 493 U.S. 411, 423 (1980) (noting that constriction of supply is the essence of price-fixing, whether it be accomplished by agreement upon a price, which will decrease the quantity demanded, or by agreeing upon an output, which will increase the price offered).

[6] As noted in Socony-Vacuum, 310 U.S. at 224 n. 59: "[w]hatever economic justification particular price-fixing agreements may be thought to have, the law does not permit an inquiry into their reasonableness. They are all banned because of their actual or potential threat to the central nervous system of the economy." *See also NCAA* v. *Board Of Regents,* 468 U.S. 85, 100 (1983) ("Horizontal price fixing and output limitation are ordinarily condemned as a matter of law under an 'illegal per se' approach because the probability that these practices are anticompetitive is so high; a per se rule is applied when 'the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output.'" *citing Broadcast Music, Inc.* v. *Columbio Broodcosting System, Inc., 441 U.S. 1, 19–20 (1979)*).

[7] *See* Fed. Trade Comm'n & Dep't of Justice, Antitrust Guidelines for Collaborations Among Competitors (2000), *ovailable at: http://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-heorings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf* ("Certain types of agreements are so likely to harm competition and to have no significant procompetitive benefit that they do not warrant the time and expense required for particularized inquiry into their effects. Once identified, such agreements are challenged as per se unlawful.").

[8] 703 F.3d 1004, 1011–12 (7th Cir. 2012) (rejecting *per se* treatment of agreements on the ground there were reasonable procompetitive justifications for the alleged agreement); *see also Nationol Mocaroni Mfrs. Ass'n* v. *FTC,* 65 F.T.C. 583, 612 (1964), *enforced,* 345 F.2d 421 (7th Cir. 1965) (agreement between competitors to reduce the percentage of more expensive and higher quality durum wheat and increase the percentage of less expensive and lower quality farina wheat for pasta held *per se* illegal).

[9] *Cf. Sugor Institute* v. *United Stotes,* 297 U.S. 553, 601 (1936) (agreement to adhere to previously announced prices and terms of sale held *per se* illegal, even though the previously announced prices and terms were unilaterally determined).

[10] Complaint ¶ 35.

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[1] *In re* Ferrellgas Partners, L.P., FTC Dkt. No. 9360, Complaint, at 2 (Mar. 27, 2014), *ovailoble ot http://www.ftc.gov/system/files/documents/coses/140401amerigoscomploint.pdf.*

[2] *In re* Sulfuric Acid Antitrust Litig., 703 F.3d 1004, 1011 (7th Cir. 2012) (Posner, J.) (rejecting per se treatment for agreements among competitors to shut down certain of their plants and abide by exclusive territorial restrictions).

[3] *See, e.g., In re* Ferrellgas Partners, L.P., FTC Dkt. No. 9360, Concurring Statement of Commissioner Joshua D. Wright, at 3 (Oct. 31, 2014) (referring to "the collusion between AmeriGas and Blue Rhino to reduce the amount of propane in tanks sold to Walmart"); *Roundtoble Conference with Enforcement Officials,* Antitrust Source, June 2014, at 4 ("Just yesterday, we announced that the Commission voted to issue an administrative complaint against AmeriGas and Blue Rhino. . . . We have alleged that the two rivals illegally coordinated on reducing the amount of propane in the tanks that were sold to a key customer.") (Chairwoman Ramirez).

se unlawful depends on an unfounded assertion that the parties agreed to keep their prices fixed. Chairwoman Ramirez and Commissioner Brill are certainly correct that "[r]educing the volume of propane gas in a tank while keeping the price constant is equivalent to a per unit price increase."[4] The problem for the majority's position is that the complaint in this matter did not allege an agreement between AmeriGas and Blue Rhino to keep their respective prices to Walmart constant. There was no allegation in the complaint that the parties agreed in any way on the pricing of the lesser-filled propane tanks. Walmart was free to negotiate prices or any other price element with the parties. Yet, there is no allegation that Walmart tried but was unable to re-negotiate the price of the tanks with each of the parties. Thus, neither the majority's assertion that the parties "secretly agreed not to deviate from a proposed *price increase*"[5] nor their characterization of the alleged agreement as "a *per se* unlawful naked restraint on *price competition*"[6] find any support in the complaint or the evidence presented to the Commission.

Try as the majority may to fit this case into the per se category of price and output restrictions among competitors, it simply does not belong in that category. As a result, the cases and other support cited by the majority—including *Catalano, Sugar Institute*, and commentary addressing agreements on various elements of price—are inapposite.[7] In fact, none of the cases cited by Commissioners Ramirez, Brill, and Wright even remotely resembles the alleged facts in this case. The lack of judicial experience with the unique conduct alleged in this case further counsels against application of the per se rule, as well as any abbreviated rule of reason treatment, for that matter.[8]

The majority's attempt to fit the alleged conduct into the per se category—done in large part through a mischaracterization of the allegations actually levied in the complaint—runs contrary to the now decades-long evolution in antitrust doctrine away from per se treatment of benign or even procompetitive business conduct, as well as the more sophisticated economic analysis that animates modern antitrust law.[9] The majority did not allege that the parties agreed on either their propane output levels[10] or the prices that they would charge Walmart (or any other customer). In my view, that takes the alleged agreement outside the scope of classic per se prohibitions of price and output restrictions, including joint conduct aimed at a single customer, such as bid rigging. At this point in the development of the antitrust laws, if anything, we should be continuing to move categories of conduct out of the per se category—not trying to squeeze conduct that we rarely encounter into the otherwise shrinking per se box.[11]

Even assuming a valid theory under Section 1, the evidence presented to the Commission failed to convince me that the parties had reached an agreement to do anything. In my view, notwithstanding the alleged communications between the parties relating to Walmart,[12] the evidence did not provide reason to believe the parties had reached an agreement on how they would "push" Walmart, which, as the complaint notes, is "the largest propane exchange tank retailer in the United States."[13] The evidence simply did not support the allegations that Walmart (the quintessential power buyer) was susceptible to pressure, that the parties were actually coercing Walmart, that the fill reductions pursued (separately) by the parties were going to unravel, or that the parties would have returned to the higher fill levels—as opposed to, for example, Walmart accepting the lower fill levels in exchange for a lower price.

Further, even assuming a valid theory and sufficient evidence to support a Section 1 violation (both of which were lacking), I was not convinced that bringing this case was in the public interest. The alleged conduct had occurred nearly six years before the complaint was issued. More importantly, the respondents had settled private litigation that included antitrust claims (as well as other, consumer protection claims), with AmeriGas and Blue Rhino agreeing to pay up to $10 million and $25 million, respectively, to settle the private claims.[14] As part of

[4] *In re* Ferrellgas Partners, L.P., FTC Dkt. No. 9360, Statement of Chairwoman Edith Ramirez and Commissioner Julie Brill, at 2 (Oct. 31, 2014). *See also* Concurring Statement of Commissioner Joshua D. Wright, at 3 ("Here, it is self-evident that AmeriGas and Blue Rhino's agreement to reduce the amount of propane in tanks sold to Walmart has the economic effect of increasing the per unit price *if prices are held constant.*") (emphasis added).

[5] *Id.* at 3 (emphasis added).

[6] *Id.* at 2 (emphasis added).

[7] *See* Statement of Chairwoman Edith Ramirez and Commissioner Julie Brill, at 2 & 3 nn.4 & 9 (citing, among other cases, *Cotolono, Inc.* v. *Target Sales, Inc.*, 446 U.S. 643 (1980); *Sugor Institute* v. *United Stotes*, 297 U.S. 553 (1936)); Concurring Statement of Commissioner Joshua D. Wright, at 3 n.14 (citing *Cotolono;* and citing Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶2022a, at 174 (3d ed. 2012), for the proposition that agreements to fix various "price elements" are per se unlawful); *id.* at 2–3 n.13 (discussing "bid-rigging or auction collusion").

[8] *See, e.g.*, Timothy J. Muris & Brady P.P. Cummins, *Tools of Reoson: Truncotion through Judicial Experience and Economic Leorning*, Antitrust, Summer 2014, at 46 (arguing that the antitrust agencies should apply a truncated rule of reason analysis only "to restraints whose effect on competition is clear based on 'judicial experience and current economic learning' ") (quoting *In re* Polygram Holding Inc., 136 F.T.C. 310, 344–45 (2003), *off'd sub nom. Polygram Holding, Inc.* v. *FTC*, 416 F.3d 29 (D.C. Cir. 2005)).

[9] *See, e.g.*, Bruce H. Kobayashi & Timothy J. Muris, *Chicogo, Post-Chicago, ond Beyond: Time to Let Go of the 20th Century*, 78 Antitrust L.J. 147, 152–53 (2012) ("One result of the incorporation of economics into antitrust law has been the widespread rejection of broad rules of per se illegality. Over three decades, the Supreme Court abandoned most per se rules, leaving only naked horizontal price fixing and market division, plus a modified per se rule for tie-ins, under per se treatment.") (footnotes omitted); Leah Brannon & Douglas H. Ginsburg, *Antitrust Decisions of the U.S. Supreme Court, 1967 to 2007*, 3 Competition Pol'y Int'l 1, 3 (2007) (arguing "that the U.S. Supreme Court . . . is methodically re-working antitrust doctrine to bring it into alignment with modern economic understanding").

[10] The majority alleged neither an agreement as to each party's output level nor an agreement on reducing the amount of the propane in each firm's tanks. While the former agreement, if reached, would clearly be per se unlawful, the latter would not necessarily be per se unlawful, in my view. The parties had contracted to fill each other's propane tanks in certain areas of the country where one of the firms did not have refilling and refurbishing facilities. *See* Compl. ¶ 29. As a result, there would have been an efficiency justification—the need for uniform fill levels across the two suppliers—for any agreement on the fill level, and such agreement, had one been reached, would have been appropriately evaluated under the rule of reason. I take no position here on the legality of that hypothetical agreement. Again, there was no allegation in the complaint that the parties agreed on the fill levels in their tanks.

[11] I would have voted against this case, even if it had been pursued under the rule of reason because the evidence did not provide a reason to believe that the alleged conduct had an adverse impact on competition in the market for propane exchange tanks.

[12] Commissioner Wright fairly notes that no antitrust practitioner would counsel a client to engage in the direct competitor communications that were alleged to have happened here. *See* Concurring Statement of Commissioner Joshua D. Wright, at 2. One might even consider bringing a standalone Section 5 case against competitors that have engaged in the sharing of nonpublic, competitively sensitive information. *See, e.g., In re* Bosley, Inc., FTC Dkt. No. C–4404, Complaint (June 5, 2013), *ovoiloble ot http://www.ftc.gov/sites/defoult/files/documents/coses/2013/06/130605aderansregiscmpt.pdf*. However, the (largely one-way) communications at issue here are a far cry from the categories of conduct that are properly deemed per se unlawful.

[13] Compl. ¶ 35.

[14] *See* Plaintiffs' Motion for Preliminary Approval of Amended Class Settlement, *In re* Pre-Filled Propane Tank Marketing and Sales Practices Litig., MDL No. 2086, No. 4:09–cv–00465 (W.D. Mo. Apr. 29, 2010) (settlement with AmeriGas granted final approval on Oct. 4, 2010); Plaintiffs' Motion for Preliminary Approval of Class Settlement, *In re* Pre-Filled Propane Tank Marketing and Sales Practices Litig., MDL No. 2086, No. 4:09–md–2086 (W.D. Mo.

Continued

that settlement, one of the parties, Blue Rhino, also agreed to provide additional antitrust compliance training to relevant company personnel. One can only assume that AmeriGas took comparable steps following the settlement. In light of these considerations and others, scarce Commission resources would have been better spent pursuing other, more worthwhile matters.

Although the Commission may have discovered some smoke, there clearly was no fire in this case—whether fueled by propane or otherwise. In short, there was very weak evidence supporting what I saw as, at best, a novel Section 1 case. I therefore did not have reason to believe that the parties had committed a Section 1 violation. Nor did I think that it was in the public interest to pursue this enforcement action. For these reasons, I cannot vote for a consent agreement grounded on the same theory and evidence that was presented to me when the complaint originally issued.

Concurring Statement of Commissioner Joshua D. Wright

The Commission has voted to accept proposed Consent Agreements to remedy allegations that AmeriGas and Blue Rhino restrained competition by colluding to reduce the amount of propane in tanks sold to Walmart. I voted in favor of issuing the Complaint and accepting the proposed Consent Agreements because the evidence is sufficient to provide reason to believe that AmeriGas and Blue Rhino engaged in conduct that is unlawful under the antitrust laws and the proposed settlements will improve consumer welfare by preventing the parties from engaging in anticompetitive conduct in the future.[1] I write separately to explain my support for this enforcement action and the proposed settlements.

The alleged conspiracy would establish a relatively straightforward violation of the antitrust laws. In 2008, AmeriGas and Blue Rhino each independently reduced the amount of propane contained in their tanks from 17 pounds to 15 pounds.[2] The fill reductions had the effect of a 13 percent increase in the price of propane because neither AmeriGas nor Blue Rhino implemented a corresponding decrease in price.[3] If the story had ended there, with merely unilateral action and no agreement between AmeriGas and Blue Rhino, there would be no violation of the antitrust laws and the Commission would not have pursued an enforcement action.

However, the story did not end there. Walmart, the largest propane exchange tank retailer in the United States, resisted the fill reductions.[4] Other retailers agreed to the fill reductions, but only on the condition that Walmart also would accept the fill reductions within a short period of time.[5] Faced with resistance from Walmart, Blue Rhino and AmeriGas encountered the very real prospect that their fill reductions could unravel and the market would return to costlier and thus less profitable 17-pound tanks. To avoid this result, AmeriGas and Blue Rhino colluded in their negotiations with Walmart to ensure it quickly accepted the fill reductions.[6] That collusion provides the basis for the Commission's complaint and proposed Consent Agreements.

More specifically, AmeriGas and Blue Rhino executives spoke frequently in the days and weeks leading up to Walmart's decision to accept the fill reductions in order to coordinate their negotiations and encourage one another not to give in to Walmart's opposition.[7] For instance, AmeriGas and Blue Rhino executives worked together to ensure that retailers near Walmart's headquarters in Bentonville, Arkansas, only carried 15-pound tanks in hopes of convincing Walmart to accept the fill reductions as the new industry standard.[8] AmeriGas and Blue Rhino executives also discussed the status of their negotiations and coordinated emails using similar language to urge Walmart to accept the fill reductions.[9] Indeed, a frustrated AmeriGas's Director of National Accounts at one point suggested to Blue Rhino that it was time for them to issue an ultimatum to Walmart.[10] Blue Rhino's Vice President of Sales responded by urging AmeriGas to "hang in there" as Blue Rhino continued to negotiate with Walmart.[11] Faced with unyielding demands from its two primary propane suppliers and no viable outside option, Walmart finally conceded and agreed to accept propane tanks filled to 15 pounds.[12]

No antitrust practitioner would counsel his or her client to engage in the direct competitor communications and concerted actions that are alleged to have occurred between Blue Rhino and AmeriGas. This is with good reason: Such conduct is plainly anticompetitive and unlawful under Section 1 of the Sherman Act.[13] It is well understood that collusion among suppliers regarding price, quantity, and other competitive terms negotiated with purchasers can harm consumers by impeding the competitive process.[14] Here, it is self-evident that AmeriGas and Blue Rhino's agreement to reduce the amount of propane in tanks sold to Walmart has the economic effect of increasing the per unit price if prices are held constant. The mere fact that AmeriGas and Blue Rhino's agreement did not preclude the possibility that they would continue to compete on price or other terms is of little consequence for antitrust analysis. Indeed, if such competition were enough to absolve otherwise anticompetitive concerted action, even a conspiracy to fix nominal prices would be lawful so long as the colluding rivals

Oct. 6, 2011) (settlement with Blue Rhino granted final approval on May 31, 2012).

[1] 15 U.S.C. 45(b) (2012) (authorizing the Commission to initiate an enforcement action when it has "reason to believe" a party has engaged in an unfair method of competition).

[2] In re Ferrellgas Partners, L.P., FTC Docket No. 9360, Complaint at ¶¶ 1, 5, 32, 43 (Mar. 27, 2014), *available at http://www.ftc.gov/system/files/documents/cases/140401amerigascomplaint.pdf.*

[3] *Id.* at ¶¶ 1, 33.

[4] *Id.* at ¶¶ 1, 6, 38.

[5] *Id.* at ¶¶ 6, 41, 47.

[6] *Id.* at ¶¶ 1, 7, 48.

[7] *Id.* at ¶¶ 42, 50.

[8] *Id.* at ¶ 50.

[9] *Id.* at ¶¶ 50, 54, 55.

[10] *Id.* at ¶ 50.

[11] *Id.*

[12] *Id.* at ¶¶ 56.

[13] Collusion by suppliers in negotiations with a single purchaser has long been accepted as a valid theory of harm under the antitrust laws. Over a century ago, collusion in negotiations by employees (i.e., suppliers of labor) with employers was challenged successfully under the Sherman Act. *See, e.g., Loewe* v. *Lawlor,* 208 U.S. 274 (1908). The theory was so viable that Congress created a new labor exemption by passing Sections 6 and 20 of the Clayton Act. *See* 29 U.S.C. 52, 101–115 (2012). In its most egregious form, collusion by suppliers in negotiations with a single purchaser can be challenged as bid-rigging or auction collusion, the harms of which are well documented in the economic literature and which represent one of the most common violations prosecuted by the Department of Justice's Antitrust Division. *See, e.g.,* Robert C. Marshall & Michael J. Meurer, *The Economics of Auctions and Bidder Collusion, in* Game Theory and Business Applications 339 (Kalyan Chatterjee & William F. Samuelson eds., 2001); Paul Klemperer, *What Really Matters in Auction Design,* 16 J. Econ. Persp. 169, 169 (Winter 2002); Luke Froeb, Robert Koyak, & Gregory Werden, *What is the Effect of Bid-rigging on Prices?,* 42 Economics Letters 419 (1993). It is therefore unclear why, if one concedes it would be unlawful for AmeriGas and Blue Rhino to collude to reduce the amount of propane in tanks sold to all purchasers, it also would not be unlawful for the parties to collude in imposing such a fill reduction on a single, unwilling purchaser.

[14] *See, e.g., Catalano, Inc.* v. *Target Sales,* Inc., 446 U.S. 643 (1980) (per curiam) (agreement by competitors to terminate certain credit terms held unlawful); Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law ¶ 2022a, at 174 (3d ed. 2012) (explaining "the per se rule generally governs not only explicit price fixing but agreements to fix a 'price element,' which broadly includes "any term of sale that can be regarded as affecting the price that the customer must pay or any mechanism such as a formula by which the price maybe computed").

continued to compete on quality or quantity. Fortunately, antitrust law requires a different and more economically sensible result.[15]

It also is worth noting that no one—including but not limited to the parties—has presented a plausible efficiency justification that might suggest the collusion between AmeriGas and Blue Rhino to reduce the amount of propane in tanks sold to Walmart was somehow procompetitive.[16] This enforcement action therefore simply does not implicate traditional concerns over false positives and the fear that the Commission might inadvertently chill procompetitive behavior.[17] In addition, while much has been written about the important shift away from per se rules in favor of a more effects-based rule of reason analysis under modern antitrust doctrine, the benefits of this shift unsurprisingly accrue only where the challenged conduct potentially offers some procompetitive benefits.[18] Again, that is not the case here. The record is devoid of evidence supporting a plausible efficiency justification for the challenged agreement.

Moreover, the Supreme Court's shift toward the rule of reason has always left room for an appropriately truncated review for conduct that is likely to harm competition and without efficiency justification. The Court has made clear that attempting to place antitrust analysis into fixed categories is overly simplistic.[19] The Court has recognized that "there is often no bright line separating per se from Rule of Reason analysis" [20] and that determining whether a "challenged restraint enhances competition" requires "an enquiry meet for the case." [21]

The alleged coordination between AmeriGas and Blue Rhino bears a "close family resemblance" to conduct long since "convicted in the court of consumer welfare" based upon "economic learning and market experience" that demonstrates such restraints are likely to harm consumers.[22] Where, as here, the two principal suppliers in an industry have colluded in their negotiations with a major distributor to impose contractual terms the distributor initially resisted, and there are no plausible efficiency justifications suggesting the conduct may have been procompetitive, that enquiry is appropriately brief. Enforcement actions to prevent anticompetitive conduct with no plausible efficiency are a wise use of agency resources and should be a focus of the Commission's competition mission because they bring immediate benefits for consumers with little risk of chilling procompetitive conduct.

For all of these reasons, I voted in favor of issuing the Complaint and accepting the proposed Consent Agreements in this matter.

[FR Doc. 2014–26551 Filed 11–6–14; 8:45 am]

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[15] *See, e.g.*, Areeda & Hovenkamp, *supra* note 14, ¶ 2022a, at 175 ("For example, firms could presumably agree to insist on cash at the time of delivery but nevertheless compete vigorously on the price they charge. But to make much of this fact distorts the relative importance of the various terms of any transaction. The explicit 'price' of any good or service is a function not only of the nominal price but also for the credit terms, applicable discounts, rebates, terms of delivery, and the like. Firms might also agree about the nominal price but continue to compete by offering increasingly longer time periods before payment is due. The fact that such competition continues to exist does not serve to make the price-fixing agreement reasonable.").

[16] Although the argument that AmeriGas and Blue Rhino's co-filling arrangement offers an efficiency justification for the parties' concerted action against Walmart has some superficial appeal, it can be dispensed with relatively easily. First, if we are to take seriously the claim that identical propane fill levels are necessary for the efficient operation of AmeriGas's and Blue Rhino's businesses, we would expect the parties to have agreed on the initial move from 17-pound to 15-pound tanks. They did not. In fact, after a lengthy investigation, the Commission concluded the parties independently reduced the amount of propane contained in their tanks and only colluded in subsequent negotiations with Walmart. Second, it would be a curious thing for two companies attempting to achieve an efficiency benefit—one that would reduce the costs passed on to purchasers—to seek to achieve that benefit by coordinating secretly rather than explaining to purchasers the costs of maintaining divergent fill-levels for their propane tanks.

[17] *See* Frank H. Easterbrook, *The Limits of Antitrust*, 63 Tex. L. Rev. 1, 15–17 (1984).

[18] *See, e.g.*, Joshua D. Wright, Comm'r, Fed. Trade Comm'n, The Economics of Resale Price Maintenance & Implications for Competition Law and Policy, Remarks before the British Institute of International and Comparative Law (Apr. 9, 2014), *available at http://www.ftc.gov/system/files/documents/public_statements/302501/140409rpm.pdf.*

[19] *See, e.g., Polygram Holding, Inc.* v. *FTC*, 416 F.3d 29, 34–35 (D.C. Cir. 2005) (explaining usefully how the "Supreme Court's approach to evaluating a section 1 claim has gone through a transition over the last twenty-five years, from a categorical approach to a more nuanced and case-specific inquiry").

[20] *Cal. Dental Ass'n* v. *F.T.C.*, 526 U.S. 756, 779 (1999) (quoting *NCAA* v. *Board of Regents*, 468 U.S. 85, 104 n.26 (1983)).

[21] *Id.* at 779–81.

[22] *Polygram*, 416 F.3d 29 at 36–37.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0013; Docket 2014–0055; Sequence 21]

Submission for OMB Review; Federal Acquisition Regulation; Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data. A notice was published in the **Federal Register** at 79 FR 51168 on August 27, 2014. No comments were received.

DATES: Submit comments on or before December 8, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0013. Select the link that corresponds with "Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data". Follow the instructions provided on the screen. Please include your name, company name (if any), and "Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data", on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data.

Instructions: Please submit comments only and cite Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Federal Acquisition Policy Division, GSA 202–501–3221 or *Edward.chambers@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Truth in Negotiations Act requires the Government to obtain certified cost or pricing data under certain circumstances. Contractors may request an exemption from this requirement under certain conditions and provide other information instead.

B. Annual Reporting Burden

Respondents: 32,111.

Responses per Respondent: 6.

Total Responses: 192,666.

Hours per Response: 50.51.

Total Burden Hours: 9,731,560.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data, in all correspondence.

Dated: October 30, 2014.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–26459 Filed 11–6–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day–15–14ATA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Biomonitoring of Great Lakes Populations Program II—New—Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

Background and Brief Description

The Great Lakes Basin has suffered decades of pollution and ecosystem damage. Many chemicals persist in Great Lakes sediments, as well as in wildlife and humans. These chemicals can build up in the aquatic food chain. Eating contaminated fish is a known route of human exposure.

In 2009, the Great Lakes Restoration Initiative (GLRI) was enacted by Public Law 111–88. The GLRI FY2010–FY2014 Action Plan makes Great Lakes restoration a national priority for 12 Federal Agencies. The GLRI is led by the U.S. Environmental Protection Agency (US EPA). Under a 2013 interagency agreement with the US EPA, the Agency for Toxic Substances and Disease Registry (ATSDR) announced a funding opportunity called the "Biomonitoring of Great Lakes Populations" (CDC–RFA–TS13–1302).

This applied public health program aims to measure Great Lakes chemicals in human blood and urine. These measures will be a baseline for current and future restoration activities. The measures will be compared to available national estimates. This program also aims to take these measures from people who may be at higher risk of harm from chemical exposures.

This project will provide additional public health information to supplement the FY2010 CDC–RFA–TS10–1001 cooperative agreement program, "Biomonitoring of Great Lakes Populations," hereafter referred to as "Program I" (OMB Control Number 0923–0044). The purpose of the current announcement is to evaluate body burden levels of priority contaminants in additional Great Lakes residents and susceptible populations who are at highest exposure risk and who are living in an area that was not previously addressed in Program I.

The New York State Department of Health (NYSDOH) received funding for the current program. NYSDOH will look at two subpopulations of adults living in Syracuse, NY, who are known to eat fish from Onondaga Lake. Onondaga Lake is a highly polluted Great Lakes Basin water body in Central New York located northwest of Syracuse. The target subpopulations are: (1) Burmese and Bhutanese refugees who are known to

eat a substantial amount of fish from Onondaga Lake (300 people); (2) an urban population who rely on fish from Onondaga Lake as a source of food (100 people). Trained NYSDOH study staff will work closely with local refugee and citizen support organizations to get people to take part in the study. Formative research will be conducted to determine the best method for recruiting these Syracuse populations who eat fish from Onondaga Lake.

All respondents who consent will give blood and urine specimens. Their blood will be tested for polychlorinated biphenyls (PCBs), mercury, lead, cadmium, polybrominated diphenyl ethers (PBDEs), perfluorinated compounds (PFCs), toxaphene, chlordane, oxychlordane and trans-nonachlor, dieldrin, dechlorane plus, omega-3 fatty acids, blood lipids, and pesticides. Pesticides will include mirex, hexachlorobenzene, dichlorodiphenyltrichloroethane (DDT) and dichlorodiphenyldichloroethylene (DDE). Their urine will be tested for creatinine.

Respondents will also be interviewed. They will be asked about demographic and lifestyle factors, hobbies, and types of jobs which can contribute to chemical exposure. Some diet questions will be asked, too, with a focus on eating Great Lakes fish. There is no cost to respondents other than their time spent in the study.

The ATSDR is requesting a two-year OMB approval for a total of 188 burden hours per year. The agency is authorized to conduct this program under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Refugees from Burma and Bhutan living in Syracuse, NY.	Eligibility Screening Survey	250	1	5/60
	Informed Consent	150	1	1/60
	Interview Questionnaire	150	1	45/60
	Network Size Questions for Respondent Driven Sampling.	150	1	5/60
Urban subsistence anglers living in Syracuse, NY.	Eligibility Screening Survey	92	1	5/60
	Informed Consent	50	1	1/60
	Interview Questionnaire	50	1	30/60
	Network Size Questions for Respondent Driven Sampling.	50	1	5/60

Leroy A. Richardson

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–26474 Filed 11–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–15–15DH]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

Division of Community Health (DCH) Awardee Training Needs Assessment—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) established the Division of Community Health (DCH) to support multi-sector, community-based programs that promote healthy living. To support these efforts, DCH announced two new cooperative agreement programs in 2014, as

authorized by the Public Health Service Act. Both programs will apply public health strategies to reduce tobacco use and exposure, improve nutrition, increase physical activity, and improve access to opportunities for chronic disease prevention, risk reduction, and management.

The Partnerships to Improve Community Health (PICH) program (Funding Opportunity Announcement (FOA) DP14–1417) will promote the use of evidence- and practice-based strategies to create or strengthen healthy environments that make it easier for people to make healthy choices and take charge of their health. The 39 PICH awardees include both state and local governmental agencies and nongovernmental organizations. Awardees will work through multi-sector community coalitions of businesses, schools, nonprofit organizations, and other community organizations. Projects will serve three types of geographic areas: Large cities and urban counties, small cities and counties, and American Indian tribes.

The new Racial and Ethnic Approaches to Community Health (REACH) cooperative agreement (FOA DP14–1419PPHF14) builds on previous REACH program activities that began in 1999 with a focus on racial and ethnic communities experiencing health disparities. The 49 new REACH awardees include local governmental agencies, community-based nongovernmental organizations, tribes and tribal organizations, Urban Indian Health Programs, and tribal and intertribal consortia. Of these awardees, 17 are receiving funds for basic implementation activities, and 32 are receiving funds to immediately expand their scope of work to improve health and reduce health disparities. REACH is financed in part by the Prevention and Public Health Fund of the Affordable Care Act.

CDC requests OMB approval to collect the information needed to assess and prioritize the training needs of PICH and REACH awardees and key collaborators. A DCH Training Needs Assessment survey will be conducted at two points in time: Once near the beginning of the project period (first quarter of 2015) and again in the second year of the project period (last quarter of 2016). The first administration of the survey will provide an initial assessment of awardee needs at program start-up. The second administration of the needs assessment will identify any new or modified training needs that arise as awardees progress in their cooperative agreement activities. Questions within the needs assessment focus on awardee preferences for training modalities as well as facilitators and barriers to training access.

Respondents will be staff members and coalition members associated with the 88 DCH awardees (49 REACH and 39 PICH). Information will be requested from four individuals affiliated with each award: The principal investigator or program manager, the lead evaluation staff member, the lead media/communications staff member, and a coalition member. The maximum number of respondents is 352 (88 awardees × 4 respondents/awardee). Because the REACH and PICH awards aim to promote collaborative, multi-sector efforts, approximately 192 respondents will be associated with private sector entities, and 160 respondents will be associated with state, local, or tribal government entities.

The same survey instrument will be administered to all respondents, however the estimated burden per response varies according to the respondent's project role and responsibilities. Information will be collected using a Web-based platform. Data collection and management will be conducted by a contractor on behalf of CDC.

Findings will enable DCH to develop appropriate training activities that best support awardees' community efforts to fulfill their funded objectives.

OMB approval is requested for two years. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Private Sector Respondents Associated with REACH or PICH Awards:					
Principal Investigator or Program Manager.	Training Needs Assessment	48	1	50/60	40
Evaluation Lead	Training Needs Assessment	48	1	.5	24
Media/Communications Lead	Training Needs Assessment	48	1	20/60	16
Coalition Member	Training Needs Assessment	48	1	1	48
State/Local/Tribal Govt. Sector Respondents Associated with REACH or PICH Awards:					
Principal Investigator or Program Manager.	Training Needs Assessment	40	1	50/60	33
Evaluation Lead	Training Needs Assessment	40	1	.5	20
Media/Communications Lead	Training Needs Assessment	40	1	20/60	13
Coalition Member	Training Needs Assessment	40	1	1	40
Total					234

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–26475 Filed 11–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–14AOD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Incentives for the Adoption of the Youth@Work—Talking Safety Curriculum—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Working youth have long been a priority area for NIOSH. Approximately 17.5 million workers were less than 24 years of age in 2010, representing 13% of the workforce [NIOSH 2014]. For the period 1997 through 2003, nearly 80% of high school students reported working while still in high school [BLS 2005; NIOSH 2013]. During the 10-year period 1998–2007, an estimated 7.9 million nonfatal injuries to younger workers were treated in U.S. hospital emergency departments (EDs) [CDC 2010]. The nonfatal injury rate was 5.0 ED-treated injuries per 100 full-time equivalent (FTE) workers, approximately two times higher than among workers age 25 or over [CDC 2010].

Given the disproportionate number of workplace injuries and illnesses suffered by young workers, occupational safety education is a critical and urgent concern [Chin et al. 2010]. Although the Occupational Safety and Health (OSH) Act of 1970 regulates that employers have the primary responsibility for providing a safe and healthy workplace, future working generations should be equipped with a foundation of workplace safety and health knowledge and skills. A mastery of general occupational safety and health competencies that protect workers from injury or illness is key to any work-readiness effort and to every job. NIOSH has developed fundamental workplace safety and health competencies that apply to all workplaces [NIOSH 2013; Schulte et al. 2014]. The eight core workplace safety and health competencies are general transferable skills that can apply across all industries. They can be used with the job-specific skills that workers gain through apprenticeship and career technical or vocational training programs. These core competencies/skills can be used to improve the health and safety of individuals in other places as well, such as in homes, schools, or communities.

The purpose of this study is therefore to conduct key informant interviews with a limited number of assistant superintendents and/or curriculum coordinators in school districts across the country to assess their openness to incorporating workplace safety and health skills for young workers into their programs as a vital component of their curricula in both academic and vocational education programs at the middle and high school level. The information will inform NIOSH on incentives barriers for the inclusion of work place safety and health competencies as the "missing life skill" in the curricula and programs of U.S. middle schools and high schools. Providing youth with foundational workplace health and safety skills enables young workers to better protect themselves and others and to contribute to safe and healthy working conditions.

For this project, twenty-eight (28) key informant interviews will be conducted, from a recruitment pool of eighty-four (84) school districts. The recruitment pool will consist of twenty-one (21) randomly assigned districts from each of the four (4) regions of the United States (Northeast, Midwest, West, and South) as defined by the U.S. Census Bureau. In each region, a sample of districts will be selected based on jurisdictional density, as defined by the National Center for Education Statistics (NCES). Recruitment letters will first be sent to the superintendent's office of the school districts selected for the recruitment pool. A recruitment call to the superintendent's office will follow in order to gauge the district's interest in participating and to identify the best potential respondent for that district. Next, the potential respondents will receive a recruitment letter detailing the objectives of the study, followed by a recruitment call to secure their participation and schedule an interview.

The twenty-eight (28) selected participants for this data collection will be recruited with the assistance of a contractor who has successfully performed similar tasks for NIOSH in the past. The sample size is based on recommendations related to qualitative interview methods and the research team's prior experience. The interview discussion guide will be administered verbally by phone to participants in English. Once this study is complete, results will be made available via various means including print publications and the agency internet site. The information gathered by this project will inform NIOSH of the receptivity and barriers faced by these school districts for incorporating workplace safety and health competencies for young workers as a vital component of their curricula within academic and vocational education programs at the middle and high school level.

There is no cost to respondents other than their time. The total estimated annual burden hours are 34.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public School Officials	Recruitment Call to Superintendent Office Script	84	1	7/60
Public School Officials	Recruitment Call to Respondent Script	84	1	7/60
Public School Officials	Discussion Guide	28	1	30/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–26473 Filed 11–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis Meeting (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates

8:30 a.m.–5:00 p.m., December 2, 2014
8:30 a.m.–2:30 p.m., December 3, 2014

Place: Corporate Square, Corporate Boulevard, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30329, telephone (404) 639–8317. This meeting is also accessible by Webinar.

For Participants

URL: *https://www.mymeetings.com/nc/join/.*

Conference number: PW8649920.

Audience passcode: 4223129.

Participants can join the event directly at: *https://www.mymeetings.com/nc/join.php?i=PW8649920&p=4223129&t=c.*

USA Toll-free +1 (800) 857–9615, Participant code: 4223129.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters for Discussion: Agenda items include the following topics: (1) Drug Shortages—Non-U.S. based drug manufactures and Food and Drug Administration (FDA) approval and FDA's role in addressing drug shortages; (2) TB elimination—Stop TB Elimination Plan Update and the Perspectives from National Tuberculosis Controllers Association (NTCA) and the Nation's TB Control Programs; (3) Updates from Workgroups; and (4) other tuberculosis-related issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Centers for Disease Control and Prevention, 1600 Clifton Road NE., M/S E–07, Atlanta, Georgia 30333, telephone (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–26509 Filed 11–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC)

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces, the following meeting of the aforementioned committee:

Time and Date: 9:00 a.m.–12:00 p.m., December 9, 2014 (OPEN).

Place: Teleconference.

Status: The meeting is open to the public; the toll free dial in number is 1–877–937–9818 with a pass code of 751384.

Purpose: The board makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. The board provides advice on the appropriate balance of intramural and extramural research, and provides advice on the structure, progress and performance of intramural programs. The Board of Scientific Counselors is also designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios, and (5) review of program proposals. The board shall provide guidance on the National Center of Injury Prevention and Control's programs and research activities by conducting scientific peer review of intramural research and programs within the National Center for Injury Prevention and Control; by ensuring adherence to Office of Management and Budget requirements for intramural peer review; and by monitoring the overall direction, focus, and success of the National Center for Injury Prevention and Control.

Matters for Discussion: The BSC, NCIPC will provide guidance on current research areas; as well as, receive an update from the current NCIPC Portfolio Review Workgroup on the Web-based Injury Surveillance Query and Reporting System (WISQARS) and the BSC Workgroup on Mild Pediatric Traumatic Brain Injury Guidelines. In addition, the BSC will discuss research strategies needed to guide the Center's focus and discuss potential topics for the upcoming Portfolio Review. There will be 15 minutes allotted for public comments at the end of the open session.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Designated Federal Official, NCIPC, CDC, 4770 Buford Highway NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–1430.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–26510 Filed 11–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Times and Dates

9:00 a.m.–5:00 p.m., December 4, 2014
9:00 a.m.–12:00 p.m., December 5, 2014

Place: Emory Conference Center, The Silverbell Pavilion, 1615 Clifton Rd, Atlanta, Georgia, 30329.

Status: Open to the public, limited only by the space available. Please register for the meeting at *www.cdc.gov/hicpac.*

Purpose: The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion, the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), the Director, CDC, the Secretary, Health and Human Services regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters for Discussion: The agenda will include updates on CDC's activities for prevention of healthcare associated infections (HAIs), updates on antimicrobial resistance, an update on Draft Guidelines, and updates on healthcare preparedness and emerging infections.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Erin Stone, M.S., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE., Mailstop A–07, Atlanta, Georgia 30333 Telephone (404) 639–4045. Email: *hicpac@cdc.gov*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2014–26511 Filed 11–6–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10371]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. 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. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. This is necessary to ensure compliance with an initiative of the Administration. We are requesting an emergency review under 5 CFR Part 1320(a)(2)(i) because public harm is reasonably likely to result if the normal clearance procedures are followed. We are seeking emergency approval for modifications to the information collection request (ICR) currently approved under Office of Management and Budget (OMB) control number 0938–1119 in order to collection additional information during the 2015 open enrollment periods from the 14 operational SBMs (including Washington, DC) to enhance the agency's understanding of the demographic makeup of the citizens enrolling in the various health plans as well as the affordability of those plans. Existing collections gather information from the grant awardee to ensure the CMS is able to conduct their statutory oversight responsibilities. The revision to the weekly reporting requirement is necessary to obtain more accurate and consistent enrollment data during the upcoming Open Enrollment Period which begins November 15, 2014. The immediate need for this revision is due to the State-Based Marketplaces (SBM) maturing business processes and the requirement for more precise reporting of comparison data between the first and second years of ACA implementation. The changes to the revised format of the Weekly Report have been presented to all participating states. CMS is requesting an emergency modification to the weekly reporting template in order to capture certain demographic data and information on new versus re-enrolled individuals in accordance with uniform definitions so as not to produce misleading results.

DATES: Comments must be received by November 14, 2014.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10371/OMB Control Number 0938–1119, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10371 Cooperative Agreement To Support Establishment of State-Operated Health Insurance Exchanges

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. The term "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. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. This is necessary to ensure compliance with an initiative of the Administration. We are requesting an emergency review under 5 CFR Part 1320(a)(2)(i) because public harm is reasonably likely to result if the normal clearance procedures are followed.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved information collection; *Title of Information Collection:* Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges; *Use:* Section 1311 of the Affordable Care Act provides for grants to States for the planning and establishment of Marketplaces. Given the innovative nature of Marketplaces and the statutorily-prescribed relationship between the Secretary and States in their development and operation, it has been critical that the Secretary work closely with States to provide necessary guidance and technical assistance to ensure that States can meet the prescribed timelines, federal requirements, and goals of the statute. These grants are funded through the Health Insurance Marketplaces Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchanges (Funding Opportunity Number: IE–HBE–12–001). A critical part of this guidance and assistance is the collection of precise information to measure the performance of the individual exchanges.

The revised data collection instrument has been developed in coordination with the states, based on an understanding of their current data collection efforts and capabilities. The tool will enable us to: (1) Distinguish new enrollees from renewals; (2) capture language preference (Spanish, other language, or no preference) to assist in targeting potentially underserved individuals; (3) obtain a better understanding of enrollment activity by certain demographic breakdowns to better target our activities through more refined cross-tabulations of data by age and gender, by age and Metal Level, and by financial assistance status (with/without) and Metal Level; (4) distinguish Special Enrollment Period activity for the 2014 coverage year during the period that overlaps with the first 2.5 months of Open Enrollment [November 15-December 31] in order to avoid contamination of 2015 data, to assess the extent of Special Enrollment activity during the last phase of 2014 activity; (5) identify stand-alone dental plans to better measure the extent to which individuals are enrolling in these products in order to provide input into ASPE's monthly report to the public; (6) codify providing enrollment data for all issuers in the individual marketplaces, if available, compared to the template that asks only for the top three in the individual marketplaces [These data, if available, have been provided to us as a write-in to the previous template on a voluntary basis.]. *Form Number:* CMS–10371 (OMB control number: 0938–1119); *Frequency:* Weekly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 16; *Total Annual Responses:* 208; *Total Annual Hours:* 6,240. (For policy questions regarding this collection contact Dena Puskin 301–492–4342.)

We are requesting OMB review and approval of this collection by November 15, 2014, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the date and address noted above.

Dated: November 4, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–26584 Filed 11–5–14; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 5, 2014, from 8 a.m. to 4:30 p.m.

Location: The Marriott Inn and Conference Center, University of Maryland University College, The Ballroom, 3501 University Blvd. East, Adelphi, MD 20783. The conference center's telephone number is 301–985–7300.

Contact Person: Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, *AIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application 206494 for ceftazidime-avibactam for injection, submitted by Cerexa Inc., for the proposed indications of: Complicated Intra-abdominal Infections, Complicated Urinary Tract Infections, including Acute Pyelonephritis and Limited Use Indication: Aerobic Gram-negative Infections with Limited Treatment Options.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 28, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 20, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 21, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer Shepherd at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 31, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Programs.

[FR Doc. 2014–26442 Filed 11–6–14; 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: Center for Scientific Review Special Emphasis Panel; Language and Communication.

Date: December 1, 2014.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Andrea B Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral Regulation, Learning and Ethology.

Date: December 4–5, 2014.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Andrea B Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@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: October 31, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26417 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: December 8–10, 2014.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 50, Conference Room 1227/1233, 50 Center Drive, Bethesda, MD 20892.

Contact Person: Kathryn C. Zoon, Ph.D., Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 3, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26420 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Hematology.

Date: November 13–14, 2014.

Time: 11:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, shahb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 3, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26419 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Policy Review.

Date: November 17, 2014.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 3, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26421 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–14–008: Secondary Analysis to Explore NIMH Research Domain Criteria.

Date: November 19, 2014.

Time: 2:00 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: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 4, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26477 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; E-Learning for HAZMAT and Emergency Response.

Date: December 1, 2014.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Room 3118, Morrisville, NC 27560 (Telephone Conference Call).

Contact Person: Janice B. Allen, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 4, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26478 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology.

Date: November 21, 2014.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Resource Center: Translational/Developmental Proteomics.

Date: December 3–5, 2014.

Time: 7:00 p.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@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: November 3, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26418 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Services Conflict.

Date: November 17, 2014.

Time: 10:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892 301–451–2356, *gavinevanskm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: November 4, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–26479 Filed 11–6–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2014–0970]

National Maritime Security Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Maritime Security Advisory Committee. The National Maritime Security Advisory Committee provides advice and makes recommendations on national maritime security matters to the Secretary of Homeland Security via the Commandant of the United States Coast Guard.

DATES: Applicants must submit a cover letter and resume in time to reach Mr.

Ryan Owens, the Alternate Designated Federal Officer, no later than December 31, 2014.

ADDRESSES: Send your cover letter and resume indicating the membership category for which you are applying via one of the following methods:

- *Email: ryan.f.owens@uscg.mil,* Subject line: The National Maritime Security Advisory Committee;
- *Fax:* 202–372–8353, ATTN: Mr. Ryan Owens, National Maritime Security Maritime Advisory Committee, Alternate Designated Federal Officer; or
- *Mail:* Send your completed application packets to: Mr. Ryan Owens, National Maritime Security Advisory Committee, Alternate Designated Federal Officer, CG–FAC, U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593, Stop 7501, Washington, DC 20593–7501.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Commandant (CG–FAC), National Maritime Security Advisory Committee, Alternate Designated Federal Officer, U.S. Coast Guard Headquarters, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593, Stop 7501, Washington, DC 20593–7501, *ryan.f.owens@uscg.mil,* Phone: 202–372–1108, Fax: 202–372–8353.

SUPPLEMENTARY INFORMATION: The National Maritime Security Advisory Committee is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act, Title 5 United States Code, Appendix. The National Maritime Security Advisory Committee advises, consults with, and makes recommendations to the Secretary via the Commandant of the Coast Guard on matters relating to national maritime security.

The full Committee normally meets at least two times per fiscal year. Working group meetings and teleconferences are held more frequently, as needed. The Committee may also meet for extraordinary purposes.

We will consider applications for seven positions. Current members are eligible to serve an additional term of office but must re-apply in accordance with this notice.

Applicants with experience in the following sectors of the marine transportation industry with at least five years' practical experience in their field are encouraged to apply:

- at least one individual who represents the interests of the port authorities;
- at least one individual who represents the interests of the facilities' owners or operators;
- at least one individual who represents the interests of the terminal owners or operators;
- at least one individual who represents the interests of the vessel owners or operators;
- at least one individual who represents the interests of the maritime labor organizations;
- at least one individual who represents the interests of State and local governments; and
- at least one individual who represents the interests of the maritime industry.

Due to the nature of National Maritime Security Advisory Committee business, National Maritime Security Advisory Committee members are required to apply for, obtain, and maintain a government national security clearance at the Secret level. The Coast Guard will sponsor and assist candidates with this process. Each member serves for a term of three years. While attending meetings or when otherwise engaged in Committee business, members may be reimbursed for travel and per diem expenses as permitted under applicable Federal travel regulations. However, members will not receive any salary or other compensation for their service on the National Maritime Security Advisory Committee.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2014–0970) in the Search box, and click "Search." Please do not post your resume on this site. Note that during the vetting process, applicants may be asked to provide date of birth and social security number.

Dated: November 3, 2014.

J. C. Burton,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2014–26443 Filed 11–6–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–45]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6672 (this is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses:: AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCE/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland, TX, 78236–9853, (210) 395–9503; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202) 685–9426; (these are not toll-free numbers).

Dated: October 30, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/07/2014

Unsuitable Properties

Building

California

CRR Campground Managers Office
1900 Jameson Beach Rd.
South Lake Tahoe CA 96150
Landholding Agency: Agriculture
Property Number: 15201440003
Status: Excess
Comments: documented deficiencies: bldg. has been abandoned for decades & is falling down; represent a clear threat to physical safety.
Reasons: Extensive deterioration

Building 9
4600 Belleau Ave., B–224
San Diego CA 92140
Landholding Agency: Navy
Property Number: 77201440014
Status: Excess
Comments: documented deficiencies: several exterior wall cracks; structural damage; clear threat to personal safety; public access denied & no alternative method to gain access w/out compromising nat'l sec.
Reasons: Extensive deterioration; Secured Area

Connecticut

Building 160
Off Growler Ave.
Groton CT 06349
Landholding Agency: Navy
Property Number: 77201440015
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising nat'l sec.
Reasons: Secured Area

Michigan

Building 891
27500 Ammo Road
Selfridge ANGB MI 48045
Landholding Agency: Air Force
Property Number: 18201440003
Status: Unutilized
Comments: property located within an airport runway clear zone; public access denied & no alternative method to gain access w/out compromising nat'l sec.
Reasons: Within airport runway clear zone; Secured Area

Building 890
27550 Ammo Road
Selfridge ANGB MI 48045
Landholding Agency: Air Force
Property Number: 18201440004
Status: Unutilized
Comments: property located within an airport runway clear zone; public access denied & no alternative method to gain access w/out compromising nat'l sec.
Reasons: Within airport runway clear zone; Secured Area

North Carolina

Building 164
MCAS Cherry Point
Cherry Point NC 28533–0006
Landholding Agency: Navy
Property Number: 77201440011
Status: Excess
Comments: Property located within an airport run way clear zone; public access denied & no alternative method to gain access w/out compromising nat'l sec.
Reasons: Within airport runway clear zone; Secured Area

Building 478
MCAS Cherry Point
Cherry Point NC 28533–0006
Landholding Agency: Navy
Property Number: 77201440012
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising nat'l sec.
Reasons: Secured Area

Building 229
MCAS Cherry Point
Cherry Point NC 28533–0006
Landholding Agency: Navy
Property Number: 77201440013
Status: Excess
Comments: public access denied & no alternative method to gain access w/out compromising nat'l sec.
Reasons: Secured Area

13 Buildings
MCAS Cherry Point
MCAS Cherry Point NC 28533
Landholding Agency: Navy
Property Number: 77201440016
Status: Excess
Directions: 1383; 1385; 1384; 4641; 1387; 1388; 1374; 1375; 1376; 1379; 1377; 1380; 1378
Comments: properties located w/in an military runway clear zone; properties located in secured area where public access denied and no alternative method to gain access w/out compromising national security.
Reasons: Secured Area; Within airport runway clear zone

Bldgs. 1502 & 1797
MCAS Cherry Point
MCAS Cherry Point NC 28533
Landholding Agency: Navy
Property Number: 77201440017
Status: Excess
Comments: properties located in a secured area where public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

[FR Doc. 2014–26196 Filed 11–6–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–N235; FRES480102200B0–XXX–FF02ENEH00]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Survey of Residents' Attitudes on Jaguar Conservation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before December 8, 2014.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803, (mail), or *hope_grey@fws.gov* (email). Please include "1018–Resident" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–XXXX. This is a new collection.

Title: Survey of Residents' Attitudes on Jaguar Conservation.

Service Form Number: None.

Type of Request: Request for a new OMB control number.

Estimated Number of Annual Respondents: 225.

Description of Respondents: Individuals, land-based business owners/operators; government agency personnel; local wildlife associations; and conservation or recreation organizations.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Activity	Number of responses	Completion time per response (minutes)	Total annual burden hours
Initial contact	225	3	11
Complete Jaguar Survey	200	15	50
Totals	425		61

Estimated Annual Nonhour Burden Cost: None.

Abstract: This survey is designed to elicit information about the public's perspectives on attitudes towards and beliefs about jaguars in the Northwestern Recovery Unit (southern Arizona and southwestern New Mexico). We plan to survey 200 residents, land-based business owners/operators, related government agency personnel, and local wildlife association and/or conservation organization members in the Northwestern Recovery Unit. The survey will gather information on people's current level of knowledge about jaguar ecology and status, people's attitudes towards jaguars, and the social barriers and opportunities to jaguar conservation in this region. The surveys will consist of in-person interviews. This information will aid us in identifying groups that might be interested in being involved or staying informed about jaguar conservation and highlighting groups with particular concerns that might be addressed in forthcoming policies or programs. We will use information gained from this survey to formulate future jaguar conservation strategies, as well as to create educational and outreach materials for jaguar recovery.

Comments Received and Our Responses

On December 17, 2013, we published in the **Federal Register** (78 FR 76315) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on February 18, 2014. We received the following comments:

Comment: The commenter requested that surveys be collected from residents of Hidalgo County, New Mexico, as well as from residents of Cochise, Pima, and Santa Cruz Counties of Arizona, and that the number of interviews conducted with residents of each of the four counties in the Northwestern Recovery Unit be proportional to the counties' population.

Response: We will survey residents in Hidalgo County, New Mexico. The contractor will make every effort to distribute the 200 surveys so that each county's residents are adequately represented.

Comment: One comment requested that the survey include farmers and ranchers in Hidalgo County, New Mexico.

Response: The method of interviewing residents will mean that farmers and ranchers will likely be included among the rural residents surveyed. The category of small farmers/ranchers will be targeted purposely, as a stakeholder category. Small-acreage land users are often not included in data collection that targets ranchers and other agricultural producers. A concurrent information collection will include ranchers and farmers in the Northwestern Recovery Unit. Thus, they will not be included in this survey to avoid duplication of effort.

Comment: One commenter requested to be included as a survey respondent.

Response: We will include the commenter's agency as a respondent in the related government agency personnel survey stakeholder category.

Comment: One commenter requested a copy of the survey instrument and the results of surveys once completed.

Response: We will send a copy of the survey instrument and the final report, which will include information on the data collected, analysis methods, results, and conclusions. The final report will be available after May 2015.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: November 4, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–26513 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N213; FXES11120000F2–145–FF08ECAR00]

Orange County Transportation Authority, Orange County, California; M2 Natural Community Conservation Plan/Habitat Conservation Plan, Draft Environmental Impact Report/ Environmental Impact Statement, and Incidental Take Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of public meetings.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Orange County Transportation Authority (OCTA/ applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (Act). The permit is needed to authorize take of listed animal species due to construction and habitat management and monitoring activities within areas affected by covered freeway projects and in preserves in Orange County, California. We have prepared a draft environmental impact statement (DEIS), which is the Federal portion of the draft environmental impact report (DEIR)/ DEIS, to analyze the impacts of issuing an incidental take permit based on the OCTA's proposed natural community conservation plan (NCCP)/habitat conservation plan (HCP). The DEIR portion of the joint document was prepared by the OCTA in compliance with the California Environmental Quality Act. The DEIS/DEIR, HCP, and NCCP are available for review.

DATES: Please send written comments on or before February 5, 2015.

Two public meetings will be held to solicit public comments on the DEIR/ DEIS. These public meetings will be held on the following dates:

1. Thursday, November 20, 2014, 5 p.m. to 7 p.m., Orange County Transportation Authority, 550 S. Main Street, Orange, California 92868.
2. Wednesday, Dec. 3, 2014, 5 p.m. to 7 p.m., Rancho Santa Margarita City Hall, 22112 El Paseo, Rancho Santa Margarita, California 92688.

ADDRESSES: *Obtaining Documents:* You may download copies of the DEIS/DEIR, HCP, and NCCP at the OCTA's Web site, at *http://www.octa.net/*. Alternatively, you may use one of the methods under *Submitting Comments* to request hard copies or a CD–ROM of the documents.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *U.S. Mail:* Mr. Mendel Stewart, Field Supervisor, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *In-Person Drop-off, Viewing, or Pickup:* Call (760) 431–1766 to make an appointment during regular business hours at the above address or at the OCTA Office, 550 S Main Street, Orange, CA 92868.
- *Fax:* Mr. Mendel Stewart, Field Supervisor, U.S. Fish and Wildlife Service, (760) 431–5901, Attn.: Orange County Transportation Authority M2 HCP/EIS Comments.

Hardbound copies are also available for viewing at the following Orange County public libraries:

1. Tustin Library, 345 E. Main St., Tustin, CA 92780.
2. Mission Viejo Library, 100 Civic Center, Mission Viejo, CA 92691.
3. Garden Grove Regional Library, 11200 Stanford Ave., Garden Grove, CA 92840.

The public meeting locations are:

1. Orange: OCTA, Conference Rooms 103/104, 550 South Main Street, Orange, CA 92863.
2. Rancho Santa Margarita City Hall, 22112 El Paseo, Rancho Santa Margarita, California 92688.

FOR FURTHER INFORMATION CONTACT: Ms. Karen A. Goebel, Assistant Field Supervisor, at the Carlsbad Fish and Wildlife Office address above; telephone (760) 431–9440. Information and comments related specifically to the DEIR and the California Environmental Quality Act should be submitted to Mr. Dan Phu, Orange County Transportation Authority (Attn: M2 NCCP/HCP), 550 South Main Street, P.O. Box 14184, Orange, CA 92863–1584.

SUPPLEMENTARY INFORMATION: We announce receipt of an application from the Orange County Transportation Authority (OCTA/applicant) for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The applicant is requesting a permit to incidentally take 10 animal species (including three federally listed species) and seeking assurances for 3 plant species during the term of the proposed 40-year permit. The permit is needed to authorize take of listed animal species due to construction and habitat management and monitoring activities within areas affected by covered freeway projects and in preserves in Orange County, California.

We have prepared a draft environmental impact statement (DEIS), which is the Federal portion of the draft environmental impact report (DEIR)/ DEIS, to analyze the impacts of issuing an incidental take permit based on the OCTA's proposed natural community conservation plan (NCCP)/habitat conservation plan (HCP). The DEIR portion of the joint document was prepared by the OCTA in compliance with the California Environmental Quality Act. The analyses provided in the DEIR/DEIS are intended to inform the public of the proposed action (i.e., permit issuance), alternatives, and associated impacts; address public comments received during the scoping period for the DEIR/DEIS; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Background

Section 9 of the Act and Federal regulations prohibit the "take" of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct (16 U.S.C. 1538). "Harm" includes significant habitat modification or degradation that actually kills or injures

listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, we may issue permits to authorize incidental take, which is defined under the Act as take that is incidental to, and not the purpose of, otherwise lawful activities. The ESA's take prohibitions do not apply to federally listed plants. Plant species would be included in the permit in recognition of the conservation measures provided to plants under the amended HCP and would receive assurances under the Service's "No Surprises" rule.

The applicant seeks incidental take authorization for 10 animal species and assurances for 3 plant species (all unlisted). Collectively the 13 listed and unlisted species are referred to as "covered species" by the NCCP/HCP and include the 3 plant species, 1 unlisted fish species, 3 reptile species (all unlisted), 4 bird species (2 endangered, 1 threatened, and 1 unlisted), and 2 mammal species (both unlisted). The permit would provide take authorization for all animal species and assurances for all plant species identified by the NCCP/HCP as "covered species." Take authorized for listed covered animal species would be effective upon permit issuance. For currently unlisted covered animal species, take authorization would become effective concurrent with listing, should the species be listed under the Act during the permit term.

The proposed permit would include the following three federally listed animal species: Least Bell's vireo (*Vireo bellii pusillus;* endangered), southwestern willow flycatcher (*Empidonax traillii extimus;* endangered), and coastal California gnatcatcher (*Polioptila californica californica;* threatened). See the DEIR/DEIS and NCCP/HCP for additional information on unlisted species proposed for coverage under the permit.

The NCCP/HCP is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through avoidance, minimization, and mitigation measures. These measures include purchasing lands for permanent conservation, as well as performing restoration on lands currently protected that will enhance habitat to address mitigation requirements associated with the proposed NCCP/HCP. The proposed NCCP/HCP and permit would accommodate the implementation of the OCTA's 13 proposed freeway projects designed to reduce congestion, increase capacity, and improve traffic flow of Orange County's important transportation infrastructure. It would also accommodate management activities conducted on the OCTA acquired lands (or Preserves) within Orange County.

The OCTA's NCCP/HCP Plan Area includes approximately 511,476 ac (206,987 ha), encompassing all of Orange County, California. The NCCP/HCP is intended to function independently of other HCPs within the Orange County region (e.g., Central and Coastal Orange County NCCP/HCP, Orange County Southern HCP, and Western Riverside County's Multiple Species Habitat Conservation Plan).

As described in the Draft NCCP/HCP and the DEIR/DEIS, the proposed NCCP/HCP would provide protection measures for species on the OCTA covered Freeway projects as well as for covered activities within the OCTA Preserves, in part by acquiring lands for permanent conservation. Covered activities, including planned and future projects, are estimated to directly affect up to 141 ac (57 ha) of habitat and indirectly affect up to 484.4 ac (196 ha) of habitat for covered species that will require mitigation over the 40-year term of the Permit. Additionally, preserve management and monitoring may adversely affect up to 11 ac (4.5 ha) of habitat. Prior to October 2013, the OCTA purchased five open-space properties totaling 940 ac (380 ha), of which about 900 ac (364 ha) is undeveloped open space and will be available to mitigate for project impacts to covered species. Additional Preserve acquisitions [at least 250 ac (101 ha)] are planned in the near future and are part of this NCCP/HCP. All Preserves will have endowments set up to cover long-term management needs. OCTA has also approved funding for 11 habitat restoration projects in the Plan Area totaling about 400 ac (162 ha). Future restoration efforts are identified within the NCCP/HCP to further benefit covered species.

The primary source of funding for the NCCP/HCP will derive from the M2 transportation sales tax designed to raise money to improve Orange County's transportation system. As part of the M2 sales tax initiative, a minimum of 5 percent of the revenues from the freeway program will be set aside for the M2 Environmental Mitigation Program (EMP) revenues. These funds will be used for "programmatic mitigation." The development and implementation of the M2 NCCP/HCP will use a portion of this funding source to achieve higher value environmental benefits such as habitat protection, connectivity, and resource preservation/enhancement in exchange for streamlined project approvals for the M2 freeway projects. The expenditures for key components of the NCCP/HCP conservation strategy that achieve upfront and comprehensive mitigation (e.g., Preserve acquisitions and funding of restoration projects) will be paid for through M2 EMP revenues. Any costs associated with implementing avoidance and minimization measures, as described in Section 5.6, "Avoidance and Minimization," will be funded through the individual construction budgets and will not rely on funding under the M2 EMP.

The NCCP/HCP includes measures to avoid and minimize incidental take of the covered species, emphasizing project design modifications to protect covered species and their habitats. A monitoring and reporting plan would gauge the Plan's success based on achievement of biological goals and objectives and would ensure that conservation keeps pace with development. The NCCP/HCP also includes a management program, including adaptive management, which allows for changes in the conservation program if the biological species objectives are not met, or new information becomes available to improve the efficacy of the NCCP/HCP's conservation strategy.

Covered projects and activities would include 13 discrete proposed freeway segments in which freeway projects have been identified for coverage under the NCCP/HCP. These proposed projects are designed to reduce congestion, increase capacity, and smooth traffic flows of Orange County's important transportation infrastructure. In addition, activities related to ongoing habitat management, restoration, and monitoring activities by preserve managers and activities necessary to provide limited public access have been identified for coverage.

National Environmental Policy Act Compliance

The DEIR/DEIS analyzes two alternatives in addition to the proposed action (i.e., permit issuance based on the Draft NCCP/HCP) described above. The other alternatives include a no-action (i.e., no permit) alternative and a reduced plan alternative covering only species that are federally or State-listed as threatened or endangered. Two other alternatives were considered during the planning process but were not evaluated in the DEIS because neither met the purpose or need of both the OCTA and the Service; these alternatives involved a no-take alternative and an alternative requiring the OCTA to participate in project-by-project mitigation.

Proposed Action

Our proposed action is to issue an incidental take permit to the applicant, who would implement the HCP, described above. If we approve the permit, incidental take of covered species would be authorized for the applicant's activities associated with the construction freeway improvement projects and Preserve Management, Restoration, and Monitoring Activities in Orange County, California.

No Project/No Action Alternative

Under the No Project/No Action Alternative, the proposed NCCP/HCP, including implementation of conservation measures and creation of a Preserve system, would not be adopted. Compliance with Act and the California Endangered Species Act would be addressed project-by-project for each of the M2 freeway projects. In contrast to the comprehensive strategies to avoid, minimize, or mitigate effects on sensitive species that would be implemented under the proposed action, the No Project/No Action Alternative would address impacts to affected listed species with project-by-project conservation and mitigation. The landscape–scale conservation actions intended to benefit both listed and non-listed species under the NCCP/HCP would not occur under the No Project/No Action Alternative.

Reduced Plan Alternative

Under the Reduced Plan Alternative, only those species that are federally or State-listed as threatened or endangered would be proposed for coverage under the NCCP/HCP. Accordingly, only the southwestern willow flycatcher, least Bell's vireo, and coastal California gnatcatcher would be covered under the Reduced Plan Alternative. The amount of land acquisition and Preserve system assembled would be identical to that of the proposed Plan. The amount of species-specific habitat restoration required would be less, however, because the conservation strategy measures would be focused only on the three ESA-listed species mentioned above.

Public Comments

The Service and OCTA invite the public to comment on the Draft NCCP/HCP, Draft Implementing Agreement and DEIR/DEIS during a 90-day public comment period beginning the date of this notice. While written comments are encouraged, we will accept both written and oral comments at the public meetings. Please direct written comments to the Service contact listed in the **ADDRESSES** section, and any questions to the Service contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Reasonable Accommodation

Individuals who require special accommodations (American Sign Language interpreter, accessible seating, documentation in alternate formats, etc.) to attend and participate in the public meetings are requested to contact Marissa Espino (*mespino@octa.net,* 714–560–5607) at least 14 days prior to the scheduled public meeting date. Information regarding this proposed action is available in alternative formats upon request.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA. This notice is provided under section 10(a) of the Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to prepare a final EIS. A permit decision will be made no sooner than 30 days after the publication in the **Federal Register** of the notice of availability for final EIS and completion of the record of decision.

Dated: October 27, 2014.

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–26361 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A2100DD/A0T501010.999900/AAK3000000]

Renewal of Agency Information Collection for Verification of Indian Preference for Employment in BIA and IHS

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information, "Verification of Indian Preference for Employment in BIA and IHS." The information collection is currently authorized by OMB Control Number 1076–0160, which expires November 30, 2014.

DATES: Interested persons are invited to submit comments on or before December 8, 2014.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to: Ms. Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240; facsimile: (202) 208–5113; email: *laurel.ironcloud@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Laurel Iron Cloud, telephone (202) 513–7641. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

BIA is seeking renewal of the approval for the information collection conducted under 25 U.S.C. 43, 36 Stat. 472, *inter alia,* and implementing regulations, at 25 CFR part 5, regarding verification of Indian preference for employment. The purpose of Indian preference is to encourage qualified Indian persons to seek employment with the BIA and Indian Health Service (IHS) by offering preferential treatment to qualified candidates of Indian heritage. BIA collects the information to ensure compliance with Indian preference hiring requirements. The information collection relates only to individuals applying for employment with the BIA and IHS. The tribe's involvement is limited to verifying membership information submitted by the applicant. The collection of information allows certain persons who are of Indian descent to receive preference when appointments are made to vacancies in positions with the BIA and IHS as well as in any unit that has been transferred intact from the BIA

to a Bureau or office within the Department of the Interior or the Department of Health and Human Services and that continues to perform functions formerly performed as part of the BIA and IHS. You are eligible for preference if (a) you are a member of a federally recognized Indian tribe; (b) you are a descendent of a member and you were residing within the present boundaries of any Indian reservation on June 1, 1934; (c) you are an Alaska native; or (d) you possess one-half degree Indian blood derived from tribes that are indigenous to the United States. No changes are being made to the form.

II. Request for Comments

On July 18, 2014, BIA published a notice announcing the renewal of this information collection and provided a 60-day comment period in the **Federal Register** (79 FR 42031). There were no comments received in response to this notice.

The BIA requests your comments on this collection concerning: (a) The necessity of the information collection for the proper performance of the functions of the agencies, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9:00 a.m. to 5:00 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, email address or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0160.

Title: Verification of Indian preference for Employment in the BIA and IHS.

Brief description of collection: Submission of this information by Indian applicants for jobs with BIA and IHS allows the Personnel Offices of BIA and IHS to verify that the individual meets the requirements for Indian preference in hiring. Response is required to obtain the benefit of preferential hiring. The collection of this information is voluntary. Response is required to obtain or retain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Qualified Indian persons who are seeking preference in employment with the BIA and IHS.

Number of Respondents: 5,000 per year, on average.

Number of Responses: 5,000 per year, on average.

Frequency of Response: On occasion.

Estimated Time per response: 30 minutes.

Estimated Total Annual Hour Burden: 2,500 hours.

Estimated Total Annual Non-Hour Dollar Cost: $6,920 (postage and copying costs). This reflects an increase to the non-hour cost burden by $400 (from $6,520 to $6,920) to reflect the increase in postage costs.

Dated: November 4, 2014.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2014–26539 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A2100DD.AADD001000.A0E501010.999900]

Renewal of Agency Information Collection for Sovereignty in Indian Education Grant Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the Sovereignty in Indian Education Grant Program authorized by OMB Control Number 1076–0182. This information collection expires January 31, 2015.

DATES: Submit comments on or before January 6, 2015.

ADDRESSES: You may submit comments on the information collection Ms. Wendy Greyeyes, Bureau of Indian Education, 1849 C Street NW., MS–4655–MIB, Washington, DC 20240; Email: *Wendy.Greyeyes@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Greyeyes, telephone: (202) 208–5810.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2013, the Secretary of the Interior and the Secretary of Education convened an American Indian Education Study Group to diagnose the systemic challenges facing the Bureau of Indian Education (BIE) and to propose a comprehensive plan for reform to ensure that all students attending BIE-funded schools receive a world-class education.

The Study Group drafted a framework for reform based on several listening sessions last fall with tribal leaders, Indian educators and others throughout Indian Country on how to facilitate tribal sovereignty in American Indian education and how to improve educational outcomes for students at BIE-funded schools. The Study Group incorporated feedback it received from tribal leaders and other BIE stakeholders into the final "Blueprint for Reform," released on June 13, 2014.

Acting on the recommendations in the *Blueprint,* BIE will award competitive grants to tribes and their tribal education agencies to promote tribal control and operation of BIE-funded schools on their Indian reservations. The purpose of the grants is to support the tribe's capacity to manage and operate tribally controlled schools as defined in the Tribally Controlled Schools Act of 1988 (Pub. L. 100–297). These funds will (a) support development of a school-reform plan to improve educational outcomes for students and (b) improve efficiencies and effectiveness in the operation of BIE-funded schools within a reservation.

The grants will provide funds for the tribe to:

- Develop an implementation plan that will reform a tribe's current organizational structure towards an expert and independent tribal education agency that will support schools and students; and
- Cover the execution of the implementation plan with identified staffing, projected timelines, proposed budgets, and activities.

Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. The Project Directors will participate in

monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education agency fulfills the obligations of the grant. A response is required to obtain and/or retain a benefit.

II. Request for Comments

The BIE requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0182.

Title: Sovereignty in Indian Education Grant Program.

Brief Description of Collection: Indian Tribes and Tribal Organizations may submit proposals to support their efforts to take control and operate BIE-funded schools located on the tribe's reservation. Each proposal must include a project narrative, a budget narrative, a work plan outline, and a Project Director to manage the execution of the grant. The Project Directors will participate in monthly collaboration meetings, submit quarterly budget updates, ensure an annual report is submitted at the end of each project year, and ultimately ensure that the tribal education agency fulfills the obligations of the grant.

Type of Review: Extension without change of currently approved collection.

Respondents: Indian Tribes and/or Tribal Education Departments.

Number of Respondents: 11 per year.

Frequency of Response: Proposals and Annual reports once per year; Budget Reports are submitted 4 times per year; and Monthly meetings are 12 times per year.

Estimated Time per Response: Ranges from 1 hour to 40 hours.

Estimated Total Annual Hour Burden: 682 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Dated: November 4, 2014.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2014–26537 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000.L19900000.PO0000; OMB Control Number 1004–0169]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior

ACTION: 30-Day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information pertaining to the use and occupancy of public lands in accordance with various mining laws. The Office of Management and Budget (OMB) has assigned control number 1004–0169 to this collection.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration written comments should be received on or before December 8, 2014.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0169), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov.* Please provide a copy of your comments to the BLM via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate "Attn: 1004–0169" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Adam Merrill, Division of Solid Minerals, at 202–912–7044. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to leave a message for Mr. Merrill. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR Part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities. (see 5 CFR 1320.8 (d) and 1320.12(a)).

As required in 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on June 3, 2014 (79 FR 31979), and the comment period closed on August 4, 2014. The BLM received no public comments.

The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES.** Please refer to OMB Control Number 1004–0169 in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

Title: Use and Occupancy Under the Mining Laws (43 CFR subpart 3715).

OMB Control Number: 1004–0169.

Type of Review: Extension of a currently approved information collection.

Abstract: This notice pertains to the collection of information that is necessary in order to regulate the use and occupancy of public lands for developing mineral deposits under various mining laws.

Frequency of Collection: On occasion.

Forms: None.

Estimated Annual Burden: 168 hours.

Estimated Annual Responses: 84.

Estimated Annual Non-hour Burden Cost: None.

The estimated burdens for this collection are itemized in the following table:

Type of response	Number of responses	Time per response	Total hours (Column B × Column C)
A	B	C	D
Proposed occupancy 43 CFR 3715.3–2	74	2 hours	148
Notification of existing use or occupancy 43 CFR 3715.4	10	2 hours	20
Totals	84		168

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2014–26515 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L51010000.FP0000. LVRWL14L0740]

Notice of Availability of the Final Supplemental Environmental Impact Statement for the Alpine Satellite Development Plan for the Proposed Greater Mooses Tooth Unit Development Project, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management (BLM), Alaska State Office, is issuing the Final Supplemental Environmental Impact Statement (EIS) for the Alpine Satellite Development Plan for the Proposed Greater Mooses Tooth (GMT) Unit Development Project, Alaska. Pursuant to 40 CFR 1502.9(c), the Supplemental EIS has been prepared to supplement the Alpine Satellite Development Plan (ASDP) Final EIS, dated September 2004, regarding the establishment of satellite oil production pads and associated infrastructure within the Alpine field.

DATES: The Final Supplemental EIS is available to the public. The BLM will not issue a Record of Decision (ROD) until at least 30 days after the Environmental Protection Agency's publication of a Notice of Availability of this document in the **Federal Register**.

ADDRESSES: Requests for information regarding the Final Supplemental EIS may be mailed to: GMT1 Supplemental EIS, Attn: Bridget Psarianos, 222 West 7th Avenue, #13 Anchorage, AK 99513–7504. The Final Supplemental EIS is available on the BLM-Alaska Web site at *http://www.blm.gov/ak/gmt.* CD or paper copies may be requested by calling Bridget Psarianos, BLM's project lead at 907–271–4208 or Serena Sweet, Planning Supervisor, at 907–271–4543.

FOR FURTHER INFORMATION CONTACT: Bridget Psarianos or Serena Sweet, BLM Alaska State Office, 907–271–4208 and 907–271–4543, respectively. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS 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 business hours.

SUPPLEMENTARY INFORMATION: The ASDP Supplemental EIS analyzes an application by ConocoPhillips, Alaska, Inc. (CPAI) for issuance of a right-of-way grant and related authorizations to construct, operate, and maintain a drill site, access road, pipelines, and ancillary facilities to support development of petroleum resources at the Greater Mooses Tooth Unit #1 (GMT1) drill site within the National Petroleum Reserve in Alaska (NPR–A). The BLM manages the surface and subsurface at the proposed drill site and a majority of the proposed infield road and pipeline route is on BLM-managed lands. The GMT1 drill site would access subsurface minerals of the Arctic Slope Regional Corporation and the BLM. The proposed GMT1 site is approximately 14 miles west of the CPAI-operated Alpine Central Processing Facility (CD–1). The proposed drill site would be operated and maintained by Alpine staff and supported using CD–1 infrastructure.

The Supplemental EIS will result in a ROD that will approve, deny, or approve with modification, CPAI's application, as well as incorporate any additional mitigation measures that may be relevant. The Draft Supplemental EIS, published in February 2014, did not identify a Preferred Alternative, because the BLM did not have one at that time. The Final Supplemental EIS identifies Alternative B as the BLM's Preferred Alternative. The Final Supplemental EIS also includes Alternative D–2, which was not analyzed as a separate alternative in the Draft Supplemental EIS—but is qualitatively within the spectrum of alternatives considered—and analyzes impacts of a seasonal (winter-only) drilling program at GMT1.

The key issues in the Final Supplemental EIS center on oil and gas production decisions, the protection of physical, biological, and subsistence resources, and the evaluation and consideration of appropriate mitigation measures.

Authority: 40 CFR 1502.9, 40 CFR 1506.6, 43 CFR part 2880.

Bud C. Cribley,

State Director.

[FR Doc. 2014–26554 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000 L16600000.XX0000]

Notice of Rio Grande Natural Area Commission Meeting Reschedule

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting reschedule.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), notice is hereby given that the U.S. Department of the Interior, Bureau of Land Management (BLM) Rio Grande Natural Area Commission meeting scheduled for December 11, 2014, has been rescheduled to take place on December 12, 2014. Notice of the original meeting appeared in the **Federal Register** on January 28, 2014.

DATES: The meeting was originally scheduled for December 11, 2014, from 10 a.m. to 3:30 p.m. The rescheduled meeting will take place on December 12, 2014, from 10 a.m. to 3:30 p.m.

ADDRESSES: Rio Grande Water Conservation District Offices, 10900 E. U.S. Highway 160, Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, Royal Gorge Field Office, 3028 E Main Street, Cañon City, CO. Phone: (719)–269–8553. Email: *ksullivan@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven 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 Rio Grande Natural Area Commission was established in the Rio Grande Natural Area Act (16 U.S.C. 460rrr–2). The nine-member commission advises the Secretary of the Interior, through the BLM, concerning the preparation and implementation of a management plan for non-Federal land in the Rio Grande Natural Area, as directed by law. Planned agenda topics for the meetings include finalizing the draft management plan, conducting public outreach for the plan and discussing property boundaries with the Rio Grande Natural Area. The public may offer oral comments at 10:15 a.m. or written statements, which may be submitted for the commission's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the meeting will be maintained in the San Luis Valley Field Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Meeting minutes and agendas are also available at: *www.blm.gov/co/st/en/fo/slvfo.html.*

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2014–26541 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plat listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plat will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on December 8, 2014.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven 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 plat and field notes of the dependent resurvey and survey in Township 36 North, Range 13 West, New Mexico Principal Meridian, Colorado, were accepted on October 17, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014–26547 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Number 1010–0151]

Information Collection: Plans and Information; Submitted for OMB Review; Comment Request; MMAA104000

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is notifying the public that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. This ICR pertains to the paperwork requirements in the regulations under 30 CFR 550, Subpart B, Plans and Information. This notice provides the public a second opportunity to comment on the paperwork burden of this collection.

DATES: Submit written comments by December 8, 2014.

ADDRESSES: Submit comments on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_submission@omb.eop.gov* (email). Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Arlene Bajusz, Bureau of Ocean Energy Management, 381 Elden Street, HM–3127, Herndon, Virginia 20170 (mail) or *arlene.bajusz@boem.gov* (email). Please reference ICR 1010–0151 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Office of Policy, Regulations, and Analysis at *arlene.bajusz@boem.gov* (email) or (703) 787–1025 (phone). You may review the ICR and forms online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1010–0151.

Title: 30 CFR 550, Subpart B, Plans and Information.

Forms: BOEM–0137, BOEM–0138, BOEM–0139, BOEM–0141, BOEM–0142.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations apply to all operations conducted under a lease, right-of-use and easement, or unit. The OCS Lands Act, at U.S.C. 1340 and 1351, requires the holders of OCS oil and gas or sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) to the Secretary for approval prior to commencing these activities. Also, as a Federal agency, we have a continuing affirmative duty to comply with the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) before engaging in a discretionary action that may affect a protected species.

These authorities and responsibilities are among those delegated to BOEM. The regulations at 30 CFR 550, Subpart B, concern plans and information that must be submitted to conduct activities on a lease, right-of-use and easement, or unit and are the subject of this collection. The collection also covers the related Notices to Lessees and Operators (NTLs) that BOEM issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

BOEM geologists, geophysicists, and environmental scientists and other Federal agencies (e.g., FWS, NOAA Fisheries) analyze and evaluate the information and data collected under Subpart B to ensure that planned operations are safe; will not adversely affect the marine, coastal, or human environment; and will conserve the resources of the OCS. We use the information to (a) make an informed decision on whether to approve the proposed exploration or development and production plan as submitted, or whether modifications are necessary without the analysis and evaluation of the required information. The affected States also review the information collected to determine consistency with approved Coastal Zone Management (CZM) plans and (b) report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3).

The following forms are submitted to BOEM under Subpart B.

BOEM–0137—Plan Information Form is submitted to summarize plan information. BOEM uses the information to review and evaluate submitted OCS plans. In this renewal, BOEM is modifying the form to clarify the wording of some fields, remove redundant fields, and make some minor formatting adjustments. We do not expect any change in the hour burden as a result.

BOEM–0138—Gulf of Mexico Air Emission Calculations for Exploration Plans; BOEM–0139—Gulf of Mexico Air Emission Calculations for Development and Production Plans (DPPs)/ Development Operations Coordination Documents (DOCDs) are submitted to standardize the way potential air emissions are estimated and approved as part of the OCS plan. BOEM uses the data from these forms to determine the effect of air emissions on the environment.

BOEM–0141—ROV Survey Report is submitted to report the observations and information recorded from two sets of remotely operated vehicle (ROV) monitoring surveys to identify high-density benthic communities that may occur on the seafloor in deep water. BOEM uses the information to help design mitigation measures to avoid these areas and to help assess the effectiveness of avoidance criteria.

BOEM–0142—Environmental Impact Analysis Worksheet identifies the environmental impact-producing factors for the listed environmental resources. BOEM uses the information to help assess impacts and determine compliance with NEPA.

We will protect information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 550.197, "Data and information to be made available to the public or for limited inspection," and 30 CFR part 552, "Outer Continental Shelf (OCS) Oil and Gas Information Program." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, semi-monthly, or varies by section.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, or sulphur lessees and operators.

Estimated Reporting and Recordkeeping Hour Burden: We expect the estimated annual reporting burden for this collection to be 432,512 hours. The following table details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 550 Subpart B and NTLs	Reporting & recordkeeping requirement [1]	Non-hour costs [2]		
		Hour burden	Average number of annual responses	Burden hours
200 thru 206	General requirements for plans and information; fees/refunds, etc.	Burden included with specific requirements below.		0
201 thru 206; 211 thru 228; 241 thru 262.	BOEM posts on FDMS, EPs/DPPs/DOCDs, and receives public comments in preparation of EAs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
Ancillary Activities				
208; NTLs	Notify BOEM in writing and other users of the OCS before conducting ancillary activities.	11	61 notices	671

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 Subpart B and NTLs	Reporting & recordkeeping requirement [1]	Non-hour costs [2]		
		Hour burden	Average number of annual responses	Burden hours
207; 210(a)	Submit report summarizing & analyzing data/information obtained or derived from ancillary activities.	2	61 reports	122
207; 210(b)	Retain ancillary activities data/information; upon request, submit to BOEM.	2	61 records	122
		2.5	1 submittal	3 (rounded).
Subtotal			184 responses	918 hours.
Contents of Exploration Plans (EP)				
200–206; 209; 231(b); 232(d); 234; 235; 281; 283; 284; 285; NTLs.	Submit amended, modified, revised, or supplemental EP, or resubmit disapproved EP, including required information; withdraw an EP.	150	345 changed plans [3] ..	51,750
200–206; 209; 211 thru 228; NTLs.	Submit EP and all required information (including, but not limited to, submissions required by BOEM Forms 0137, 0138, 0142; lease stipulations; withdrawals; air quality info.; reports, including shallow hazards surveys, H2S, G&G, archaeological surveys (550.194)), in specified formats. Provide notifications; retain data.	600	163 [3]	97,800
		$3,673 × 163 EP surface locations = $598,699.		
220	Alaska-specific requirements	Burden included with EP requirements (30 CFR 550.211–228)		0
Subtotal			508 responses	149,550
			$598,699 Non-Hour Costs.	
Review and Decision Process for the EP				
235(b); 272(b); 281(d)(3)(ii).	Appeal State's objection	Burden exempt as defined in 5 CFR 1320.4(a)(2), (c).		0
Contents of Development and Production Plans (DPP) and Development Operations Coordination Documents (DOCD)				
200–206; 209; 266(b); 267(d); 272(a); 273; 281; 283; 284; 285; NTLs.	Submit amended, modified, revised, or supplemental DPP or DOCD, including required information, or resubmit disapproved DPP or DOCD.	235	353 changed plans [3] ..	82,955
200–206; 241 thru 262; 209; NTLs.	Submit DPP/DOCD and required/supporting information (including, but not limited to, submissions required by BOEM Forms 0137, 0139, 0142; lease stipulations; withdrawals; air quality info.; reports, including shallow hazards surveys, archaeological surveys (CFR 550.194)), in specified formats. Provide notifications; retain data.	700	268 [3]	187,600
		$4,238 × 268 DPP/DOCD wells = $1,135,784.		
Subtotal			621 responses	270,555
			$1,135,784 Non-hour costs.	
Review and Decision Process for the DPP or DOCD				
267(a)	Once BOEM deemed DPP/DOCD submitted; Governor of each affected State, local government official; etc., submit comments/recommendations.	1	1 submittal	1
267(b)	General public comments/recommendations submitted to BOEM re: DPPs or DOCDs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 Subpart B and NTLs	Reporting & recordkeeping requirement [1]	Non-hour costs [2]		
		Hour burden	Average number of annual responses	Burden hours
269(b)	Submit information on preliminary plans for leases or units in vicinity of proposed development and production activities.	3	1 response	3
Subtotal			2 responses	4
Post-Approval Requirements for the EP, DPP, and DOCD				
280	Request departure from your approved EP, DPP, or DOCD.	Burden included under 1010–0114.		0
281(a)	Submit various BSEE applications	Burdens included under appropriate subpart or form (1014–0003; 1014–0011; 1014–0016; 1014–0018).		0
282	Retain monitoring data/information; upon request, make available to BOEM.	4	150 records	600
	Submit monitoring plan for approval	2	6 plans	12
282(b)	Submit monitoring reports and data (including BOEM Form 0141 used in GOMR).	3	12 reports	36
284	Submit updated info on activities conducted under approved EP/DPP/DOCD.	4	56 updates	224
Subtotal			224 responses	872
Submit CIDs				
296(a); 297	Submit CID and required/supporting information.	375	14 documents	5,250
		$27,348 × 14 = $382,872.		
296(b); 297	Submit a revised CID for approval	100	13 revisions	1,300
Subtotal			27 responses	6,550
			$382,872 non-hour costs.	
Seismic Survey Mitigation Measures and Protected Species Observer Program NTL				
NTL; 211 thru 228; 241 thru 262.	Submit to BOEM observer training requirement materials and information.	1.5	2 sets of material	3
	Training certification and recordkeeping	1	1 new trainee	1
	During seismic acquisition operations, submit daily observer reports semi-monthly.	1.5	344 reports	516
	If used, submit to BOEM information on any passive acoustic monitoring system prior to placing it in service.	2	6 submittals	12
	During seismic acquisition operations, submit to BOEM marine mammal observation report(s) semi-monthly or within 24 hours if air gun operations were shut down.	1.5	1,976 reports	2,964
	During seismic acquisition operations, when air guns are being discharged, submit daily observer reports semi-monthly.	1.5	344 reports	516
	Observation Duty (3 observers fulfilling an 8 hour shift ea for 365 calendar days × 4 vessels = 35,040 man-hours). This requirement is contracted out; hence the non-hour cost burden.	3 observers × 8 hrs × 365 days = 8,760 hours × 4 vessels observing = 35,040 man-hours × $52/hr = $1,822,080.		

BURDEN BREAKDOWN—Continued

Citation 30 CFR 550 Subpart B and NTLs	Reporting & recordkeeping requirement [1]	Non-hour costs [2]		
		Hour burden	Average number of annual responses	Burden hours
Subtotal			2,673 responses	4,012
			$1,822,080 Non-Hour Costs.	
Vessel Strike Avoidance and Injured/Protected Species Reporting NTL				
NTL; 211 thru 228; 241 thru 262.	Notify BOEM within 24 hours of strike, when your vessel injures/kills a protected species (marine mammal/sea turtle).	1	1 notice	1
Subtotal			1 response	1
General Departure				
200 thru 299	General departure and alternative compliance requests not specifically covered elsewhere in Subpart B regulations.	2	25 requests	50
Subtotal			25 responses	50
Total Burden			4,265 responses	432,512
			$3,939,435 Non-Hour Costs.	

[1] In the future, BOEM may require electronic filing of some submissions.
[2] Fees are subject to modification per inflation annually.
[3] Number of plans currently estimated for all OCS areas.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified three non-hour costs associated with this information collection that are cost recovery fees. They consist of fees being submitted with EP's ($3,673), DPP's or DOCD's ($4,238), and CID's ($27,348).

There is also one non-hour cost burden associated with the Protected Species Observer Program. The cost associated with this program is due to observation activities that are usually subcontracted to other service companies with expertise in these areas (see above table). The total non-hour cost burden for this collection is $3,939,435.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our burden estimates;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden on respondents.

To comply with the public consultation process, on June 9, 2014, BOEM published a **Federal Register** notice (79 FR 32989) announcing that we would submit this ICR to OMB for approval. This notice provided the required 60-day comment period. We received one comment, but it did not pertain to the information collection.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 27, 2014.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2014–26464 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2014–0078]

Outer Continental Shelf, Alaska OCS Region, Chukchi Sea Planning Area, Oil and Gas Lease Sale 193, MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability (NOA) of a Draft Supplemental Environmental Impact Statement and Notice of Public Hearings.

SUMMARY: BOEM is announcing the availability of a Draft Second Supplemental Environmental Impact Statement (SEIS) for the Chukchi Sea Planning Area, OCS Oil and Gas Lease Sale 193 (Lease Sale 193). The Draft Second SEIS (OCS EIS/EA BOEM 2014–653) provides new analysis in accordance with the United States District Court for the District of Alaska (District Court) Order remanding Lease Sale 193 to BOEM. The District Court's order instructs BOEM to address the deficiency in the 2007 Final EIS (OCS EIS/EA MMS 2007–026) identified by the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). The Ninth Circuit Court held that the Environmental Impact Statement supporting the decision to hold Lease

Sale 193 arbitrarily relied on a 1 billion barrel oil production estimate.

Authority: This Notice of Availability for the Draft Second SEIS is in compliance with the National Environmental Policy Act (NEPA) of 1969, and is published pursuant to 43 CFR 46.305.

DATES: Comments must be received no later than December 22, 2014.

SUPPLEMENTARY INFORMATION: Chukchi Sea OCS Oil and Gas Lease Sale 193 was held in February 2008. The Minerals Management Service (MMS) (predecessor to BOEM) received high bids totaling approximately $2.7 billion and issued 487 leases. The lease sale decision was challenged in the U.S. District Court for the District of Alaska. In 2010, the District Court remanded the case to the agency to remedy deficiencies pertaining to the agency's compliance with NEPA. BOEM released a Final SEIS in August 2011 and the Secretary of the Interior reaffirmed the lease sale in October 2011. In February 2012, the District Court ruled the Department of the Interior had met its NEPA obligations on remand. In April 2012, the plaintiffs appealed the District Court's decision to the U.S. Court of Appeals for the Ninth Circuit.

In a January 22, 2014, opinion, the Ninth Circuit found MMS's "reliance in the [Final Environmental Impact Statement] on a one billion barrel estimate of total economically recoverable oil was arbitrary and capricious." The Ninth Circuit explained that "NEPA require[s] [the Agency] to base its analysis on the full range of likely production if oil production were to occur." *Id.* The Ninth Circuit remanded the case to the District Court, which further remanded the matter to BOEM on April 24, 2014.

BOEM has prepared a Draft Second SEIS for Lease Sale 193 in accordance with the April 24, 2014 remand order of the District Court. The Draft Second SEIS addresses the deficiencies identified in the Ninth Circuit opinion by analyzing the potential environmental effects of potential oil and gas activities associated with Lease Sale 193 based on a new exploration and development scenario.

Prior to this NOA, BOEM made the Draft Second SEIS available to the public by issuing a press release and posting the Draft Second SEIS on the BOEM Web site. The Draft Second SEIS continues to be available on BOEM's Web site at *http://www.boem.gov/Alaska-Region* for downloading and viewing. In keeping with the Department of the Interior's mission to protect natural resources and to limit costs, while ensuring availability of the document to the public, BOEM will primarily distribute digital copies of the Draft Second SEIS on compact discs. BOEM has printed and will be distributing a limited number of paper copies. If requested, BOEM will provide a paper copy if copies are still available. You may request a paper copy by calling (907) 334–5200 or the toll free number at 800–764–2627. BOEM has distributed the Draft Second SEIS for viewing at the following libraries in Alaska: Alaska Resources Library and Information Service (Anchorage); University of Alaska Anchorage, Consortium Library; Alaska Pacific University, Academic Support Center Library; University of Alaska Fairbanks, Institute of Arctic Biology; University of Alaska Fairbanks, Elmer E. Rasmuson Library; Nellie Weyiouanna Ilisaavik Library, Shishmaref; Katie Tokienna Memorial Library, Wales; Noel Wien Library, Fairbanks; Kaveolook School Library, Kaktovik; Koyuk City Library; Tikigaq Library, Point Hope; Trapper School Community Library, Nuiqsut; Juneau Public Library; University of Alaska Southeast Library, Juneau; Alaska State Library, Juneau; and Kegoyah Kozga Public Library, Nome.

Written Comments: Federal, state, tribal, and local governments and/or agencies and all other interested parties may submit written comments on this Draft Second SEIS at: Federal eRulemaking Portal: *http://www.regulations.gov*. In the field entitled, "Enter Keyword or ID," enter BOEM–2014–0078, and then click "search." BOEM will make available all comments in their entirety on *http://www.regulations.gov*. However, to the extent practicable, BOEM will remove inappropriate content (i.e., contains vulgar language, personal attacks of any kind, threats, accusations, obscenity, or offensive terms that target specific ethnic or racial groups). Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearings: Pursuant to the regulations implementing the procedural provisions of NEPA, BOEM will hold public hearings on the Draft Second SEIS. These hearings are scheduled as follows:

November 17, 2014, Northwest Arctic Borough Assembly Chambers, 163 Lagoon Street, Kotzebue, Alaska;

November 18, 2014, City Qalgi Center, Point Hope, Alaska;

November 19, 2014, Community Center, Point Lay, Alaska;

November 20, 2014, R. James Community Center, Wainwright, Alaska;

December 1, 2014, Loussac Library Complex, 3600 Denali Street, Anchorage, Alaska;

December 3, 2014, Ilisagvik College (Albert Hall), 100 Stevenson Street, Barrow, Alaska; and

December 4, 2014, Westmark Hotel, 813 Noble Street, Fairbanks, Alaska.

All meetings will start at 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Routhier, Program Analysis Officer and Project Manager, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823 or by telephone at (907) 334–5200.

Dated: October 20, 2014.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2014–25745 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–14–0075]

Request for Information on the Development of a Long Term Monitoring Plan for Marine Mammals in the Gulf of Mexico; MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Request for information.

SUMMARY: BOEM, in cooperation with the National Marine Fisheries Service (NMFS), is issuing a request for information to aid in the development of a long-term monitoring plan (LTMP) for marine mammals in the Gulf of Mexico (GOM). The LTMP will focus on the potential impacts to marine mammals from geological and geophysical data acquisition activities, including seismic surveys. This LTMP is a required element of BOEM's petition for rulemaking under the Marine Mammal Protection Act (MMPA).

SUPPLEMENTARY INFORMATION: Section 101(a)(5) of the MMPA (16 U.S.C. 1371(a)(5)) directs the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing)

within a specified geographical region, the incidental but not intentional, taking of marine mammals by citizens, providing that certain findings are made and the necessary measures are established, including requirements pertaining to monitoring. NMFS' implementing regulations direct that a request for incidental take authorization include "the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities, and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable. . . ." (50 CFR 216.104(a)(13)). These regulations also direct that a monitoring plan include "a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) . . . ." *Id.*

BOEM is seeking public input on development of this LTMP as outlined in paragraphs 1–4 below; however, it will only consider comments that are relevant to marine mammal species that occur in the GOM (*http://www.nmfs.noaa.gov/pr/sars/pdf/ao2012_summary.pdf*) and the potential effects of geological and geophysical survey activities on those species. Please refer to *http://www.boem.gov/Oil-and-Gas-Energy-Program/GOMR/G-and-G-Survey-Techniques-Information-Sheet.aspx* for information on the types of geological and geophysical survey activities that may be proposed for use in the GOM.

(1) BOEM is seeking input on monitoring measures that will improve our understanding of the occurrence of marine mammal species in the GOM (e.g., presence, abundance, distribution, density); individual responses to acute stressors or impacts of chronic exposure to stressors (behavioral or physiological); how anticipated responses to stressors impact either long-term fitness and survival of an individual or the larger population, stock, or species; mitigation and monitoring effectiveness; and the nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic).

(2) With regard to the nature, scope and context of marine mammal exposure, BOEM and NMFS are looking for a better understanding of the relationships among the geological and geophysical activities and existing environment (e.g., source characterization, propagation, ambient noise); the affected species (e.g., life history, dive patterns); co-occurrence of marine mammal species with the geological and geophysical activities; and the biological or behavioral context of exposure (e.g., age, calving or feeding areas).

(3) BOEM requests information related to the appropriate scope of this LTMP; study objectives necessary to increase understanding of the affected species; the effects of geological and geophysical survey activities on these species in both the short- and long-term; discrete study questions that will inform these objectives; and scientific methods (study design, methodology, or technology) to test these questions.

(4) BOEM requests information regarding existing or upcoming marine mammal research efforts that may inform development of this LTMP, or with which it may be appropriate for this effort to coordinate to achieve monitoring goals, including those related to marine mammals in the GOM or monitoring programs worldwide aimed at long-term assessment of the effects of geological and geophysical activities on marine mammals. BOEM expects that this LTMP will be adaptive and will leverage existing monitoring efforts when feasible.

(5) BOEM requests information pertaining to any other long-term monitoring plans for marine mammals that have been proposed or implemented, including those in other countries and regions.

Comments: All interested parties may submit written comments on the development of the LTMP. BOEM will accept comments in either of the following two formats:

1. Comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov.* Search for: "Request for Information on the Development of a Long Term Monitoring Plan for Marine Mammals in the Gulf of Mexico". (**Note:** It is recommended to include the quotation marks in your search terms.) You may also search via BOEM–14–0075. Click on the "Comment Now!" button to the right of the document link. Enter your information and comment, then click "Submit."

2. Comments may be submitted via email to *monitoringplan@boem.gov* with the subject line labeled "Request for Information, Gulf of Mexico Long Term Monitoring Plan".

DATES: Comments must be received on or before December 8, 2014.

Public Disclosure of Names and Addresses: BOEM does not consider anonymous comments; please include your name and address as part of your submittal. BOEM makes all comments, including the names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that BOEM withhold their names and/or addresses from the public record; however, BOEM cannot guarantee that we will be able to do so. If you wish your name and/or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jennifer R. Laliberté, *jennifer.laliberte@boem.gov.* Please note that written comments will not be accepted at this email address. All written comments must be submitted in the manner described under the "Comments" section provided above.

Dated: November 3, 2014.

Walter D. Cruickshank,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2014–26520 Filed 11–6–14; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1153 (Review)]

Tow-Behind Lawn Groomers From China; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on tow-behind lawn groomers from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 6, 2014.

FOR FURTHER INFORMATION CONTACT: David Thirkill (202–1025), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On Monday, October 6, 2014, the Commission determined that the domestic interested party group response to its notice of institution (79 FR 37349, July 1, 2014) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on Monday, November 17, 2014, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before Thursday, November 20, 2014 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by Thursday, November 20, 2014. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov*.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B) and 1675(c)(5)(C)(ii).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 4, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–26508 Filed 11–6–14; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by Agri-Fab, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–501 and 731–TA–1226 (Final)]

Chlorinated Isocyanurates From China and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) ("the Act"), that an industry in the United States is threatened with material injury by reason of imports of chlorinated isocyanurates from China, provided for in subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.50.4000, 3808.94.5000, and 3808.99.9500 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce ("Commerce") to be subsidized by the government of China.[2]

The Commission further determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of chlorinated isocyanurates from Japan that have been found by Commerce to be sold in the United States at less than fair value ("LTFV").[3]

Background

The Commission instituted these investigations effective August 29, 2013, following receipt of a petition filed with the Commission and Commerce by Clearon Corp., South Charleston, WV; and Occidental Chemical Corp., Dallas, TX. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of chlorinated isocyanurates from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of chlorinated isocyanurates from Japan were dumped within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 19, 2014 (79 FR 28771). The hearing was held in Washington, DC, on September 9, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission additionally determined that it would not have found material injury by reason of subject imports of chlorinated isocyanurates from China but for the suspension of liquidation of entries on the subject imports.

[3] Vice Chairman Dean A. Pinkert determines that an industry in the United States is materially injured by reason of imports from China and Japan of chlorinated isocyanurates.

The Commission completed and filed its determinations in these investigations on November 3, 2014. The views of the Commission are contained in USITC Publication 4494 (November 2014), entitled Chlorinated Isocyanurates from China and Japan (Investigation Nos. 701–TA–501 and 731–TA–1226 (Final)).

By order of the Commission.

Dated: November 3, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–26472 Filed 11–6–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0102]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection COPS Office Progress Report

AGENCY: Community Oriented Policing Services (COPS) Office, Department of Justice

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Community Oriented Policing Services (COPS) Office, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 6, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kimberly J. Brummett, Program Specialist, Community Oriented Policing Services (COPS) Office, 145 N Street NE., Washington, DC 20530 (phone: 202–353–9769).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

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

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* COPS Office Progress Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* N/A. The applicable component within the Department of Justice is the Community Oriented Policing Services (COPS) Office.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Under the Violent Crime and Control Act of 1994, the U.S. Department of Justice COPS Office would require the completion of the COPS Progress Report by recipients of COPS hiring and non-hiring grants. Grant recipients must complete this report in order to inform COPS of their activities with their awarded grant funding.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,200 grantees will be required to submit an active progress report each quarter. The estimated range of burden for respondents is expected to be between 20 minutes to 25 minutes for each quarterly completion.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 2000 hours. It is estimated that respondents will take up to 25 minutes each quarter to complete the quarterly progress report. The burden hours for collecting respondent data sum to 2000 hours (1200 respondents × .4167 hours × 4 times annually = 2000 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: November 4, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–26503 Filed 11–6–14; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States et al.* v. *Hyundai Motor Company et al.* (Civil Action No. 1:14–cv–1837), which was lodged with the United States District Court for the District of Columbia on November 3, 2014. The complaint was filed on the same day.

In the complaint, the United States seeks civil penalties and injunctive relief pursuant to Sections 203, 204, and 205 of the Clean Air Act, 42 U.S.C. 7522, 7523, and 7524, against Hyundai Motor Company, Hyundai Motor America, Kia Motors Corporation, Kia Motors America, and Hyundai America Technical Center, Inc. (collectively, "Defendants") for violations of the Act. The California Air Resources Board joins the United States as co-plaintiff and seeks civil penalties for related violations of California Health and Safety Code Section 43212. The violations arise from the Defendants' introduction into commerce in the United States of over one million motor vehicles from model years 2012 and 2013 that were not covered by Certificates of Conformity as required by the Act and regulations promulgated thereunder. The vehicles belong to six car lines: Hyundai's Accent, Elantra, Veloster, and Santa Fe, and Kia's Soul and Rio. Under the settlement, the Defendants will pay a civil penalty of $100 million, with $93,656,600 paid to the United States, and $6,343,400 paid to the California Air Resources Board. The Defendants will also reduce the number of greenhouse gas emission credits claimed in their Averaging, Banking, and Trading reports by a total of 4.75 million credits. The Defendants are also required to perform additional corrective measures, including auditing of their vehicles and improving testing and data management practices.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Hyundai Motor Company et al.* (Civil Action No. 1:14–cv–1837), D.J. Ref. No. 90–5–2–1–10753. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–26512 Filed 11–6–14; 8:45 am]

BILLING CODE 4410–15–P

JUSTICE DEPARTMENT

Drug Enforcement Administration

Martin L. Korn, M.D.; Decision and Order

On August 23, 2013, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, OTSC/ISO or Order) to Martin L. Korn, M.D. (hereinafter, Registrant). GX 1, at 1. The OTSC/ISO proposed the revocation of Registrant's DEA Certificate of Registration, pursuant to which he was authorized to dispense controlled substances as a practitioner, based on allegations that on "[o]n twelve separate occasions" between February 20 and June 24, 2013, Registrant prescribed controlled substances including alprazolam (schedule IV) and Adderall (schedule II), "to three law enforcement officers working in an undercover capacity . . . without a legitimate medical purpose and/or outside the usual course of professional practice." *Id.* at 1–2 (citing 21 CFR 1306.04(a)). Based on the above, I further concluded that Registrant's "continued registration while these proceedings [were] pending constitutes an imminent danger to the public health and safety" and ordered that his registration be immediately suspended. *Id.* at 3 (citing 21 U.S.C. § 824(d)). The OTSC/ISO also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for electing either option, and the consequence of failing to elect either option. *Id.* at 3–4 (citing 21 CFR 1301.43).

On September 5, 2013, a DEA Special Agent served Registrant with the OTSC/ISO at the Westchester County District Attorney's Office. GX 2. According to the Government, Registrant has not requested a hearing on the allegations nor otherwise responded to the OTSC. Request for Final Agency Action, at 1. Based on the Government's representation, I find that more than thirty (30) days have now passed since the OTSC/ISO was served on Registrant and that he has neither requested a hearing nor submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing. 21 CFR 1301.43(d). I make the following findings.

Registrant previously held a DEA Certificate of Registration, pursuant to which he was authorized to dispense controlled substances as a practitioner at registered premises located in Larchmont, New York. On December 31, 2013, this registration expired. GX 3, at 1. According to the Agency's registration records, Registrant has not filed a renewal application.

Pursuant to the authority granted by 21 U.S.C. § 824(f), DEA seized approximately 300 dosage units of various controlled substances which apparently were in prescription vials, some of which bore the names of patients. GX A, at 2. The drugs included two vials containing 144 and 19 dosage units of lorazepam .5mg bearing labels listing the patients as A.K. and C.A. respectively; a vial containing 16 tablets of phentermine 37.5mg bearing a label listing the patient as J.L.; a vial containing 80 tablets of oxazepam, its label having been ripped off; a vial containing 13 tablets of temazepam 15mg bearing a label listing the patient as K.M.; a vial containing 10.5 tablets of hydrocodone 10/325 bearing a label listing the patient as A.K.; and vials containing 11 tablets of Lyrica 50mg and 6 tablets of Lyrica 25mg, neither of which had a patient name. *Id.*

On April 10, 2014, DEA's New York Field Division wrote to Registrant noting that following the expiration of his DEA registration, he no longer had authority to handle controlled substances. *Id.* at 1. The letter further informed him that under federal law, the Agency was authorized to dispose of the drugs 180 days after the date on which they had been seized. *Id.* However, the letter instructed Registrant that "[i]n the event you wish to transfer title to the controlled substances to a registered successor in interest, you may notify this office within thirty (30) days from the date of this letter to make arrangements for such a transfer. . . . However, if you fail to notify the office within thirty days, DEA will dispose of . . . the controlled . . . substances it currently holds." *Id.* According to the Government, Registrant did not respond to the letter. *See* Gov. Suggestion of Mootness, at 1.

Discussion

While the Government initially filed a Request for Final Agency Action, it now suggests that this case is moot because Registrant has allowed his registration to expire and "there is no need to determine title to the controlled substances that were seized." *Id.* at 2. I agree.

Ordinarily, where a registrant allows his registration to expire and also fails to file a renewal application, there is neither a registration to revoke nor an application to act upon, thus rendering the case moot. *See, e.g., Ronald J. Riegel,* 63 FR 67132 (1998). DEA, however, has recognized a limited exception to this rule in cases which commence with the issuance of an immediate suspension order because of the collateral consequences which may attach with the issuance of such a suspension. *See William R. Lockridge,* 71 FR 77791, 77797 (2006). Such "collateral consequences" may include the loss of title to any controlled substances that have been seized pursuant to the immediate suspension order, *see* 21 U.S.C. § 824(f), harm to reputation, and having to report the suspension on future applications to either this Agency or a state board. *See Lockridge,* 71 FR at 77797.

While this case commenced with the issuance of an immediate suspension order, I nonetheless conclude it is now

moot. Here, while various controlled substances were seized, the Government subsequently provided registrant with the opportunity to transfer the controlled substances to a registered successor in interest. *See* 21 U.S.C. § 824(g). Thus, to the extent the controlled substances had any market value—which appears highly unlikely anyway given that they were in prescription vials and not sealed commercial containers—the Government disclaimed any interest in them. Registrant's failure to respond to the Government's offer itself constitutes a waiver of any claim to title to the drugs. Thus, there is no need to issue a decision on the merits to adjudicate the issue of title to the drugs.

To the extent the issuance of the Immediate Suspension has harmed Registrant's reputation and may result in his having to report this action on future applications for a DEA registration or a state license, Registrant was provided with the opportunity to request a hearing and challenge the basis of the Government's action. Registrant did not, however, seek to do so. *See Richard C. Quigley*, 79 FR 50945, 50947 (2014) (rejecting Government's contention that ISO case was not moot because of potential harm to physician's reputation when physician did not request a hearing).

It is acknowledged that several federal appeals courts have held that "the mere possibility of adverse collateral consequences is sufficient to preclude a finding of mootness." *In re Surrick*, 338 F.3d 224, 230 (3d Cir. 2003) (quoting *Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 228 (5th Cir. 1998)). But in those cases, which involved sanctions imposed by courts on attorneys, the person who was sanctioned at least cared enough to litigate. Not so here. So too, this case stands in contrast to those cases where the Agency has ruled on the validity of a suspension order notwithstanding that a registrant allowed his/her registration to expire and failed to file a renewal application. *See Lockridge*, 71 FR at 77797 (holding case not moot where registrant subject to ISO did not allow registration to expire until after receiving adverse recommended decision from ALJ); *see also Nirmal Saran & Nisha Saran*, 73 FR 7827, 7835 n.29 (2008) (holding case not moot where during proceeding, registrants' registrations expired but registrants asserted that they intended to remain in professional practice and had attempted to renew their registrations online but been prevented from doing so). Accordingly, I conclude that this case is moot. *See Tin T. Win*, 78 FR 52802 (2013) (holding ISO proceeding moot where physician, who allowed her registration to expire, failed to request a hearing and no controlled substances had been seized); *Robert Charles Ley*, 76 FR 20033 (2011) (holding ISO proceeding moot where physician eventually waived his right to a hearing and no controlled substances had been seized).

Order

Pursuant to the authority vested in me by 21 U.S.C. § 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that the Order to Show Cause and Immediate Suspension of Registration issued to Martin L. Korn, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: October 23, 2014.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2014–26447 Filed 11–6–14; 8:45 am]

BILLING CODE 4410–09–P

JUSTICE DEPARTMENT

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Alltech Associates, Inc.

ACTION: Notice of registration.

SUMMARY: Alltech Associates, Inc., applied to be registered as a manufacturer of certain basic classes of controlled substances. The DEA grants Alltech Associates, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated May 2, 2014, and published in the **Federal Register** on May 15, 2014, 79 FR 27936, Alltech Associates, Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted to this notice.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Alltech Associates, Inc., to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verified the company's compliance with state and local laws, and reviewed the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed:–

Controlled substance	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Gamma Hydroxybutyric Acid (2010).	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine) (7348).	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2C-T-2 (2-(4-Ethylthio-2,5-dimethoxyphenyl)ethanamine) (7385).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431).	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine) (7509).	I
2C-H (2-(2,5-Dimethoxyphenyl)ethanamine) (7517).	I
2C-I (2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine) (7518).	I

Controlled substance	Schedule
2C-C (2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (7519).	I
2C-T-4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl)ethanamine) (7532).	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Ecgonine (9180)	II
Meperidine intermediate-B (9233)	II
Morphine (9300)	II
Noroxymorphone (9668)	II

The company plans to manufacture high purity drug standards used for analytical applications only in clinical, toxicological, and forensic laboratories, and for distribution to its customers.

Dated: October 23, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–26448 Filed 11–6–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Equal Access to Justice Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the information collection request (ICR) titled, "Equal Access to Justice Act," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 8, 2014

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201410-1225-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–DM, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Equal Access to Justice Act (EAJA) information collection requirements for the DOL codified in regulations 29 CFR part 16, subpart B. The EAJA provides for payment of fees and expenses to eligible parties who have prevailed against an agency in certain administrative proceedings. In order to obtain an award, the statute and associated DOL regulations require the filing of an application. Other agencies may have their own EAJA regulations. This information collection is authorized under 5 U.S.C. 504(d)(1)(B).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1225–0013.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 18, 2014 (79 FR 48770).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1225–0013. The OMB is particularly interested in comments that:

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

Agency: DOL–DM.

Title of Collection: Equal Access to Justice Act.

OMB Control Number: 1225–0013.

Affected Public: Individuals or Households; Private Sector—businesses or other for-profits, farms, and not-for-profit institutions; and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 50 hours.

Total Estimated Annual Other Costs Burden: $23.

Dated: October 31, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–26452 Filed 11–6–14; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2014–09, Renaissance Technologies, LLC, D–11730; and 2014–10, Family Dynamics Inc., Pension Plan, D–11777.

SUPPLEMENTARY INFORMATION: Notices were previously published in the **Federal Register** of the pendency before the Department of proposals to grant the above-referenced exemptions. Each notice set forth a summary of facts and representations contained in an application for exemption, and referred interested persons to the application for a complete statement of the facts and representations. Each application has been available for public inspection at the Department in Washington, DC. Each notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, each notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of notifying interested persons. No request for a hearing was received by the Department. Public comments were received by the Department as described in each granted exemption.

The notices of proposed exemption were issued, and the exemptions are being granted, solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible; (b) The exemptions are in the interests of the affected plans and their participants and beneficiaries; and (c) The exemptions are protective of the rights of affected participants and beneficiaries.

Renaissance Technologies, LLC (Renaissance or the Applicant) Located in New York, New York

[Prohibited Transaction Exemption 2014–09; Application No. D–11730]

Amendment to Exemption

Section I. Covered Transactions Involving Certain IRAs Subject to Title I and Title II of ERISA

The restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to:

(a) The direct or indirect acquisition by a Participant's IRA of an interest in a Medallion Fund through such IRA's acquisition of an interest in a New Medallion Vehicle;

(b) The acquisition of an additional interest by a Participant's IRA in a New Medallion Vehicle; and

(c) The redemption of all or a portion of a Participant's IRA's interest in a New Medallion Vehicle.

This amendment is subject to the general conditions set forth below in Section IV.

Section II. Covered Transactions Involving Certain IRAs Subject to Title II of Erisa Only

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to:

(a) The direct or indirect acquisition by a Spouse's IRA of an interest in a Medallion Fund through such IRA's acquisition of an interest in a New Medallion Vehicle; [2]

(b) The acquisition of an additional interest by a Spouse's IRA in a New Medallion Vehicle; and

(c) The redemption of all or a portion of a Spouse's IRA's interest in a New Medallion Vehicle.

This amendment is subject to the general conditions set forth below in Section IV.

Section III. Covered Transactions Involving Certain 401(k) Accounts

The restrictions of section 406(a)(1)(A) and (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and (D) of the Code, shall not apply to:

(a) The direct or indirect acquisition by a 401(k) Account of an interest in a Medallion Fund through such 401(k) Account's acquisition of an interest in a New Medallion Vehicle; and

(b) The redemption of all or a portion of a 401(k) Account's interest in a New Medallion Vehicle.

This amendment is subject to the general conditions set forth below in Section IV.

Section IV. General Conditions

(a) An IRA's acquisition of an interest in a New Medallion Vehicle is made at the specific direction of its IRA Holder, and a 401(k) Account's acquisition of an interest in a New Medallion Vehicle is made at the specific direction of its 401(k) Account Holder.

(b) Renaissance renders no investment advice (within the meaning of 29 CFR 2510.3–21(c)) to IRA Holders or 401(k) Account Holders concerning a potential acquisition or redemption of an interest in a New Medallion Vehicle and does not engage in marketing activities or offer employment-related incentives of any kind intended to cause IRA Holders or 401(k) Account Holders to consider such acquisition or redemption.

(c) An interest in a New Medallion Vehicle is only available to IRA Holders or 401(k) Account Holders who satisfy the securities-based laws, and other regulatory-based investor qualifications, applicable to all investors in such New Medallion Vehicle.

(d) No commissions, sales charges, or other fees (including management fees) or profit participations in the form of performance allocations or otherwise, direct or indirect, are assessed against an IRA or 401(k) Account in connection with its acquisition and holding of an interest in a New Medallion Vehicle.

(e) An IRA or 401(k) Account pays no more and receives no less for its particular interest in any of the New Medallion Vehicles than it would in an

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] Pursuant to 29 CFR 2510.3–2(d), the Spouses' IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

arm's length transaction with an unrelated party.

(f) An IRA's or 401(k) Account's interest in a New Medallion Vehicle is redeemable, in whole or in part, without the payment of any redemption fee or penalty, no less frequently than on a quarterly basis upon no less than 10 days advance written notice by the IRA or 401(k) Account, except in the case of New Kaleidoscope, for which 45 days' notice is required.

(g) An acquisition or redemption of an IRA's or 401(k) Account's interest in a New Medallion Vehicle is made for fair market value, determined as follows:

(1) Equity securities are valued at the consolidated or composite closing price, or, in the case of over-the-counter equity securities, the last sale price provided by unaffiliated, third-party market data providers. If no price of such equity security was reported on that date, the market value will be the last reported price on the most recent date for which a price is available, and will reflect a discount if such date occurred more than thirty days before;

(2) Fixed income securities are valued at the "bid" price of such securities at the close of business on the relevant valuation date. These prices are determined (i) where available, on the basis of prices provided by independent pricing services that determine valuations based on market transactions for comparable securities; and (ii) in certain cases where independent pricing services are not available, on the basis of quotes obtained from multiple independent providers that are either U.S.-registered or foreign broker-dealers, which are registered and subject to the laws of their respective jurisdiction, or banks;

(3) Options are valued at the mean between the current independent best "bid" price and the current independent best "asked" price from the exchanges on which they are listed or, where such prices are not available, are valued on the basis of pricing data obtained from unaffiliated, third-party market data providers at their fair value in accordance with Fair Value Pricing Practices by the Renaissance Valuation Committee, which utilizes a set of defined rules and an independent review process; and

(4) If current market quotations are not readily available for any investments, such investments are valued at their fair value by the Renaissance Valuation Committee in accordance with Fair Value Pricing Practices.

(h) Redemption of an IRA's or 401(k) Account's interest in a New Medallion Vehicle, in whole or in part, is made for cash.

(i) In the event that a redemption of any portion of an interest in a New Medallion Vehicle held by an IRA or 401(k) Account becomes necessary as the result of a reduction of the Investment Allocation applicable to a Participant, then, at such IRA Holder's or 401(k) Account Holder's election, the redemption may first be made of such individual's taxable investments in the Medallion Funds (if any) prior to his or her IRA's or 401(k) Account's interest in a New Medallion Vehicle.

(j) With respect to the investment by Participants in the New Medallion Vehicles through IRAs, Renaissance acknowledges that such investments may constitute investments by a "pension plan" within the meaning of section 3(2) of the Act, and the Applicant represents that, with respect to such investments, it will comply with all applicable requirements of Title I of the Act.

(k) Renaissance does not use the IRAs' or 401(k) Accounts' investments in the Funds in any of their marketing activities or publicity materials for the Funds.

(l) In advance of the initial investment by an IRA or 401(k) Account in a New Medallion Vehicle, the IRA Holder or 401(k) Account Holder receives:

(1) A copy of the notice of proposed exemption published in the **Federal Register** at 77 FR 3038 (January 20, 2012) and notice of final grant of Prohibited Transaction Exemption (PTE) 2012–10 published in the **Federal Register** at 77 FR 23756 (April 20, 2012), the proposed amendment published in the **Federal Register** at 79 FR 47674 (August 14, 2014), and this final amendment, once published in the **Federal Register**;

(2) A private offering memorandum (with all related exhibits) describing the relevant investment vehicles, including its investment objectives, risks, conflicts, operating expenses and redemption and valuation policies, and any IRA Holder or 401(k) Account Holder whose IRA or 401(k) Account owns an interest in a New Medallion Vehicle receives the same disclosures and information provided to other investors with respect to the Fund in which he or she invests; and

(3) Following receipt of the information described in (1) and (2), above, an IRA Holder or 401(k) Account Holder will receive, in a timely manner, all reasonably available relevant information as such IRA Holder or 401(k) Account Holder may request.

(m) On an on-going basis, Renaissance provides each IRA Holder or 401(k) Account Holder whose IRA or 401(k) Account owns an interest in a New Medallion Vehicle with the following information:

(1) Unaudited performance reports at the end of each month; and

(2) Audited annual financial statements following the end of each calendar year.

(n) Prior to the acquisition by an IRA or 401(k) Account of an interest in a New Medallion Vehicle, and the corresponding indirect acquisition of an interest in a Medallion Master Fund, Other Renaissance Managed RF Fund, or any other Fund made through such acquisition of an interest in a New Medallion Vehicle, Renaissance or the applicable New Medallion Vehicle manager (the New Medallion Vehicle Manager) with respect to any such acquisition:

(1) Agrees to submit to the jurisdiction of the federal and state courts located in the State of New York;

(2) Agrees to appoint an agent for service of process for the New Medallion Vehicle, the Other Renaissance Managed RF Fund, and any other Funds described in this Section IV(n), in the United States (the Process Agent);

(3) Consents to service of process on the Process Agent; and

(4) Agrees that any enforcement by an IRA Holder or 401(k) Account Holder of his or her rights pursuant to this amendment will at the option of such IRA Holder or 401(k) Account Holder, occur exclusively in the United States courts.

(o) Renaissance maintains, or causes to be maintained, for a period of six years from the date of any covered transaction, such records as are necessary to enable the persons described in paragraph (p)(1) below to determine whether the conditions of this amendment have been met, provided that (1) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Renaissance, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest or disqualified person other than Renaissance shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (p)(1) below.

(p)(1) Except as provided below in paragraph (p)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (o) are unconditionally available at their

customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, the Commodity Futures Trading Commission (CFTC), or the U.S. Securities and Exchange Commission (SEC), and

(B) Any IRA Holder or 401(k) Account Holder or any duly authorized representative or beneficiary of an IRA or 401(k) Account; and

(2) None of the persons described above in paragraph (p)(1)(B) shall be authorized to examine trade secrets of Renaissance, or commercial or financial information which is privileged or confidential, and should Renaissance refuse to disclose information on the basis that such information is exempt from disclosure, Renaissance shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section V. Definitions

For purposes of this amendment:

(a) The term "Renaissance" means Renaissance Technologies, LLC, and its affiliates.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity (for purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual); and

(2) Any officer of, director of, or partner in such person.

(c) The term "Fair Value Pricing Policies" means the Official Pricing Policy established in good faith by the Renaissance Valuation Committee for valuing an instrument, which is subject to the approval of the Renaissance Technologies LLC Board of Directors.

(d) The term "Fund" or "Funds" means, individually or collectively, the eight privately offered U.S. and non-U.S. collective investment vehicles managed by Renaissance, comprised almost exclusively of assets of Renaissance and its owners and employees (the Proprietary Funds) and the eight privately offered U.S. and non-U.S. collective investment vehicles, consisting primarily of assets of clients of Renaissance (the non-Proprietary Funds).

(e) The term "Investment Allocation" means the permitted investment allocation limit in the Medallion Funds applicable to a Renaissance employee, which such employee and his or her Spouse may utilize to make investments in a Medallion FF or Kaleidoscope, or in an applicable New Medallion Vehicle.

(f) The term "IRA" means an "individual retirement account" as defined under section 408(a) of the Code that is beneficially owned by an IRA Holder or a "Roth IRA" as defined under section 408A of the Code that is beneficially owned by an IRA Holder.

(g) The term "IRA Holder" means a Participant, or the Spouse of a Participant, who is eligible to invest in a New Medallion Vehicle through his or her IRA.

(h) The term "Kaleidoscope" means Renaissance Kaleidoscope Fund LLC, a Delaware limited liability company established by Renaissance to facilitate the investment in the Proprietary Funds by employees of Renaissance who are not Accredited Investors under the Securities Act of 1933, as amended (the 1933 Act) or otherwise do not meet the financial requirements to invest in such Proprietary Funds.

(i) The term "Medallion Funds" means the five Proprietary Funds of Renaissance that are organized in a "master-feeder" investment structure. The Medallion Funds are comprised of five feeder funds (Medallion FFs), each designed for a different type of investor, that engage in their investment and trading activities only through certain master funds and their subsidiaries (the Medallion Master Funds).

(j) The term "New Medallion Vehicle" or "New Medallion Vehicles" means, individually or collectively, New Medallion FF, New Medallion FF RMPRF, and New Kaleidoscope.

(k) The term "New Kaleidoscope" means Renaissance Kaleidoscope RF Fund LLC, the Delaware limited liability company established by Renaissance in order to facilitate investment, by IRA Holders and 401(k) Plan participants who are not "Accredited Investors" under the 1933 Act, in the Medallion Fund RF LP and Other Renaissance Managed RF Funds that are not parties in interest, or other disqualified persons, as applicable, to the IRA Holders' IRAs or to the New 401(k) Plan.

(l) The term "New Medallion FF" means Medallion Fund RF LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes, established by Renaissance in order to facilitate an investment by an IRA Holder or 401(k) Plan participant who is a "Qualified Purchaser" or "Knowledgeable Employee" under the Investment Company Act of 1940, as amended (the 1940 Act) in the Medallion Master Funds, through his or her IRA or 401(k) Account.

(m) The term "New Medallion FF RMPRF" means Medallion RMPRF Fund LP, the Bermuda Limited Partnership that is treated as a corporation for U.S. Federal Income Tax purposes established by Renaissance in order to facilitate the investment by IRA Holders or 401(k) Plan participants who are neither Qualified Purchasers nor "Knowledgeable Employees" as defined in the 1940 Act, but who are Accredited Investors, in the Medallion Master Funds, through their IRAs or 401(k) Accounts.

(n) The term "Other Renaissance Managed RF Fund" means an RF Series of any Renaissance-sponsored Fund, other than a Medallion Fund or Kaleidoscope Fund, that is a private investment vehicle established in compliance with the various federal securities laws and other applicable regulatory requirements and for which Renaissance is the investment manager, as well as the investment manager of any master trading vehicles that may be utilized by such a fund to invest and trade its assets.

(o) The term "Participant" means a person who is either an employee or a Permitted Owner of Renaissance at the time of such individual's investment in the New Medallion Vehicles.

(p) The term "Permitted Owners" means the eight individuals permitted to invest in the Medallion Funds following the termination of their Renaissance employment, comprised of three Renaissance "founders," and five former employees who are current owners of Renaissance.

(q) The term "Renaissance Valuation Committee," or "RVC," means the committee, established by Renaissance in 2008, that oversees and monitors the valuation process, and establishes the methods of, and procedures for, valuing various instruments traded by Renaissance, composed of high-level Renaissance employees who also may be Fund investors.

(r) The term "Spouse" means a person who is (1) married to a Participant, or (2) to the extent not prohibited by applicable law, in a civil union or similar marriage-equivalent institution established pursuant to State law of the State where the Participant resides (or otherwise recognized by the State where the Participant resides) with a Participant.

(s) The term "401(k) Account" means the plan account established and maintained for the benefit of a

participant in the Renaissance Technologies LLC 401(k) Plan.

(t) The term "401(k) Account Holder" means a participant in the Renaissance Technologies LLC 401(k) Plan who is eligible to invest in a New Medallion Vehicle through his or her 401(k) Account.

Section VI. Effective Date

This amendment of PTE 2012–10 is effective as of the earlier of the date of publication in the **Federal Register** or October 1, 2014.

Written Comments

The Department invited all interested persons to submit written comments with respect to the proposed amendment of exemption published in the **Federal Register** on August 14, 2014 at 79 FR 47674 (the Notice) on or before September 16, 2014. During the comment period, the Department received one written comment from the Applicant that requests: (1) modifications to certain definitions in Section V of the proposed amendment to take into account the 401(k) Account investments; (2) a clarification to a condition in the proposed amendment; (3) updates to information describing Renaissance and the Funds; (4) clarifications and/or updates to descriptions of the New Medallion Vehicles; (5) clarifications to descriptions of PTE 2012–10 and the covered transactions; and (6) clarifications regarding use of certain defined terms in the Summary of Facts and Representations in the Notice (the Summary). The Department received no other written comments. The Applicant's comment and the Department's responses thereto are described as follows.[3]

Modification of Section V(l) and Section V(m). The Applicant's comment requested a change to the definitions of "New Medallion FF" and "New Medallion FF RMPRF" in Section V of the proposed amendment to better describe the purpose of such investment vehicles. Section V(l) of the proposed amendment provides that "[t]he term 'New Medallion FF' means Medallion Fund RF LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes, established by Renaissance in order to facilitate an investment by an IRA Holder who is a "Qualified Purchaser" or "Knowledgeable Employee" under the Investment Company Act of 1940, as amended (the 1940 Act) in the Medallion Master Funds, through his or her IRA." Furthermore, Section V(m) of the proposed amendment provides that "[t]he term 'New Medallion FF RMPRF' means Medallion RMPRF Fund LP, the Bermuda Limited Partnership that is treated as a corporation for US Federal Income Tax purposes established by Renaissance in order to facilitate the investment by IRA Holders who are neither Qualified Purchasers nor 'Knowledgeable Employees' as defined in the 1940 Act, but who are Accredited Investors, in the Medallion Master Funds, through their IRAs."

The Applicant states that the current definitions of "New Medallion FF" and "New Medallion FF RMPRF" in Sections V(l) and V(m) of the proposed amendment contain historical information about the reason such Funds were originally established, i.e., to facilitate the investment by IRA Holders in the Medallion Master Funds through their IRAs in connection with PTE 2012–10. However, the Applicant states that since the proposed amendment provides exemptive relief for the investment by 401(k) Account Holders in the Medallion Master Funds through their 401(k) Accounts in addition to the IRA investments described in PTE 2012–10, the definitions should be updated for the sake of clarification, as well as consistency with the definition of "New Kaleidoscope," which has already been modified in the proposed amendment. Accordingly, the Applicant requests that the definitions of "New Medallion FF" and "New Medallion FF RMPRF" in Sections V(l) and V(m) be modified as follows: (1) In Section V(l), insert "or 401(k) Plan participant" after "an IRA Holder", and insert "or 401(k) Account" after "his or her IRA"; and (2) In Section V(m), insert "or 401(k) Plan participants" after "IRA Holders", and insert "or 401(k) Accounts" after "their IRAs".

The Department concurs with the Applicant's requested modification of the definitions of "New Medallion FF" and "New Medallion FF RMPRF" in Sections V(l) and V(m) and the final amendment has been modified accordingly.

Clarification of Scope of Condition in Section IV(k). The Applicant, in its comment, seeks clarification with respect to the scope of the condition for exemptive relief in Section IV(k) of the proposed amendment, which provides that, with the respect to the covered transactions, "Renaissance does not use the IRAs' or 401(k) Accounts' investments in the Funds in any of their marketing activities or publicity materials for the Funds." Specifically, the Applicant requests that the Department confirm that this condition does not prevent Renaissance from disclosing the existence and amounts of such investments for the sake of completeness, in order to avoid omitting material disclosures that are required by Federal securities laws or other applicable law. The Department confirms that the condition in Section IV(k) of the Notice is not intended to prevent Renaissance from making disclosures in compliance with Federal securities laws or other applicable laws.

Updates to Information Describing Renaissance and the Funds. The Applicant's comment updates the number of Proprietary and non-Proprietary Funds, as described in Section V(d) of the proposed amendment and paragraphs four and ten of the Summary. Paragraph four of the Summary provides that the Applicant is the investment manager of fifteen privately offered U.S. and non-U.S. collective investment vehicles, nine of which are proprietary funds (Proprietary Funds) and six of which are non-proprietary funds (non-Proprietary Funds)—with approximately $24 billion of assets under management. The Applicant notes that Renaissance now manages sixteen privately offered collective investment vehicles, split equally between Proprietary Funds and non-Proprietary Funds, with approximately $23 billion of assets under management. The Applicant requests that Section V(d) of the proposed amendment be modified accordingly. Paragraph ten of the Summary states that Kaleidoscope is one of nine Proprietary Funds eligible to invest in the other eight Proprietary Funds. However, the Applicant notes that Kaleidoscope Fund is now one of eight Proprietary Funds and is eligible to invest in the other seven Proprietary Funds.

The Applicant's comment also updates the number of Medallion Funds described in Section V(i) of the proposed amendment and paragraphs four and six of the Summary, as there are now five Medallion Funds—rather than six as stated in the Notice. The Applicant explains that one of the Medallion FF's, Medallion RMP, liquidated its investors' interests on December 31, 2012.

The Applicant's comment also updates paragraph five of the Summary, which describes the breakdown of assets under management between the Proprietary Funds and the non-Proprietary Funds. In this regard, the Applicant notes that, as of June 30, 2014, the Proprietary Funds and the non-Proprietary Funds had $11.3 billion

[3] Capitalized terms not defined herein have the meanings ascribed to them in the Summary.

and $11.7 billion in assets under management, respectively. In addition, the Applicant specified that, as of June 30, 2014, the Medallion Funds represent approximately $8.9 billion of the Proprietary Funds' $11.3 billion in assets under management.

The Applicant's comment also updates paragraph seven of the Summary, which describes the Medallion Master Funds and Medallion FFs. In this regard, the Applicant notes that the Medallion Master Funds and Medallion FFs are now organized as limited partnerships, limited liability corporations and corporations—not just limited partnerships or corporations, as specified in the Summary. Additionally, the Applicant's comment notes that footnote three to paragraph seven of the Summary is no longer accurate. In this regard, footnote three provides that the Medallion FFs currently operate under the exemptions set forth in sections 3(c)(7), 3(c)(1), or 6(b) of the 1940 Act, and Rule 506 of Regulation D under the Securities Act of 1933, as amended. However, the Applicant notes that Medallion RMP was the only Medallion Fund that relied on the exemption set forth in section 6(b) of the 1940 Act, and as described above, Medallion RMP liquidated its assets on December 31, 2012.

Finally, the Applicant's comment updates paragraph nine of the Summary, which provides that the average annual returns of the Medallion Funds (before management fees and performance allocations) for the period January 1, 1994 through December 31, 2013 is 71.88%. The Applicant notes that the average annual returns of the Medallion Funds (before management fees and performance allocations) for the period January 1, 1994 through June 30, 2014 is 71.80%.

The Department has modified Section V(d) and Section V(i) in the final amendment to reflect the Applicant's updates to the number of Proprietary and non-Proprietary Funds, including the number of Medallion Funds, and the Department takes note of the Applicant's other updates to the Summary, as described above.

Clarifications and/or Updates to Descriptions of the New Medallion Vehicles. Paragraph fourteen and footnote five of the Summary provide descriptions of the New Medallion Vehicles, including their tax status, corporate form, legal jurisdiction, and their applicable securities law-based investor qualifications. The Applicant's comment provides several clarifications to paragraph fourteen and footnote five, and suggests certain clarifying language in paragraph fourteen to more accurately describe the New Medallion Vehicles, described as follows:

The second sentence of paragraph fourteen provides that "New Medallion FF is available only to IRAs maintained by IRA Holders who meet the same investor qualifications as those investing the Medallion Funds." The Applicant clarifies that the New Medallion FF is only open for investment by IRAs whose IRA Holders are qualified under section 3(c)(7) of the 1940 Act, but one of the five Medallion Funds (Medallion USA) actually qualifies for an exemption under section 3(c)(1) of the 1940 Act.

The Applicant suggests that the first two sentences of paragraph fourteen provide descriptions of New Medallion FF and New Kaleidoscope, but do not provide a full description of New Medallion FF RMPRF. Accordingly, the Applicant provides the following clarifying description of New Medallion FF RMPRF: "New Medallion FF RMPRF is organized as a Bermuda Limited Partnership that elects to be treated as a corporation for US Federal Income Tax purposes, and invests directly in the Medallion Master Funds. New Medallion FF RMPRF is available only to IRAs whose beneficial owners are Accredited Investors under Regulation D of the 1933 Act."

The third sentence of paragraph fourteen provides that New Kaleidoscope is available to IRAs of IRA Holders who are not eligible to invest in New Medallion FF. The Applicant clarifies that New Kaleidoscope is designed to accept investments from IRAs whose beneficial owners do not qualify for investment in either New Medallion FF or New Medallion RMPRF. The Applicant notes further that New Kaleidoscope may accept investments from up to 35 IRAs whose beneficial owners are non-Accredited Investors.

The fourth sentence of paragraph fourteen states that New Kaleidoscope invests in the Medallion Funds through New Medallion FF RMPRF, and the second sentence of footnote five provides that, ". . .New Medallion FF accepts direct IRA investment, whereas New Medallion FF RMPRF only accepts investment by New Kaleidoscope, and thus has no direct investment by IRAs." According to the Applicant, this sentence and footnote need to be clarified in several respects: First, the reference to the "Medallion Funds" should be instead to the "Medallion Master Funds," to more accurately reflect the ultimate investment by New Kaleidoscope; secondly, although New Kaleidoscope originally invested in the Medallion Master Funds through New Medallion FF RMPRF, Renaissance has since determined that New Kaleidoscope will invest in the Medallion Master Funds through New Medallion FF; and finally, New Medallion FF accepts direct investments from IRAs whose IRA Holders are qualified under section 3(c)(7) of the 1940 Act and from New Kaleidoscope, whereas New Medallion FF RMPRF accepts investments from IRAs whose IRA Holders are qualified under section 3(c)(1) or section 3(c)(7) of the 1940 Act.

Finally, the fifth sentence of paragraph fourteen states that " . . .New Kaleidoscope will invest in the two other newly established feeder funds which are designed to facilitate investment in the non-Medallion Funds." The Applicant clarifies that these two other feeder funds are the RF Series of RIEF LLC and RIFF LLC, and notes that the Applicant requested the amendment, in part, in order to facilitate New Kaleidoscope's investment in other non-Medallion Funds.

Therefore, to resolve any confusion and make necessary updates to the descriptions of the New Medallion Vehicles in paragraph fourteen of the Summary, the Applicant's comment suggests that paragraph fourteen read as follows:

"New Medallion FF is organized as a Bermuda Limited Partnership that elects to be treated as a corporation for U.S. Federal Income Tax Purposes, and invests directly in the Medallion Master Funds. New Medallion FF is available only to IRAs whose beneficial owners are 3(c)(7) qualified investors. New Medallion FF RMPRF is organized as a Bermuda Limited Partnership that elects to be treated as a corporation for U.S. Federal Income Tax Purposes, and invests directly in the Medallion Master Funds. New Medallion FF RMPRF is available only to IRAs whose beneficial owners are 3(c)(1) or 3(c)(7) qualified investors. New Kaleidoscope is a fund-of-funds that is available only to IRAs maintained by IRA Holders that do not meet the investor qualifications to invest directly in New Medallion FF or New Medallion FF RMPRF. New Kaleidoscope is organized as a Delaware limited liability company, and invests in the Medallion Funds through New Medallion FF. In addition, New Kaleidoscope invests in two other vehicles (the RF series of RIEF LLC and RIFF LLC) which are designed to facilitate its investment in non-Medallion Funds, and relief has been requested to facilitate its investment in other non-Medallion Funds (see paragraph 30, infra)."

The Department takes note of the Applicant's clarifications to paragraph fourteen of the Summary and suggested clarifying language, except that, with respect to the Applicant's suggested revision to the last sentence of paragraph fourteen, the Department is

not extending exemptive relief to investments by New Kaleidoscope in the non-Medallion Funds, because, according to the Applicant and as described in paragraph 32 of the Summary, such Funds do not constitute parties in interest or disqualified persons with respect to the IRAs or the 401(k) Plan.

Clarifications to Description of PTE 2012–10 and the Covered Transactions. The Applicant's comment also provided clarifications to the Summary regarding the description of PTE 2012–10 and the covered transactions. In describing PTE 2012–10, paragraph one of the Summary provides that relief was granted for investments in "six privately offered collective investment vehicles managed by Renaissance." However, the Applicant notes that PTE 2012–10 grants relief for investments in three privately offered collective investment vehicles, New Medallion FF, New Medallion FF RMPRF and New Kaleidoscope, which themselves ultimately invest in the Medallion Master Funds. In further describing PTE 2012–10, paragraph thirteen provides that Renaissance also created "two other feeder funds," besides the New Medallion Vehicles, that were specifically designed to facilitate the investment by IRAs into other of Renaissance's Proprietary Funds (the non-Medallion Funds). The Applicant notes, however that there are currently four such feeder funds: RIFF RMPRF LP and the RF Series of RIEF LLC, RIFF LLC and RIDA LLC.

In describing PTE 2012–10, footnote six of the Summary provides that no management fees or profit participations of any kind are charged to IRAs investing (directly or through New Kaleidoscope) in any Renaissance investment vehicles designed to facilitate the investment into the non-Medallion Funds. The Applicant notes in its comment that this will also be the case for investments made by 401(k) Accounts in such vehicles. Furthermore, in describing PTE 2012–10, footnote seven of the Summary provides that Renaissance terminated the Old 401(k) Plan in late 2010 and distributed its assets to participants by December 31, 2010. The Applicant notes in its comment that the effective date of such plan termination was December 15, 2010.

In describing the covered transactions, paragraphs 21 and 23 of the Summary provide general descriptions of the procedures for purchases and redemptions of interests in the New Medallion Vehicles by 401(k) Plan Accounts. The Applicant notes in its comment that the phrase "purchases by 401(k) Accounts of interests in the Funds will be allowed quarterly and are purchased and redeemed at net asset value" in paragraph 21 and the phrase "Redemptions of interests in New Medallion Vehicles are always made in cash" in paragraph 23 suggest that the 401(k) Account transactions for which relief was sought by the Applicant are already occurring. However, the Applicant represents that these transactions have yet to occur.

Lastly, in describing the covered transactions, paragraph 40 of the Summary provides that, "if the proposed amendment is granted, each Participant's 'Investment Allocation' would limit the combined amount he or she is permitted to invest in the Medallion Funds via his or her personal account, IRA (including his or her Spouse's IRA), and 401(k) Account (in the case of the latter two, via the New Medallion Vehicles)." The Applicant notes that a Participant's Investment Allocation applies in the aggregate to his or her investments in non-fee-free Medallion Funds and in fee-free New Medallion Vehicles.

The Department takes note of the Applicant's suggested clarifications to the Summary, as described above.

Clarifications Regarding Use of Defined Terms. The Applicant suggests in its comment that there are several places in the proposed amendment and the Summary where clarification of certain defined terms is appropriate. Specifically, the Applicant states for purposes of clarification that, in paragraphs 14, 15, 28, 32, and in the last sentence of footnote twelve of the Summary, and in Sections I(a), II(a) and III(a) of the proposed amendment, references to "Medallion Fund" or "Medallion Funds" should be interpreted as references to "Medallion Master Fund" or "Medallion Master Funds." In this regard, according to the Applicant, when an IRA or 401(k) Account acquires an interest in a New Medallion Vehicle, it ultimately acquires, through that investment, an interest in a Medallion Master Fund, where the actual investment activity takes place.

Additionally, the Applicant notes that in the second sentence of paragraph ten, the reference to "Medallion RMP" should refer to "Medallion Fund LP." In this regard, the Applicant states that Medallion RMP had all of its investors' interests liquidated on December 31, 2012, and Kaleidoscope's investment in the Medallion Master Funds was subsequently redirected through Medallion Fund LP. In addition, the Applicant states that in footnote eighteen of the Summary, the reference to "New Kaleidoscope" should be to "New Medallion FF RMPRF," because Spouses are not eligible to invest in New Kaleidoscope.

Lastly, the Applicant's comment also suggests that in paragraph 35 and the last sentence of footnote twelve, the references to "Medallion Funds" should be interpreted to read "New Medallion Vehicles." In this regard, the Applicant explains that although the ultimate investment by IRAs and 401(k) Accounts is in the Medallion [Master] Funds, the actual investment that is being offered to an IRA or 401(k) Account is an interest in a New Medallion Vehicle.

The Department takes note of the Applicant's foregoing clarifications of the above-described defined terms in the proposed amendment and the Summary. However, the Department notes that the last sentence of footnote twelve of the Summary already provides that the investments in the Medallion Funds referenced therein are made indirectly through the New Medallion Vehicles, and as such no clarification thereto is necessary.

After giving full consideration to the entire record, including the Applicant's written comment, subject to the Department's responses thereto, the Department has decided to grant the amendment to PTE 2012–10. The complete application file is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this amendment, refer to the proposed amendment to PTE 2012–10 published in the **Federal Register** on August 14, 2014 at 79 FR 47674.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.)

Family Dynamics, Inc., Pension Plan (the Plan) Located in Leesburg, Florida

[Prohibited Transaction Exemption 2014–10; Exemption Application No. D–11777]

Exemption

Section I: Retroactive Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B),

4975(c)(1)(D), and 4975(c)(1)(E) of the Code,[4] shall not apply, effective September 15, 2011, through December 28, 2012, to the following transactions, provided that the conditions, as set forth in Section II and Section V of this exemption, are satisfied:

(a) The contribution in-kind to the Plan of two (2) promissory notes (Note#1 and Note#2), of a series of twenty-nine (29) numbered promissory notes (collectively, the "Notes" and individually, "Note#1 through Note#29"), as defined below in Section VI(d), by Family Dynamics, Inc. (FDI), the sponsor of the Plan, for the purpose of satisfying the minimum funding obligation of FDI to the Plan for the plan year ending December 31, 2010;

(b) The holding by the Plan of Note#1 and Note#2 until December 28, 2012;

(c) The extension of credit by the Plan to Minneola AG, LLC (Minneola), the issuer of the Notes and a party in interest with respect to the Plan, resulting from the holding of Note#1 and Note#2 by the Plan;

(d) The extension of credit to the Plan:

(1) By certain stockholders of FDI; and

(2) By the members of Minneola, by reason of each such stockholder's and/or each such member's personal guaranty of all or a portion of the face amounts, plus accrued interest thereon, of Note#1 and Note#2; and

(e) The redemption of Note#1 and Note#2 on December 28, 2012, by Minneola for a cash payment that equaled the fair market value of such notes, including principal and all accrued interest thereon through the date of redemption.

Section II: Conditions for Retroactive Transactions

(a) Prior to the in-kind contribution of Note#1 and Note#2, the fair market value of such notes was determined to be at least $2,316,047, as determined by an independent, qualified appraiser (the IQA);

(b) Prior to the in-kind contribution of Note#1 and Note#2, FDI engaged the law firm of Alston and Bird, LLP (A&B), and FDI thereafter contributed Note#1 and Note#2 in a manner consistent with written guidance provided by A&B on September 10, 2011;

(c) Note#1 and Note#2 were redeemed for $2,616,702.01, providing the Plan with a 10.39 percent (10.39%) annual rate of return in connection with its holding of such notes;

(d) The terms and conditions of the transactions, as described in Section I, were no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(e) The Plan did not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of Note#1 and Note#2, except for the fees of a qualified, independent fiduciary acting on behalf of the Plan (the I/F), as defined below in Section VI(c), or persons engaged by the I/F on behalf of the Plan.

Section III: Prospective Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), 4975(c)(1)(B), 4975(c)(1)(D), and 4975(c)(1)(E) of the Code, shall not apply as of the date the final exemption is published in the **Federal Register** and ending on the last day certain of the Notes (the Subsequent Notes), as defined below in Section VI(m), are held by the Plan, to the following transactions, provided that the conditions as set forth in Section IV and Section V of this exemption are satisfied:

(a) The contribution in-kind to the Plan of the Subsequent Notes for the purpose of satisfying FDI's minimum funding obligations to the Plan;

(b) The holding of the Subsequent Notes until the maturity date of such notes;

(c) The extension of credit by the Plan to Minneola resulting from the holding of the Subsequent Notes by the Plan;

(d) The extension of credit to the Plan by:

(1) Certain major stockholders of FDI; and

(2) The members of Minneola that are family trusts, by reason of each such stockholder's and/or each such member's personal guaranty of all or a portion of the face amount, plus accrued interest thereon, of any of the Subsequent Notes; and

(e) The redemption by FDI, Family Dynamics Land Company, LLC (FDLC), Minneola, or any affiliate thereof, as affiliate is defined below in Section VI(a), of any of the Subsequent Notes on or before the maturity date of such notes for the *greater* of:

(1) The aggregate principal plus accrued interest thereon of such notes, as of the date of redemption; or

(2) The fair market value of such notes, as determined by an IQA, as of the date of redemption.

Section IV: Conditions for Prospective Transactions

(a) The terms and conditions of the transactions will be no less favorable to the Plan than the terms and conditions negotiated at arm's length under similar circumstances between unrelated parties;

(b) The terms of the transactions, as described in Section III, are determined in advance by the I/F, acting on behalf of the Plan, to be administratively feasible, in the interest of, and protective of the Plan and its participants and beneficiaries;

(c) The I/F is engaged with full discretionary authority to act on behalf of the Plan with respect to each of the Subsequent Notes contributed in-kind to the Plan, including the exercise of any of the rights of the Plan under such notes, and the responsibility to monitor such notes, and to ensure compliance by FDI, Minneola, FDLC, and any affiliates thereof, with the terms and conditions of such notes, and with the terms and conditions of this exemption;

(d) The Subsequent Notes will be contributed in-kind to the Plan in the next order of seniority of such notes (*i.e.*, Note#3, Note#4, Note#5, etc.);

(e) Prior to the in-kind contribution of any of the Subsequent Notes, the fair market value of such notes will be determined by an IQA, engaged by the I/F. The fair market value must reflect the then-current terms of such Subsequent Notes, and take into account all factors deemed relevant, including the then-current value of a certain parcel of real property (the Property), as defined below in Section VI(f), all or a portion of which secures such notes, as well as the additional pledges and covenants the I/F has negotiated on behalf of the Plan;

(f) Upon the contribution in-kind of any Subsequent Notes to the Plan,

(1) The Plan receives a recorded, perfected security interest in the Property (or in a relevant portion of such Property)(the Security Interest) and retains such Security Interest until the Plan no longer holds any Subsequent Notes; and

(2) The Property (or relevant portion thereof) in which the Plan holds the Security Interest has, at all times throughout the duration of the contributed Subsequent Notes, an appraised value equal to a minimum of five (5) times the aggregate outstanding balance, including all principal and accrued interest thereon, of all of the Subsequent Notes held by the Plan,

[4] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

where such appraised value is determined by an IQA,

(A) Immediately after the most recent contribution in-kind of such Subsequent Notes; and

(B) Immediately after the sale or disposition of any portion of the Property;

(g) The aggregate fair market value, as determined pursuant to Section IV(e) above, of the Subsequent Notes that are held by the Plan shall not exceed 20 percent (20%) of the fair market value of the total assets of the Plan, in each case determined by the I/F immediately after any in-kind contribution of such notes;

(h) The Plan will not incur any commissions, fees, costs, other charges, or expenses in connection with the acquisition, the in-kind contribution, the holding, and/or the redemption of any of the Subsequent Notes, including the fees and expenses of the I/F, and the fees and expenses of an IQA, counsel, or other persons engaged by the I/F;

(i) If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan, is less than 150 percent (150%) of the aggregate outstanding principal balance and accrued interest of such notes held by the Plan, the Plan has the right, exercisable on 120 days' prior written notice by the I/F to FDI, to accelerate the payment of such notes in order to cause the fair market value of the relevant portion of the Property which serves as collateral to be at least 150 percent (150%) of the aggregate outstanding principal and accrued interest amount of such Subsequent Notes;

(j) If, at any time, the I/F determines that the Plan does not have sufficient liquidity to meet its projected 12-month forward expense obligations (including benefit payment obligations), the Plan has a right, exercisable, by the I/F, on ninety (90) days' prior written notice to FDI, to accelerate the repayment of the Subsequent Notes held by the Plan;

(k)(1) FDI provides to the I/F a report from the custodian of the Plan no later than ten (10) days after the end of each calendar quarter detailing the assets of the Plan (excluding the Subsequent Notes held by the Plan) as of the last day of the calendar quarter just ended so long as the Plan owns any Subsequent Notes; and

(2) FDI provides to the I/F, not later than thirty (30) days after the written request of the I/F, a report from the actuary of the Plan projecting the Plan's forward expense obligations for the following twelve (12) months;

(l) The following FDI-related entities: Yeehaw Ranch Land, LLC (Yeehaw), PMCC, LLC (PMCC), Bi-Coastal Holdings, LLC (Bi-Coastal), and Arcadia Holdings, LLC (Arcadia): will covenant with FDI to use the "available proceeds," as defined in Section VI(1), from the sale of any real property owned by such entities, and all net royalties received by Arcadia from third parties, to pay off any debts owned by such entities to FDI. At the option of FDI, such available proceeds and such royalties either will be contributed to the Plan (as a current contribution or a pre-contribution of a future funding obligation) or will be loaned to Minneola with a written direction that Minneola pay the proceeds of such loan to the Plan as payment on any of the Subsequent Notes held by the Plan;

(m) The covenants and agreements described in Section IV(l),(n),(o),and(p) of this exemption are entered into prior to any in-kind contribution of any Subsequent Notes to the Plan; and such notes will be amended to treat a breach of any such covenants and agreements as an event of default under such notes;

(n) FDLC enters into a covenant agreement with the Plan, pursuant to which FDLC covenants to:

(1) Refrain from mortgaging the Property; and

(2) Distribute to Minneola the net proceeds (after the payment of expenses) from the sale of all or a portion of the Property by FDLC. If any mortgage is placed on the Property, such mortgage will create a default under the Subsequent Notes held in the Plan that will allow the Plan to enforce its rights under such a default;

(o) FDI enters into an agreement with the Plan, whereby FDI shall apply all the funds that FDI receives during the Prospective Exemption Period, as defined below in Section VI(e), with respect to certain of FDI's illiquid assets, as defined below in Section VI(k), either to the repayment of the principal and accrued interest on the Subsequent Notes then held in the Plan, or to the use of such funds to satisfy FDI's current and future funding obligations to the Plan;

(p) FDI covenants that it will cause Minneola, at the option of FDI, either to pay to the Plan any funds Minneola receives from FDLC, as payment on the Subsequent Notes held, or to loan such funds to FDI for the purpose of FDI making a contribution to the Plan within thirty (30) days of such loan (either as a current contribution or a pre-contribution of a future funding obligation);

(q) Any extension of the maturity date of the Subsequent Notes is subject to the approval of the I/F; and

(r) The Notes are partially guaranteed by certain family trusts, based on the respective ownership of such trusts of interests in Minneola; and unconditionally guaranteed by Mrs. Gail Gregg-Strimenos (Mrs. Strimenos) and Mrs. Jeannie Gregg-Emack, who jointly and severally guarantee payment of the aggregate amount of such notes in full.

Section V: General Conditions

(a) FDI, Minneola, FDLC, and any affiliates thereof, as applicable, maintain or causes to be maintained within the United States, starting on September 15, 2011, and ending on the date which is six (6) years after the last day any of the Subsequent Notes is held by the Plan, the records necessary to enable the persons, described below in Section V(b)(1)(A)–(C), to determine whether the conditions of this exemption have been met, except that:

(1) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of FDI, Minneola, FDLC, or their affiliates, as applicable, such records are lost or destroyed prior to the end of the six (6) year period, described in Section V(a) above, and

(2) No party in interest with respect to the Plan, other than FDI, Minneola, FDLC, and their affiliates, as applicable, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination, as required, below, by Section V(b)(1).

(b)(1) Except as provided in Section V(b)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in Section V(a) are unconditionally available for examination at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, or the Internal Revenue Service; and

(B) Any fiduciary of the Plan, and any duly authorized representative of such fiduciary; and

(C) Any participant or beneficiary of the Plan, and any duly authorized representative of such participant or beneficiary;

(2) None of the persons, described above in Section V(b)(1)(B) through (C), shall be authorized to examine trade secrets of FDI, Minneola, FDLC, or their affiliates or commercial or financial information which is privileged or confidential.

Section VI: Definitions

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "I/F" means Gallagher Fiduciary Advisers, LLC or any successor that has satisfied all of the criteria for a "qualified independent fiduciary" within the meaning of 29 CFR 2570.31(j).

(d) The term "Notes" means a series of twenty-nine (29) promissory notes (declining in seniority from Note#1 to Note#29), issued by Minneola and acquired by FDI from Minneola as a result of the sale of FDLC which owns the Property by FDI to Minneola. Each of the Notes has a face value of $1,000,000, except for Note#29, which has a face value of $1,330,000. Each of the Notes has an interest rate of 4.53 percent (4.53%) per annum compounded semi-annually.

(e) The term "Prospective Exemption Period" means the period beginning on the date of publication in the **Federal Register** of the grant of this exemption and ending on the last day any of the Subsequent Notes is held by the Plan.

(f) The term "Property" means a certain tract of approximately 1,670 acres of real estate which is located in the City of Minneola, Florida.

(g) The term "Minneola" means Minneola AG, LLC, a Florida limited liability company.

(h) The term "FDI" means Family Dynamics, Inc., a Florida corporation.

(i) The term "FDLC" means Family Dynamics Land Company, LLC, a Florida limited liability company.

(j) The term "Plan" means the Family Dynamics, Inc. Pension Plan.

(k) The phrase "FDI's illiquid assets" means the following assets:

(1) A $6.730 million dollar note from Yeehaw;

(2) A $2.872 million dollar note from PMCC;

(3) A $5.463 million dollar note from Bi-Coastal, the sole owner of Arcadia;

(4) A non-recourse loan to a Gregg family member in the amount of $5.661 million dollars;

(5) The Notes with an aggregate value of $35.757 million dollars issued by Minneola and held by FDI which are the subject of this exemption; and

(6) Miscellaneous assets worth $0.403 million dollars.

(l) The term "available proceeds" means the proceeds from the sale of property less:

(1) All reasonable expenses, including any brokerage commissions, payable to parties unrelated to FDI or its principals/beneficial owners; and

(2) All debt required to be paid as a condition to closing on such sale to obtain a release of any mortgage on such property.

(m) The term "Subsequent Notes" means Note#3 through Note#29.

DATES: *Effective Dates*: This exemption shall be effective with regard to the transactions described in Section I above for the period beginning on September 15, 2011, and ending on December 28, 2012. This exemption shall be effective with regard to the transactions described in Section III above beginning on the date of the publication in the **Federal Register** of the grant of this proposed exemption and ending on the last day any of the Subsequent Notes is held in the Plan.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on July 24, 2014. All comments and requests for a hearing were due by September 8, 2014. During the comment period, the Department received no requests for hearing.

The Department received two (2) written comments during the comment period with respect to the Notice. One comment was submitted by a commenter who is a beneficiary of the Plan. The other was submitted by FDI. The comments, submitted by the commenter and by FDI, and the Department's responses, thereto, are discussed below in paragraphs 1 and 2, respectively, of the final exemption. Paragraph 3 of the final exemption describes amendments and clarifications that the Department has made to the Summary of Facts and Representations (SFR) of the Notice and to certain conditions.

Commenter's Comments

1. In a letter dated August 29, 2014, a commenter lodged a general objection to the proposed exemption. In this regard, the commenter proposes that an independent receiver be appointed to manage the assets of the Plan without the input from the previous fiduciaries of the Plan or their new agents. In addition, the commenter explains that he would prefer to be given a "lump sum payout" that would take into consideration his contribution to the Plan. In this regard, the commenter suggests that the assets of the Plan be disbursed evenly among the current and former employees of FDI.

In response to the commenter's general objection to the proposed exemption, FDI argues that its intent, and the purpose of the exemption are to ensure that the Plan is ultimately fully funded so that 100 percent (100%) of all accrued benefits under the Plan are paid in full. To accomplish this purpose, FDI explains that the Subsequent Notes contributed to the Plan will be collateralized by the Property (or relevant portion thereof) having an appraised value, at all times, equal to five (5) times the aggregate outstanding balance, including all principal and accrued interest thereon, of all of the Subsequent Notes held by the Plan.

Moreover, FDI represents that the exemption contains numerous other safeguards. In this regard, an I/F will be engaged (at FDI's expense) to determine whether the acceptance by the Plan of the contribution of the Subsequent Notes in the future is in the best interest of the Plan and its participants. To the extent any Subsequent Notes are held by the Plan, FDI states that the I/F will exercise all of the Plan's rights with respect to such notes.

With respect to the commenter's request for a "lump sum payout" of his benefit under the Plan, FDI states that the Plan does not provide for "lump sum payouts" (except for benefits with a lump sum value of $5,000 or less in which event a "lump sum payout" is mandatory). Rather, FDI explains, benefits under the Plan are paid in the form of an annuity which is consistent with both the purpose of the Plan to provide retirement income to the participants and the prevailing policy objective to discouraging "lump sum payouts."

With regard to the commenter's request that each participant should receive an equal share of the Plan's $28.92 million in assets, FDI argues that the suggestion completely disregards the fact that the amount of accrued benefits that the participants are entitled to receive under the Plan varies widely among the participants.

With respect to the commenter's request that an independent receiver be appointed to manage the funds, FDI states that all of the Plan's assets are currently managed by the Principal Life Insurance Company (Principal Life), a large, sophisticated financial services firm. Principal Life was engaged in 2013 and is unrelated to and independent of

FDI. If the Subsequent Notes are offered to the Plan, FDI explains that the I/F will act on behalf of the Plan to determine whether to accept such notes, and if accepted, to manage such notes.

In summary, FDI submits that the exemption is in the best interest of the Plan and its participants and that there are adequate safeguards in place to protect their interests. FDI further submits that no changes to the proposed exemption or any other actions are warranted based on the comment letter.

The Department concurs with FDI's responses to the commenter's concerns.

FDI's Requested Amendments and Clarifications

2. In an email to the Department, dated August 28, 2014, FDI requested amendments to the language of the proposed exemption, as set forth in the Notice, and clarifications to the representations in the SFR, as follows:

(a) FDI has requested a clarification to Representation 7, on page 43083 of the SFR, which contains a statement that "[t]he trustee of the Plan is Mrs. Strimenous." In this regard, FDI clarifies that Mrs. Strimenous is the trustee of the trust that was established solely for the purpose of holding Note#1 and Note#2, as well as for the purpose of holding any Subsequent Notes to be contributed to the Plan in the future. FDI represents that all of the other assets of the Plan are held pursuant to an insurance company annuity contract currently issued by Principal Life Insurance Company, and, as a result, are not required to be held in trust.

The Department acknowledges the clarification made by FDI to Representation 7.

(b) FDI has requested a clarification to footnote 3, on page 43083 of the SFR, which states that FDLC, as owner of the Property, will be donating approximately "fifty (50) acres" to the City of Minneola which will reduce the acreage of the Property. In addition, FDI notes a reference to fifty (50) acres in the last sentence of Representation 16 on page 43085 of the SFR. In this regard, FDI represents that subsequent to the filing of the application, the City of Minneola requested a donation of additional acreage to facilitate potential future expansion of the turnpike exchange from a 2-ramp exit to a 4-ramp clover-leaf exit. FDLC has agreed to this request with the result that the acreage of the Property will likely be decreased by approximately one hundred (100) acres, rather than fifty (50) acres.

The Department acknowledges the clarification made by FDI to footnote 3 and to Representation 16 of the SFR. In addition, the Department notes that the approximate size of the Property (1,770 acres), as described in Representation 9, on page 43083 of the SFR, and in Section VI(f), on page 43091 of the Notice, should be decreased from 1,770 acres to 1,670 acres. Accordingly, the Department has amended the language in Section VI(f) of the final exemption to reflect the change in the acreage of the Property.

(c) Section IV(k)(1), on page 43090 of the Notice, requires the "custodian" of the Plan to provide certain reports to the I/F. As noted in paragraph 2(a), above, all of the assets of the Plan (other than the Notes which are the subject of this exemption) are held by an insurance company pursuant to an annuity contract. FDI maintains that the reference to the word, "custodian," in Section IV(k)(1) should be read to mean the insurance company in this context and, therefore, believes that no amendment to this condition is required.

The Department concurs.

(d) Representation 15, on page 43084 of the SFR, lists various sections of the Act with respect to which both retroactive and prospective relief was proposed, including relief from section 406(a)(1)(D) of the Act which had been inadvertently omitted from the Notice. FDI also requests that corresponding references to section 4975(c)(1)(D) of the Code should be included in the language of both Section I and Section III of the final exemption.

The Department concurs with FDI's request and has amended the language of Section I and Section III in the final exemption to include relief from section 406(a)(1)(D) of the Act and section 4975(c)(1)(D) of the Code.

Department's Revisions and Clarifications

3. In addition to the changes to the language of the final exemption requested by FDI, as discussed above in paragraph 2, the Department has determined to make the following clarifications and/or changes to the SFR and the conditions of the final exemption:

(a) In sub-paragraph (c) of Representation 26, on page 43088 of the SFR, and in Section II(c), on page 43089 of the summary of the terms and conditions for the Retroactive Transactions, the phrase, "The Notes," should be deleted and the phrase "Note#1 and Note#2" should be inserted instead. Further, the phrase, "Note#1 and Note#2," after the word, "of," should be changed to the phrase, "such notes." In this regard, the Department has amended Section II(c) of the final exemption to reflect this change;

(b) In sub-paragraph (f)(2) of Representation 27, on page 43088 of the SFR, and in Section IV(f)(2), on page 43090 of the Notice, the parenthetical "(or relevant portion thereof)" should be inserted after the word "Property," and before the word "in." It is the Department's view that the Property (or relevant portion thereof) in which the Plan has a Security Interest, at all times throughout the duration of Plan's holding of the contributed Subsequent Notes, must have an appraised value equal to a minimum of five (5) times the aggregate outstanding balance, including all principal and accrued interest thereon, of all of the Subsequent Notes held by the Plan, where such appraised value is determined by an IQA immediately after the most recent contribution in-kind of such Subsequent Notes and immediately after the sale or disposition of any portion of the Property. In this regard, the Department has amended Section IV(f)(2) of the final exemption to reflect this change;

(c) In Representation 21(f), on page 43087 of the SFR, the second sentence should be amended to read as follows:

The aggregate fair market value of the Subsequent Notes that are held by the Plan shall not exceed 20 percent (20%) of the fair market value of the total assets of the Plan, in each case determined by GFA immediately after any in-kind contribution of such notes;

(d) Section IV(g), on page 43090 of the Notice, should be amended to read as follows:

The aggregate fair market value, as determined pursuant to Section IV(e) above, of the Subsequent Notes that are held by the Plan shall not exceed 20 percent (20%) of the fair market value of the total assets of the Plan, in each case determined by the I/F immediately after any in-kind contribution of such notes;

(e) Section IV(i), on page 43090 of the Notice, should be amended to read as follows:

If, at any time, the fair market value of the Property, all or a portion of which serves as collateral for the Subsequent Notes contributed in-kind to the Plan, is less than 150 percent (150%) of the aggregate outstanding principal balance and accrued interest of such notes held by the Plan, the Plan has the right, exercisable on 120 days' prior written notice by the I/F to FDI, to accelerate the payment of such notes in order to cause the fair market value of the relevant portion of the Property which serves as collateral to be at least 150 percent (150%) of the aggregate outstanding principal and accrued interest amount of such Subsequent Notes;

and;

(f) In Section IV(m), on page 43090 of the Notice, the reference to subsection

(m) should be deleted and a reference to subsections (l),(n),(o),and(p) should be inserted;

Accordingly, after giving full consideration and review to the entire record, including the written comments from the commenter, FDI and the Department, the Department has decided to grant the exemption, as amended and clarified above. Comments and responses submitted to the Department have been included as part of the public record of the exemption application. The complete application file (D–11777), including all supplemental submissions received by the Department is available for inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published in the **Federal Register** on July 24, 2014 at 79 FR 43082.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8551. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of each exemption is subject to the express condition that the material facts and representations contained in the applicable application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of November 2014.

Lyssa E. Hall,

Director of Exemption Determinations, Employee Benefits Security, Administration, U.S. Department Of Labor.

[FR Doc. 2014–26432 Filed 11–6–14; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel.

DATES: The meeting will be held on Thursday, November 20, 2014, from 12:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov*. Hearing-impaired individuals who prefer to contact us by phone may use NEH's TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after January 1, 2015. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993.

Dated: November 4, 2014.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2014–26545 Filed 11–6–14; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal—Large Facilities Manual

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request establishment of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action.

After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by January 6, 2015 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed

information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: "Large Facilities Manual"

OMB Approval Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for three years.

Proposed Project:

The National Science Foundation Act of 1950 (Pub. L. 81–507) set forth NSF's mission and purpose:

"To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . ." The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

Among Federal agencies, NSF is a leader in providing the academic community with advanced instrumentation needed to conduct state-of-the-art research and to educate the next generation of scientists, engineers and technical workers. The knowledge generated by these tools sustains U.S. leadership in science and engineering (S&E) to drive the U.S. economy and secure the future. NSF's responsibility is to ensure that the research and education communities have access to these resources, and to provide the support needed to utilize them optimally, and implement timely upgrades.

The scale of advanced instrumentation ranges from small research instruments to shared resources or facilities that can be used by entire communities. The demand for such instrumentation is very high, and is growing rapidly, along with the pace of discovery. For large facilities and shared infrastructure, the need is particularly high. This trend is expected to accelerate in the future as increasing numbers of researchers and educators rely on such large facilities, instruments, and databases to provide the reach to make the next intellectual leaps.

NSF currently provides support for facility construction from two accounts: The Major Research Equipment and Facility Construction (MREFC) account, and the Research and Related Activities (R&RA) account. The MREFC account, established in FY 1995, is a separate budget line item that provides an agency-wide mechanism, permitting directorates to undertake large facility projects that exceed 10% of the Directorate's annual budget; or roughly $100M or greater. Smaller projects continue to be supported from the R&RA Account.

Facilities are defined as shared-use infrastructure, instrumentation and equipment that are accessible to a broad community of researchers and/or educators. Facilities may be centralized or may consist of distributed installations. They may incorporate large-scale networking or computational infrastructure, multi-user instruments or networks of such instruments, or other infrastructure, instrumentation and equipment having a major impact on a broad segment of a scientific or engineering discipline. Historically, awards have been made for such diverse projects as accelerators, telescopes, research vessels and aircraft, and geographically distributed but networked sensors and instrumentation.

The growth and diversification of large facility projects require that NSF remain attentive to the ever-changing issues and challenges inherent in their planning, construction, operation, management and oversight. Most importantly, dedicated, competent NSF and awardee staff are needed to manage and oversee these projects; giving the attention and oversight that good practice dictates and that proper accountability to taxpayers and Congress demands. To this end, there is also a need for consistent, documented requirements and procedures to be understood and used by NSF program managers and awardees for all such large projects.

Use of the Information: Facilities are an essential part of the science and engineering enterprise, and supporting them is one major responsibility of the National Science Foundation (NSF). NSF makes awards to external entities—primarily universities, consortia of universities or non-profit organizations—to undertake construction, management and operation of facilities. Such awards frequently take the form of cooperative agreements. NSF does not directly construct or operate the facilities it supports. However, NSF retains responsibility for overseeing their development, management and successful performance. The Large Facilities Manual is intended to:

- Provide step-by-step guidance for NSF staff and awardees to carry out effective project planning, management and oversight of large facilities while considering the varying requirements of a diverse portfolio;
- Clearly state the policies, processes and procedures pertinent at each stage of a facility's life cycle from development through construction, operations, and termination; and
- Document and disseminate "best practices" identified over time so that NSF and awardees can carry out their responsibilities more effectively.

This version of the Large Facilities Manual reflects recent changes in organization and formatting to improve readability and facilitate period revision. It also up-dates sections related to contingency and cost estimating requirements. The Manual does not replace existing formal procedures required for all NSF awards, which are described in the *Grant Proposal Guide* and *The Award and Administration Guide.* Instead, it draws upon and supplements them for the purpose of providing detailed guidance regarding NSF management and oversight of facilities projects. All facilities projects require merit and technical review, as well as approval of certain deliverables. The level of review and approval varies substantially from standard grants, as does the level of oversight needed to ensure appropriate and proper accountability for federal funds. The requirements, recommended procedures and best practices presented in the Manual apply to any facility significant enough to require close and substantial interaction with the Foundation and the National Science Board.

This Manual will be updated periodically to reflect changes in requirements, policies and/or procedures. Award Recipients are expected to monitor and adopt the requirements and best practices included in the Manual which are aimed at improving management and oversight of large facilities projects and

at enabling the most efficient and cost-effective delivery of tools to the research and education communities.

The submission of proposals and subsequent project documentation to the Foundation related to the development, construction and operations of Large Facilities is part of the collection of information. This information is used to help NSF fulfill this responsibility in supporting merit-based research and education projects in all the scientific and engineering disciplines. The Foundation also has a continuing commitment to provide oversight on facilities development and construction which must be balanced against monitoring its information collection so as to identify and address any excessive reporting burdens.

NSF has approximately twenty-two (22) Large Facilities in various stages of development, construction, operations and termination. One to two (1 to 2) new awards are made approximately every five (5) years based on science community infrastructure needs and availability of funding. Of the twenty-two large facilities, there are approximately eight (8) facilities annually that are either in development or construction. These stages require the highest level of reporting and management documentation per the Large Facilities Manual.

Burden To The Public: The Foundation estimates that an average of three (3) Full Time Equivalents (FTEs) are necessary for each facility project in development or construction (Total Project Cost of $200–$500M) to respond to NSF routine reporting and project management documentation requirements on an annual basis; or 6240 hours per year. The Foundation estimates an average of one (1) FTE for a facility in operations; or 2080 hours per year. Assuming an average of eight (8) facilities in construction and the balance in operations, this equates to roughly 80,000 public burden hours annually.

Dated: November 3, 2014.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–26444 Filed 11–6–14; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM Online Form 1417, Combined Federal Campaign Results Report

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Combined Federal Campaign, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR) 3206–0193, OPM 1417, the Combined Federal Campaign Results Report. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on July, 16, 2014 at 79 FR 41600 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until December 8, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Combined Federal Campaign (CFC) is the world's largest and most successful annual workplace philanthropic giving campaign, with 151 CFC campaigns throughout the country and overseas raising millions of dollars each year. The mission of the CFC is to promote and support philanthropy through a program that is employee focused, cost-efficient, and effective in providing all federal employees the opportunity to improve the quality of life for all.

The CFC OPM Online Form 1417 collects information from the 151 local CFC charities to verify campaign results and collect contact information. Revisions to the form include clarifying edits to item number 13 of the Campaign Results Totals screen; clarifying edits and expansion of item numbers 14 and 17 of the Campaign Results Totals screen; the elimination of item numbers 16, 18, and 19 of the Campaign Results Totals screen; and the inclusion of verbiage on the Summary Report screen that states that the OPM Form 1417 is not complete without the submission, by email, of the relevant designation data.

Analysis

Agency: Combined Federal Campaign, Office of Personnel Management.

Title: OPM Online Form 1417, Combined Federal Campaign Results Report.

OMB Number: 3206–0193.

Affected Public: Principal Combined Fund Organizations.

Number of Respondents: 151.

Estimated Time Per Respondent: 40 minutes.

Total Burden Hours: 101 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–26468 Filed 11–6–14; 8:45 am]

BILLING CODE 6325–58–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2015–8; Order No. 2237]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an addition of Global Expedited Package Services 3 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 10, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On October 31, 2014, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2015–8 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than November 10, 2014. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2015–8 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than November 10, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–26428 Filed 11–6–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, October 31, 2014 (Notice).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–31321]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 31, 2014.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2014. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 21, 2014, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Gottex Multi-Alternatives Fund—I [File No. 811–22411]

Gottex Multi-Alternatives Fund—II [File No. 811–22414]

Gottex Multi-Alternatives Master Fund [File No. 811–22416]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on October 21, 2014.

Applicants' Address: 28 State St., 40th Floor, Boston, MA 02109.

Cohen & Steers Dividend Majors Fund, Inc. [File No. 811–21633]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Cohen & Steers Total Return Realty Fund, Inc., and on June 13, 2014, made a distribution to its shareholders based on net asset value. Expenses of $190,217 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on October 23, 2014.

Applicant's Address: 280 Park Ave., 10th Floor, New York, NY 10017.

Hansberger International Series [File No. 811–7729]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant's final series, International Growth Fund, transferred its assets to a corresponding series of Madison Funds, and on July 31, 2014, made a distribution to its shareholders based on net asset value. Expenses of $122,292 incurred in connection with the reorganization were paid by Hansberger Global Investors, Inc., applicant's investment adviser, and Madison Asset Management, LLC, the acquiring fund's investment adviser.

Filing Dates: The application was filed on September 23, 2014, and amended on October 17, 2014.

Applicant's Address: 399 Boylston St., Boston, MA 02116.

FMI Common Stock Fund, Inc. [File No. 811–3235]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to FMI Funds, Inc., and on January 31, 2014, made distributions to its shareholders based on net asset value. Expenses of $40,000

incurred in connection with the reorganization were paid by Fiduciary Management, Inc., investment adviser to both applicant and the acquiring fund.

Filing Date: The application was filed on September 30, 2014.

Applicant's Address: 100 East Wisconsin Ave., Suite 2200, Milwaukee, WS 53202.

Inflation-Linked Securities Portfolio [File No. 811–22385]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 7, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on September 26, 2014.

Applicant's Address: Two International Place, Boston, MA 02110.

DGHM Investment Trust [File No. 811–21958]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to corresponding series of World Funds Trust, and on October 23, 2013, made distributions to its shareholders based on net asset value. Expenses of $43,000 incurred in connection with the reorganization were paid by applicant and Commonwealth Shareholder Services, Inc., the administrator to both applicant and the acquiring fund.

Filing Date: The application was filed on September 30, 2014.

Applicant's Address: 565 Fifth Ave., Suite 2101, New York, NY 10017.

Franklin Tax Exempt Money Market Fund [File No. 811–3193]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 2, 2013, applicant made a liquidating distribution to its shareholders, based on net asset value. Thereafter, applicant transferred approximately $540,110 to Franklin Templeton Investors Services, LLC, its transfer agent, to be held for shareholders not yet located. If the transfer agent is unable to locate the shareholders, the funds will escheat to the state. Expenses of approximately $7,078 that were incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on July 29, 2014, and amended on October 3, 2014.

Applicant's Address: One Franklin Parkway, San Mateo, CA 94403–1906.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–26462 Filed 11–6–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73511; File No. 4–657]

Joint Industry Plan; BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.; Notice of Filing of Proposed National Market System Plan To Implement a Tick Size Pilot Program on a One-Year Pilot Basis

November 3, 2014.

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 608 thereunder[2], notice is hereby given that, on August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively "SROs" or "Participants"), filed with the Securities and Exchange Commission ("Commission") a proposed national market system ("NMS") Plan to Implement a Tick Size Pilot Program ("Plan"). A copy of the proposed Plan, which includes the details of a proposed Tick Size Pilot Program ("Pilot") is attached as Exhibit A hereto. The Commission is publishing this notice to solicit comments on the proposed Plan and Pilot.

II. Background

On June 24, 2014, the Commission issued an order pursuant to Section 11A(a)(3)(B) of the Act[3] directing the Participants to act jointly in developing and filing with the Commission a NMS plan to implement a pilot program that, among other things, would widen the quoting and trading increment for certain small capitalization stocks as described in the order by August 25, 2014 ("Order" or "Tick Size Pilot Plan Order").[4] Pursuant to the Order, the SROs filed the proposed Plan, which includes the proposed Pilot as described below.

III. Description of the Plan

Section III is the statement of purpose of the proposed Plan, along with the information required by Rule 608(a)(4) and (5) under the Act. The remainder of Section III appears exactly as prepared and submitted by the Participants.[5]

* * * * *

A. Statement of Purpose

The Participants are filing the proposed Plan in order to implement a pilot program for a one-year pilot period ("Pilot Period") that, among other things, would widen the quoting and trading increments for certain small capitalization stocks ("Tick Size Pilot Program"). The purpose of the Plan, and the Tick Size Pilot Program it contains, is to assist the Commission, market participants, and the public in studying and assessing the impact of increment conventions on the liquidity and trading of stocks of small capitalization companies. The Plan sets forth proposed procedures for selecting a representative group of stocks of small capitalization companies ("Pilot Securities") and subjecting groups of those Pilot Securities ("Test Groups") to various requirements with regards to quoting and trading increments. As set forth in more detail in the Plan, Participants will be required to adopt rules to ensure that Pilot Securities in the Test Groups are quoted and traded in permitted increments.[6]

Selection of Pilot Securities for Inclusion in the Tick Size Pilot Program

Pilot Securities will consist of those NMS common stocks[7] that satisfy the following criteria: (1) A market capitalization of $5 billion or less on the

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] 15 U.S.C. 78k–1(a)(3)(B).

[4] *See* Securities Exchange Act Release No. 72460, 79 FR 36840 (June 30, 2014).

[5] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 ("Transmittal Letter").

[6] Participants operating trading centers will be required, pursuant to the Plan, to ensure that Pilot Securities in the Test Groups are quoted and traded in permitted increments. As applicable, members of Participants will be required, pursuant to rules of self-regulatory organizations, to ensure that Pilot Securities in the Test Groups are quoted and traded in permitted increments.

[7] NMS common stock is defined in the Plan as NMS stock that is common stock of an operating company.

last day of the Measurement Period,[8] where market capitalization is calculated by multiplying the total number of shares outstanding on such day by the Closing Price[9] of the security on such day; (2) A Closing Price of at least $2.00 on the last day of the Measurement Period; (3) A Closing Price on every trading day during the Measurement Period that is not less than $1.50; (4) A Consolidated Average Daily Volume ("CADV") during the Measurement Period of one million shares or less, where the CADV is calculated by adding the single-counted share volume of all reported transactions in the NMS common stock during the Measurement Period and dividing by the total number of U.S. trading days during the Measurement Period; and (5) A Measurement Period Volume-Weighted Average Price ("Measurement Period VWAP") of at least $2.00, where the Measurement Period VWAP is determined by calculating the VWAP of the NMS common stock for each U.S. trading day during the Measurement Period, summing the daily VWAP across the Measurement Period, and dividing by the total number of U.S. trading days during the Measurement Period.[10]

The Participants believe that the above criteria will result in the selection of those stocks that are most likely to benefit from a larger tick size because such stocks will tend to have higher average effective spreads. Additionally, the criteria should help to ensure that those stocks most likely to fall below $1.00 during the Pilot Period are not included in the Tick Size Pilot Program.[11]

The Participants have decided not to include any NMS common stock that has its initial public offering within six months of the start of the Pilot Period. Such stocks will not have the full set of data required to be collected under the Plan for the six-month period before the start of the Tick Size Pilot Program. The Participants believe that the value of subjecting such stocks to the quoting and trading requirements of the Plan is diminished because market participants will not be able to analyze the effects of the quoting and trading requirements against a sufficient baseline.

Once the complete list of Pilot Securities is determined, the Participants will select, by means of a stratified random sampling process, the Pilot Securities to be placed into the three Test Groups. Those Pilot Securities not placed into the three Test Groups will constitute the Control Group. To effect the stratified random sampling, the Pilot Securities will be categorized based on price, market capitalization, and trading volume, and each of those three categories will be further subdivided into low, medium, or high subcategories.[12] As a result, the Pilot Securities will be grouped into a total of 27 categories.

The Tick Size Pilot Plan Order called for the selection of Pilot Securities by means of a stratified random sampling process with the Pilot Securities categorized based on only price and market capitalization.[13] The Plan also requires categorization by trading volume. The Participants believe that the addition of the trading volume category will create more detailed groups of Pilot Securities that will, in turn, lead to a diverse set of stocks selected for inclusion into each Test Group. The Participants believe that the more detailed groups will aid in the assessment process described below by permitting the Commission, market participants, and the public to review the effects of the quoting and trading increment requirements on stocks with a variety of characteristics.

A random sample of Pilot Securities from each of the 27 categories will be placed into the three Test Groups in a number proportional to the category's size relative to the population of Pilot Securities. So, for example, if the category consisting of high priced, high market capitalization, and medium trading volume Pilot Securities contained 5% of the Pilot Securities, that category would make up 5% of each Test Group. Further, a primary listing market's stocks will be selected from each category and included in the three Test Groups in the same proportion as that primary listing market's stocks comprise each category of Pilot Securities.

Each Test Group will consist of 400 Pilot Securities and the Control Group will consist of the remaining Pilot Securities. The Participants believe that including 400 Pilot Securities in each Test Group will allow each Test Group to be statistically large enough to generate data to reliably test for the effects of a larger tick size. Additionally, if any Pilot Securities need to be removed from the data analysis due to unforeseen events, the Participants believe that including 400 Pilot Securities in each Test Group will ensure that the data on the remaining Pilot Securities will be sufficient to complete the required assessments.

Each primary listing exchange will make publicly available for free on its Web site a list of those Pilot Securities listed on that exchange and included in the Control Group and each Test Group. The list will be adjusted for ticker symbol changes and relevant corporate actions and will contain the data specified in Appendix A to the Plan.

Control and Test Groups' Increment Conventions and Trade-at Restrictions

During the Pilot Period, the Control Group and Test Groups will be subjected to quoting and trading increment requirements designed to allow the Commission, market participants, and the public to assess the effect of pricing increment decimalization on small capitalization companies.

Pilot Securities in the Control Group may be quoted and traded at any price increment that is currently permitted.[14] Maintaining the Control Group with the current quoting and trading increments will provide a baseline to analyze the economic effects of the wider quoting and trading increments required by the Test Groups.

Pilot Securities in Test Group One will be quoted in $0.05 minimum increments but may continue to trade at any price increment that is currently permitted. Participants will adopt rules prohibiting Participants or any member of a Participant from displaying, ranking, or accepting from any person any displayable and non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in price increments other than $0.05. However, orders priced to execute at the midpoint and orders entered into a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

Pilot Securities in Test Group Two will be subject to the same quoting

[8] Measurement Period is defined in the Plan as the U.S. trading days during the three-calendar-month period ending at least 30 days prior to the effective date of the Pilot Period.

[9] Closing Price is defined in the Plan as the closing auction price on the primary listing exchange, or if not available, then the last regular-way trade reported by the processor prior to 4:00 p.m. ET.

[10] For purposes of the CADV and Measurement Period VWAP calculations, U.S. trading days during the Measurement Period with early closes will be excluded.

[11] While the criteria are designed to avoid selecting an NMS common stock likely to fall below $1.00, a Pilot Security that falls below $1.00 during the Pilot Period will remain in the Tick Size Pilot Program.

[12] Low, medium, and high subcategories will be established by dividing the categories into three parts, each containing a third of the population.

[13] *See* Tick Size Pilot Plan Order at 36844.

[14] Consistent with Rule 612(b) of Regulation NMS, bids or offers, orders, or indications of interest priced less than $1.00 per share for Pilot Securities in the Control Group may be displayed, ranked, or accepted in $0.0001 increments.

requirements as Test Group One, along with the applicable quoting exceptions. In addition, Pilot Securities in Test Group Two may only be traded in $0.05 minimum increments. Participants will adopt rules prohibiting trading centers [15] operated by Participants and members of Participants from executing orders in any Pilot Security in Test Group Two in price increments other than $0.05.

The $0.05 minimum trading increment will apply to brokered cross trades.[16] Pilot Securities in Test Group Two may trade in increments less than $0.05 under the following circumstances:

(1) Trading may occur at the midpoint between the National Best Bid and the National Best Offer ("NBBO") or the midpoint between the best protected bid and the best protected offer;

(2) Retail Investor Orders [17] may be provided with price improvement that is at least $0.005 better than the best protected bid or the best protected offer; and

(3) Negotiated Trades [18] may trade in increments less than $0.05.

Pilot Securities in Test Group Three will be subject to the same quoting and trading requirements as Test Group Two, along with the applicable quoting and trading exceptions. In addition, Pilot Securities in Test Group Three will be subject to a trade-at prohibition. The purpose of the tradeat prohibition is to assess and gather data with respect to the impact of market-wide restrictions on price-matching activity by market participants that are not quoting aggressively or otherwise offering liquidity in Pilot Securities at competitive prices. Toward that end, the trade-at prohibition of the Plan, operating in conjunction with applicable exceptions, generally will condition the ability of a trading center to execute at a protected quotation on that trading center's contemporaneous display of liquidity, either via a processor [19] or an SRO quotation feed,[20] at that, or a superior, price level, thereby discouraging passive price-matching and incentivizing aggressive quoting. Under the trade-at prohibition, the Plan will (1) prevent a trading center that was not quoting from price-matching protected quotations and (2) permit a trading center that was quoting at a protected quotation to execute orders at that level, but only up to the amount of its displayed size.

The Commission's Tick Size Pilot Plan Order stated that the trade-at prohibition "is intended to prevent price matching by a trading center not displaying the NBBO." [21] Accordingly, the Plan seeks to protect displayed liquidity and to prevent passive-price matching. Based on their experience observing price competition on the market centers that they regulate and marketwide, the Participants believe that the most appropriate and workable reference point for formulating a restriction on price-matching is the standard of a "protected quotation" rather than "the NBBO." The "protected quotation" standard would appear to have the following policy, structural, and operational advantages.

First, the "protected quotation" standard would give broader protection to aggressively displayed quotes, in that the "NBBO" is limited to the *single* best order in the market, while the "protected quotation" standard encompasses the *aggregate* of the most aggressively priced displayed liquidity on all trading centers.[22] Additionally, the Participants believe that not only should the best protected quotations be protected, but also that all protected quotations should be protected, as such protected quotations could likewise be the basis for passive price-matching.

Second, the only other difference between the NBBO and the best protected quotations is that the NBBO would include manual quotations. The Commission has previously recognized that manual quotations are not within the scope of liquidity that should be protected for Rule 611 of Regulation NMS ("Rule 611") (*i.e.*, trade-through) purposes. Based on their experience implementing Rule 611 and other provisions related to intermarket display and price priority, the Participants believe that the scope of the trade-at prohibition in the Plan should be appropriately aligned with that of Regulation NMS.

Third, Participants believe that the trend, in terms of the design and development of systems that perform matching and routing functions, is to reference "protected quotations" rather than "the NBBO" and that the approach of the Plan would therefore provide a more workable approach for the assessment contemplated by the Plan. Most market centers today track the market center's view of protected quotations in its automated execution systems in order to comply with Rule 611. Changing such view for trade-at purposes to the market center's view of the NBBO or to the NBBO as displayed by the processor would incur additional development time, operational complexity and risk, and potentially create unintended conflicts between the logic designed to comply with Rule 611 and trade-at compliance logic.

Fourth, from a textual and implementation perspective, the Participants believe that achieving as great a degree of definitional simplicity

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[15] Trading center is defined in the Plan as having the same meaning as that provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

[16] A brokered cross trade is defined in the Plan as a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security.

[17] A Retail Investor Order is defined in the Plan as an agency order or a riskless principal order originating from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. Such orders include those retail orders entered into Participant-operated retail liquidity programs. The Participant that is the Designated Examining Authority of a member of a Participant operating a trading center executing a Retail Investor Order will require such trading center to sign an attestation that substantially all orders to be executed as Retail Investor Orders will qualify as such under the Plan.

[18] A Negotiated Trade is defined in the Plan as: (i) A Benchmark trade, including, but not limited to, a Volume-Weighted Average Price trade or a Time-Weighted Average Price trade, provided that, if such a trade is comprised of two or more component trades, each component trade complies with the quoting and trading increment requirements of the Plan, or with an exception to such requirements, or (ii) a Pilot Qualified Contingent Trade. A Benchmark Trade is defined in the Plan as the execution of an order at a price that was not based, directly or indirectly, on the quoted price of a Pilot Security at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made. A Pilot Qualified Contingent Trade is defined in the Plan as a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component order is in an NMS common stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.

[19] Processor is defined in the Plan as the single plan processor responsible for the consolidation of information for an NMS stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

[20] SRO quotation feed is defined in the Plan as any market data feed disseminated by a self-regulatory organization.

[21] *See* Tick Size Pilot Plan Order at 36845.

[22] *See* 17 CFR. § 242.600(b)(42). When two or more market centers transmit to the plan processor identical bids or offers for an NMS security, the best bid or best offer is determined by ranking the identical bids or offers by size and then time. As a result, while two market centers may display identical prices, only one market center will display the national best bid or national best offer.

is imperative. Specifically, the Participants believe that the reference to "the NBBO," with continued qualifications excluding manual quotations, would produce an approach that is unnecessarily more complex than grounding the trade-at prohibition in the more workable "protected quotation" standard.

In any event, the Plan, as demonstrated below, will prevent those trading centers not displaying at the best protected quotations from passively price matching those competitive quotations. If a trading center is not displayed at a best protected quotation, the trading center will not be able to execute any orders at that price level without first executing against that displayed liquidity. Accordingly, the Participants believe that the approach of the Plan is well-grounded in the discretion of Rule 611 and directly aligned with both the language and logic of the Commission's Tick Size Pilot Plan Order.

In accordance with the above reasoning, the Plan provides that Participants will adopt rules prohibiting trading centers operated by Participants and members of Participants from executing a sell order for a Pilot Security at the price of a protected bid or from executing a buy order for a Pilot Security at the price of a protected offer unless such execution falls within an exception set forth below.

Trading centers will be permitted to execute an order for a Pilot Security at a price equal to a protected bid or protected offer under the following circumstances:

(1) The order is executed by a trading center that is displaying a quotation, via either a processor or an SRO quotation feed,[23] at a price equal to the traded-at protected quotation but only up to the trading center's full displayed size. Where the quotation is displayed through a national securities exchange, the execution at the size of the order must occur against the displayed size on that national securities exchange. Where the quotation is displayed through the Alternative Display Facility or another facility approved by the Commission that does not provide execution functionality, the execution at the size of the order must occur against the displayed size in accordance with the rules of the Alternative Display Facility or such approved facility;

(2) The order is of Block Size;[24]

(3) The order is a Retail Investor Order executed with at least $0.005 price improvement;

(4) The order is executed when the trading center displaying the protected quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(5) The order is executed as part of a transaction that was not a "regular way" contract;[25]

(6) The order is executed as part of a single-priced opening, reopening, or closing transaction by the trading center;

(7) The order is executed when a protected bid was priced higher than a protected offer in the Pilot Security;

(8) The order is identified as an Intermarket Sweep Order;

(9) The order is executed by a trading center that simultaneously routed Trade-at Intermarket Sweep Orders ("Trade-at ISOs")[26] to execute against the full displayed size of any protected quotation in the Pilot Security that was traded at;

(10) The order is executed as part of a Negotiated Trade;

(11) The order is executed when the trading center displaying the protected quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the trade-at, a best bid or best offer, as applicable, for the Pilot Security with a price that was inferior to the price of the trade-at transaction;

(12) The order is executed by a trading center which, at the time of order receipt, the trading center had guaranteed an execution at no worse than a specified price (a "stopped order"), where: a. The stopped order was for the account of a customer; b. The customer agreed to the specified price on an order-by-order basis; and c. The price of the trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution; or

(13) The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the trade-at prohibition or any other provisions of the Plan.[27]

The first exception to the trade-at prohibition is designed to address the intended scope of the trade-at prohibition, as discussed above and illustrated in the examples below. The Participants believe that a trading center displaying, either via a processor or an SRO quotation feed, at a protected quotation should only be able to execute against the full displayed size at that price, and should not be able to trade any hidden size at that price without complying with one of the exceptions detailed above. Without such a limitation, trading centers and market participants may not be incentivized to display quotations for a significant number of shares of Pilot Securities,

[23] The Participants believe that a trading center displaying a quotation either via a processor, as a protected quotation, or via an SRO quotation feed, as a quotation below the trading center's top-of-book, should be able to avail themselves of this exception. As detailed in Example 3 below, a trading center would be able to trade at the price of a protected quotation against its depth-of-book displayed quotations in order to promote the display of protected quotations at a more aggressively-priced quotation.

[24] Block Size is defined in the Plan as having the same meaning as that provided in Rule 600(b)(9) of Regulation NMS under the Exchange Act.

[25] For purposes of the trade-at prohibition, "regular way" contract has the same meaning as the term is used in Rule 611(b). In the Regulation NMS Adopting Release, the Commission stated that "regular way" refers to "bids, offers, and transactions that embody the standard terms and conditions of a market." *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37537 n. 326 (June 29, 2005).

[26] A Trade-at ISO is defined in the Plan as a limit order for a Pilot Security that meets the following requirements: (1) When routed to a trading center, the limit order is identified as an Intermarket Sweep Order; and (2) Simultaneously with the routing of the limit order identified as an Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the limit order identified as an Intermarket Sweep Order. These additional routed orders also must be marked as Intermarket Sweep Orders. The Tick Size Pilot Plan Order provides for an ISO exception to the trade-at prohibition that, as described above, involves routing ISOs to execute against the full displayed size of protected quotations. *See* Tick Size Pilot Plan Order, 79 FR at 36846. From the perspective of the sending market, and as described in the Tick Size Pilot Plan Order, this usage of an ISO differs from the definition of ISO in Rule 600(b)(30) of Regulation NMS in that the ISOs, for purposes of the trade-at prohibition, need to be routed to execute against protected quotations with a price that is *equal* to the limit price of the order routed to a protected quotation. *See id.* at n. 65. For purposes of the trade-through prohibition in Rule 611 of Regulation NMS, Rule 600(b)(30) provides that ISOs need to be routed to execute against those protected quotations with a price that is *superior* to the limit price of the order routed to a protected quotation. To account for the differences in ISO usage, the Participants have defined ISOs routed to take advantage of the exception to the trade-at prohibition as Trade-at ISOs. From the perspective of the receiving market, the receipt of an ISO routed to comply with the exception to the trade-at prohibition is no different from the receipt of an ISO routed to comply with the exception to the trade-through prohibition; in both cases, the ISO designation permits the receiving market to execute the ISO at its limit price without regard to prices on away markets.

[27] A trading center complying with one of these exceptions under the trade-at prohibition must still ensure that any execution complies with Rule 611.

thus circumventing the purposes of the trade-at prohibition. Therefore, to incentivize the public display of liquidity, only those orders-and those portions of such orders that are fully displayed, either via a processor or an SRO quotation feed, on a trading center will be executable against a contra-side order at the price of a protected quotation before requiring a trading center to comply with another exception to the trade-at prohibition.

The Tick Size Pilot Order included the third and fourth exceptions to the trade-at prohibition.[28] The Participants, however, determined not to include in the Plan the significant price improvement exception set out in the Tick Size Pilot Plan Order. Because of the applicable trading and quoting increments, an execution of an order at a price superior to a protected quotation will necessarily result in significant price improvement. Therefore, the Participants believe the significant price improvement exception is superfluous.

The fifth through thirteenth exceptions apply the trade-through exceptions found in Rule 611(b) to the trade-at prohibition. The Participants believe that the rationales underlying the trade-through exceptions apply to the trade-at prohibition as well. Consistent with this belief, the Participants have included the trade-through exceptions as exceptions to the trade-at prohibition, subject to a few minor changes to account for the difference between the trade-at prohibition and the trade-through prohibition.

Finally, the fourteenth exception implements an exception for fractional shares, but only with respect to situations where the fractional shares were not the result of breaking an order for one or more whole shares into orders for fractional shares. Due to the difficulties of routing fractional shares to comply with the trade-at prohibition, and because the execution of fractional shares will represent a negligible portion of overall trading, the Participants believe that fractional share orders should be excepted from the trade-at prohibition.

To illustrate the operation of the trade-at prohibition, the Participants have included the following examples:

Example 1

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 2 is displaying a 100-share protected bid at $19.95. There are no other protected bids. Trading Center 3 is not displaying any shares in Pilot Security ABC but has 100 shares hidden at $20.00 and has 100 shares hidden at $19.95. Trading Center 3 receives an incoming order to sell for 400 shares. To execute the 100 shares hidden at $20.00, Trading Center 3 must respect the protected bid on Trading Center 1 at $20.00. Trading Center 3 must route a Trade-at Intermarket Sweep Order to Trading Center 1 to execute against the full displayed size of the protected bid, at which point Trading Center 3 is permitted to execute against the 100 shares hidden at $20.00. To execute the 100 shares hidden at $19.95, Trading Center 3 must respect the protected bid on Trading Center 2 at $19.95. Trading Center 3 must route a Trade-at Intermarket Sweep Order to Trading Center 2 to execute against the full displayed size of the protected bid, at which point Trading Center 3 is permitted to execute against the 100 shares hidden at $19.95.

Example 2

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 2 is displaying a 100-share protected bid at $20.00. Trading Center 2 also has 300 shares hidden at $20.00 and has 300 shares hidden at $19.95. Trading Center 3 is displaying a 100-share protected bid at $19.95. There are no other protected bids. Trading Center 2 receives an incoming order to sell for 900 shares. Trading Center 2 may execute 100 shares against its full displayed size at the protected bid at $20.00. To execute the 300 shares hidden at $20.00, Trading Center 2 must respect the protected bid on Trading Center 1 at $20.00. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 1 to execute against the full displayed size of Trading Center 1's protected bid, at which point Trading Center 2 is permitted to execute against the 300 shares hidden at $20.00. To execute the 300 shares hidden at $19.95, Trading Center 2 must respect the protected bid on Trading Center 3 at $19.95. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 3 to execute against the full displayed size of Trading Center 3's protected bid, at which point Trading Center 2 is permitted to execute against the 300 shares hidden at $19.95.

Example 3

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 1 is also displaying 300 shares at $19.90 on an SRO quotation feed. Trading Center 2 is displaying a 100-share protected bid at $19.95. Trading Center 2 is also displaying 200 shares on an SRO quotation feed at $19.90 and has 200 shares hidden at $19.90. Trading Center 3 is displaying a 100-share protected bid at $19.90. There are no other protected bids. Trading Center 2 receives an incoming order to sell for 700 shares. To execute against its protected bid at $19.95, Trading Center 2 must comply with the trade-through restrictions in Rule 611 and route an intermarket sweep order to Trading Center 1 to execute against the full displayed size of Trading Center 1's protected bid at $20.00. Trading Center 2 is then permitted to execute against its 100-share protected bid at $19.95. Trading Center 2 may then execute 200 shares against its full displayed size at the price of Trading Center 3's protected bid. To execute the 200 shares hidden at $19.90, Trading Center 2 must respect the protected bid on Trading Center 3 at $19.90. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 3 to execute against the full displayed size of Trading Center 3's protected bid, at which point Trading Center 2 is permitted to execute against the 200 shares hidden at $19.90. Trading Center 2 does not have to respect Trading Center 1's displayed size at $19.90 for trade-at purposes because it is not a protected quotation.

Collection of Pilot Data

Throughout the Pilot Period, the Participants will collect the data described in Appendix B to the Plan with respect to Pilot Securities. Such data will include:

(1) Daily market quality statistics of orders by security, order type, original order size (as observed by the trading center), hidden status (as applicable), and coverage under Rule 605 of Regulation NMS;

(2) Specified data regarding market orders and marketable limit orders;

(3) Daily number of registered Market Makers;[29] and

(4) Daily Market Maker participation statistics.

Each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will require such member to collect and provide to the Designated Examining Authority the data described in subparagraphs (1) and (2) above,

[28] *See* Tick Size Pilot Plan Order at 36845–46, n. 63, 64.

[29] Market Maker is defined in the Plan as a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.

subject to the terms and conditions in Appendix B to the Plan. The Participants and each member of a Participant operating a trading center will also be required to collect such data for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period.

The data will be made publicly available for free on a disaggregated basis by trading center on the Web sites of the Participants and the Designated Examining Authorities and will be reported by the Participants and the Designated Examining Authorities to the Commission on a monthly basis. The data will be provided on a disaggregated basis by trading center. The data made publicly available will not identify the trading center that generated the data.

Participants will also require each Market Maker to provide to its Designated Examining Authority the data described in Appendix C to the Plan with respect to Pilot Securities, specifically data related to daily Market Maker trading profits. The Designated Examining Authority will aggregate such data, report it to the Commission, and make it publicly available for free on its Web site on a monthly basis. Such data will also be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. The Designated Examining Authority will develop policies and procedures reasonably designed to ensure the confidentiality of the non-aggregated data it receives from Market Makers. The data made publicly available will not identify the Market Makers that generated the data.

Each Participant will make available to the other Participants a list of members designated as Market Makers on that Participant's trading center. Because the data requested will be gathered by a Participant whether or not the member is registered as a Market Maker with that Participant's trading center, each Participant will need the list to determine those members about whom the Participant needs to report data.

Assessment of Pilot Data

Within six months after the end of the Pilot Period, the Participants will provide to the Commission and make publicly available a joint assessment of the impact of the Pilot. Such assessment will include:

(1) An assessment of the statistical and economic impact of an increase in the quoting increment on market quality;

(2) An assessment of the statistical and economic impact of an increase in the quoting increment on the number of Market Makers;

(3) An assessment of the statistical and economic impact of an increase in the quoting increment on Market Maker participation;

(4) An assessment of the statistical and economic impact of an increase in the quoting increment on market transparency;

(5) An evaluation whether any market capitalization, daily trading volume, or other thresholds can differentiate the results of the above assessments across stocks (*e.g.*, does the quoting increment impact differently those stocks with daily trading volume below a certain threshold);

(6) An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trading increment and for the joint effect of an increase in a quoting increment with the addition of a trading increment;

(7) An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trade-at prohibition and for the joint effect of an increase in a quoting increment with the addition of a trading increment and a trade-at prohibition; and

(8) An assessment of any other economic issues that the Participants believe the Commission should consider in any rulemaking that may follow the Pilot.

Further, Participants may individually submit to the Commission and make publicly available additional supplemental assessments of the impact of the Tick Size Pilot Program.

The Tick Size Pilot Plan Order originally called for the Participants to assess the effect of the quoting and trading increment requirements on Market Maker profitability.[30] The Exchanges believe that Market Makers will be in a better position than the Participants to analyze the effects of the Tick Size Pilot Program on Market Maker profitability. Therefore, the Participants have removed this assessment from the Tick Size Pilot Plan.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Plan

The initial date of the Tick Size Pilot Program will be no sooner than 180 calendar days following the publication of the Commission's Approval Order of the Plan in the **Federal Register**.

[30] *See* Tick Size Pilot Plan Order at 36846.

Development and Implementation Phases

The Plan will be implemented as a one-year pilot program.

D. Analysis of Impact on Competition

The proposed Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants do not believe that the proposed Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

E. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to the interpretation of the Plan. Section II(C) of the Plan sets forth how any entity registered as a national securities exchange or national securities association may become a Participant.

F. Approval of Amendment of the Plan

Not applicable.

G. Terms and Conditions of Access

Section II(C) of the Plan provides that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Executing a copy of the Plan, as then in effect; (2) providing each then-current Participant with a copy of such executed Plan; and (3) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

H. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

I. Method and Frequency of Processor Evaluation

Not applicable

J. Dispute Resolution

The Plan does not include specific provisions regarding resolution of disputes between or among Participants. Section III(C) of the Plan provides for each Participant to designate an individual to represent the Participant as a member of an Operating Committee. No later than the initial date of the Plan, the Operating Committee shall designate one member of the Operating Committee to act as the Chair of the Operating Committee. The Operating Committee shall monitor the procedures established pursuant to the Plan and advise the Participants with respect to any deficiencies, problems, or

recommendations as the Operating Committee may deem appropriate. Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, shall be submitted to the Commission as a request for an amendment to the Plan initiated by the Commission under Rule 608.

* * * * *

This marks the end of the Statement of Purpose as prepared and submitted by the Participants.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan, which includes the proposed Tick Size Pilot Program, is consistent with the Act. In the Order, the Commission stated its belief that it was in the public interest for the Participants to develop and file a plan for a proposed tick size pilot, and noted that once filed, such plan would be published for public comment.

In the Order, however, the Commission also pointed out that support for a tick size pilot was not universal, with concerns being raised in particular about the potential costs to investors of wider minimum tick sizes.[31] In addition, a recent Commission staff paper suggests that there appears to be considerable variability among small capitalization stocks in their trading characteristics, liquidity, and spreads, with some stocks more closely resembling the trading of large capitalization stocks.[32] Accordingly, the Commission generally requests comment on whether there are other market structure initiatives that the Commission should consider to address concerns about the market structure for small capitalization stocks in addition to, or instead of, the proposed Tick Size Pilot Program.

The Order contained certain terms and conditions for a tick size pilot that the Commission preliminarily believed would produce data that would allow the Commission and others to conduct studies on the effect of increased tick size on liquidity, execution quality for investors, volatility, market maker profitability, competition, transparency and institutional ownership. The Commission broadly requests comment on whether the proposed Tick Size Pilot Program filed by the Participants will generate measurable data to allow the Commission and others to conduct such studies.

The Commission notes that the Participants have proposed additional details for the Tick Size Pilot Program that were not specified in the Commission's Order. In addition, the Participants have proposed to modify some of the terms and conditions set forth in the Order. The Commission discusses these additions and modifications in more detail below, but also broadly requests comment on them.[33]

A. General Questions

The Commission stated in the Order that it preliminarily believed that it should assess, through a short-term pilot program, whether wider minimum tick sizes for small capitalization stocks would enhance market quality to the benefit of market participants, issuers, and U.S. investors. The Commission requests comment on whether the proposed Tick Size Pilot Program would facilitate such an assessment and requests comment on the specific questions set forth below.

- How well does the structure of the proposed Tick Size Pilot Program, generally, facilitate analysis of the tradeoffs associated with increasing the quote increment for certain small capitalization securities? How could the proposed Pilot structure change to better facilitate such analysis? Please provide any other comments on the structure and selection process of the proposed Pilot.
- Does the structure of the proposed Pilot allow for a robust analysis of alternative quote increments in securities, including the determination of thresholds that distinguish stocks that should have different quote increments? How could the structure change to better facilitate such analysis?
- What are the anticipated costs for implementing and operating the proposed Pilot? Are any components of the Pilot structure particularly costly? If so, please describe which market participants could be impacted.
- Could investors of the small capitalization securities included in the Pilot be harmed by the widening of quoting and trading increments?
- Is the proposed one-year Pilot Period period too long or too short? Should the Pilot Period be different? Is it appropriate that the proposed Pilot is structured to end before completion of the assessments by the Participants?
- What is the risk of unintended consequences from the Pilot? What might they be? Are these issues that could be tested during the Pilot, or do they raise more fundamental questions about the advisability of the Pilot? Will the Pilot lead to changes in trading behavior by market makers or other market participants?
- As noted above, the Commission preliminarily believes the Pilot would produce data that would allow the Commission and others to conduct studies on the effect of increased tick size on liquidity, execution quality for investors, volatility, market maker profitability, competition, transparency and institutional ownership. Should the Pilot be designed to produce data to allow the Commission and others to conduct studies in other areas? If so, how should the proposed Pilot be changed to accommodate these other studies?

B. Proposed Selection Process for Pilot Securities

- In the Order, the Commission set forth the criteria that it preliminarily believed would identify securities that should be included in a proposed Pilot. Are these criteria appropriate and sufficient for selecting securities to be included in the Pilot? The Commission requests comment on whether small capitalization securities would benefit from the proposed Tick Size Pilot Program and if so, what types of small capitalization securities would benefit most. Should the proposed Tick Size Pilot Program assess different or additional criteria for identifying Pilot Securities? For example, should the market capitalization be higher or lower than $5 billion? Should the CADV be more or less than one million shares? Should securities other than stocks of operating companies be included in the Plan, such as exchange-traded products?
- The Participants have proposed to exclude securities that have recently completed an initial public offering

[31] *See* Order at 36843.

[32] *See* SEC Staff Paper, A characterization of market quality for small capitalization US equities, Charles Collver (September 2014), available at *http://www.sec.gov/marketstructure/research/small_cap_liquidity.pdf*. Moreover, recent data seems to indicate that initial public offerings have rebounded since the financial crisis. *See, e.g.*, The Epic Year in Initial Public Offerings, available at *http://blogs.wsj.com/moneybeat/2014/09/25/the-epic-year-in-initial-public-offerings/* (visited on Sepetember 29, 2014) (showing that 2014 is on pace for the second biggest year for U.S. listed IPOs by amount since 1995) and Renaissance Capital IPO Center, available at *http://www.renaissancecapital.com/ipohome/press/mediaroom.aspx?market=us* (visited on September 29, 2014) (showing that, for initial public offerings of greater than $50 million market cap, a 41% increase in issuances, 59% increase in filing activity, and 122% increase in proceeds raised, as compared to similar time period in 2013).

[33] The Commission notes that the Participants described their additions and modifications and rationale in their Transmittal Letter, which is set forth above in Section III.

from the proposed Pilot. Should these securities be included?

- Should the proposed Pilot exclude any other small capitalization securities? For example, should small capitalization securities that are cross-listed in another jurisdiction be excluded from the Pilot?
- Should companies whose securities are included in the Pilot be allowed to opt-out of participating in the Pilot? If so, how should such an opt-out work and what impact would it have on the ability of the Commission and others to analyze the Pilot?
- As noted above, the proposed Tick Size Pilot Program contains different terms and conditions than specified in the Order. In particular, the Participants proposed to evaluate potential Pilot Securities over a Measurement Period.[34] Is this period sufficient to evaluate and identify potential Pilot Securities?
- With regard to the selection of Pilot Securities, the Participants have proposed to consider two additional elements related to the price of potential Pilot Securities. First, the Participants proposed that the Closing Price on every trading day during the Measurement Period not be less than $1.50. In addition, Participants proposed that the Measurement Period VWAP be at least $2.00. Are these additional criteria useful? Are there other criteria related to the price of potential Pilot Securities that should be considered?

C. Proposed Control and Test Groups

- The Order specified that there should be three test groups. Would the three proposed test groups provide sufficient information to allow for analysis of quote increments in certain small capitalization stocks? Would different test groups with different criteria better facilitate such an analysis?
- Participants have proposed to include 400 securities per Test Group. The Commission preliminarily believed that 300 securities per Test Group was sufficiently large number to generate statistically reliable data, yet a number small enough to minimize potential disruption to the market. The Commission requests comment on whether the proposed inclusion of 400 securities per Test Group satisfies these goals. If not, what test group size should be required?
- Specifically, please describe whether the size of the three test groups is large enough to draw reliable conclusions from statistical tests of the tradeoffs associated with increasing the quote increment for certain small securities, including tests that attempt to identify approximate thresholds for changes in the quote increment. Is the control group size large enough to draw reliable conclusions? If not, what size should be required?
- How likely is it that the process for selection will result in three representative test groups that can be compared to each other and the Control Group or matched stocks from the Control Group? How important is it that the three Test Groups be representative and be suitable for comparison with each other and the Control Group? Is the selection plan for the categories with fewer than 10 securities reasonable for allocating potential Pilot Securities among the Test Groups? If not, please specify a more appropriate selection plan and explain how it improves on the Plan.
- With regard to assigning potential Pilot Securities to each Test Group and the Control Group, Participants have proposed to consider the trading volume of a security, in addition to price and market capitalization as specified in the Order. Is this additional criterion reasonable? Are there other criteria that would be useful? Would these additional criteria help to achieve representative samples of Pilot Securities in the Test Groups?
- The Commission designated $0.05 as the increment to be tested in the proposed Pilot. Is the $0.05 increment appropriately wide enough to encourage trading and liquidity in small capitalization securities? Should the increment be another amount? If so, please specify that increment and explain why it is preferable.

i. Test Group One

- In the Order, the Commission stated that quoting of securities in Test Group One should be in $0.05 increments but that trading would continue to occur at any price that is permitted today. The Participants proposed to include two quoting exceptions for orders priced to execute at the midpoint and orders entered into a Participant-operated retail liquidity program. Do you agree with these proposed exceptions? Why or why not?

ii. Test Group Two

- The Order stated that quoting and trading should be in $0.05 increments in Test Group Two with three exceptions: (1) Trading could occur at the midpoint between the NBBO; (2) retail investor orders could be provided price improvement that is at least $0.005 better than the NBBO; and (3) certain negotiated trades such as VWAP, TWAP, and qualified contingent trades, could continue at any increment permitted today. In the Order, the Commission noted that it preliminarily believed that Test Group Two should be established to examine the potential impact on displayed liquidity in conjunction with Test Group One. The Commission requests comment on whether the structure of Test Group Two supports this goal. Is Test Group Two necessary for the proposed Pilot?
- The Commission noted that it preliminarily believed that these three exceptions should be allowed so as not to prohibit certain categories of trades that are broadly beneficial to market participants today. The Commission requests comment on whether these exceptions are necessary. Should there be other exceptions? If so, please describe those exceptions and explain why they are advisable.
- The Participants proposed additional exceptions and terms for Test Group Two. First, the Participants proposed to clarify that the $0.05 trading increment would apply to brokered cross trades. Is this clarification necessary? Second, the Participants proposed that midpoint trades could occur between the best protected bid and best protected offer, in addition to the NBBO as the Commission Order specified. Should these additional midpoint trades be excepted from the trading increment requirement? Third, the Participants proposed that the price improvement for retail investor orders be calculated against the best protected bid or the best protected offer, rather than the NBBO as the Commission Order specified. Finally, the Participants proposed that qualified contingent trades would not include block size criteria, as specified in the Commission Order. Do you agree with the additional exceptions and terms proposed by the Participants? Why or why not?

iii. Test Group Three

The Order stated that the quoting and trading increments (and the exceptions thereto) in Test Group Three would be the same as Test Group Two, but Test Group Three would include a trade-at requirement. In the Order, the Commission generally described a trade-at requirement as one that is intended to prevent price matching by a trading center not displaying the NBBO.

The Commission further stated that under a trade-at requirement, a trading center that was not displaying the NBBO at the time it received an incoming marketable order could either: (1) Execute the order with significant price improvement ($0.05 or the

[34] *See supra* note 8.

midpoint between the NBBO);[35] (2) execute the order at the NBBO if the size of the incoming marketable order is of block size; or (3) route intermarket sweep orders to execute against the full displayed size of the protected quotations at the NBBO and then execute the balance of the order at the NBBO price.

The Commission notes that, in the context of the Pilot, an important purpose of a trade-at requirement would be to test whether, in a wider tick size environment, the ability of market participants to match displayed prices, without quoting, would disproportionately affect market makers' quoting practices. If quoting practices are affected negatively, then it could undermine one of the central purposes of the Pilot, namely to determine whether wider tick sizes positively affect market maker participation and pre-trade transparency.

- The Commission generally requests comment on the advisability of testing a trade-at requirement as part of the Pilot. Is a trade-at requirement necessary to effectively analyze the impact of widened ticks on the trading and liquidity of small capitalization securities? If a trade-at requirement is advisable, has the Commission appropriately described such a requirement in the Order? Are exceptions to the trade-at requirement set forth in the Order appropriate?
- The Commission noted that a trade-at requirement could stem the possible migration of trading volume away from "lit" venues to "dark" venues. Is a trade-at requirement an appropriate regulatory tool for the proposed Pilot to address this potential concern? Are there other tools that could achieve the same goals? Would a trade-at requirement improve trading and liquidity of small capitalization securities and benefit investors? How difficult and costly would it be to implement the trade-at restriction?
- The Participants have proposed several deviations from, or additions to, the trade-at component of Test Group Three that differ from or go beyond those specified in the Commission Order.[36] First, the Participants proposed that the trade-at requirement apply to any protected bid or protected offer, rather than just the NBBO.[37] Should the trade-at requirement apply to all protected quotes?
- Second, the Participants proposed that a trading center be permitted to execute an order at the price of a protected quotation, so long as it is displaying a quotation at that price through a processor or an SRO quotation feed. Should the display requirement be satisfied by displaying only through a proprietary market data feed, and not a processor? In other words, should a trade-at requirement permit price matching through displayed quotes that are not protected quotes? Why or why not?
- Third, the Participants proposed that a trading center be permitted to execute an order at the price of a protected quotation, if it is displaying a quotation at that price, but only up to its displayed size. Is this restriction necessary to achieve the purpose of the Pilot's trade-at requirement? Why or why not?
- Fourth, the Participants proposed to restrict where and how a trading center that is displaying a quotation at the price of a protected quotation may execute orders at that price. Specifically, where a quotation is displayed through a national securities exchange, the execution must occur against the displayed size on that exchange; where a quotation is displayed on the Alternative Display Facility ("ADF") or other Commission-approved facility, the execution must occur in accordance with the rules of the ADF or other such facility. Is this restriction necessary to achieve the purpose of the Pilot's trade-at requirement? Why or why not?
- Fifth, the Participants proposed 13 exceptions to the trade-at restrictions, many of which are modeled after the trade-through exceptions in Rule 611 of Regulation NMS. Does it make sense to apply the trade-through exceptions in Rule 611 to a trade-at restriction? Why or why not?
- Finally, the Participants proposed to except fractional shares from the trade-at requirement. Is this proposed exception reasonable? Why or why not?

D. Proposed Data

As noted above, the Commission stated that one of the goals of a proposed Pilot would be to generate data on the impact of widened tick sizes on the trading and liquidity for certain small capitalization stocks. Therefore, in the Order, the Commission set forth details on the data that it preliminarily believed to be necessary to support analysis. This data is meant to supplement publicly available data such as data available on the Commission's market structure Web site[38] and should allow the Commission and others to conduct studies on the effect of increased tick size on liquidity, execution quality for investors, volatility, market maker profitability, competition, transparency and institutional ownership. The Commission requests comment on the data to be generated.

- How important is the public release of the data that is collected during the Pilot ("pilot data") to the usefulness of the Pilot (*i.e.*, to achieve a reliable analysis of the tradeoffs associated with increasing the quote increment in certain small capitalization securities)? Are there readily available data that are already public and could substitute for the pilot data? If so, what are they and how well could they facilitate tests of the tradeoffs associated with changing quote increments? What are the most important tradeoffs to examine during the Pilot?
- Are researchers other than those in the securities industry or regulators likely to study the pilot data? Are they likely to use the pilot data to study the Pilot? If so, which sets of data are likely to be the most useful?
- How costly will the Pilot data be to produce and make public? Are there any components of the pilot data that are particularly costly? If so, which ones? Are there any unintended consequences of releasing the pilot data?
- The data is to be available starting six months prior to the start of the Pilot, and continue until six months after the Pilot ends. How valuable is the data availability before and after the proposed Pilot, and is six months the appropriate time frame? Please explain.
- Is the frequency of the Pilot data, and delay in its release, appropriate to balance the cost of the data, including the potential for unintended consequences, against the value of the data to the pilot analysis and the timeliness of Pilot analyses by

[35] The Commission noted that it preliminarily believed that $0.005 would be the required minimum price improvement for retail investor orders.

[36] *See* Section III *supra* for the rationale provided by the Participants for this proposal.

[37] Rule 600(b)(42) of Regulation NMS defines "National best bid and national best offer" as "with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time)" (emphasis added).

[38] *See* Market Structure Web site, available at *http://www.sec.gov/marketstructure/#.VCMPpyh39UQ.*

researchers? If not, what would be more appropriate? Please explain.

i. Assessments

• How important are the Participant assessments of the proposed Pilot to the success of the Pilot? Are the Participants able to examine unique data or offer a unique perspective such that certain results would only be observed because the Participants assessed the Pilot? Should the Participants assess any additional issues beyond those specified in the plan? If so, what issues?

• The Order stated that the Participants would conduct an assessment of market maker profitability. The Participants did not propose to study market maker profitability. Should the Participants produce an assessment of market maker profitability as contemplated by the Order? Why or why not?

ii. Appendix A

• Will the data requirements specified in Appendix A allow market participants to effectively implement the Pilot? How could the data requirements be more useful? Is pipe-delimited ASCII the best format of the data for this purpose? If not, what other format would be more appropriate and why? Should the data in Appendix A have a common naming convention? Why or why not?

• Will the pilot data in Appendix A facilitate the analysis of the tradeoffs associated with increasing the quote increment for certain small capitalization securities? How could this data be more useful? Is pipe-delimited ASCII the best format of the data for this purpose? If not, what other format would be more appropriate and why?

• How costly is the data in Appendix A to produce? Are there any unintended consequences of releasing the data in Appendix A? Please explain.

iii. Appendices B and C

• Will each set of pilot data specified in Appendices B and C facilitate analysis of the tradeoffs associated with increasing the quote increment for certain small securities, including liquidity, execution quality for investors, market maker profitability, competition, and transparency? How much does each set of pilot data specified in Appendices B and C add to potential analyses of the proposed Pilot compared to what can be learned with publicly available data? How much does each set of pilot data specified in Appendices B and C add to potential analyses of the proposed Pilot compared to what can be learned with other pilot data? How could each set of data be more useful or how can the combinations of data be more useful? Is pipe-delimited ASCII the best format of the data? If not, what other format would be more appropriate and why? Should the data in Appendices B and C have common naming conventions? Why or why not?

• How costly is the data in Appendices B and C to produce? Are there any unintended consequences of releasing the data in Appendices B and C? Please explain. Are there ways to reduce the cost of the data in Appendices B and C without sacrificing its value to the Pilot? Please explain.

• The data specified in Appendix B.1 provides data similar to Rule 605 market quality data, but with a few key differences. For example, the Pilot data specified in Appendix B.1 would provide daily data whereas Rule 605 provides for monthly disclosure. Further, the Pilot data would include more order types and sizes than what Rule 605 data includes, and provides additional time to execution and order size buckets than Rule 605 data. How important are the expansions to the Rule 605 data, such as the daily frequency and the inclusion of orders that are excluded from Rule 605 statistics? Please explain. On the other hand, the pilot data does not include orders that are routed to other trading venues and executed in full by those other trading venues. Should the Pilot data also include orders that are routed to other trading venues and executed in full by those other trading venues? Please explain. The data specified in Appendix B.1 includes only resting orders. This excludes "immediate or cancel" orders. Should immediate or cancel orders be included in the data in Appendix B.1?

• Can the data in Appendix B.1 be built from the same infrastructure that currently supports Rule 605 data? Why or why not? Would the costs of Appendix B.1 data depend on whether it can be built from the same infrastructure as Rule 605 data?

• The data specified in Appendix B.2 provides information on market and marketable limit orders. The data includes statistics for only the non-resting portion of the Marketable Limit Orders. Is this appropriate in light of potential Pilot analysis and data that are currently available? If not, why not? Should this data contain additional order information? If so, what other order information should be included? Please also specify which data items, if any, are less valuable or potentially problematic.

• The data specified in Appendix B.3 provides the number of registered market makers. Should this data also include a separate count of the number of unregistered market makers that provide liquidity in the Pilot Securities? Please explain.

• The data specified in Appendix B.4 provides aggregate participation statistics for registered market makers. Should this data also include separate participation statistics for unregistered market makers that provide liquidity in the Pilot Securities? Please explain.

• Should the data in Appendix B exclude orders entered or executed while a trading halt is in effect? Please explain.

• The Participants have proposed that each market maker shall provide to its Designated Examining Authority the market maker profitability data set forth in Appendix C of the Plan. The Designated Examining Authority will then aggregate the data, report it to the Commission, and make it publicly available on the Designated Examining Authority's Web site. This aspect differs from the Order, which required the Participants to collect such data, make it public, and conduct an assessment. Is market maker profitability data necessary to analyze the effect of the Tick Size Pilot Program and to reach a conclusion about the tradeoffs associated with increasing the quote increment in certain small capitalization securities? Are there better ways to collect such Pilot data?

• The data specified in Appendix C provides aggregate market maker profitability statistics. Should this data also include separate profitability statistics for unregistered market makers that provide liquidity in the Pilot Securities? Please explain.

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number 4–657 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–657. 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 Plan that are filed with the Commission, and all written communications relating to Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Participants' principal offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–657 and should be submitted on or before December 22, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

Exhibit A

PLAN TO IMPLEMENT A TICK SIZE PILOT PROGRAM SUBMITTED TO THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 608 OF REGULATION NMS UNDER THE SECURITIES EXCHANGE ACT OF 1934

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Preamble

Pursuant to Section 11A(a)(3)(B) of the Exchange Act, which authorizes the SEC to require by order self-regulatory organizations to act jointly with respect to matters as to which they share authority in planning, developing, operating, or regulating a national market system, the SEC issued an order directing the Participants to submit a Tick Size Pilot Plan as a national market system plan pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act. In response, the Participants submit this Plan to implement a Tick Size Pilot Program that will allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. To do so, the Plan provides for the widening of quoting and trading increments for a group of Pilot Securities. As detailed herein, the Pilot Securities will be subdivided into three Test Groups and a Control Group, each with its own requirements and exceptions relating to quoting and trading increments to facilitate the referenced analysis.

I. Definitions

(A) "Average effective spread" has the meaning provided in Rule 600(b)(5) of Regulation NMS under the Exchange Act.

(B) "Average realized spread" has the meaning provided in Rule 600(b)(6) of Regulation NMS under the Exchange Act.

(C) "Benchmark trade" means the execution of an order at a price that was not based, directly or indirectly, on the quoted price of a Pilot Security at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

(D) "Best protected bid" means the highest priced protected bid. (E) "Best protected offer" means the lowest priced protected offer.

(F) "Block Size" has the meaning provided in Rule 600(b)(9) of Regulation NMS under the Exchange Act.

(G) "Brokered cross trade" means a trade that a broker-dealer that is a member of a Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security.

(H) "Closing Price" means the closing auction price on the primary listing exchange, or if not available, then the last regular-way trade reported by the processor prior to 4:00 p.m. ET.

(I) "Designated Examining Authority" means, with respect to a member of two or more self-regulatory organizations, the self-regulatory organization responsible for (i) examining such member for compliance with the financial responsibility requirements imposed by the Exchange Act, or by Commission or self-regulatory organization rules, (ii) receiving regulatory reports from such member, (iii) examining such member for compliance with, and enforcing compliance with, specified provisions of the Exchange Act, the rules and regulations thereunder, and self-regulatory organization rules, and (iv) carrying out any other specified regulatory functions with respect to such member.

(J) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(K) "Inside-the-quote limit order," "at-the-quote limit order," and "near-the-quote limit order" mean non-marketable buy orders that are ranked at a price, respectively, higher than, equal to, and lower by $0.10 or less than the National Best Bid at the time of order receipt, and non-marketable sell orders that are ranked at a price, respectively, lower than, equal to, and higher by $0.10 or less than the National Best Offer at the time of order receipt.

(L) "Market Maker" means a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest.

(M) "Marketable limit order" means any buy order with a limit price equal to or greater than the National Best Offer at the time of order receipt, or any sell order with a limit price equal to or less than the National Best Bid at the time of order receipt. For price sliding, pegged, discretionary, or similar order types where the ranked price is different from the limit price, the ranked price will determine marketability.

(N) "Measurement Period" means the U.S. trading days during the three-calendar-month period ending at least 30 days prior to the effective date of the Pilot Period.

(O) "National Best Bid" and "National Best Offer" have the meanings provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act.

(P) "Negotiated Trade" means (i) a Benchmark trade, including, but not limited to, a Volume-Weighted Average Price trade or a Time-Weighted Average Price trade, provided that, if such a trade is composed of two or more component trades, each component trade complies with the quoting and trading increment requirements of the Plan, or with an exception to such requirements, or (ii) a Pilot Qualified Contingent Trade.

(Q) "NMS common stock" means an NMS stock that is common stock of an operating company.

(R) "NMS stock" has the meaning provided in Rule 600(b)(47) of Regulation NMS under the Exchange Act.

(S) "Operating Committee" has the meaning provided in Section III(C) of the Plan.

(T) "Participant" means a party to the Plan.

(U) "Pilot Period" means the operative period of the Tick Size Pilot Program, lasting one year from the date of implementation.

(V) "Pilot Qualified Contingent Trade" means a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component order is in an NMS common stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since canceled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.

(W) "Pilot Securities" means those securities that satisfy the criteria established in Section V.

(X) "Plan" means the plan set forth in this instrument, as amended from time to time in accordance with its provisions.

(Y) "Processor" means the single plan processor responsible for the consolidation of information for an NMS stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act.

(Z) "Protected bid" and "protected offer" have the meanings provided in Rule 600(b)(57) of Regulation NMS under the Exchange Act.

(AA) "Protected quotation" has the meaning provided in Rule 600(b)(58) of Regulation NMS under the Exchange Act.

(BB) "Quotation" has the meaning provided in Rule 600(b)(62) of Regulation NMS under the Exchange Act.

(CC) "Regular Trading Hours" has the meaning provided in Rule 600(b)(64) of Regulation NMS under the Exchange Act. For purposes of the Plan, Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

(DD) "Retail Investor Order" means an agency order or a riskless principal order originating from a natural person, provided that, prior to submission, no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The Participant that is the Designated Examining Authority of a member of a Participant operating a trading center executing a Retail Investor Order will require such trading center to sign an attestation that substantially all orders to be executed as Retail Investor Orders will qualify as such under the Plan.

(EE) "Retail liquidity providing order" means an order entered into a Participant-operated retail liquidity program to execute against Retail Investor Orders.

(FF) "SEC" means the United States Securities and Exchange Commission.

(GG) "SRO quotation feed" means any market data feed disseminated by a self-regulatory organization.

(HH) "Tick Size Pilot Program" means the program established by this Plan and by the corresponding rules of the Participants.

(II) "Time of order execution" means the time (to the second, or to such smaller increments as are available) that an order was executed at any venue.

(JJ) "Time of order receipt" means the time (to the second, or to such smaller increments as are available) that an order was received by a trading center for execution.

(KK) "Time-Weighted Average Price" means the price calculated as the average price of a security over a specified period of time.

(LL) "Trade-at" means the execution by a trading center of a sell order for a Pilot Security at the price of a protected bid or the execution of a buy order for a Pilot Security at the price of a protected offer.

(MM) "Trade-at Intermarket Sweep Order" means a limit order for a Pilot Security that meets the following requirements:

(1) When routed to a trading center, the limit order is identified as an Intermarket Sweep Order; and

(2) Simultaneously with the routing of the limit order identified as an Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the limit order identified as an Intermarket Sweep Order. These additional routed orders also must be marked as Intermarket Sweep Orders.

(NN) "Trading center" has the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act.

(OO) "Volume-Weighted Average Price" means the price calculated by summing up the products of the number of single-counted shares traded and the respective share price, and dividing by the total number of single-counted shares traded.

II. Parties

(A) List of Parties

The parties to the Plan are as follows:

(1) BATS Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214

(2) BATS Y-Exchange, Inc., 8050 Marshall Drive, Lenexa, Kansas 66214

(3) Chicago Stock Exchange, Inc., 440 South LaSalle Street, Chicago, Illinois 60605

(4) EDGA Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310
(5) EDGX Exchange, Inc., 545 Washington Boulevard, Sixth Floor, Jersey City, NJ 07310
(6) Financial Industry Regulatory Authority, Inc., 1735 K Street NW., Washington, DC 20006
(7) NASDAQ OMX BX, Inc., One Liberty Plaza, New York, NY 10006
(8) NASDAQ OMX PHLX LLC, 1900 Market Street, Philadelphia, PA 19103
(9) The Nasdaq Stock Market LLC, 1 Liberty Plaza, 165 Broadway, New York, NY 10006
(10) New York Stock Exchange LLC, 11 Wall Street, New York, NY 10005
(11) NYSE MKT LLC, 11 Wall Street, New York, NY 10005
(12) NYSE Area, Inc., 11 Wall Street, New York, NY 10005

(B) Compliance Undertaking

By subscribing to and submitting the Plan for approval by the SEC, each Participant agrees to comply with, and to enforce compliance by its members, as applicable, with the provisions of the Plan as required by Rule 608(c) of Regulation NMS under the Exchange Act. To this end, each Participant will adopt rules requiring compliance by its members with the provisions of the Plan, as applicable, and adopt such other rules as are needed for such compliance.

(C) New Participants

The Participants agree that any entity registered as a national securities exchange or national securities association under the Exchange Act may become a Participant by: (1) Executing a copy of the Plan, as then in effect; (2) providing each then-current Participant with a copy of such executed Plan; and (3) effecting an amendment to the Plan as specified in Section III(B) of the Plan.

III. Amendments To Plan

(A) General Amendments

Except with respect to the addition of new Participants to the Plan, any proposed change in, addition to, or deletion from the Plan will be effected by means of a written amendment to the Plan that: (1) Sets forth the change, addition, or deletion; (2) is executed on behalf of each Participant; and (3) is approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective under Rule 608 of Regulation NMS under the Exchange Act.

(B) New Participants

With respect to new Participants, an amendment to the Plan may be effected by the new national securities exchange or national securities association executing a copy of the Plan, as then in effect (with the only changes being the addition of the new Participant's name in Section II(A) of the Plan) and submitting such executed Plan to the SEC for approval. The amendment will be effective when it is approved by the SEC in accordance with Rule 608 of Regulation NMS under the Exchange Act, or otherwise becomes effective pursuant to Rule 608 of Regulation NMS under the Exchange Act.

(C) Operating Committee

(1) Each Participant will select from its staff one individual to represent the Participant as a member of an Operating Committee, together with a substitute for such individual. The substitute may participate in deliberations of the Operating Committee and will be considered a voting member thereof only in the absence of the primary representative. Each Participant will have one vote on all matters considered by the Operating Committee. No later than the initial date of Plan operations, the Operating Committee will designate one member of the Operating Committee to act as the Chair of the Operating Committee.

(2) The Operating Committee will monitor the procedures established pursuant to this Plan and advise the Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate. The Operating Committee will establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of this Plan. With respect to matters in this paragraph, Operating Committee decisions must be approved by a simple majority vote.

(3) Any recommendation for an amendment to the Plan from the Operating Committee that receives an affirmative vote of at least two-thirds of the Participants, but is less than unanimous, will be submitted to the SEC as a request for an amendment to the Plan initiated by the Commission under Rule 608 of Regulation NMS.

IV. Policies and Procedures

Consistent with the compliance undertakings set out in Section II(B), all Participants and members of Participants will be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in Section VI for the Pilot Securities.

Each Participant, as applicable, will develop appropriate policies and procedures that provide for collecting and reporting to the SEC the data described in Appendix B. In addition, each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will require such member to develop appropriate policies and procedures for collecting and reporting the data described in Items I and II of Appendix B, as applicable, to the Designated Examining Authority. Each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will develop appropriate policies and procedures, as applicable, that provide for collecting and reporting such data to the SEC. The data collection and reporting obligations are described below in Section VII.

Each Participant that is the Designated Examining Authority of a Market Maker will require such Market Maker to develop policies and procedures for collecting the data set out in Appendix C and reporting it to the Designated Examining Authority. Each Participant that is the Designated Examining Authority of a Market Maker will develop appropriate policies and procedures that provide for collecting and reporting such data to the SEC on an aggregated basis. The Designated Examining Authority will also develop policies and procedures reasonably designed to ensure the confidentiality of the non-aggregated data it receives from Market Makers. The data collection and reporting obligations are described below in Section VII.

V. Identification of Pilot Securities

(A) Criteria for Selection of Pilot Securities

Pilot Securities will consist of those NMS common stocks that satisfy the following criteria:

(1) A market capitalization of $5 billion or less on the last day of the Measurement Period, where market capitalization is calculated by multiplying the total number of shares outstanding on such day by the Closing Price of the security on such day;

(2) A Closing Price of at least $2.00 on the last day of the Measurement Period;

(3) A Closing Price on every U.S. trading day during the Measurement Period that is not less than $1.50;

(4) A Consolidated Average Daily Volume ("CADY") during the Measurement Period of one million shares or less, where the CADY is calculated by adding the single-counted share volume of all reported transactions in the Pilot Security during

the Measurement Period and dividing by the total number of U.S. trading days during the Measurement Period; and

(5) A Measurement Period Volume-Weighted Average Price ("Measurement Period VWAP") of at least $2.00, where the Measurement Period VWAP is determined by calculating the VWAP for each U.S. trading day during the Measurement Period, summing the daily VWAP across the Measurement Period, and dividing by the total number of U.S. trading days during the Measurement Period.

For purposes of the CADY and Measurement Period VWAP calculations described in Sections V(A)(4) and V(A)(5), U.S. trading days during the Measurement Period with early closes will be excluded. An NMS common stock that had its initial public offering within six months of the start of the Pilot Period will not be eligible to be a Pilot Security.

(B) Grouping of Pilot Securities

The Operating Committee will oversee the Pilot Security grouping process in accordance with the methodology and criteria set out in this subsection. Once the population of Pilot Securities has been determined based on the criteria in Section V(A), the Operating Committee will select the Pilot Securities to be placed into three Test Groups by means of a stratified random sampling process. To effect this sampling, each of the Pilot Securities will be categorized as having (1) a low, medium, or high share price based on the Measurement Period VWAP, (2) low, medium, or high market capitalization based on the last day of the Measurement Period, and (3) low, medium, or high trading volume based on the CADY during the Measurement Period, yielding 27 possible categories. Low, medium, and high subcategories will be established by dividing the categories into three parts, each containing a third of the population.

Pilot Securities will be randomly selected from each of the 27 categories for inclusion into the Test Groups. If, however, a single category of Pilot Securities contains fewer than 10 securities, it will be combined with another of the 27 categories that contains at least 10 securities. If two or more categories of Pilot Securities contain fewer than 10 securities, those categories will be combined, provided the combined category contains at least 10 securities. If the combined category contains fewer than 10 securities, then the category will be combined with another of the 27 categories that contains at least 10 securities.

Pilot Securities will be randomly selected from each category for inclusion in the three Test Groups based on the percentage of Pilot Securities comprised of that category. As a result, each category will be represented in the three Test Groups based on its relative proportion to the population of Pilot Securities. Further, a primary listing market's securities will be selected from each category and included in the three Test Groups in the same proportion as that primary listing market's securities comprise each category of Pilot Securities. Each Test Group will consist of 400 Pilot Securities. Those Pilot Securities not placed into the three Test Groups will constitute the Control Group.

(C) Publication of Pilot Securities and Groups

Each primary listing exchange will make publicly available for free on its Web site a list of those Pilot Securities listed on that exchange and included in the Control Group and each Test Group, adjusting for ticker symbol changes and relevant corporate actions. The list of Pilot Securities will contain the data specified in Appendix A.

VI. Pilot Test Groups

As described in Section V(B), the Pilot Securities will be divided into four groups: A Control Group and three Test Groups. Each Test Group will consist of 400 Pilot Securities. The Control Group will consist of the Pilot Securities not placed into a Test Group.

(A) Control Group

Pilot Securities in the Control Group may be quoted and traded at any price increment that is currently permitted.

(B) Test Group One

Pilot Securities in Test Group One will be quoted in $0.05 minimum increments, but may continue to trade at any price increment that is currently permitted. Participants will adopt rules prohibiting Participants or any member of a Participant from displaying, ranking, or accepting from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in price increments other than $0.05. However, orders priced to execute at the midpoint and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

(C) Test Group Two

Pilot Securities in Test Group Two will be subject to the same quoting requirements as Test Group One, along with the applicable quoting exceptions. In addition, Pilot Securities in Test Group Two may only be traded in $0.05 minimum increments. Participants will adopt rules prohibiting trading centers operated by Participants and members of Participants from executing orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 minimum trading increment applies to brokered cross trades. Pilot Securities in Test Group Two may trade in increments less than $0.05, however, under the following circumstances:

(1) Trading may occur at the midpoint between the National Best Bid and the National Best Offer or the midpoint between the best protected bid and the best protected offer;

(2) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the best protected bid or the best protected offer; and

(3) Negotiated Trades may trade in increments less than $0.05.

(D) Test Group Three

Pilot Securities in Test Group Three will be subject to the same quoting and trading requirements as Test Group Two, along with the applicable quoting and trading exceptions. In addition, Pilot Securities in Test Group Three will be subject to a trade-at prohibition.

Trade-at Prohibition. Under the trade-at prohibition, the Plan will (1) prevent a trading center that was not quoting from price-matching protected quotations and (2) permit a trading center that was quoting at a protected quotation to execute orders at that level, but only up to the amount of its displayed size.

In accordance with the trade-at prohibition, Participants will adopt rules prohibiting trading centers operated by Participants and members of Participants from executing a sell order for a Pilot Security at the price of a protected bid or from executing a buy order for a Pilot Security at the price of a protected offer unless such executions fall within an exception set forth below.

Trade-at Prohibition Exceptions. Trading centers will be permitted to execute an order for a Pilot Security at a price equal to a protected bid or protected offer under the following circumstances:

(1) The order is executed by a trading center that is displaying a quotation, via either a processor or an SRO quotation feed, at a price equal to the traded-at protected quotation but only up to the trading center's full displayed size. Where the quotation is displayed through a national securities exchange,

the execution at the size of the order must occur against the displayed size on that national securities exchange. Where the quotation is displayed through the Alternative Display Facility or another facility approved by the Commission that does not provide execution functionality, the execution at the size of the order must occur against the displayed size in accordance with the rules of the Alternative Display Facility or such approved facility;

(2) The order is of Block Size;

(3) The order is a Retail Investor Order executed with at least $0.005 price improvement;

(4) The order is executed when the trading center displaying the protected quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(5) The order is executed as part of a transaction that was not a "regular way" contract;

(6) The order is executed as part of a single-priced opening, reopening, or closing transaction by the trading center;

(7) The order is executed when a protected bid was priced higher than a protected offer in the Pilot Security;

(8) The order is identified as an Intermarket Sweep Order;

(9) The order is executed by a trading center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the protected quotation that was traded at;

(10) The order is executed as part of a Negotiated Trade;

(11) The order is executed when the trading center displaying the protected quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the trade-at, a best bid or best offer, as applicable, for the Pilot Security with a price that was inferior to the price of the trade-at transaction.

(12) The order is executed by a trading center which, at the time of order receipt, the trading center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:

a. The stopped order was for the account of a customer;

b. The customer agreed to the specified price on an order-by-order basis; and

c. The price of the trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution; or

(13) The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the trade-at prohibition or any other provisions of the Plan.

The following examples illustrate the basic operation of the trade-at prohibition:

Example 1

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 2 is displaying a 100-share protected bid at $19.95. There are no other protected bids. Trading Center 3 is not displaying any shares in Pilot Security ABC but has 100 shares hidden at $20.00 and has 100 shares hidden at $19.95. Trading Center 3 receives an incoming order to sell for 400 shares. To execute the 100 shares hidden at $20.00, Trading Center 3 must respect the protected bid on Trading Center 1 at $20.00. Trading Center 3 must route a Trade-at Intermarket Sweep Order to Trading Center 1 to execute against the full displayed size of the protected bid, at which point Trading Center 3 is permitted to execute against the 100 shares hidden at $20.00. To execute the 100 shares hidden at $19.95, Trading Center 3 must respect the protected bid on Trading Center 2 at $19.95. Trading Center 3 must route a Trade-at Intermarket Sweep Order to Trading Center 2 to execute against the full displayed size of the protected bid, at which point Trading Center 3 is permitted to execute against the 100 shares hidden at $19.95.

Example 2

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 2 is displaying a 100-share protected bid at $20.00. Trading Center 2 also has 300 shares hidden at $20.00 and has 300 shares hidden at $19.95. Trading Center 3 is displaying a 100-share protected bid at $19.95. There are no other protected bids. Trading Center 2 receives an incoming order to sell for 900 shares. Trading Center 2 may execute 100 shares against its full displayed size at the protected bid at $20.00. To execute the 300 shares hidden at $20.00, Trading Center 2 must respect the protected bid on Trading Center 1 at $20.00. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 1 to execute against the full displayed size of Trading Center 1's protected bid, at which point Trading Center 2 is permitted to execute against the 300 shares hidden at $20.00. To execute the 300 shares hidden at $19.95, Trading Center 2 must respect the protected bid on Trading Center 3 at $19.95. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 3 to execute against the full displayed size of Trading Center 3's protected bid, at which point Trading Center 2 is permitted to execute against the 300 shares hidden at $19.95.

Example 3

The NBBO for Pilot Security ABC is $20.00 × $20.10. Trading Center 1 is displaying a 100-share protected bid at $20.00. Trading Center 1 is also displaying 300 shares at $19.90 on an SRO quotation feed. Trading Center 2 is displaying a 100-share protected bid at $19.95. Trading Center 2 is also displaying 200 shares at $19.90 on an SRO quotation feed and has 200 shares hidden at $19.90. Trading Center 3 is displaying a 100-share protected bid at $19.90. There are no other protected bids. Trading Center 2 receives an incoming order to sell for 700 shares. To execute against its protected bid at $19.95, Trading Center 2 must comply with the trade-through restrictions in Rule 611 of Regulation NMS and route an intermarket sweep order to Trading Center 1 to execute against the full displayed size of Trading Center 1's protected bid at $20.00. Trading Center 2 is then permitted to execute against its 100-share protected bid at $19.95. Trading Center 2 may then execute 200 shares against its full displayed size at the price of Trading Center 3's protected bid. To execute the 200 shares hidden at $19.90, Trading Center 2 must respect the protected bid on Trading Center 3 at $19.90. Trading Center 2 must route a Trade-at Intermarket Sweep Order to Trading Center 3 to execute against the full displayed size of Trading Center 3's protected bid, at which point Trading Center 2 is permitted to execute against the 200 shares hidden at $19.90. Trading Center 2 does not have to respect Trading Center 1's displayed size at $19.90 for trade-at purposes because it is not a protected quotation.

VII. Collection of Pilot Data

(A) Collection of Trading Center Pilot Data

Throughout the Pilot Period, the Participants will collect the following data with respect to Pilot Securities (as set forth in Appendix B):

(1) Daily market quality statistics of orders by security, order type, original order size (as observed by the trading

center), hidden status (as applicable), and coverage under Rule 605 of Regulation NMS;

(2) Specified data regarding market orders and marketable limit orders;

(3) Daily number of registered Market Makers; and

(4) Daily Market Maker participation statistics.

Each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will require such member to collect and provide to the Designated Examining Authority the data described in subparagraphs (1) and (2) above, as applicable, subject to the terms and conditions in Appendix B. The Participants and each member of a Participant operating a trading center will also be required to collect such data for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Each Participant will make available to other Participants a list of members designated as Market Makers on that Participant's trading center.

On a monthly basis, the Participants and the Designated Examining Authority for each member of a Participant operating a trading center will make the data in the applicable subparagraphs specified above publicly available on their Web sites for free and will report such data to the SEC on a disaggregated basis by trading center. The data made publicly available will not identify the trading center that generated the data.

(B) Collection of Market Maker Profitability Data

Each Participant that is the Designated Examining Authority of a Market Maker will require such Market Maker to provide to the Designated Examining Authority the data specified in Appendix C regarding daily Market Maker trading profits with respect to Pilot Securities on a monthly basis. Each Market Maker will also be required to provide to its Designated Examining Authority such daily data for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. On a monthly basis, the Designated Examining Authority will aggregate such data related to Market Makers and make the aggregated data publicly available on its Web site for free and will report such data to the SEC. The data made publicly available will not identify the Market Makers that generated the data.

VIII. Assessment of Pilot

No later than six months after the end of the Pilot Period, the Participants will provide to the Commission and make publicly available a joint assessment of the impact of the Pilot. The assessment will include:

(1) An assessment of the statistical and economic impact of an increase in the quoting increment on market quality;

(2) An assessment of the statistical and economic impact of an increase in the quoting increment on the number of Market Makers;

(3) An assessment of the statistical and economic impact of an increase in the quoting increment on Market Maker participation;

(4) An assessment of the statistical and economic impact of an increase in the quoting increment on market transparency;

(5) An evaluation whether any market capitalization, daily trading volume, or other thresholds can differentiate the results of the above assessments across stocks (*e.g.*, does the quoting increment impact differently those stocks with daily trading volume below a certain threshold);

(6) An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trading increment and for the joint effect of an increase in a quoting increment with the addition of a trading increment;

(7) An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trade-at prohibition and for the joint effect of an increase in a quoting increment with the addition of a trading increment and a trade-at prohibition; and

(8) An assessment of any other economic issues that the Participants believe the SEC should consider in any rulemaking that may follow the Pilot. Participants may individually submit to the SEC and make publicly available additional supplemental assessments of the impact of the Pilot.

IX. Implementation

The Tick Size Pilot Program will be implemented on a one-year pilot basis. The Tick Size Pilot Program will be applicable during and outside of Regular Trading Hours.

X. Withdrawal From Plan

If a Participant obtains SEC approval to withdraw from the Plan, such Participant may withdraw from the Plan at any time on not less than 30 days' prior written notice to each of the other Participants. At such time, the withdrawing Participant will have no further rights or obligations under the Plan.

XI. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as will together contain all such signatures will constitute one and the same instrument.

In witness thereof, this Plan has been executed as of the __ day of _____ 2014 by each of the parties hereto.

BATS EXCHANGE, INC.
BY: _____

CHICAGO STOCK EXCHANGE, INC.
BY: _____

EDGX EXCHANGE, INC.
BY: _____

NASDAQ OMX BX, INC.
BY: _____

THE NASDAQ STOCK MARKET LLC
BY: _____

NYSE MKT LLC
BY: _____

BATS Y-EXCHANGE, INC.
BY: _____

EDGA EXCHANGE, INC.
BY: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
BY: _____

NASDAQ OMX PHLX LLC
BY: _____

NEW YORK STOCK EXCHANGE LLC
BY: _____

NYSE ARCA, INC.
BY: _____

Appendix A—Publication of Pilot Securities

The following data will be made publicly available in a pipe delimited format regarding the list of Pilot Securities included in the Control Group and each Test Group. Each primary listing exchange will be responsible for making publicly available for free on its Web site the following data with respect to the Pilot Securities listed on that exchange and included in the Control Group and each Test Group.

I. Identification of Pilot Securities

a. Ticker Symbol
b. Security Name
c. Listing Exchange
d. Date
e. Tick Size Pilot Program Group—character value of
i. "C" for Pilot Securities in the Control Group
ii. "G1" for Pilot Securities in Test Group One
iii. "G2" for Pilot Securities in Test Group Two
iv. "G3" for Pilot Securities in Test Group Three

II. Change in Pilot Securities' Ticker Symbols

a. Ticker Symbol

b. Security Name
c. Listing Exchange
d. Effective Date
e. Deleted Date
f. Tick Size Pilot Program Group—character value of
i. "C" for Pilot Securities in the Control Group
ii. "G1" for Pilot Securities in Test Group One
iii. "G2" for Pilot Securities in Test Group Two
iv. "G3" for Pilot Securities in Test Group Three
g. Old Ticker Symbol(s)
h. Reason for the change

Appendix B—Data Collected by Participants and Trading Centers

Each Participant, as applicable, will collect and transmit the data described in Items I–IV with respect to Pilot Securities to the SEC in a pipe delimited format on a monthly basis. In addition, each Participant that is the Designated Examining Authority of a member of a Participant operating a trading center will require such member, as applicable, to collect and transmit the data described in Items I and II with respect to Pilot Securities to the Designated Examining Authority in a pipe delimited format on a monthly basis. Each Designated Examining Authority will transmit the data on a disaggregated basis to the SEC, *i.e.*, by trading center. The data will be provided to the SEC within 30 calendar days following month end. All trading centers, including Participants, will report the data described in Items I.a(28) and I.b with respect to only those orders executed, in whole or part, on that trading center. All trading centers will report the remaining data described in Item I.a with respect to any order received by that trading center. The data described in Item I will only be collected for orders received during Regular Trading Hours. All trading centers, including Participants, will report the data described in Item II with respect to any market or marketable limit orders received by that trading center. The data described in Item II will be collected for orders received during and outside of Regular Trading Hours. Orders entered while a trading halt is in effect will be excluded from the data. The data will be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period.

I. Market Quality Statistics—Daily market quality statistics categorized by security, order type, original order size, hidden status, and coverage under Rule 605, including the following columns of information:

a. For regular hours orders which are market orders (10), marketable limit orders (11), inside-the-quote resting limit orders (12), at-the-quote resting limit orders (13), near-the-quote resting limit orders (within .10 from the NBBO) (14), resting intermarket sweep orders (15), retail liquidity providing orders (16), and midpoint passive liquidity orders (17) executed on the trading center:

(1) Exchange code or trading center identifier;
(2) Ticker Symbol;
(3) Order Type, as defined in the Plan or in I.a of this Appendix;
(4) Original Order size with the following modified categories from Rule 605 reports:
a. Less than 100 shares;
b. 100 to 499 shares;
c. 500 to 1999 shares;
d. 2000 to 4999 shares;
e. 5000 to 9999 shares; and
f. 10000 or more shares;
(5) Hidden Status Category—indicates whether the orders fall into the following categories:
a. Entirely Displayable;
b. Partially Displayable; and
c. Not Displayable;
(6) Rule 605 Coverage—indicates whether the orders are covered in Rule 605 (YIN);
(7) The cumulative number of orders;
(8) The cumulative number of shares of orders;
(9) The cumulative number of shares of orders canceled;
(10) The cumulative number of shares of orders executed on the receiving trading center;
(11) The cumulative number of orders with special handling instructions (for example, slide, discretion, eligible counterparty, minimum quantity) excluded from price improvement and effective spread statistics;
(12) The cumulative number of shares of orders with special handling instructions (for example slide, discretion, eligible counterparty, minimum quantity) excluded from price improvement and effective spread statistics;
(13) The cumulative number of shares of orders executed at any other trading center;
(14) The cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt;
(15) The cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt;
(16) The cumulative number of shares of orders executed from 100 milliseconds to less than 1 second after the time of order receipt;
(17) The cumulative number of shares of orders executed from 1 second to less than 30 seconds after the time of order receipt;
(18) The cumulative number of shares of orders executed from 30 seconds to less than 60 seconds after the time of order receipt;
(19) The cumulative number of shares of orders executed from 60 seconds to less than 5 minutes after the time of order receipt;
(20) The cumulative number of shares of orders executed from 5 minutes to 30 minutes after the time of order receipt;
(21) The cumulative number of shares of orders canceled from 0 to less than 100 microseconds after the time of order receipt;
(22) The cumulative number of shares of orders canceled from 100 microseconds to less than 100 milliseconds after the time of order receipt;
(23) The cumulative number of shares of orders canceled from 100 milliseconds to less than 1 second after the time of order receipt;
(24) The cumulative number of shares of orders canceled from 1 second to less than 30 seconds after the time of order receipt;
(25) The cumulative number of shares of orders canceled from 30 seconds to less than 60 seconds after the time of order receipt;
(26) The cumulative number of shares of orders canceled from 60 seconds to less than 5 minutes after the time of order receipt;
(27) The cumulative number of shares of orders canceled from 5 minutes to 30 minutes;
(28) The share-weighted average realized spread for executions of orders;
(29) Original Percentage Hidden—the received share-weighted average percentage of shares not displayable as of order receipt;
(30) Final Percentage Hidden—the received share-weighted average percentage of shares not displayed prior to final order execution or cancellation;
(31) Quoted Size at the National Best Bid and National Best Offer—the share-weighted average of the consolidated quoted size at the inside price at the time of order execution;
(32) Share-weighted average NBBO Spread at the time of order execution; and
(33) Share-weighted average BBO Spread of reporting exchange at the time of order execution.

b. For market orders and marketable limit orders, except those noted as excluded: (1) The share-weighted average effective spread for executions of orders;
(2) The cumulative number of shares of orders executed with price improvement; (3) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;
(4) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;
(5) The cumulative number of shares of orders executed at the quote;
(6) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;
(7) The cumulative number of shares of orders executed outside the quote;
(8) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and
(9) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

II. Market and Marketable Limit Order Data—The following columns of information with respect to Market Orders and non-booked portions of Marketable Limit Orders:

a. Exchange code or trading center identifier;
b. Ticker Symbol;
c. Date;
d. Time of order receipt;
e. Order Type;
f. Order Size in Shares;
g. Order side—"B", "S" (including sell short exempt), "SS";
h. Order price (if marketable limit);
i. NBBO quoted price;
j. NBBO quoted depth in lots;
k. Receiving market offer for buy or bid for sell (as applicable);
l. Receiving market depth (offer for buy and bid for sell) (as applicable);
m. ISO flag (YIN);
n. Retail Investor Order flag (YIN);
o. Routable flag (YIN);
p. IOC (YIN);

q. Indicator for quote leader—"1" if the receiving market is the first market to post the NBB for a sell or NBO for a buy (as applicable);

r. Average execution price-share-weighted average that includes only executions on the receiving market;

s. Average execution time-share-weighted average period that includes only executions on the receiving market;

t. Executed shares—the number of shares in the order that are executed;

u. Canceled shares—the number of shares in the order that are canceled;

v. Routed shares—the number of shares in the order that are routed to another exchange or market;

w. Routed average execution price-share-weighted average that includes only shares routed away from the receiving market;

x. Average routed execution time-share-weighted average period that includes only executions on the routed markets; and

y. Indicator for special handling instructions (for example, slide, discretion, eligible counterparty, minimum quantity)—identifies orders that contain instructions that could result in delayed execution or an execution price other than the quote.

III. Daily Market Maker Registration Statistics—Each Participant that is a National Securities Exchange will collect daily Market Maker registration statistics categorized by security, including the following columns of information:

a. Ticker Symbol;

b. SRO;

c. Number of registered market makers; and

d. Number of other registered liquidity suppliers.

IV. Daily Market Maker Participation Statistics—Each Participant will collect daily Market Maker participation statistics with respect to each Market Maker engaging in trading activity on the trading center operated by the Participant. With respect to each Market Maker, the Participant will collect such statistics irrespective of whether the Market Maker is registered with the Participant. The participation statistics will be categorized by security, including the columns of information listed below, except that a Participant that is a national securities association will not be required to collect such statistics unless a Market Maker registers with its Alternative Display Facility prior to or during the Pilot Period:

a. Ticker Symbol;

b. Share participation—the number of shares purchased or sold by Market Makers in a principal trade, not including riskless principal. When aggregating across Market Makers, share participation will be an executed share-weighted average per Market Maker;

c. Trade participation—the number of purchases and sales by Market Makers in a principal trade, not including riskless principal. When aggregating across Market Makers, trade participation will be a trade-weighted average per Market Maker;

d. Cross-quote share (trade) participation—the number of shares purchased (the number of purchases) at or above the NBO and the number of shares sold (the number of sales) at or below the NBB at the time of the trade;

e. Inside-the-quote share (trade) participation—the number of shares purchased (the number of purchases) and the number of shares sold (the number of sales) between the NBBO at the time of the trade;

f. At-the-quote share (trade) participation—the number of shares purchased (the number of purchases) that are equal to the National Best Bid price and the number of shares sold (the number of sales) that are equal to the National Best Offer price at the time of or immediately before the trade. In the case of a downward moving National Best Bid or Offer, the National Best Bid or National Best Offer price immediately before the trade will be used; and

g. Outside-the-quote share (trade) participation—the number of shares purchased (the number of purchases) that are less than the National Best Bid price and the number of shares sold (the number of sales) that are greater than the National Best Offer price at the time of or immediately before the trade. In the case of a downward moving National Best Bid or Offer, the National Best Bid or National Best Offer price immediately before the trade will be used.

Appendix C—Data Collected by Market Makers

Each Participant that is the Designated Examining Authority of a Market Maker will require such Market Maker to collect the data described in Item I with respect to orders and executions in Pilot Securities on any trading center and to transmit such data in a pipe delimited format to the Designated Examining Authority on a monthly basis, to be provided within 30 calendar days following month end. Data will only be collected with respect to those orders and executions occurring during Regular Trading Hours. The data will be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Each Designated Examining Authority will be responsible for aggregating the data provided by the Market Makers under Item I and providing the data described in Item II in a pipe delimited format to the SEC.

I. Market Maker Profitability—Daily Market Maker profitability statistics categorized by security, including the following columns of information:

a. Total number of shares of orders executed by the Market Maker;

b. Raw Market Maker realized trading profits—the difference between the market value of Market Maker sales (shares sold x price) and the market value of Market Maker purchases (shares purchased x price). A LIFO-like method will be used for determining which share prices to use in the calculation;

c. Market Maker realized trading profits net of fees and rebates—realized trading profits plus rebates the Market Maker collects from trading on that day minus access fees the Market Maker pays for trading on that day (if estimated before allocation of rebates and fees, use expected rebates and fees); and

d. Raw Market Maker unrealized trading profits—the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In case of a short position, the Closing Price from the sale will be subtracted. In the case of a long position, the purchase price will be subtracted from the Closing Price.

II. Aggregated Market Maker Profitability—Total Daily Market Maker profitability statistics categorized by security, including the following columns of information:

a. Total Raw Market Maker realized trading profits—the difference between the market value of Market Maker sales (shares sold x price) and the market value of Market Maker purchases (shares purchased x price). A LIFO-like method will be used for determining which share prices to use in the calculation;

b. Volume-weighted average of Raw Market Maker realized trading profits;

c. Total Market Maker realized trading profits net of fees and rebates—realized trading profits plus rebates the Market Maker collects from trading on that day minus access fees the Market Maker pays for trading on that day (if estimated before allocation of rebates and fees, use expected rebates and fees);

d. Volume-weighted average of Market Maker realized trading profits net of fees and rebates;

e. Total Raw Market Maker unrealized trading profits—the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In case of a short position, the Closing Price from the sale will be subtracted. In the case of a long position, the purchase price will be subtracted from the Closing Price; and

f. Volume-weighted average of Market Maker unrealized trading profits.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73497; File No. SR–OCC–2014–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Provide That the Options Clearing Corporation's President Will Be Its Chief Operating Officer, and That the President Will Not Be a Management Director

November 3, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2014, The Options Clearing Corporation, ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would revise OCC's By-Laws to provide that OCC's President will be its Chief Operating Officer, rather than its Chief Executive Officer, and that the President will not be a Management Director. Conforming amendments are also proposed to OCC's Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to provide that OCC's President will be its Chief Operating Officer, rather than its Chief Executive Officer, and that the President will not be a Management Director. These changes are proposed to be made in connection with the resignation of OCC's former President and Chief Executive Officer, a transition plan that includes the election of OCC's current Chief Operating Officer as President and Chief Operating Officer, and the appointment of an Ad Hoc Search Committee to identify an appropriate candidate to become OCC's Chief Executive Officer (collectively, the "Transition Plan"). OCC's Board of Directors has determined that in light of the resignation of the former President and Chief Executive Officer and the election of the current Chief Operating Officer as President, the positions of President and Chief Executive Officer should be separated and the position of President should instead be combined with the position of Chief Operating Officer. To reflect this change, OCC is proposing to revise Section 8 of Article IV of its By-Laws to state that the President will be OCC's Chief Operating Officer, rather than its Chief Executive Officer.

While OCC's existing By-Laws provide that the President, who is also the Chief Executive Officer, serves as a Management Director on OCC's Board of Directors, given the separation of the President and Chief Executive Officer positions and the pending search for a new Chief Executive Officer, OCC's Board of Directors has also determined that the President should not be a Management Director. Accordingly, OCC proposes to amend its By-Laws such that the President is not a Management Director. To reflect this change, OCC is proposing to revise Section 7 of Article III of its By-Laws to refer only to the Executive Chairman, and not the President, as a Management Director. OCC also proposes to make a conforming revision to Section 8 of Article IV of its By-Laws to state that the President will not preside at meetings of the Board of Directors or the stockholders in the absence or disability of the Executive Chairman and the Management Vice Chairman because the President will no longer serve as a Management Director.

OCC is also proposing amendments to its Stockholder Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. In each case, conforming changes would be made to provide that only the Executive Chairman, not the President, will serve as a Management Director.

Once a replacement Chief Executive Officer has been elected by the Board of Directors, OCC intends to reconsider the appropriate number of Management Directors. The currently proposed rule change represents a short-term measure to implement the Transition Plan, and OCC does not intend a permanent change in the composition of the Board of Directors. Therefore, once OCC's Board of Directors has elected a Chief Executive Officer, OCC would propose further changes to its By-Laws, Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. OCC believes that the short-term flexibility reflected in the foregoing changes will assist OCC and its Board of Directors in implementing the Transition Plan efficiently and governing OCC effectively.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] because the proposed rule change would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. As described above, recent changes at OCC have prompted initiation of the Transition Plan. This proposed rule change will promote transparency with respect to the Transition Plan because it will clarify who may and who may not be a Board member from a senior management perspective. In addition, the proposed rule change is consistent with Section 17A(b)(3)(I)[4] of the Act because it will not impose a burden on competition. The Transition Plan will allow OCC to continue to provide clearance and settlement service without affecting competition between clearing members, clearing agencies and market participants because the Transition Plan will facilitate uninterrupted, ongoing, operations at OCC notwithstanding the above described change at OCC. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.[5] Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency and the markets that the clearing agency serves. This proposed rule change primarily affects OCC in that it amends certain By-Laws governing OCC's management structure. The proposed modifications would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because they relate to OCC governance issues and would not impose any additional substantive burden on clearing members or other OCC participants.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies and would not impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(I).

[5] 15 U.S.C. 78q–1(b)(3)(I).

the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2014–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_18.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2014–18 and should be submitted on or before November 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–26460 Filed 11–6–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73512; File No. SR–NYSEArca–2014–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Reflect Changes to the Means of Achieving the Investment Objective Applicable to the Guggenheim Enhanced Short Duration ETF

November 3, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 21, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 29, 2014, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to submit a rule change to reflect changes to the means of achieving the investment objective applicable to the Guggenheim Enhanced Short Duration ETF (the "Fund"). The shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved listing and trading on the Exchange of shares ("Shares") of the Guggenheim Enhanced Short Duration ETF, a series of Claymore Exchange-Traded Fund Trust (the "Trust"),[5] under NYSE Arca

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Amendment No. 1 clarified the last sentence in footnote 6 of the proposed rule change filing and footnote 7 of the Exchange's Exhibit 1 by replacing the sentence with the following: "The asset-back securities in which the Fund may invest include collateralized debt obligations, as described in the Prior Release."

[5] *See* Securities Exchange Act Release No. 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (order approving listing and trading on the Exchange of the Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF) ("Prior Order"). *See also* Securities Exchange Act Release No. 64224 (April 7, 2011), 76 FR 20401 (April 12, 2011) (SR–NYSEArca–2011–11) ("Prior Notice," and together with the Prior Order, the "Prior Release"). The name of the Guggenheim Enhanced Ultra-Short Bond ETF was changed to the Guggenheim Enhanced Short Duration Bond ETF in a supplement to the Registration Statement (as defined below) effective December 5, 2011, and was further changed to Guggenheim Enhanced Short Duration ETF in a supplement to the Registration Statement (as defined below) effective September 27, 2013 ("September 27, 2013 Amendment"). The Fund and the Shares are currently in compliance with the listing standards and other rules of the Exchange and the requirements set forth in the Prior Release.

Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares of the Fund are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The Shares are offered by the Trust, a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The investment advisor to the Fund is Guggenheim Funds Investment Advisors, LLC (the "Adviser").[7]

In this proposed rule change, the Exchange proposes to reflect changes to the description of the measures the Adviser will utilize to implement the Fund's investment objective, as described below.

First, the Prior Release stated that the Fund may invest up to 10% of its assets in mortgage-backed securities ("MBS") or in other asset-backed securities ("ABS")[8]; this limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration ("GNMA"), the Federal Housing Administration ("FHA"), the Federal National Mortgage Association ("FNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"). Going forward, the Fund proposes to have this limit apply to such privately issued MBS; however, the Fund may invest up to 50% of its assets in ABS[9] that are not mortgage-related. This 50% limitation would not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the GNMA, FHA, FNMA, and FHLMC. In addition, such holdings would be subject to the respective limitations on the Fund's investments in illiquid assets and high yield securities, as described below.

The Adviser represents that this change to the Fund's investment limitations would allow the Adviser to better achieve the Fund's investment objective to seek maximum current income, consistent with preservation of capital and daily liquidity. Moreover, the Fund's increased investment in ABS that are not mortgage-related will continue to adhere to the Fund's investment strategy of investing in short duration fixed income securities.[10]

Because the Fund may invest no more than 10% of its net assets in high yield securities ("junk bonds"), which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations ("NRSROs"), or are unrated securities that the Adviser believes are of comparable quality, the preponderance of the Fund's investments in ABS will be in investment grade instruments. Due to the quality of ABS in which the Fund will invest, the Adviser does not expect that the Fund's additional investments in ABS that are not mortgage-related will expose the Fund to additional liquidity risk.

Second, the Prior Release stated that the Fund may invest up to an aggregate amount of 15% of its net assets in: (1) Illiquid securities; and (2) Rule 144A securities. Going forward, the Fund proposes that the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment),[11] including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.[12] The Exchange notes that the Commission has approved proposals that have included similar representations relating to issues of Managed Fund Shares proposed to be listed and traded on the Exchange.[13] The Adviser represents that the Adviser and the Trust's Board of Trustees will continue to evaluate each Rule 144A security based on the Fund's valuation procedures to oversee liquidity and valuation concerns. With respect to investment in illiquid assets, if changes in the values of the Fund's assets cause the Fund's holdings of illiquid assets to exceed the 15% limitation (as if liquid assets have become illiquid), the Fund will take such actions as it deems appropriate and practicable to attempt to reduce its holdings of illiquid assets.

Third, the Prior Release stated that the Fund primarily will invest in U.S. dollar-denominated investment grade debt securities rated Baa or higher by Moody's Investors Service, Inc. ("Moody's"), or equivalently rated by Standard & Poor's Rating Group ("S&P") or Fitch Investor Services ("Fitch"), or, if unrated, determined by the Adviser to be of comparable quality.

Going forward, the Exchange proposes to change the representation that the Fund primarily will invest in U.S. dollar-denominated investment grade debt securities rated Baa or higher, as described above, to a representation that

[6] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act"). On September 27, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act"), and under the 1940 Act relating to the Fund (File Nos. 333–134551 and 811–21906) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29271, May 18, 2010 (File No. 812–13534) ("Exemptive Order").

[7] The Fund's investment advisor was previously named Claymore Advisors, LLC. On September 10, 2010, Claymore Advisors, LLC changed its name to Guggenheim Funds Investment Advisors, LLC.

[8] As stated in the Prior Release, the Fund may invest in MBS or other asset-backed securities issued or guaranteed by private issuers. The MBS in which the Fund may invest may also include residential mortgage-backed securities, collateralized mortgage obligations and commercial mortgage-backed securities. The asset-backed securities in which the Fund may invest include collateralized debt obligations, as described in the Prior Release.

[9] ABS are bonds backed by pools of loans or other receivables. ABS are securitized by a wide variety of assets and are generally broken into 3 categories: consumer, commercial, and corporate. The consumer category includes credit card, auto loan, student loan, and timeshare loan ABS. The commercial category includes trade receivables, equipment leases, oil receivables, film receivables, rental cars, aircraft securitizations, ship and container securitizations, whole business securitizations, and diversified payment right securitizations. Corporate ABS include cash flow collateralized loan obligations, collateralized by both middle market and broadly syndicated bank loans. ABS are issued through special purpose vehicles that are bankruptcy remote from the issuer of the collateral. The credit quality of an ABS tranche depends on the performance of the underlying assets and the structure. To protect ABS investors from the possibility that some borrowers could miss payments or even default on their loans, ABS include various forms of credit enhancement.

[10] The Fund will target floating rate, shorter maturity, shorter spread duration and other amortizing securities. These securities' maturity and spread duration are consistent with the Fund's investment objective.

[11] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[12] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[13] *See, e.g.*, Securities Exchange Act Release No. 70282 (August 29, 2013), 78 FR 54700 (September 5, 2013) (order approving listing and trading on the exchange of First Trust Inflation Managed Fund).

the Fund primarily will invest in U.S. dollar-denominated investment grade debt securities rated Baa3 or higher by Moody's,[14] or equivalently rated by S&P, Fitch, or by any other NRSRO, or, if unrated, determined by the Adviser to be of comparable quality. By being permitted to invest in U.S. dollar-denominated investment grade debt securities rated Baa3 or higher, as described above, the Fund will be able to invest in a broader range of investment grade debt securities, which will assist the Fund in meeting its investment objective. In addition, by being permitted to consider ratings issued by all NRSROs, which are registered with the Commission, the Fund will be able to assess a broader range of available information regarding the characteristics and quality of securities that it may consider for investment.

Fourth, the Prior Release stated that the Fund will invest at least 80% of its net assets in fixed income securities. Going forward, the Fund proposes that it will invest at least 80% of its net assets in fixed income securities, and in exchange-traded funds ("ETFs") and closed-end funds that invest substantially all of their assets in fixed income securities.[15] All such ETFs and closed-end funds would be listed on a U.S. national securities exchange. The Adviser represents that, by allowing the Fund to invest in ETFs and closed-end funds that invest substantially all of their assets in fixed-income securities and have such investments count towards the Fund's 80% threshold (thus allowing the Fund to invest in excess of 20% of its assets in such ETFs and closed-end funds), the Fund may be able to realize its investment objective in a more diversified and efficient manner than is currently available under the Fund's current 20% limitation on non-fixed income securities investments. Possible increased investments in such ETFs and closed-end funds would give the Fund access to a diverse set of fixed-income securities in an efficient fashion, with the liquidity and transparency of a U.S. exchange-traded security.

The Exchange notes that the Prior Release stated that the Fund is considered non-diversified under the 1940 Act and can invest a greater portion of assets in securities of individual issuers than a diversified fund.[16] In the September 27, 2013 Amendment, the Trust amended this representation to state that the Fund is considered a diversified fund. This change was made because, in view of the Fund's investments, the Fund has been operating in a manner consistent with a diversified fund for three years and, pursuant to Commission guidance, the Fund has amended its disclosure in that regard. The revised representation in the September 27, 2013 Amendment reflects this fact.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[17] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Adviser represents that increasing the Fund's flexibility to invest in ABS that are not mortgage-related would allow the Adviser to better achieve the Fund's investment objective to seek maximum current income, consistent with preservation of capital and daily liquidity. Moreover, the Fund's increased investment in ABS that are not mortgage-related will continue to adhere to the Fund's investment strategy of investing in short duration fixed income securities. In addition, such holdings would be subject to the limitation of the Fund's investments in illiquid assets, as described above. Because the Fund may invest no more than 10% of its net assets in junk bonds, which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations, or are unrated securities that the Adviser believes are of comparable quality, the preponderance of the Fund's investments in ABS will be in investment grade instruments. With respect to the 15% limitation on investments in illiquid assets, including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance, the Exchange notes that the Commission has approved proposals that have included similar representations relating to issues of Managed Fund Shares proposed to be listed and traded on the Exchange.[18] The Adviser represents that the Adviser and the Trust's Board of Trustees will continue to evaluate each Rule 144A security based on the Fund's valuation procedures to oversee liquidity and valuation concerns.

With respect to the representation above that the Fund primarily will invest in U.S. dollar-denominated investment grade debt securities rated Baa3 or higher (instead of Baa or higher) by Moody's, or equivalently rated by S&P, Fitch, or by any other NRSRO, or, if unrated, determined by the Adviser to be of comparable quality, by being permitted to invest in U.S. dollar-denominated investment grade debt securities rated Baa3 or higher, as described above, the Fund will be able to invest in a broader range of investment grade debt securities, which will assist the Fund in meeting its investment objective. In addition, with respect to the Fund utilizing ratings of any NRSRO, rather than only enumerated NRSROs, in connection with its fixed income investments, by being permitted to consider ratings issued by all NRSROs, which are registered with the Commission, the Fund will be able to assess a broader range of available information regarding the characteristics and quality of securities that it may consider for investment.

With respect to the proposal for the Fund to invest at least 80% of its net assets in fixed income securities, and in ETFs and closed-end funds that invest substantially all of their assets in fixed income securities, the Exchange notes that all such ETFs and closed-end funds would be listed on a U.S. national

[14] Baa3 is the lowest tier within the Baa rating.

[15] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Fund will invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof.

[16] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5(b)(1)). The Fund intends to maintain the level of diversification necessary to qualify as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended (26 U.S.C. 851).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* note 12, *supra [sic]*.

securities exchange. The Adviser represents that, by allowing the Fund to invest in ETFs and closed-end funds that invest substantially all of their assets in fixed-income securities and have such investments count towards the Fund's 80% threshold, the Fund may be able to realize its investment objective in a more diversified and efficient manner than is currently available under the Fund's current 20% limitation on non-fixed income securities investments. Possible increased investments in such ETFs and closed-end funds would give the Fund access to a diverse set of fixed-income securities in an efficient fashion, with the liquidity and transparency of a U.S. exchange-traded security.

With respect to the Fund's operation as a diversified Fund, this change was made because, in view of the Fund's investments, the Fund has been operating in a manner consistent with a diversified fund for three years and, pursuant to Commission guidance, the Fund has amended its disclosure in that regard. The revised representation in the September 27, 2013 Amendment reflects this fact.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of the proposed changes is to provide additional flexibility to the Adviser to meet the Fund's investment objective, as discussed above.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of the proposed changes is to provide additional flexibility to the Adviser to meet the Fund's investment objective, as discussed above. The Adviser represents that there is no change to the Fund's investment objective. Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to the Fund's means of achieving the investment objective will permit the Fund to adjust its portfolio to allow the Fund to continue to meet its investment objectives in the most efficient manner possible and will enhance competition among issues of Managed Fund Shares that invest in fixed income securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2014–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–107. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–107 and should be submitted on or before November 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–26461 Filed 11–6–14; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2014–0055]

Charging Standard Administrative Fees for Nonprogram-Related Information Requests for Detailed Social Security Earnings

AGENCY: Social Security Administration.

ACTION: Notice of updated schedule of standardized administrative fees.

SUMMARY: On November 8, 2013,[1] we announced in the **Federal Register** a new administrative fee we charge to the public for detailed yearly Social Security earnings information. We charge administrative fees to recover our full costs when we provide information and related services for nonprogram purposes. We are announcing an update to the previously published fee for detailed yearly Social Security earning information.

The updated standard fee is part of our continuing effort to standardize fees

[19] 17 CFR 200.30–3(a)(12).

[1] 78 FR 67210, November 8, 2013.

for nonprogram information requests. We reserve the right to review and update the published standard fees as necessary, but no less than every two years, to ensure the agency recovers the full cost of providing nonprogram-related services. Standard fees provide consistency and ensure we recover the full cost of supplying information when we receive a request for a purpose not directly related to the administration of a program under the Social Security Act (Act).

SUPPLEMENTARY INFORMATION: Section 1106 of the Act and the Privacy Act [2] authorize the Commissioner of Social Security to promulgate regulations regarding agency records and information and to charge fees for providing information and related services. Our regulations and operating instructions identify when we will charge fees for information.[3] Whenever we determine a request for information is for any purpose not directly related to the administration of the Social Security programs, we require the requester to pay the full cost of providing the information.

New Information: Based on the most recent cost analysis, we determined the new standard fee for detailed yearly Social Security earnings information is $136 for each request. We will certify the detailed earnings information for an additional $56. Note: Certification is usually not necessary. We based this updated standard fee on our most recent cost calculations for supplying this information and the standard fee methodology previously published in the **Federal Register.** A requestor can obtain certified and non-certified detailed yearly Social Security earnings information by completing the Form SSA–7050 (Request for Social Security Earnings Information). A requestor can continue to obtain non-certified, yearly earnings totals (Form SSA–7004, Request for a Social Security Statement) through our free online service mySocialSecurity, *http://socialsecurity.gov/myaccount/, a personal online account for Social Security information and services.* Online Social Security Statements display uncertified yearly earnings, free of charge, and do not show any employer information. Certified yearly Social Security earnings totals cost $56, available by completing Form SSA–7050.

We will continue to evaluate all standard fees at least every two years to ensure we capture the full costs associated with providing information for nonprogram-related purposes. We will require nonrefundable advance payment of the standard fee by check, money order, or credit card. We will not accept cash. If we revise any of the standard fees, we will publish another notice in the **Federal Register.** For other nonprogram-related requests for information not addressed here or within the current schedule of standardized administrative fees, we will continue to charge fees calculated on a case-by-case basis to recover our full cost of supplying the information.

[2] 42 U.S.C. 1306 and 5 U.S.C. 552a, respectively.

[3] See 20 CFR 402.170, 402.175; Program Operations Manual System (POMS) GN 03311.005.

Additional Information

Additional information is available on our Web site at *http://socialsecurity.gov/pgm/business.htm* or by written request to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

DATES: The changes described above are effective for requests we receive on or after November 15, 2014.

FOR FURTHER INFORMATION CONTACT: Kristina Poist, Social Security Administration, Office of Finance, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1977. For information on eligibility or filing for benefits, visit our Internet site, Social Security Online, at *http://socialsecurity.gov,* or call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

Dated: November 3, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2014–26484 Filed 11–6–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 8939]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on November 14, 2014 at 8:30 a.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 3:00 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on April 23, 2014 and the announcement of gifts and loans of furnishings as well as financial contributions from April 23, 2014 through October 30, 2014.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an email to *WallaceJA@State.gov* by November 5th to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: October 30, 2014.

Marcee Craighill,

Fine Arts Committee, Department of State.

[FR Doc. 2014–26441 Filed 11–6–14; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment and reply comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) ('Section 1377'), the Office of the United States Trade Representative ("USTR") is reviewing and requests comments on the operation, effectiveness, and implementation of, and compliance with the following agreements regarding telecommunications products and services of the United States: The World Trade Organization ("WTO") General Agreement on Trade in Services; The North American Free Trade Agreement ("NAFTA"); U.S. free trade agreements ("FTAs") with Australia, Bahrain, Chile, Colombia, Korea, Morocco, Oman, Panama, Peru, and Singapore; the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA–DR"); and any other telecommunications trade agreements, such as Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment. The USTR will conclude the review by March 31, 2015.

DATES: Comments are due on December 5, 2014 and reply comments on December 19, 2014.

ADDRESSES: Submissions should be made via the Internet at *www.regulations.gov* docket number USTR–2014–0022. For alternatives to on-line submissions please contact Yvonne Jamison (202–395–3475). The public is strongly encouraged to file

submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Jonathan McHale, Office of Services and Investment, (202) 395–9533; or Ashley Miller, Office of Market Access and Industrial Competitiveness, (202) 395–9476.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a trade agreement or other telecommunications trade agreement with the United States is inconsistent with the terms of such agreement or otherwise denies U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities for telecommunications products and services. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its obligations under WTO agreements affecting market opportunities for telecommunications products or services, *e.g.*, the WTO General Agreement on Trade in Services ("GATS"), including the Agreement on Basic Telecommunications Services, the Annex on Telecommunications, and any scheduled commitments including the Reference Paper on Pro-Competitive Regulatory Principles; the WTO Agreement on Subsidies and Countervailing Measures; the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights; or the plurilateral WTO Agreement on Government Procurement.

(2) Whether Canada or Mexico has failed to comply with its telecommunications obligations under the NAFTA;

(3) Whether Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras or Nicaragua has failed to comply with its telecommunications obligations under the CAFTA–DR;

(4) Whether Australia, Bahrain, Chile, Colombia, Korea, Morocco, Oman, Panama, Peru, or Singapore has failed to comply with its telecommunications obligations under its FTA with the United States (see *http://www.ustr.gov/trade-agreements/free-trade-agreements* for links to U.S. FTAs);

(5) Whether any country has failed to comply with its obligations under telecommunications trade agreements with the United States other than FTAs, *e.g.*, Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment (see *http://ts.nist.gov/standards/conformity/mra/mra.cfm* for links to certain U.S. telecommunications MRAs);

(6) Whether any act, policy, or practice of a country cited in a previous section 1377 review remains unresolved (see *http://www.ustr.gov/trade-topics/services-investment/telecom-ecommerce/section-1377-review* for recent reviews); and

(7) Whether any measures or practices of a country that is a WTO member or for which an FTA or telecommunications trade agreement has entered into force with respect to the United States impede access to its telecommunications markets or otherwise deny market opportunities to telecommunications products and services of United Stares firms. Measures or practices of interest include, for example, efforts by a foreign government or a telecommunications service provider to block services delivered over the Internet (including, but not limited to voice over Internet protocol services, social networking, and search services); requirements for access to or use of networks that limit the products or services U.S. suppliers can offer in specific foreign markets; the imposition of excessively high licensing fees; unreasonable wholesale roaming rates that mobile telecommunications service suppliers in specific foreign markets charge U.S. suppliers that seek to supply international mobile roaming services to their U.S. customers; allocating access to spectrum or other scarce resources through discriminatory procedures or contingent on the purchase of locally-produced equipment; subsidies provided to equipment manufactures which are contingent upon exporting or local content, or have caused adverse effects to domestic equipment manufacturers and the imposition by foreign governments of unnecessary or discriminatory technical regulations or standards for telecommunications products or services. In all cases, commenters should provide any available documentary evidence, including relevant legal measures where available, translated into English where necessary, to facilitate evaluation.

Public Comment and Reply Comment: Requirements for Submission

Comments in response to this notice must be written in English, must identify (on the first page of the comments) the telecommunications trade agreement(s) discussed therein, and must be submitted no later than December 5, 2014. Any replies to comments submitted must also be in English and must be submitted no later than December 19, 2014. Comments and reply comments must be submitted using *http://www.regulations.gov*, docket number USTR–2014–0022. In the unusual case where submitters are unable to make submissions through regulations.gov, the submitter must contact Yvonne Jamison at (202) 395–3475 to make alternate arrangements.

To submit comments using *http://www.regulations.gov*, enter docket number USTR–2014–0022 under "Key Word or ID" on the home page and click "Search". The site will provide a search results page listing all documents associated with this docket. Locate the reference to this notice, and click on "Comment Now!" Follow the instructions given on the screen to submit a comment. The *http://www.regulations.gov* Web site offers the option of providing comments by filling in a "Type Comment" field or by attaching a document using the "Upload File(s) option. While both options are acceptable, USTR prefers submissions in the form of an attachment. If you attach a comment, it is sufficient to type "see attached" in the comment section. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files. (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "help" tab.) Submitters should provide updated information on all issues they cite in their filings; USTR will not review submissions that are copies of earlier submissions.

Business Confidential Submissions

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC". The top of any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL". Any person filing comments that contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. The submitter must include

in the comments a written explanation of why the information should be protected. The submission must indicate, with asterisks, where confidential information was redacted or deleted. The top and bottom of each page of the non-confidential version must be marked either "PUBLIC VERSION" or "NON-CONFIDENTIAL".

Public Inspection of Submissions

Comments will be placed in the docket and open to public inspection, except confidential business information. Comments may be viewed on the *http://www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2014–26453 Filed 11–6–14; 8:45 am]

BILLING CODE 3290–F5–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

South Mountain Freeway Project FEIS Comment Consideration

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice of omission to advise the public that 10 comments submitted by email during the comment period for the South Mountain Freeway (Loop 202) Interstate 10 (Papago Freeway) to Interstate 10 (Maricopa Freeway) Draft Environmental Impact Statement and Section 4(f) Evaluation were inadvertently omitted from the South Mountain Freeway (Loop 202) Interstate 10 (Papago Freeway) to Interstate 10 (Maricopa Freeway) Final Environmental Impact Statement and Section 4(f) Evaluation.

FOR FURTHER INFORMATION CONTACT: Alan Hansen, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012; (602) 382–8964.

SUPPLEMENTARY INFORMATION: On September 26, 2014, at 79 FR 57929, FHWA published a notice of availability for its Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation for the South Mountain Freeway (Loop 202) Interstate 10 (Papago Freeway) to Interstate 10 (Maricopa Freeway) project. On October 21, 2014, the Arizona Department of Transportation (ADOT) was contacted by a stakeholder organization and told that the comments they submitted on the Draft Environmental Impact Statement were not included in the FEIS. The ADOT examined this concern and found that the comments, submitted through email, had been received, but were never brought to the attention of the project team. The ADOT conducted a thorough search of the entire email system and found that 10 email comments had been inadvertently omitted from the FEIS. The omitted comments consist of the email from the stakeholder organization and 9 emails from other interested parties.

Based on this, FHWA, in conjunction with ADOT, has published this omission notice in the **Federal Register** and will prepare an Errata to the FEIS including responses to the 10 omitted comments, will publish a notice of availability for the Errata to the FEIS in the **Federal Register**, and will provide a 30-day review period for the Errata to the FEIS.

All interested parties who received project communications, including notice of the FEIS availability, will receive the notice of omission and notice of availability of the Errata to the FEIS. The Errata to the FEIS will also be available on the project Web site with the FEIS at *www.azdot.gov/southmountainfreeway.*

Issued on: October 31, 2014.

Karla S. Petty,

Arizona Division Administrator, Federal Highway Administration, Phoenix, AZ.

[FR Doc. 2014–26533 Filed 11–6–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0388]

Agency Information Collection Activities; New Information Collection Request: Entry Level Driver Training Survey for Commercial Drivers' Licenses

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The purpose of this ICR is to examine, by a one-time collection of survey data, the relationship of commercial driver license (CDL) entry level driver training (ELDT), as influenced by any subsequent employer training that may have been received, to safety performance of the drivers. The goal of this research is to contribute to other related research being done evaluating the relationship of CDL ELDT to subsequent safety performance of the drivers.

The results of this study, along with others, will provide FMCSA with information to support its consideration of the congressionally mandated requirement to establish enhanced minimum training requirements for CDL entry-level drivers from those currently required at 49 CFR 380.503. There is no national database that contains or collects data on the training received by drivers to enable them to qualify for a CDL.

Recently licensed freight CDL drivers will be surveyed. (This will contain both drivers without hazardous material endorsements and drives with hazardous materials endorsements.) Motorcoach and bus drivers recently observed to have begun driving such vehicles in the most recent three years, as indicated by data in MCMIS, will be surveyed. The goal is to obtain a better understanding of the amount and type of total training they received, and its composition between that received before obtaining the CDL, and that received after obtaining the CDL. Type of training is divided into hours-based versus performance-based. Data on the amount and type of training received will be collected using a one-time survey effort. The data will be analyzed to describe the details of the driver training reported by the survey participants.

Results of the training survey data will be analyzed in relation to the safety performance data of the responding drivers available from two databases: the State-operated Commercial Driver's License Information System (CDLIS) and the Federally-operated Motor Carrier Management Information System (MCMIS).

DATES: We must receive your comments on or before January 6, 2015.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2014–0388 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Services; U.S. Department of Transportation, 1200

New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: David Goettee, Research Division, Office of Analysis, Research and Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Telephone: (202–366–4097); email *David.Goettee@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: CDL driving is a specialized skill, distinct in many ways and more demanding than operating a smaller vehicle such as an automobile.[1] In the early 1970's the CDL Program (49 CFR Parts 383 and 384) did not exist.[2] Thus, there were no standardized national requirements that prevented a driver from operating a vehicle heavier than 26,000 lbs. or that carries 16 or more persons without demonstrating minimum knowledge and skills. Neither the Federal government nor any State had CDL ELDT requirements. In States that did have a classified licensing system, only a few required the driver candidate to be skills-tested in a representative commercial vehicle. As a result, many drivers were operating large commercial motor vehicles that they may not have been qualified to drive.[3]

Additionally, because there was no tracking of existing licenses, there was no systematic method for preventing drivers from obtaining multiple licenses from multiple States and spreading convictions of any traffic violations over those licenses. That allowed them to avoid having any driver license suspended or revoked in any jurisdiction as a result of convictions for violations of moving traffic laws and thus being reported to the National Driver Registry.

In the early 1980's, before the Commercial Motor Vehicle Safety Act (CMVSA) was enacted, the Federal Highway Administration (FHWA) Office of Motor Carriers (the predecessor to FMCSA) determined that there was a need for technical guidance in the area of truck driver training. At that time, only a few driver-training institutions offered a structured curriculum or a standardized training program for any type of commercial motor vehicle (CMV) driver.

In 1986, 32 States issued some form of a classified driver's license (i.e., a license that makes a distinction between types of vehicles that the holder may operate). Of these 32 States, 12 required State-conducted, behind-the-wheel skills testing of all applicants in a vehicle that represented the type that the driver operated or expected to operate. The other 20 of those 32 States waived testing if the applicants met certain conditions, such as certification of training and testing by their employer; two States recognized training schools. The remaining 18 States and the District of Columbia did not require applicants to demonstrate their driving skills in the types of vehicles they drove or intended to drive, nor did they require certification of training and testing by the employer or a recognized training school. Drivers in those States who obtained a driver license to drive a passenger car were also considered qualified to drive an 18-wheeler or a three-axle intercity bus.

In 1986 Congress passed the Commercial Motor Vehicle Safety Act[4] (CMVSA), and subsequent amendments, explicitly to begin addressing these issues. Implementation of the CDL Program and its supporting information system, CDLIS, have been addressing many of these issues.

The goal of the CDL program is to ensure that drivers of large trucks and commercial passenger vehicles possess the knowledge and skills necessary to obtain a CDL and operate those vehicles on public highways, and that such drivers are uniformly sanctioned for specified convictions. The CMVSA established the CDL Program and directed the Secretary to establish minimum Federal standards that the States must meet when licensing drivers required to have a CDL and sanctions for convictions for specified violations. The CMVSA and implementing regulations apply to virtually anyone who operates a CMV requiring a CDL in interstate or intrastate commerce, including employees of Federal, State, and local governments. There are very limited exceptions.

One of the issues not addressed by the original CMVSA was standardizing the ELDT to be received by those drivers before obtaining a CDL. A 1995 FHWA-sponsored study titled Assessing the Adequacy of Commercial Motor Vehicle Driver Training (the Adequacy Report) concluded, among other things, that effective entry-level driver training needs to include behind-the-wheel instruction on how to operate a heavy vehicle.[5]

In 2004 FMCSA issued a Final Rule for such CDL ELDT, found at 49 CFR 380.503. The requirements of that rule were estimated to take on average 10

[1] National Transportation Safety Board. (1986) *Safety Recommendations H–86–27 through 34.* Washington, DC.

[2] Federal Motor Carrier Safety Administration. (1996). Purpose and scope of this part and responsibility for compliance and training. *49 CFR,* Washington, DC: Government Printing Office.

[3] Federal Motor Carrier Safety Administration. *Commercial Driver's License Program (CDL/CDLIS).* Retrieved from *http://www.fmcsa.dot.gov/registration-licensing/cdl/cdl.htm.*

[4] U.S. Congress, (1986). Commercial Motor Vehicle Safety Act of 1986. Title XII of Public Law 99–570, Anti-Drug Abuse Act of 1986 49 U.S.C. 31301 *et seq.,* Washington, DC: U.S. Government Printing Office.

[5] Dueker, R. L. (1995). *Assessing the Adequacy of Commercial Motor Vehicle Driver Training: Final Report* (FHWA–MC–96–011). Washington, DC: U.S. DOT FHWA Office of Motor Carriers.

hours of training to accomplish. However, the rule was challenged; the court determined FMCSA needed to give more attention to its previous research in establishing meaningful minimum CDL training standards, in particular with regard to behind-the-wheel training requirements. The court left the rule in effect but remanded it to FMCSA for further action. In 2007 FMCSA issued a follow-on Notice of Proposed Rule Making (NPRM), proposing revised ELDT standards for CDL drivers.

The 2012 Moving Ahead for Progress in the 21st Century (MAP–21) requirement expanded the scope of the needed rule. In January and March 2013, FMCSA held public listening sessions to obtain additional input. In December 2012, FMCSA tasked its Motor Carrier Safety Advisory Committee (MCSAC) with developing training recommendations; these were delivered in June 2013. In September 2013, FMCSA withdrew the 2007 NPRM in order to develop a new proposed rule responsive to the 2007 docket comments, the MAP–21-directives, input from the listening sessions, the MCSAC recommendations, and several research projects under way (including this survey). In March 2014, it was announced that a negotiated rulemaking was being considered to facilitate the rulemaking process. On August 19, 2014, the agency announced initiation of the process with the contracted convener (79 FR 49044).

Title: Entry Level Driver Training Survey for Commercial Drivers' Licenses

OMB Control Number: 2126–00XX.

Type of Request: New information collection.

Respondents: Entry-level interstate[6] freight and bus/motorcoach drivers. The goal is to understand what entry-level training general freight drivers without endorsements received to obtain their CDLs, and what additional training the hazmat freight (H—non-tanker, X—tanker endorsements) and bus/motorcoach drivers (P endorsement) received to obtain the required endorsement(s). Respondents will therefore be from one of two groups. The first group is CDL drivers newly licensed within the past three years (for freight—non-hazmat and hazmat). The second group is drivers first observed operating a motorcoach or bus as demonstrated by MCMIS data within the last three years, regardless of when they received their CDL. The criteria for selection of this second group is different because such drivers could have obtained their CDL in the past, but only recently obtained training and began driving bus/motorcoaches. In order to have more safety performance data available, all drivers must be driving for a carrier authorized to operate interstate. To avoid specific bias caused by a higher than usual inspection rate at the border for international drivers, the carriers must operate solely in the United States.[7]

Recent entry-level freight CMV drivers for purposes of this survey are defined as those who received their initial commercial license within the past three years. This will be verified by examining the date the CDL index record was added to the CDLIS index. The drivers also must have received an inspection within the past 12 months. This is to verify they were recently, and thus may still be, driving a CMV for a living. (Previous survey research from CDL drivers, found while the response rate by CDL drivers was quite low, drivers who were currently driving were more likely to respond.) Those drivers who also have an H or X endorsement will automatically be routed to additional questions regarding training for those endorsements.

Recent entry-level Bus/Motorcoach (P) CMV drivers are defined as having had an inspection or crash recorded in MCMIS in the past three years while driving a bus or motorcoach vehicle.[8] (As noted above, entry level bus/motorcoach drivers are defined differently from the freight drivers because drivers can enter the profession of bus/motorcoach driving many years after obtaining their CDL.)

Estimated Number of Invitees: 82,207 drivers will be invited to participate in the survey.

Estimated Number of Respondents: 7,399.

Estimated Time Per Response: Between 12 and 21 minutes per response, primarily via online technology to a secure Web site for completing only one survey instrument by the invited drivers. The necessary login information will be provided in their solicitation letter. The length of time required depends on which survey instrument applies to that type of driver (see detailed calculation below.) The average is 15.4 minutes because of the small number of drivers with H, X or P endorsements that will be included in the invited sample.

Expiration Date: N/A. This is a new ICR for a one-time survey.

Frequency of Response: Once per respondent.

Estimated Annual Burden Hours: 1903 hours [6620 general freight survey responses × 15 minutes/60 minutes = 1655; 498 hazmat endorsement freight survey responses × 21 minutes/60 minutes = 174.3; 109 bus survey responses × 12 minutes/60 minutes = 21.8; 172 motorcoach survey responses × 18 minutes/60 minutes = 51.6; total estimated burden thus is 1902.7, rounded to 1903 hours].

Form(s): MCSA–5890, "Entry-Level CMV CDL Truck Driver Training Survey," MCSA–5891, "Entry-Level CMV CDL Bus Driver Training Survey," and MCSA–5892, "Entry-Level CMV CDL Motorcoach Driver Training Survey."

Analysis

This study will obtain safety performance data from both MCMIS and CDLIS to analyze the safety performance in relation to the amount and type of training received by recently licensed CDL drivers who chose to respond to this survey.

FMCSA maintains the MCMIS, which contains violations of Federal Motor Carrier Safety Regulations (FMCSRs) found during roadside inspections (including driver out-of-service orders) and crash data submitted by States supported by Motor Carrier Safety Assistance Program (MCSAP) funding. CDLIS Index data are maintained by the American Association of Motor Vehicle Administrators (AAMVA). The licensing States maintain the detailed CDLIS driver records that contain convictions on State and local traffic infractions, suspensions, and revocations.

This study will ensure confidentiality regarding the identity and responses of the participating drivers. Only summarized data will be published. Results of this study will provide FMCSA with information to support its considerations of establishing minimum entry-level training requirements for CDL drivers.

Public Comments Invited: On whether the proposed collection of information is necessary for the proper performance

[6] Intrastate drivers do not cross jurisdictions, and often do not operate on interstate highways. Therefore, they tend toward having minimal number of inspections and traffic citations from either a MCSAP or non-MCSAP officers. This lack of safety performance data would make it harder to evaluate any relationship between their training and early subsequent safety performance. Therefore, due to this lower availability of safety performance data, intrastate drivers are not included in the target population.

[7] Drivers who cross the Canadian and Mexican borders have a high number of inspections at the border and would bias the sample.

[8] Neither CDLIS nor MCMIS contains the date when an endorsement was earned. Therefore, this research assumes that when a driver has their first inspection operating a motor vehicle requiring a P endorsement, it is more likely they recently completed training, likely from the employer, to operate that type vehicle.

of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance 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.

Issued under the authority of 49 CFR 1.87 on: October 31, 2014.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2014–26563 Filed 11–6–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0308]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA). DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 52 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 8, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0308 using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 52 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Travis L. Beck

Mr. Beck, 21, has had ITDM since 1997. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Ohio.

Corey C. Bennett

Mr. Bennett, 36, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bennett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bennett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Richard C. Bennett

Mr. Bennett, 52, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bennett understands

diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bennett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Massachusetts.

Nicholas J. Borelli

Mr. Borelli, 36, has had ITDM since 1995. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Borelli understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Borelli meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Bobby L. Brown

Mr. Brown, 48, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Missouri.

Elvis P. Butler

Mr. Butler, 60, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Butler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

John H. Butler

Mr. Butler, 41, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Butler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Michael E. Calvert

Mr. Calvert, 49, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Calvert understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Calvert meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Keith J. Cole

Mr. Cole, 58, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cole understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cole meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Kevin E. Conti

Mr. Conti, 38, has had ITDM since 1985. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Conti understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conti meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Ohio.

Marsh L. Daggett

Mr. Daggett, 49, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Daggett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daggett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Daniel D. Eisenbise

Mr. Eisenbise, 59, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Eisenbise understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Eisenbise meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Callie W. Freeman

Mr. Freeman, 74, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Freeman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Freeman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Brandy D. Green

Ms. Green, 37, has had ITDM since 2011. Her endocrinologist examined her in 2014 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Green understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Green meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2014 and certified that she has stable proliferative diabetic retinopathy. She holds a Class B CDL from Oklahoma.

Chad E. Hales

Mr. Hales, 38, has had ITDM since 1981. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hales understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hales meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative and stable proliferative diabetic retinopathy. He holds an operator's license from Utah.

Dennis L. Hooyman

Mr. Hooyman, 68, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hooyman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hooyman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

Lorenza K. Jefferson

Mr. Jefferson, 47, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jefferson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jefferson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Virginia.

Edward Johnson

Mr. Johnson, 62, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Tennessee.

William O. Johnson, Jr.

Mr. Johnson, 42, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Michael E. Kroll

Mr. Kroll, 67, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kroll understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kroll meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

Thomas J. LaPointe

Mr. LaPointe, 57, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. LaPointe understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. LaPointe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

Matthew A. Lind

Mr. Lind, 25, has had ITDM since 2007. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lind understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lind meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Cynthia A. Martindale

Ms. Martindale, 54, has had ITDM since 2014. Her endocrinologist examined her in 2014 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Martindale understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Martindale meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2014 and certified that she does not have diabetic retinopathy. She holds an operator's license from Utah.

Isolina Matos

Ms. Matos, 49, has had ITDM since 2013. Her endocrinologist examined her in 2014 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Matos understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Matos meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2014 and certified that she does not have diabetic retinopathy. She holds a Class C CDL from New Jersey.

Rex D. McManaway

Mr. McManaway, 51, has had ITDM since 1976. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McManaway understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McManaway meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Steven A. Metternick

Mr. Metternick, 55, has had ITDM since 1978. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Metternick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Metternick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Daniel P. Miller

Mr. Miller, 26, has had ITDM since 1999. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

James K. Ollerich

Mr. Ollerich, 57, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ollerich understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ollerich meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Scott B. Olson

Mr. Olson, 53, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Olson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Olson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Raymond E. Pawloski

Mr. Pawloski, 55, has had ITDM since 2009. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pawloski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pawloski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Rodney D. Pedersen

Mr. Pedersen, 51, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pedersen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pedersen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Loren A. Pingel

Mr. Pingel, 51, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pingel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pingel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Colorado.

Douglas S. Pitcher

Mr. Pitcher, 59, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pitcher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pitcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

John E. Pringle

Mr. Pringle, 49, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pringle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pringle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Washington.

Terrence A. Proctor

Mr. Proctor, 55, has had ITDM since 2010. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Proctor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Proctor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Salvador Ramirez, Jr.

Mr. Ramirez, 56, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ramirez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ramirez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Heber E. Rodriguez

Mr. Rodriguez, 50, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rodriguez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rodriguez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Ethan T. Roy

Mr. Roy, 24, has had ITDM since 2004. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Emily J. Runde

Ms. Runde, 29, has had ITDM since 1997. Her endocrinologist examined her in 2014 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Runde understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Runde meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2014 and certified that she does not have diabetic retinopathy. She holds an operator's license from Washington.

Jerome E. Schwarz

Mr. Schwarz, 47, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schwarz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schwarz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kansas.

Lukas N. Skutnik

Mr. Skutnik, 28, has had ITDM since 1988. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Skutnik understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Skutnik meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nebraska.

Daniel C. Sliman

Mr. Sliman, 50, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sliman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sliman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Jeffery A. Sturgill

Mr. Sturgill, 49, has had ITDM since 1994. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sturgill understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sturgill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Maurice S. Styles

Mr. Styles, 48, has had ITDM since 2013. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Styles understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Styles meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Steven M. Theys

Mr. Theys, 46, has had ITDM since 1983. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Theys understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Theys meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wisconsin.

Richard J. Thomas

Mr. Thomas, 31, has had ITDM since 1986. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thomas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thomas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Kevin E. Tucker

Mr. Tucker, 55, has had ITDM since 2014. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tucker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tucker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

Robert Vassallo

Mr. Vassallo, 54, has had ITDM since 2011. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vassallo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vassallo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Clifford L. White

Mr. White, 42, has had ITDM since 2012. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. White understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. White meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Jason L. Woody

Mr. Woody, 42, has had ITDM since 1994. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Woody understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Woody meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kansas.

John A. Yarde

Mr. Yarde, 72, has had ITDM since 2004. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yarde understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yarde meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Wesley B. Yokum

Mr. Yokum, 32, has had ITDM since 1996. His endocrinologist examined him in 2014 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yokum understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yokum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2014 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2014–0308 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, to submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2014–0308 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to the proposed rulemaking.

Issued on: October 31, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–26557 Filed 11–6–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35867]

AD&A Railway, LLC—Acquisition and Operation Exemption—V & S Railway, LLC

AD&A Railway, LLC (AD&A),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from V & S Railway, LLC (V&S), and to operate, approximately 5.14 miles of rail lines between milepost 0.0 and milepost 5.14 in Hutchinson, Reno County, Kan. (the Lines).

AD&A states that the Lines connect directly to a Union Pacific Railroad Company main line, and access indirectly the BNSF Railway Company's main lines. The notice states that the Lines also connect to a short stretch of track owned by the Hutchinson Salt Company, Inc. and/or Hutchinson Transportation Company (HSC/HTC). The notice further states that the HSC/HTC track connects to trackage owned by the City of Hutchinson (the City). According to AD&A, Mervis is acquiring property to construct a rail car repair facility adjacent to the City's trackage. AD&A states that the City and HSC/HTC will grant AD&A rights to operate over their respective tracks. According to the notice, HSC/HTC currently conducts private freight rail operations for itself over the Lines and, pursuant to the agreement, will continue to provide such service following AD&A's acquisition of the Lines.

AD&A certifies that the proposed transaction does not contain any provision or agreement that may limit future interchange of traffic with a third-party connecting carrier.

AD&A also certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

This transaction may be consummated on November 22, 2014, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 14, 2014 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35867, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David F. Rifkind, Stinson Leonard Street, LLC, 1775 Pennsylvania Ave. NW., Suite 800, Washington, DC 20006.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: November 4, 2014.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–26516 Filed 11–6–14; 8:45 am]

BILLING CODE 4915–01–P

[1] According to AD&A, on October 10, 2014, AD&A's parent company, Mervis Industries, Inc. (Mervis), executed a Memorandum of Understanding (MOU) with V&S for AD&A's acquisition of certain assets including the Lines from V&S. AD&A states that, pursuant to the MOU, the parties expect to enter into a definitive agreement providing for AD&A's acquisition no later than October 30, 2014.

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Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 214, 232, and 243
Training, Qualification, and Oversight for Safety-Related Railroad Employees; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 214, 232, and 243

[Docket No. FRA–2009–0033, Notice No. 3]

RIN 2130–AC06

Training, Qualification, and Oversight for Safety-Related Railroad Employees

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

ACTION: Final rule.

SUMMARY: FRA is establishing minimum training standards for all safety-related railroad employees, as required by the Rail Safety Improvement Act of 2008 (RSIA). The final rule requires each railroad or contractor that employs one or more safety-related railroad employee to develop and submit a training program to FRA for approval and to designate the minimum training qualifications for each occupational category of employee. The rule also requires most employers to conduct periodic oversight of their own employees and annual written reviews of their training programs to close performance gaps. The rule also contains specific training and qualification requirements for operators of roadway maintenance machines that can hoist, lower, and horizontally move a suspended load. Finally, the rule clarifies the existing training requirements for railroad and contractor employees that perform brake system inspections, tests, or maintenance.

DATES: This regulation is effective January 6, 2015. Petitions for reconsideration must be received on or before December 29, 2014. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before February 10, 2015.

ADDRESSES: Petitions for reconsideration or comments on such petitions: Any petitions and any comments to petitions related to Docket No. FRA–2009–0033 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Robert J. Castiglione, Staff Director—Technical Training, U.S. Department of Transportation, Federal Railroad Administration, 4100 International Plaza, Suite 450, Fort Worth, TX 76109–4820 (telephone: 817–447–2715); or Alan H. Nagler, Senior Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–309, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6038).

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I. Executive Summary

Purpose of the Regulatory Action and Legal Authority

FRA is issuing regulations establishing minimum training standards for each category and subcategory of safety-related railroad employee and the submission of training plans from railroad carriers, contractors, and subcontractors for the Secretary of Transportation (Secretary) approval, as required by section 401(a) of the RSIA, Public Law 110–432, 122 Stat. 4883, (Oct. 16, 2008), codified at 49 U.S.C. 20162. The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89(b). The statutory provisions are summarized below.

Section 20162(a)(1) mandates that the employers of each safety-related railroad employee be required "to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations." Paragraph (a)(2) of the statute mandated a requirement for employers to "submit training and qualification plans . . . for approval." In paragraph (a)(3), the statute requires that the Secretary ensure that the employer submitted programs specifically address the training of safety-related railroad employees

charged with the inspection of track or railroad equipment so that these employees are qualified to assess railroad compliance with Federal standards, not only to identify and correct defective conditions, but to initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries. Furthermore, paragraphs (b) and (c) of the statute set out the method of the plan approval and permit the Secretary to exempt employers from submitting plans previously approved.

The scientific literature on training, in general, and FRA's own experience with training in the railroad industry show a clear link between the quality of training programs—including whether training is engaging or "hands-on"—and safety. Even though rail transportation in the United States is generally an extremely safe mode of transportation, and rail safety has been improving, well-designed training programs have the potential to further reduce safety risk in the railroad environment. FRA believes that better designed training can reduce the number of accidents and incidents.

Summary of the Major Provisions of the Regulatory Action in Question

FRA is requiring that each employer of one or more safety-related railroad employees (whether the employer is a railroad, contractor, or subcontractor) train and qualify each such employee on the Federal railroad safety laws, regulations, and orders that the employee is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders. The final rule also requires that the training program developed by each employer be submitted to FRA for approval. FRA is proposing a holistic approach including minimum training and qualification standards, maximum refresher training intervals, review and oversight of the training programs, and performance standards. The approach consists of three main components:

1. A requirement that all employers produce and submit a training program for FRA approval.

2. A requirement that all employers implement this training program in the initial and ongoing training for all safety-critical railroad employees.

3. A requirement that certain employers monitor the outcomes of their training programs and revise the programs if and when evidence arises of the need for revision.

FRA believes that well-designed training programs have the potential to reduce risk in the railroad environment, therefore reducing the frequency and severity of accidents. FRA's expectation is that the programs submitted for approval will reflect the insights of training models that are recognized and generally accepted by the academic and training communities for formal initial training, on-the-job training (OJT), and refresher training. Furthermore, FRA expects that these training programs will use "hands-on" or engaging training methods where practicable and appropriate.[1] These programs will include: Initial, ongoing, and OJT criteria; testing and skills evaluation measures designed to ensure continual compliance with applicable Federal standards; and the identification of critical safety defects and plans for immediate remedial actions to correct them. The rule also contains specific training and qualification requirements for operators of roadway maintenance machines that can hoist, lower, and horizontally move a suspended load. Finally, the rule clarifies the existing training requirements for railroad and contractor employees that perform brake system inspections, tests, or maintenance.

Costs and Benefits

In analyzing the final rule, FRA has applied updated "Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses," March 2013. This policy updates the Value of a Statistical Life (VSL) from $6.2 million to $9.1 million and revises guidance used to compute benefits based on injury and fatality avoidance in each year of the analysis based on forecasts from the Congressional Budget Office (CBO) of a 1.07% annual growth rate in median real wages over the next 30 years (2013–2043). FRA also adjusted wage-based labor costs in each year of the analysis accordingly. Real wages represent the purchasing power of nominal wages. Non-wage inputs are not impacted.

The primary cost and benefit drivers for this RIA are labor costs and avoided injuries and fatalities, both of which in turn depend on wage rates.

Based on the new DOT guidance and CBO wage forecast, the total non-discounted cost of the final rule over the 20-year period analyzed is approximately $389.9 million. Present discounted costs evaluated over the first 20 years of the final rule equal about $290.9 million at a 3% discount rate and about $207.1 million at a 7% discount rate. The annualized costs are $26.2 million at a 3% discount rate and $36.8 million at a 7% discount rate.

Additionally, FRA has performed a break-even analysis of the final rule, estimating the reduction in railroad-related accidents and incidents that will be required in order for the benefits of the final rule to offset the costs. FRA believes the final rule will reduce rail-related accidents and incidents, and associated fatalities, injuries, and property damage, through implementation of the hands-on and other enhanced training methods.[2] Table 1 shows the total present discounted annual costs of accidents and incidents that would be incurred over the next 20 years, where injuries and fatalities have been monetized according to U.S. Department of Transportation (DOT) policies; and shows the percent reduction in accidents and incidents that would be necessary for the monetized reduction in fatalities, injuries, and property damages caused by these accidents to justify implementation of this final rule. These calculations take into account various recent and concurrent initiatives to address accidents, including implementation of Positive Train Control (PTC) systems, issuance of passenger hours of service regulations, development of conductor certification standards, a rule to provide protection to roadway workers working next to adjacent track, and the implementation of programs to address fatigue and electronic device distraction, among others.

Using the 2013 VSL guidance, FRA estimates that this final rule will break even if it results in a 20-year total reduction in relevant railroad accidents and incidents of 4.59% using a 3% discount rate, and 4.59% using a 7% discount rate. Another way to look at this break even reduction is to describe it in terms of how many accidents or

[1] In the background of this final rule, FRA uses the terms "hands-on training" and "hands-on training components." These terms are not meant to signify a type of formal training, but a technique used during some types of formal training (most commonly, classroom and on-the-job). Hands-on training include one or more activities in which there is an opportunity for learners to touch the items to be used to perform the task, and to attempt, practice, or perform portions of the task being learned. On-the-job (OJT) training allows the learner to actually do the tasks required on a job, under the close scrutiny of a qualified person. *See* § 243.201(c)(2).

[2] Hands-on training is generally used by instructors/trainers to re-enforce new skills to the learner. Hands-on can be a simulated exercise in a laboratory, classroom, or it can be used in the actual work environment similar to OJT. Hands-on activity enables the trainer/instructor to objectively assess learning transfer based on successful completion of the task to be performed.

incidents need to be avoided for the final rule to be worth the costs associated with it. In viewing the reduction in this manner, the break-even point corresponds to approximately 118 accidents and incidents per year on average over the 20-year period. Of course, no accident or incident is "average" and there are far fewer major accidents, fatalities, and severe injuries reported to FRA than there are other accidents/incidents meeting the reporting requirements. Of the 118 accidents and incident reductions necessary to break even annually, FRA considered that those would likely include at least one severe injury and many incidents that result in relatively minor, yet still reportable injuries.[3] Another way this rule would break even is by preventing one fatality and 86 injuries per year. Between 2001 and 2010, the number of accidents and incidents[4] decreased throughout the railroad industry due to various safety initiatives. During this same time period, there has been a significant growth in passenger and freight traffic. This new regulation on training standards should further contribute toward the decreasing trend of railroad accidents throughout the country in a more challenging, and higher traffic environment.

The following table summarizes estimates using the revised DOT guidance and CBO real wage rate forecasts.

TABLE 1—SUMMARY OF BREAKEVEN ANALYSIS

[2013 VSL guidance]

Present value of potential annual benefits (3% discount rate)	Total present discounted costs (3% discount rate)	Percent reduction for breakeven (3% discount rate)	Present value of potential annual benefits (7% discount rate)	Total present discounted costs (7% discount rate)	Percent reduction for breakeven (7% discount rate)
$6,333,998,623	$290,932,418	4.59	$4,507,378,459	$207,068,184	4.59

II. RSIA Requirement

Section 20162 of 49 U.S.C. requires the Secretary of Transportation (Secretary) to establish minimum training standards for safety-related railroad employees and the submission of training plans from railroad carriers, contractors, and subcontractors for the Secretary's approval. The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89(b).

FRA quoted the relevant provisions of Section 20162 in the proposed rule, 77 FR 6412, 6413–6414 (Feb. 7, 2012), and those provisions are summarized here. In paragraph (a)(1), the statute contained a mandate that the employers of each safety-related railroad employee be required "to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations." Paragraph (a)(2) of the statute mandated a requirement for employers to "submit training and qualification plans . . . for approval." In paragraph (a)(3), the statute requires that the Secretary ensure that the employer submitted programs specifically address the training of safety-related railroad employees charged with the inspection of track or railroad equipment so that these employees are qualified to assess railroad compliance with Federal standards, not only to identify and correct defective conditions, but to initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries. Furthermore, paragraphs (b) and (c) of the statute set out the method of the plan approval and permit the Secretary to exempt employers from submitting plans previously approved.

Please also note that there is a statutory definition of "safety-related railroad employee." 49 U.S.C. 20102. That definition was quoted in the NPRM. 77 FR 6414. The preamble and section-by-section analysis of both the NPRM and this final rule explain how FRA has interpreted that statutory definition.

Although the legislative history does not offer an explanation regarding why the statute requires that the rule should address contractors and subcontractors, FRA surmises that Congress recognizes that the railroad workforce consists of safety-related railroad employees, some of which are employed by railroads and others by contractors. These employees are side-by-side, often doing the same work, or doing work that was previously thought to be exclusively reserved for employees of a railroad. Contractors and subcontractors can be found on railroads of all sizes and kinds, from shortlines to major freight railroads, as well as passenger railroads. Given the statutory construction, Congress apparently recognized the need for FRA oversight of each contractor's training program and did not make an exception for small employers specifically. FRA has no evidence to suggest the risk posed by each safety-related employee differs by contractor size. This is especially so given the risks associated with working for a major railroad that operates trains in close proximity to one another, for long distances, at high speeds, and with heavy tonnage and train length. The same is true for the increased risks associated with employees of a contractor or subcontractor working for a commuter railroad where the protection of passengers and the general public at grade crossings is paramount.

III. RSAC Overview

In March 1996, FRA established the Railroad Safety Advisory Committee (RSAC), which provides a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. In the NPRM, FRA provided a list of RSAC members. 77 FR 6414. The membership list did not change between the NPRM and the end of the comment period.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by

[3] Accidents/incidents are reportable to FRA, and the requirements for when injuries reach the reportable threshold are found in 49 CFR part 225. For instance, nearly all accidents/incidents arising from the operation of a railroad that result in a death, injury, or occupational illness are reportable.

[4] In 2010, railroads reported to FRA 1,874 train accidents and 6,644 incidents.

consensus. The working group may establish one or more task forces or other subgroups to develop facts and options on a particular aspect of a given task. The task force, or other subgroup, reports to the working group. If a working group comes to consensus on recommendations for action, the package is presented to RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation.

Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goals, is soundly supported, and is in accordance with applicable policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA would explain in the rulemaking documents that RSAC did not make a consensus recommendation on a particular issue. Of course, whether FRA receives an RSAC recommendation or not, FRA is free to use information collected from RSAC participants as a basis for any of its decisions during the rulemaking action.

IV. RSAC Training Standards and Plans Working Group

As discussed in the NPRM, this proposal was based primarily on the consensus recommendations of RSAC. 77 FR 6415. The NPRM was published for comment on February 7, 2012 and provided background on the task statement, the organizations and businesses that participated as the Working Group, and the number of meetings held. The docket contains minutes from those meetings.

In order to further benefit from the input of the RSAC, FRA held a meeting with the Working Group on May 8, 2012 in Washington, DC. The purpose of the meeting was to allow the Working Group's members to provide further written or oral comment on the public comments on the NPRM. Although FRA was interested in areas of agreement, FRA did not take the further step of bringing any issues to the full RSAC for a formal recommendation as the issues in disagreement did not appear to substantially impact the prior consensus-based recommendations. Minutes from this meeting are part of the docket in this proceeding and are available for public inspection.

V. Discussion of Specific Comments and Conclusions

FRA received written comments in response to the NPRM from a number of interested parties. As previously mentioned, FRA discussed these comments with the Working Group to allow RSAC commenters an opportunity to elaborate on any comments filed, including their own. FRA did not receive a request for a public hearing and none was provided.

Most of the comments are discussed in the Section-by-Section Analysis or in the Regulatory Impact and Notices portion of this final rule directly with the provisions and statements to which they specifically relate. Other comments apply more generally to the final rule as a whole, and FRA is discussing them here. Please note that the order in which the comments are discussed in this document, whether by issue or by commenter, is not intended to reflect the significance of the comment raised or the standing of the commenter.

A. Implementation Dates and Incentives for Early Filing of Programs

In the NPRM, FRA identified a major issue under the heading "Incentives for Early Filing of Program." FRA's intent was to encourage interested parties to file comments regarding how to make the training program submission and review process quicker and more efficient. FRA raised several proposals and explained that the agency was willing to consider any incentives or approaches that are intended to encourage early submission and improve the efficiency and effectiveness of the review process. The paramount issue was whether the proposed implementation schedule provided model program developers with sufficient time to develop programs and receive FRA approval, keeping in mind that employers would not use those model programs unless the employers were provided with a reasonable amount of time to consider using those programs prior to the employer's deadline for implementation.

Reaction to the NPRM

The following is a summary of the comments received on this issue. No commenter took the position that the NPRM provided an employer with sufficient time to consider model programs and develop a program. Nearly every comment focused on the proposed existing employer's burden to meet the implementation deadline of one year and 120 days after the effective date of the rule. Only a few comments focused on the incentives for early filing of programs suggested by FRA in the NPRM.

The National Railroad Construction and Maintenance Association (NRC) states that the NPRM does not afford adequate time for model programs to be developed. NRC requests that model program development be completed within three years of the effective date of the final rule and that each contractor then have two additional years to gain approval of and implement its program. Thus, NRC requests five years for contractors to implement training programs rather than the proposed requirement of one year and 120 days after the effective date of the rule.

AAR agrees that the time frames in the NPRM are aggressive and provides several reasons why they should be extended. AAR explains that railroads will need to craft training programs and establish new processes for retention of training records and related information, including new or revised IT programs. FRA will need time to review and approve each program. After approval, railroads will need time to implement the programs during the regular training cycle in the first half of each calendar year. AAR suggests that the effective date for providing training under the rule be January 1 three years after publication of the final rule. AAR also reminds FRA to ensure that all of its compliance deadlines are consistent, including the date by which refresher training must begin.

ASLRRA mentions that it urges the adoption of AAR's recommendation to extend the filing date for each railroad's training program to three years and contractor programs to five years. ASLRRA explains that it does not currently have the financial or personnel resources to create model programs. Even with FRA's help, ASLRRA envisions that it will take at least two years to create and obtain approval of any model programs. Because ASLRRA considers three years to be a very aggressive schedule, it appears to suggest in its comment that it would be amenable if FRA were to

provide short line railroads with even more time to submit a training program.

APTA recommends that FRA extend implementation dates for passenger rail systems to six years. APTA believes passenger railroads could begin phasing in new training in three years, but would not complete training until year six. APTA states that phasing in the development and implementation of training is more realistic in consideration of the complexities of the public funding and public budget processes to which nearly all commuter railroads are subject. Likewise, the Metropolitan Transportation Authority (MTA), which includes LIRR and MNCW, recommends that the implementation schedule provide at least three years to implement a program. MTA raised the additional concern that it be provided with the flexibility to start a new training program at the beginning of the calendar year.

REB states that it would be helpful for the employers' implementation date to be pushed back at least one year after the implementation date for training organizations and learning institutions. REB believes this one year extension would provide an employer with sufficient time to consider whether it can use a specific solution from an outside training organization or learning institution. Without this extra time, REB maintains that an employer may be thrown into a situation where it has to develop its own material or seek a solution from other training vendors quickly.

One commenter recommends pushing back the deadline for a small employer to at least one year after the submission deadline for model programs submitted by other entities. FRA notes that neither the proposed rule nor final rule contains a deadline for model program submission. Another commenter does not believe FRA would have the time to examine all the initial training courses and conduct continual yearly inspections.

FRA's Response

Throughout the RSAC and rulemaking processes, FRA has continuously recognized the importance of providing employers, and every other type of entity that must file a training program, with sufficient time to consider all options and draft the required programs. FRA is acutely aware of the annual training cycle followed by the major railroads and the agency does not intend to disrupt that cycle by any requirement promulgated in this rule. Furthermore, in the NPRM, FRA raised the topic of incentives for early filing of programs due to the concern that the agency's program review process could be time consuming and resource intensive. Thus, the comments echo many of the same concerns that FRA raised in the proposal, and confirm the need to provide more generous implementation deadlines than those proposed.

The NPRM's preamble discussion included several suggestions involving how to encourage the filing of programs that have the benefit of being used by multiple employers. For instance, in § 243.105, FRA proposed an option for any organization, business, or association to develop one or more model training programs that could be used by multiple employers and that option has been retained in the final rule. Likewise, in § 243.111, FRA proposed an option for programs to be filed by training organizations and learning institutions, and that option has also been retained in the final rule. FRA expects that most class III railroads and contractors, and some class II railroads, would prefer to utilize one of these options.

In the NPRM, one of FRA's suggestions was to encourage model program developers to file early. The comments received suggested that those organizations most likely to develop model programs believe that development of such programs will be more difficult than originally contemplated. Consequently, the commenters do not believe model programs can be developed on a more compressed schedule. The comments suggest that the incentives to file early are unlikely to work and the employers that are most likely to benefit from model programs would be left scrambling to cobble together individual programs. If the commenters are right, a tight implementation schedule would defeat other provisions that appear to provide choices and flexibility in adopting a training program developed by an entity other than the employer.

In order to solve this dilemma, FRA is turning to an option it suggested in the NPRM. In the proposed rule, FRA stated that the deadline for an employer submission, under § 243.101(a), could be pushed back so that the deadline would be at least one year after the submission deadline for an existing training organization or learning institution under § 243.111(b), instead of the proposed 120 days. REB commented that it agreed with this suggestion. Obviously, if employers are provided with more time to consider model programs, as well as programs of training organizations and learning institutions, the employers are more likely to find such programs suitable for use either off the shelf or with some tailoring to fit the employer's individual needs. Thus, FRA has decided to extend the deadline to file a program until January 1, 2018, for an existing employer conducting operations subject to this part with 400,000 total employee work hours annually or more. FRA also plans to issue a compliance guide, that can be used by all employers, but written with a primary emphasis on assisting small entities. The compliance guide will also help model program developers in drafting programs to be adopted by small railroads and contractors. Thus, for an existing employer with less than 400,000 total employee work hours, FRA has decided to extend the deadline to file a program until January 1, 2019 or four years from the date of issuance of FRA's Interim Final Compliance Guide, whichever is later. For an employer with less than 400,000 total employee work hours annually that commences operations subject to this part after January 1, 2018, but prior to the date that similarly sized small employers will be required to submit a program, the regulation permits the employer to abide by the later deadline of January 1, 2019 or four years from the date of issuance of FRA's Interim Final Compliance Guide, whichever is later, rather than adopting and complying with a training program upon commencing operations. These extended deadlines are found in § 243.101(a)(1), (a)(2), and (b) of this final rule respectively. Please note that FRA considered an NRC comment described in the agency's final policy statement concerning small entitities subject to the railroad safety laws, 68 FR 24891 (May, 9, 2003), when considering how to define small entities under this rulemaking. In response to that interim policy statement, NRC requested that FRA define contractor small entities as those entities having less than a total of 400,000 total employee work hours annually without any qualifier such as limiting small entities to those with $20 million or less in annual operating revenues. In the policy statement, FRA explained that it would retain the ability to use different criteria to tailor the appliciablity of the rule to address a specific problem, *e.g.*, a problem related to defining small contractors, and that limiting small entities by total employee work hours annually, as FRA has done here, is appropriate under this type of circumstance.

An employer's initial program is considered approved upon submission and therefore it may be implemented immediately upon submission, but certainly must be implemented no later

than the applicable deadline. These extensions, from the proposed implementation date of one year and 120 days from the rule's effective date, will provide each employer with at least three years (or at least four years, if a small entity employer) to develop its own program or adopt a program developed by other entities. The significantly longer implementation period is consistent with the requests made by AAR and MTA, as well as ASLRRA's request for an extension for railroads. APTA and NRC requested a bit more time, but FRA does not believe that employers will need five or six years to develop training programs, especially when these employers will be able to adopt previously approved model programs or seek help from training organizations and learning institutions with approved programs.

Although there is no deadline for filing a model program under § 243.105, model programs will generally not be adopted by employers unless they are developed and made available well before an employer's program is due. FRA addressed a portion of this problem by proposing to extend the deadline for an employer to file. However, the proposed rule also created uncertainty for developers of model programs regarding when the developers could expect to receive approval or disapproval of a submitted model program. To combat this uncertainty, FRA has adopted another of the agency's suggestions from the NPRM. Thus, in this final rule FRA is adding paragraph (a)(3) to § 243.105 so that model program developers can be assured that each model training program submitted to FRA prior to May 1, 2017, will be considered approved and may be implemented 180 days after the date of submission unless FRA advises the organization, business, or association that developed and submitted the program that all or part of the program does not conform. By adding this condition, model program developers can be assured that they may begin marketing their model programs 180 days after filing such a program with FRA unless the agency explicitly disapproves any portion of the program. This implicit approval process also encourages FRA to more quickly review model programs and a byproduct may be that FRA is able to approve some model programs in less than 180 days. Please note that model programs could be filed after May 1, 2017, but FRA will be under no obligation to review and approve those programs in a set period of time, nor would most employers that are likely to use model programs be able to use such a program if it is not approved ahead of the deadline established in § 243.101(a)(2).[5]

AAR also recommends that FRA ensure that all of its compliance deadlines are consistent, including the date by which refresher training must begin. FRA presumes that AAR wants the implementation dates to be consistent with one another so that the timeline for action has a logical flow, and the agency agrees with this approach. Consequently, the final rule contains a number of corresponding implementation date adjustments. For example, each employer with 400,000 total employee work hours annually or more under § 243.201(a)(1), will be required to designate each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory as of September 1, 2018, which therefore provides 8 months from the date that the employer's program is due under § 243.101(a)(1). A similar deadline change is being made by creating a separate requirement in § 243.201(a)(2), for small entity employers, so that it corresponds with the, deadline contained in § 243.101(a)(2).

AAR also specifically raised the issue that the proposed period for initially implementing refresher training should be extended. Again, FRA agrees. The NPRM proposed that employers begin refresher training beginning on January 1, two years after the effective date of the final rule. If FRA had left the proposal intact, refresher training would be required starting January 1, 2017. However, the final rule will not require employers to file programs until January 1, 2018, at the earliest, so the proposed deadline clearly would not work. Given the extended deadlines for filing programs, corresponding changes were made in setting the final rule's deadlines for beginning the implementation of a mandatory refresher training program. Thus, each employer with 400,000 total employee work hours annually or more must have a refresher training program in place on January 1, 2020 and, likewise, each employer with less than 400,000 total employee work hours annually must have a refresher training program in place on January 1, 2022 or six years from the date of issuance of FRA's Interim Final Compliance Guide, whichever is later. These deadlines for "beginning" to deliver refresher training are not deadlines for "completing" that refresher *training* for each existing employee. FRA has set deadlines for completing refresher training for each existing employee: December 31, 2022 for each employer with 400,000 total employee work hours annually or more, and December 31, 2023 for each employer with less than 400,000 total employee work hours annually. Otherwise, when an employee is due for refresher training will depend on when that employee last had initial or refresher training covering the subject matter.

During Working Group meetings and in the NPRM, FRA expressed the opinion that a grace period should be provided for starting refresher training as well as credit provided for any training provided in the last three years, even though that training might have been conducted prior to the adoption of the training program required by this part. FRA reviewed the refresher training deadline proposal and found that it was too constricting. The proposed refresher training concept would not have granted an employer a reasonable grace period when many employers will train one-third of their workforce each year. In order to provide some kind of grace period that would accommodate the typical refresher training cycle, the rule would need to stretch the refresher training deadline to more than three years after the deadline for adoption of a program. Thus, the final rule is extending the deadline for completing mandatory refresher training to December 31, 2022, for each employer with 400,000 total employee work hours annually or more, and to December 31, 2023, for each employer with less than 400,000 total employee work hours annually. This means that whether an employer is large, medium, or small, the employer will have two calendar years from its program submission deadline to begin implementing a refresher training program and an additional three calendar years to complete providing refresher training to all safety-related railroad employees who have not had a relevant training event per the employee's designation in an occupational category or subcategory within the past three calendar years. FRA's expectation is that the relaxation of the implementation schedule should make it easier for employers to comply with the rule.

[5] In the Regulatory Impact Analysis filed in the docket, FRA estimates that 1,459 employers with less than 400,000 total annual work hours annually may choose to adopt a model program rather than develop their own program. FRA estimates that an additional 11 employers with more than 400,000 total annual work hours annually may choose to adopt a model program and would need to meet the earlier January 1, 2018 deadline for program submission found in § 243.101(a)(1).

FRA notes its disagreement with the commenter that contended that FRA would not have the time to examine all the initial training courses and conduct continual yearly inspections. The relaxation of the implementation dates should lead to greater use of model programs and the use of training organizations and learning institutions. FRA approval of those programs first should ease FRA's program review burden. Meanwhile, FRA has already begun the process of considering how to allocate its resources to accomplish training program reviews and audits. Finally, FRA notes that it is not under any legal mandate to conduct yearly inspections or audits of every employer covered by this rule.

B. Hazmat Employees Not Covered

FRA received two comments requesting that the rule contain explicit language that hazardous materials training is not covered by this rule. AAR recommends that FRA clearly state in the purpose and scope section that hazardous materials training is not covered by these regulations because the NPRM was not clear enough on this point. A second commenter recommends that FRA specify in the regulation that hazmat employees, hazmat employers, and hazmat training organizations and learning institutions be explicitly excluded from the regulation.

FRA's Response

FRA generally agrees with the commenters that it is better to include an explicit statement regarding the scope of the rule than to leave that issue to the preamble. However, FRA was not ambiguous in the NPRM regarding whether the proposed rule covered hazardous materials training. In the section-by-section analysis for proposed § 243.5, definition of safety-related railroad employee, FRA stated that the NPRM did not address the training of hazmat employees even though the statutory definition of safety-related railroad employee covers a hazmat employee of a railroad carrier as defined in 49 U.S.C. 5102(3). FRA proposed to decline regulating the training of hazmat employees in this rule as that training is already extensively covered by DOT regulations promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA). *See e.g.,* 49 CFR part 172, subpart H. The hazmat training required by PHMSA for hazmat employees mandates general familiarity with hazmat requirements, especially when the employee's duties may impact emergency responses, self-protection measures and accident prevention methods and procedures. *See* 49 CFR 172.200(b). FRA is satisfied that the training requirements are sufficiently addressed by PHMSA and does not believe that Congress intended for FRA to overcomplicate the existing rules governing hazmat training.

Despite the agency's clarity on this issue in the NPRM, FRA has decided to address the issue by adding a paragraph (e) to § 243.1 of this final rule that explicitly excludes hazmat training for hazmat employees and clarifies that such training can be found in 49 CFR part 172, subpart H. Paragraph (e) states that "[t]he requirements in this part do not address hazardous materials training of 'hazmat employees' as defined in 49 CFR 171.8." However, this exclusion does not mean that a hazmat employee would not be covered under any circumstances. The definition of hazmat employees in PHMSA's regulation is so broad that it encompasses railroad signalmen, railroad maintenance-of-way employees, and even locomotive engineers if they operate a vehicle used to transport hazmats. FRA certainly intends to cover the training for these "safety-related railroad employees" when they are doing safety-related tasks, even if these types of employees may also be defined by PHMSA as hazmat employees and require additional training under PHMSA's regulations. *See* § 243.5 (defining "safety-related tasks"). In other words, paragraph (e) is intended to be read so that a hazmat employee will need to be trained in accordance with this part to the extent that the employee is doing safety-related tasks that are not covered by hazmat training required elsewhere in 49 CFR Subtitle B. Subtitle B encompasses other regulations relating to transportation, including hazmat training regulated by PHMSA found at 49 CFR part 172, subpart H. The training required by PHMSA does not overlap with the training required by this final rule.

FRA disagrees with the comment recommending that FRA specify in the regulation that hazmat employees, hazmat employers, and hazmat training organizations and learning institutions be explicitly excluded from the regulation. FRA declines to accept this comment because it is too broad and may have implications beyond what the commenter intended. That is, if the recommendation were adopted as suggested by the commenter, the rejected requirement could be viewed as excluding any railroad (or employer) employing a hazmat employee instead of excluding just the hazmat training for those hazmat employees. For that reason, FRA has rejected that recommendation.

C. Preemptive Effect and Construction

FRA received a jointly filed comment from BLET, BMWED, and BRS ("joint labor comment"), that agreed with FRA's statement in the NPRM's section-by-section analysis to § 243.201 that "[o]f course, FRA does not regulate employment issues and will leave those issues to be settled in accordance with any applicable collective bargaining agreement or employment and labor law." 77 FR 6435. The joint labor comment would like FRA to go further by adding a paragraph (e) to § 243.1 that states that "[n]othing in this part diminishes any rights, privileges, or remedies a safety-related employee may have under any collective bargaining agreement or State or Federal law." During the Working Group meeting to discuss the comments, BMWED pointed out that there is no appeals process in the NPRM and that FRA should preserve the employees' rights that exist today, whether those rights are found in a collective bargaining agreement or anti-discrimination statutes.

FRA's Response

FRA stands by the statement in the NPRM cited by the joint labor comment. However, based on the principles set forth in Executive Order 13132, and affirmed in the Presidential Memorandum regarding preemption issued on May 20, 2009, it is unnecessary to include a statement in the rule regarding whether any requirement in the rule is expected to diminish any rights, privileges, or remedies a safety-related railroad employee may have under any collective bargaining agreement, State law, or Federal law.

D. Request for Preemption Provision for Entities That Develop Model Programs

Two commenters, NRC and ASLRRA, were concerned that entities that develop model programs could be subject to State causes of action should an injured individual claim that harm resulted from inadequate employee training derived from a model program created in response to this training rule. The comments raise a concern that the threat of litigation is a real disincentive for organizations to create model programs and that, without a preemption provision, the model program option will not be utilized.

FRA's Response

FRA does not have the legal authority to preempt the use of model training programs as a basis for liability or discovery in private litigation. Thus, FRA is not including such a preemption provision. The basis for this request may

be the result of similar discussions in the context of the risk reduction and system safety plan rulemakings. In that context, however, a statute provides FRA with the authority to conduct a study on the issue and, on the basis of the results of that study, FRA will be able to include some preemption language in those specific rules, if applicable. Meanwhile, as a general matter, FRA cannot decide by regulation whether documents, such as a model training plan, would be discoverable in litigation, and the agency's statutory preemption provision at 49 U.S.C. 20106(b)(1)(B) specifically provides that State law causes of action for death, injury, or property damage are not preempted if they are based on the failure of a party "to comply with its own plan, rule or standard that it created pursuant to a regulation or order issued by" the Secretary of Transportation.

E. Training Required of Manufacturer's Employees and Other Contractors Who Inspect, Repair, and Maintain Equipment off Railroad Property

FRA received a comment from GE Railcar requesting clarification of the purpose and scope of the rule found in § 243.1. GE Railcar's position is that its leasing and repair activities fall outside the scope of the rule and this contractor would like FRA to confirm its understanding. GE Railcar's business represents most of the diversity of the railcar business because it leases railroad cars, operates railcar repair shops, and has mobile repair capabilities to perform railcar repairs at a customer's site on railcars that it leases. FRA notes that some contractors may also operate a railcar or locomotive repair shop for a railroad on a railroad's property that is not a mobile repair situation. GE Railcar reads the proposed rule and guiding section-by-section analysis as limited to companies and their employees who have contracted with a railroad and are actually working on a railroad's real property.

FRA's Response

GE Railcar's comment raises a scope question. A review of the NPRM found that the proposal adequately addressed the scope question as it pertains to track and signal system repair. However, the NPRM could have described how the rule pertains to mechanical repair work in greater detail. Thus, the following paragraphs explain the scope of the final rule in relation to GE Railcar's question.

In describing item (4) of the definition of safety-related railroad employee in the NPRM, FRA explained the scope of training for an individual who is engaged or compensated by an employer to inspect, repair, or maintain locomotives, passenger cars, or freight cars. The NPRM's section-by-section analysis stated that the inclusion of proposed item (4) "is essential [so] that individuals doing such safety-sensitive work are trained to comply with those laws or rules mandated by the Federal government for keeping those locomotives and cars in safe order." 77 FR 6412, 6423.

In deciding the scope question for mechanical personnel supplied by contractors, the answer mainly rests on the contractual obligations the non-railroad company owes to the railroad. For example, a company that simply manufactures or leases rolling equipment (i.e., locomotives and railroad cars), but does not inspect, repair, or maintain the purchased or leased rolling equipment, does not have any duty under this rule to file a training program because its employees are not performing any of the duties that would cause the employees to be classified as "safety-related railroad employees." In other words, the manufacturer or lessor of the rolling equipment would not be under contract with the railroad to inspect, repair, or maintain locomotives, passenger cars, or freight cars. Under this example, the railroad that purchases or leases the rolling equipment would have the duty to inspect the rolling equipment and make sure it complies with all applicable Federal railroad safety laws, regulations, and orders before placing the rolling equipment in use. *See e.g.*, 49 CFR 229.21 (requiring locomotives to have a daily inspection), and part 231 (requiring certain safety appliances meeting specific standards), and part 232 (requiring the inspection and testing of brake systems). If an inspection revealed that repairs or maintenance were necessary, it would be the responsibility of the railroad to arrange for those repairs or that maintenance to be completed. Under these circumstances, a railroad would need to file a training program under this rule and train its employees to perform the inspections, repairs, and maintenance; or, the railroad could hire a different company to contract the work and accept the training responsibilities.

If a manufacturer or lessor of rolling equipment is under contract to provide a railroad with inspection, repair, or maintenance services necessary to comply with the federal regulations, then the contractor is required to train the employees performing those services in accordance with a training program required under this rule. *See* 66 FR 4104, 4165 (January 17, 2001) (explaining that FRA intends for the training and qualification requirements of 49 CFR 232.203 to apply not only to railroad personnel but also to contract personnel that are responsible for performing brake system inspections, maintenance, or tests required by part 232). FRA does not believe there is any distinction made for contractor services performed off railroad property versus on railroad property. It also should not matter whether the repairs are made at a fixed location on the railroad's property or from a mobile repair facility.

F. Application and Responsibility of Compliance for Tourist, Scenic, Historic, and Excursion Railroads

One commenter characterizes tourist, scenic, historic, and excursion railroads as largely run by people who are untrained and as railroad operations with many safety concerns. This commenter warns that the public will be put further at risk because the NPRM excludes these railroads from the training requirements. Thus, the commenter requests that FRA apply the final rule to tourist, scenic, historic, and excursion railroads.

FRA's Response

As noted in the NPRM, the final rule would apply to tourist, scenic, historic, and excursion railroads that operate on the general system, which are the railroads that present the highest risk to members of the public. As discussed in the NPRM, FRA intends to apply its published policy statement regarding how the agency regulates tourist, scenic, historic, and excursion railroads, in determining necessary compliance with the provisions of this final rule. As stated in 49 CFR part 209, appendix A—The Extent and Exercise of FRA's Safety Jurisdiction (the Policy Statement), FRA asserts broad jurisdiction over tourist operations, and explains that it works to ensure that the rules it issues are appropriate to the circumstances of the tourist railroad industry. For example, FRA does not exercise jurisdiction over insular tourist railroads that are off the general system, and it applies a limited number of its regulations to non-insular tourist railroads that are off the general system. Additionally, FRA has excluded all tourist railroads from certain of its regulations, *i.e.*, 49 CFR parts 238 and 239 (passenger equipment safety standards and passenger train emergency preparedness). FRA stated in the Policy Statement that "[i]n drafting safety rules, FRA has a specific obligation to consider financial, operational, or other factors that may be unique to tourist operations . . . [and therefore] we work to ensure that the

rules we issue are appropriate to their somewhat special circumstances." However, the enforcement policy retains all of the general power and enforcement provisions of the rail safety statutes, including the authority to obtain subpoenas and civil penalties and to issue disqualification orders and emergency orders.

FRA only has limited resources, so it focuses on regulating those areas that would generate the most safety benefit. In the NPRM, FRA stated that the decision to exclude certain types of tourist operations that are not part of the general system of transportation is consistent with FRA's jurisdictional policy that already excludes these operations from all but a limited number of Federal safety laws, regulations, and orders. FRA disagrees with the contention that tourist, scenic, historic, and excursion railroads that do not operate on the general system of transportation are categorically unsafe and FRA continues to believe that it should not impose these training requirements on these small operations.

G. Application to Private Motorcar Operators

One commenter raises an objection to private motorcars being operated on the general railroad system when the people operating these cars are untrained. A different commenter disagrees with the first commenter and states that, in his experience, motorcars have been safe and including them in this training rule would be over-reaching the intent of the RSIA.

FRA's Response

The comment regarding the application of this rule to the training of motorcar operators is surprising to FRA because since August 1, 1963, railroads have been prohibited from permitting motorcars to pull or haul trailers, push trucks, hand cars, or similar cars or equipment on their track. 49 CFR 231.22. A railroad motorcar is generally considered an antiquated piece of self-propelled on-track equipment that has been relegated to use by hobbyists.

Considering that this rule only applies to the training of any person employed by a railroad or contractor of a railroad as a safety-related railroad employee, it clearly does not apply to private motorcar owners and hobbyists who obtain permission from a railroad to operate on the railroad's track for purposes of enjoying the hobby. FRA has no basis to support the commenter's assertion that the operation of a private motorcar is so inherently unsafe that FRA should begin regulating the training of private operators who have taken up this hobby.

H. Application to Bridge Inspectors and Small Engineering Firms

One commenter requests that the rule exempt small engineering firms that perform bridge inspections. The comment states that the cost of compliance is too great for these small entities. Meanwhile, the commenter concedes that training of such individuals on roadway worker protection should still be required to ensure on-track safety.

FRA's Response

FRA is sensitive to the costs imposed by this rule, especially costs imposed on small entities, and the agency has addressed the costs and benefits elsewhere in this rule. The statute mandating this rule specifically requires that FRA address contractor training without regard to the number of employees or total annual operating revenue. FRA is concerned that if it were to provide an exemption to small entity contractors, a great number of safety-related railroad employees would not be covered by this rule and potentially would not receive the same quality training required by this rule.

This preamble includes information regarding the substantial industry feedback on the NPRM and the comments received to the NPRM. FRA has not previously heard from the industry that any particular group of small entities will not be able to comply with the rule due to the costs involved. The option to use a model program or use programs submitted by training organizations or learning institutions should greatly ease the burden on small entities. FRA also expects to clarify the requirements and ease the burden on small engineering firms that conduct bridge inspections by addressing the issue in its compliance guide. Consequently, FRA does not agree that there is sufficient justification to exclude an entire type of small entity contractor from the responsibility to comply with this final rule.

I. Qualified Instructor

One commenter recommends adding a definition of "qualified instructor" and that the definition state that the instructor must have "exclusive, independently verifiable, educational training experience." The commenter's concern is that, without specifically defining the parameters of a qualified instructor, regional and short line railroads will have an incentive to designate individuals as instructors who are truly unqualified.

FRA's Response

In the NPRM, FRA defined the term "designated instructor" but not "qualified instructor." However, the section-by-section analysis in the proposed rule describing the definition of designated instructor addressed the qualification issue. The analysis stated that "FRA expects only qualified instructors will be designated, which explains why FRA is including in the definition that each designated person must have 'demonstrated, pursuant to the training program submitted by the employer, training organization, or learning institution, an adequate knowledge of the subject matter under instruction and, where applicable, has the necessary experience to effectively provide formal training.'" 77 FR 6422. As FRA has concluded that the proposed definition of a "designated instructor" includes the requirement that the instructor be qualified, and the term "qualified" is adequately defined, there is no reason to add a definition for "qualified instructor."

FRA also does not share the commenter's concern that regional and short line railroads will have an incentive to designate individuals as instructors who are truly unqualified. It is reasonable to expect a railroad to employ instructors who can impart adequate knowledge on employees. A railroad that knowingly or negligently designates an unqualified person as an instructor would create unnecessary risk that the instructor, or an employee improperly trained by the instructor, would cause harm when attempting to perform a safety-related task. In an industry where safety lapses can result in serious injuries and costly accidents, an employer that fails to take the proper precautions to ensure that only qualified persons are designated as instructors would be taking on too much liability.

J. Training for Designated Instructors and Supervisors Performing Oversight

AAR requests clarification regarding the training required for supervisors performing oversight. In AAR's view, a supervisor performing oversight should not necessarily be required, in all instances, to successfully complete the same craft training that the employees would be required to complete in accordance with the program. Instead, AAR suggests that a supervisor performing oversight should be trained on how to perform the oversight task.

Similarly, AAR asks FRA to address the training required for a designated instructor in the final rule. AAR states that a railroad might choose, as part of a training program for train crews, to

have a person address the subject of fatigue mitigation who is not a conductor or engineer. AAR interprets the proposed rule so that the designated instructor needs to have demonstrated adequate knowledge of the subject under instruction, but does not need to be qualified in the occupational category or subcategory of the employees being trained.

FRA's Response

FRA agrees with AAR's comment that not every designated instructor or supervisor performing oversight will need the identical training that the employer is providing to each occupational category or subcategory of safety-related railroad employee that is being trained by an instructor or subject to oversight by a supervisor. However, in instances where the training is not identical, the employer will need to discern how the instructor or supervisor can be deemed qualified. Typically in these instances, an employer will find an instructor qualified because the person holds a degree or certification from a training organization or learning institution, and an employer will find a supervisor qualified because the person has significant relevant work experience and can prove knowledge of the applicable rules. Certainly, FRA agrees with AAR that the important issue is that the instructor is qualified on the subject matter to which the instructor is instructing, not all the subject matters necessary to be qualified in the occupational category or subcategory of the employees being trained.

The more difficult question, which AAR did not address in its comment, is what substitutes for the actual occupational category or subcategory training when the technical aspects of that training are involved. For example, can anyone who is not a carman instruct or supervise another carman on how to conduct certain equipment repairs or maintenance? FRA theorizes that an instructor in a classroom setting could be a college graduate with a degree in mechanical engineering, and thus would be qualified without having been through the employer's training program for a carman. In other instances, a supervisor may only need to know the rules to conduct oversight, yet never have been qualified in the same occupational category or subcategory as the employee subject to oversight. For instance, a Manager of Operating Practices (MOP) observes that the roadway worker in charge of a work group does not conduct a proper job briefing, nor set up roadway worker protection correctly; in this situation, as long as the MOP understands and can apply the rule correctly, there should be no impediment to the MOP conducting the oversight.

FRA also agrees with AAR that a supervisor performing oversight could not be deemed qualified without being trained on how to perform the oversight task. In conclusion, an instructor or supervisor may be qualified without successfully completing the same training that the employees would be required to complete in accordance with the program, but FRA will be scrutinizing such qualification requirements that substitute for that training to ensure that the railroad has provided an adequate basis for determining the individual is qualified.

K. Refresher Training

One commenter questioned whether the regulation should define refresher training and whether initial training courses can substitute for refresher training courses.

FRA's Response

FRA included refresher training in the proposed rule in order to address Congress's mandate that the training regulation include requirements for "ongoing training." The NPRM did not define the term "refresher training," but the issues surrounding this particular type of training were described in the section-by-section analysis to paragraph (e) of § 243.201. In the NPRM, FRA made clear that refresher training could be exactly the same as initial training, but that it does not have to be exactly the same training. Refresher training is expected to be comprehensive, but the developer of the training should develop it with the understanding that the employees participating have experience in the subject matter of the training. Experienced employees may not need the step-by-step instruction covering every requirement that would be included in initial training. In other words, the refresher training may not need to cover truly basic tasks or issues that no practicing employee in that field would have a question about.

Refresher training should most likely be focused on placing greater emphasis on advanced areas or subjects that often lead to accidents, injuries, or non-compliance. For example, experienced employees would benefit from refresher training that identifies those behaviors that often lead to accidents/incidents or close calls. Refresher training may also address systemic performance gaps, or possible substantive amendments to existing regulations. FRA expects that by conducting periodic oversight under § 243.205 and the annual review in § 243.207, employers will be gathering significant information that will help them design refresher training that is data driven to close knowledge or performance gaps. However, FRA certainly would not take exception to refresher training that is identical to an initial training course on the same subject.

Although not raised by the comments, FRA considered whether employees should be allowed to test out of refresher training. The concept is that experienced employees would demonstrate their knowledge and perform a sufficient number of tasks so that the employer could determine that refresher training is unnecessary. FRA did not consider a test out option to be viable for several reasons. One, Congress's mandate that the training regulation include requirements for "ongoing training" did not contemplate a testing out option, and so FRA is concerned that such an option would conflict with the statutory mandate. Two, as explained in the previous paragraph, refresher training is expected to be data driven and applied systemically. If individuals could test out, the effectiveness of the final rule could be diminished. Three, even experienced employees may need refresher training to help them better understand rules or tasks that are not conducted often. Four, there may also be more than one way to do a task, and sharing that information during a mandatory refresher training class could make the employee more efficient or aware of additional options. Five, experienced employees, taking training with other experienced employees, may be more reluctant than employees new to an occupational category to ask questions clarifying how to properly conduct certain tasks considered routine. The data-driven refresher training provides critical information to all participating employees thereby reducing the need for individualized refresher training programs.

FRA also did not receive comments challenging the minimum three-year cycle for refresher training, even though FRA raised the issue during the RSAC Working Group's meetings and in the NPRM. 77 FR at 6436. The reason the three year refresher cycle probably was not challenged is that it has become a railroad industry standard, except where refresher training is required more frequently. FRA has some refresher training requirements in its railroad safety regulations that are more stringent than every three years, and in §§ 243.1(c) and 243.201(e) it is made clear that compliance with those more stringent refresher training cycles is still required. In promulgating this final rule,

FRA has accepted the RSAC's recommendation that a three year refresher cycle is acceptable to the industry and is beneficial to employees.

FRA has added a definition of refresher training to the final rule, based on the definition in 49 CFR 238.5, to further address the commenter's concerns. That definition is explained in the section-by-section analysis to § 243.5

L. Waivers

In the NPRM, FRA included a proposed section explaining how a person may petition the Administrator for a waiver of compliance with any requirement of this part. Meanwhile, FRA stated in the section-by-section analysis that "this section may be unnecessary because 49 CFR part 211 sufficiently addresses the waiver process." 77 FR 6425. FRA requested comments on whether the proposed waiver section should be removed and FRA received several comments, all in support of removing the waiver provision. The commenters frequently cited that the waiver provision should be removed as unnecessary and to reduce confusion. Furthermore, the Working Group reached agreement to delete the waiver section from this rule during its post-comment period meeting.

FRA's Response

FRA agrees with the commenters and the Working Group. The procedures for petitioning for a waiver do not depend on the inclusion of a waiver provision in this part. Instead, the procedures are found in 49 CFR part 211. Thus, the proposed waiver section is redundant and can be removed without any impact to any person who may wish to petition the Administrator for a waiver. Thus, FRA is removing the proposed section related to waivers in this final rule.

M. Employees Charged With Inspection of Track or Railroad Equipment

In the preamble to the NPRM, FRA requested comments regarding whether the proposed rule adequately covers the specific statutory requirement related to employees charged with the inspection of track or railroad equipment found at 49 U.S.C. 20162(a)(3), or whether the regulatory text needs to be more explicit in the final rule. In that regard, FRA explained that it was considering whether language that mirrors the statutory requirement related to employees charged with the inspection of track or railroad equipment should be added as paragraph (c)(6) to proposed § 243.101 so that it would be one of the specific requirements necessary for each employer's training program. The joint labor comment supports adding the statutory requirement in 49 U.S.C. 20162(a)(3) to § 243.101, while the NRC opposes it.

Separately, FRA also explained that it was considering whether the proposed regulatory language requiring periodic oversight and annual review should be expanded to directly address those employees inspecting track and railroad equipment. Currently, the oversight and review provisions are only applicable to determine if safety-related railroad employees are complying with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. NRC opposes an expansion of periodic oversight and annual review to address these types of employees explicitly.

FRA's Response

Upon further review of the statute and the comments, FRA has concluded that it is unnecessary to add a paragraph (c)(6) to § 243.101 to cover employees charged with the inspection of track or railroad equipment. This rule meets the statutory mandate found in 49 U.S.C. 20162(a)(3) by requiring that each employer of one or more safety-related railroad employee, whether the employer is a railroad, contractor, or subcontractor, be required to train and qualify each such employee on the Federal railroad safety laws, regulations, and orders that the employee is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders. *See* §§ 243.1(a) and 243.201. Employees charged with the inspection of track or railroad equipment are considered safety-related railroad employees that each employer must train and qualify. The rule at § 243.5 defines *safety-related railroad employee* to specifically include an individual who is engaged or compensated by an employer to "(3) In the application of parts 213 and 214 of this chapter, inspect . . . track; (4) Inspect . . . locomotives, passenger cars or freight cars; (5) Inspect . . . other railroad on-track equipment when such equipment is in a service that constitutes a train movement under part 232 of this chapter; [and] (6) Determine that an on-track roadway maintenance machine or hi-rail vehicle may be used in accordance with part 214, subpart D of this chapter, without repair of a non-complying condition."

The final rule also requires that the training program developed by each employer be submitted to FRA for approval. *See* § 243.109. In order to be approved, each employer must address in its program how it will train those employees charged with the inspection of track or railroad equipment to identify defective conditions and initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries. FRA would reject a program that fails to adequately address training for those employees charged with the inspection of track or railroad equipment.

The formal training for employees responsible for inspecting track and railroad equipment is expected to cover all aspects of their duties related to complying with the Federal standards. FRA would expect that the training programs and courses for such employees would include techniques for identifying defective conditions and would address what sort of immediate remedial actions need to be initiated to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries. FRA would also expect that the statutorily mandated refresher training address these issues and any other areas that may warrant particular focus.

Finally, after further consideration, FRA has decided not to expand periodic oversight and annual review to directly address those employees inspecting track and railroad equipment. Safety-related railroad employees inspecting track and railroad equipment will be subjected to oversight to the extent that their duties are necessary to comply with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. At this time, FRA does not recognize a need to expand periodic oversight or the annual review to address these types of employees explicitly. Of course, if FRA determines at a later date that such additional periodic oversight or annual review would be worthwhile, FRA could initiate a rulemaking to amend this part.

N. Employees Charged With Inspection of Railroad Bridges

The joint labor comment recommends that FRA add a paragraph, *i.e.*, § 243.101(c)(6), that would be applicable to those employees charged with the inspection of railroad bridges including specific training requirements for employees charged with the inspection of track, railroad equipment, and bridges in the final rule to address issues such as the type, frequency, and scope of training and refresher training. In addition, the joint labor comment requests that FRA amend item (3) in the definition of "safety-related railroad

employee'' so that it references more CFR parts, specifically parts 234, 236, and 237. Furthermore, the joint labor comment raises a concern that the NPRM does not explicitly include safety-related functions performed in relation to the inspection of roadway maintenance machines and hi-rail vehicles under 49 CFR part 214, subpart D.

FRA's Response

It is unnecessary for FRA to require specific training requirements for any category of safety-related railroad employee because each employer will be defining each category or subcategory of employee and thus, each employer will be best situated to determine what training those categories of employees should receive. In order to follow the joint labor organization's recommendation, the rule would need to be extensively rewritten so that it would take away the flexibility provided to each employer to individually define its categories of employees. FRA is unwilling to follow this suggestion as it would substantially increase the costs of implementing the rule for each employer and would force upon the industry a one-size fits all solution that would create many implementation challenges for employers.

It is also unnecessary to address issues such as the type, frequency, and scope of training and refresher training as the joint labor comment advocates because the final rule already addresses those issues. At a minimum, each newly hired safety-related railroad employee will be provided with initial training, and refresher training every three years. *See* 243.201(c). Experienced employees may be exempt from initial training, but will still be required to complete refresher training every three years. *See* 243.201(e).

FRA also rejects the comment that the final rule should reference more CFR parts in the definition of safety-related railroad employee. That definition is not intended to include a recitation of all the Federal laws, regulations, or orders that may apply to any particular safety-related railroad employee covered by this rule. Adding some cross-referencing parts, and not others, has no effect on whether those Federal regulations must be covered in training. The reason FRA added the phrase ''in the application of parts 213 and 214 of this chapter'' to item (3) of the definition was to refine the statutory definition of safety-related railroad employee which broadly includes the types of employees that the industry recognizes as responsible for ''maintain[ing] the right of way of a railroad.'' 49 U.S.C. 20102(4)(C). FRA and RSAC agreed that the statutory definition could be confusing if repeated in the regulation. Thus, FRA agreed with the RSAC recommendation to define those employees who maintain the right of way of a railroad in the regulatory definition.

The joint labor comment raises the concern that 49 CFR part 237, which covers ''Bridge Safety Standards,'' might not be covered under this rule. BMWED elaborated during the Working Group meeting to discuss the comments received in response to the NPRM that part 237 is a new regulation that was not contemplated by the RSIA. Hence, BMWED's concern is that this new training regulation might not cover part 237 without specifically citing it. However, as part 237 is an FRA regulation and there is no exemption in this rule that applies, the concern appears unfounded. In other words, as FRA clarified at the Working Group meeting, this final rule applies to training on any FRA regulations as of the effective date of this rule and into the future, not only those FRA regulations that are in effect as of the date of this rule, or as of the implementation date of the RSIA.

Meanwhile, FRA is aware that a person reading this rule might be persuaded to interpret that an employer would be required to adopt and comply with a training program to satisfy certain training requirements of 49 CFR part 237 that could not realistically be supported by an employer's training program because such training could only reasonably be afforded by a training organization or learning institution. For example, the rule does not require railroad bridge engineers to receive ''in-house'' training when an engineering degree is what is required by § 237.51(b). This rulemaking also does not change the bridge owner's authority under 49 CFR part 237 to determine whether the railroad bridge engineers, inspectors, and supervisors are technically competent. Training on 49 CFR part 237, subpart E—Bridge Inspection is required under this rule. A railroad bridge engineer, inspector, or supervisor would need to be trained on roadway worker protection requirements pursuant to this rule and 49 CFR part 214. So, no amendment to the proposal is necessary as these individuals are covered by the final rule, and employers will need to submit plans explaining how training will be provided and what Federal laws, regulations, and orders will be covered during the training for each category of employee.

FRA disagrees with the statement in the joint labor comment that raises a concern that the NPRM ''does not explicitly include safety-related functions performed in relation to the inspection of roadway maintenance machines and hi-rail vehicles under 49 CFR part 214, subpart D.'' The definition of safety-related railroad employee at item (6) specifically includes an individual that determines that an on-track roadway maintenance machine or hi-rail vehicle may be used in accordance with part 214, subpart D of this chapter, without repair of a non-complying condition. Thus, a person who makes this inspection and determination that equipment is safe to use is required by this final rule to be trained to detect non-complying conditions.

O. Joint Ventures

One commenter notes that the NPRM did not address joint venture companies and raises concerns regarding how FRA would determine compliance for these joint ventures. NRC requests that FRA allow flexibility in how these joint venture companies meet the regulatory requirements: by the original participant companies, under the auspices of one lead participant company, or under the joint venture itself. NRC also suggests that proposed § 243.101(b) could pose difficulties for joint ventures, or any company that forms quickly and wishes to start business soon after forming. NRC recommended that start-ups and joint ventures should be allowed to use employees for up to one year to perform safety-related duties without designating those employees in accordance with a training program filed with FRA.

NRC's comment was discussed at the Working Group meeting held after the comment period closed. During that meeting, the Working Group reached agreement that the final rule should not require employers to designate employees under § 243.201 until 30 days prior to the start of the program.

FRA's Response

NRC's comments regarding joint ventures raise some valid concerns. The NPRM did not address any issues related to joint ventures. Furthermore, FRA did not foresee that proposed § 243.101(b) could pose difficulties for joint ventures or start-up companies. The changes FRA made to the proposal that are found in this final rule reflect FRA's considerations of wanting to provide equal treatment to existing companies and new companies, while ensuring that new ventures and new companies begin operations with safety-

related railroad employees that are properly trained.

NRC's comment asks which entity involved in the joint venture is the party responsible for compliance with the rule, because the NPRM was silent on this issue. FRA has decided that the final rule should remain silent on the issue because it is unnecessary for the regulatory text to assign responsibility. Parties to a joint venture should understand that compliance is mandatory and the participants in the joint venture are obligated to ensure that compliance is achieved. No changes were made in this final rule to delineate which entities involved in a joint venture are responsible for training as FRA would determine that all the entities involved would be responsible for compliance, unless the joint venture agreement specifies the responsibilities of each party. This approach permits the maximum flexibility to each entity participating in the joint venture or created by the joint venture.

A different, but related, question may be how does FRA intend to enforce the final rule against multiple companies that form a joint venture. From an enforcement perspective, FRA would likely first consider an employer responsible for training its employees that the employer contributes to the joint venture, unless the joint venture agreement states otherwise. Likewise, the employer responsible for training would be expected to maintain the records for that employee. Although NRC suggests that the parties to the joint venture could agree to assign the responsibility for training and compliance under this rule to the lead participant company or the shell company formed by the joint venture, FRA warns that it will not tolerate the forming of shell companies that accept responsibility for compliance with the final rule but do not actually perform any of the duties necessary for compliance. If FRA discovers training compliance failures under the final rule and that the parties to a joint venture agreement are unresponsive to their regulatory responsibilities, FRA will consider all available means of enforcement to achieve compliance.

With regard to NRC's concerns regarding § 243.101(b), FRA agrees that the proposed rule did not adequately address the difficulties of compliance that start-ups and joint ventures could face. The proposed requirement that the program be submitted at least 90 days prior to commencing operations has been removed. In addition, FRA has removed the proposed requirement that the employer wait for FRA to approve the program prior to adopting and complying with it. Instead, the final rule requires that the employer adopt and comply with its submitted training program no later than upon the commencement of operations, as long as commencement begins on or after January 1, 2018.

This requirement relieves a start-up or joint venture from filing a program at least 90 days prior to commencing operations, but means that, upon commencing operations, the employer's training must be complete for any safety-related railroad employees, designated by occupational category or subcategory, who are working. *See* § 243.201(b). Prior to this final rule, railroads are already required to ensure proper training techniques prior to commencing their operations. Therefore, this rule should not create barriers to entry nor delays in starting new operations. More so, new railroads would have access to model training programs and best-in-class training practices. Therefore, they should be able to use their own human resources more efficiently for training purposes and possibly expedite entry into market.

As FRA explains in the section-by-section analysis, FRA does not agree that start-ups and joint ventures should be allowed to use employees for up to one year to perform safety-related duties without designating those employees in accordance with a training program filed with FRA. There is no basis to support the position that start-ups and joint ventures deserve more flexibility than other employers. In addition, such a loophole could create a class of untrained employees that circumvents the purpose of the rule.

Furthermore, FRA has rejected the Working Group's recommendation that the rule should not require employers to designate employees under § 243.201 until 30 days prior to the start of the program. FRA believes the Working Group members may not have realized that they were agreeing to a much more stringent restriction than FRA proposed in the NPRM. For an employer commencing operations after January 1, 2017, under § 243.201(b), FRA has not specified an amount of time prior to beginning operations that the employer has to designate employees, only that the employer declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory prior to beginning operations. That aspect of the final rule is carried over from the NPRM because requiring new employers to designate employees 30 or 90 days prior to commencing operations is unlikely to ensure the employees are qualified to do the safety-related work. Instead, existing aspects of FRA's operations are better designed to check whether railroad safety would be detrimentally impacted. For instance, FRA routinely conducts inspections, audits, and other oversight of new railroads to identify safety concerns, and frequently makes contact with employers prior to the commencing of operations. If FRA discovered that employees were unqualified to perform safety-related duties, FRA would generally be in a position to take immediate action prior to operations commencing or within a short period after initial start-up. FRA could exercise its enforcement authority to bring about compliance. Thus, FRA's oversight of new operations can address the safety concerns that employees are untrained or not properly designated without placing a restriction on the speed at which joint ventures or businesses of any size can enter the field of railroading.

P. Requests for Confidential Treatment of Programs

In the NPRM, FRA requested comments on whether the rule should address the submission of proprietary materials or other materials that an entity wishes to keep confidential. FRA raised the issue in the context of the electronic submission process found in § 243.113. FRA suggested that it could develop a secure document submission site so that confidential materials are identified and not shared with the general public. However, FRA sought comments on the issue because the agency questioned whether that extra step would be necessary.

AAR filed the only comment on this issue. In the comment, AAR agrees that it is unlikely that confidential material will be submitted. However, AAR states that it is likely that proprietary (copyrighted) material will be submitted. AAR recommends that FRA ensure that in making such material public, it includes copyright notices and warns the public against copying or other unauthorized use of such material.

FRA's Response

In the NPRM, FRA explained that the agency did not expect the information in a program to be of a confidential or proprietary nature. For instance, each railroad is expected to share the program submission, resubmission, or informational filing with the president of each labor organization that represents the railroad's employees subject to this part. *See* § 243.109(d). FRA's expectation is that a railroad would remove any information that it wished to keep private prior to sharing that program material with a labor

organization. In the NPRM, FRA suggested that entities consider this concern when drafting any programmatic material to be submitted to FRA and that each entity takes its own steps not to share such private material with FRA. In that way, FRA may make such programmatic material available to the general public upon request.

In addition to the suggestions made in the NPRM for keeping information confidential, FRA notes that the agency's railroad safety enforcement procedures address requests for confidential treatment at 49 CFR 209.11. The procedures in that section place the burden on the party requesting confidential treatment with respect to a document or portion thereof. For example, according to paragraph (c) of that section, a railroad that wants confidential treatment is required to provide a statement at the time of filing justifying nondisclosure and referring to the specific legal authority claimed. Paragraph (e) of that section explains that FRA retains the right to make its own determination with regard to any claim of confidentiality.

FRA is concerned that a party requesting confidential treatment of a document, or including a copyright notice on a portion of a program submission, may be asking for treatment that could interfere with FRA's safety enforcement program. For this reason, in addition to FRA's procedures in 49 CFR 209.11, a party requesting confidential treatment should provide a detailed explanation for how the party expects FRA to treat the document. In requesting confidential treatment, the party should consider several aspects of FRA's safety enforcement program. For instance, a party should understand that FRA intends to share the program with the State agencies that FRA partners with in accordance with 49 CFR part 212. It is typically understood that a party has consented to all electronic and written dissemination of a submitted program for any investigative and compliance purposes envisioned pursuant to the FRA regulations or FRA's statutory enforcement authority. *See* 49 CFR 209.11(a). Likewise, program submissions would normally be subject to the mandatory disclosure requirements of the Freedom of Information Act (FOIA, 5 U.S.C. 552) and thus a party that has a copyright notice on the program submission will need to specify which statutory exemption it believes is applicable. Again, FRA retains the right to make its own determination with regard to any claim of confidentiality, including whether an exemption to mandatory disclosure requirements under FOIA are applicable. If FRA decides to deny a claim of confidentiality, FRA is required to provide notice and an opportunity to respond no less than five days prior to the public disclosure. 49 CFR 209.11(e).

Q. Computer and Simulator-Based Instruction

The joint labor comment requests that FRA clarify that the use of computer and simulator-based instruction be deployed for training purposes rather than for examination or qualification purposes. The comment implies that new and unproven training technologies could be utilized and could lead to disciplinary action when an employee fails to pass the training. The commenters strongly urge FRA to eliminate such practices in the final rule. This comment was further developed during the Working Group meeting in which the comments were discussed. BRS clarified that it would not want an employee to be qualified solely from computer-based training, as it is essential to be trained on the actual equipment that an employee will be required to maintain. UTU stated that there are field tests for employees who fail simulator tests.

FRA's Response

The final rule defines formal training and FRA accepts that formal training can be delivered in many different ways. In the NPRM, FRA recognized that classroom training is preferred by some employees over any other type of training. However, classroom training is not the only type of training that can be effective and FRA has no intention of severely limiting the methods of delivering formal training.

Although FRA is not changing the proposed rule based on this comment, the joint labor comment does raise some important issues that each employer should contemplate when drafting and implementing a training program. One issue is whether the training is effective given the target employee audience. If an employee lacks familiarity with computers or simulators, an employer should consider whether the method of delivery is appropriate. An employee may be able to do the actual task and understand the underlying rules being tested without being able to pass a computer or simulator-based test.

Furthermore, nowhere in the proposed rule or this final rule does FRA require an employer to discipline an employee for failing to pass training. Likewise, the rule does not prohibit an employer from taking disciplinary action. FRA encourages employers to provide employees with sufficient training and testing opportunities, and to retrain and retest whenever there is a need. If a computer or simulator-based training leads to an employee's failure to qualify on a subject, the employer should take into account whether any technological issues potentially contributed to the failure. The final rule does not prohibit the employer from providing further opportunities for training or testing for any reason or no reason at all. Further opportunities for training or testing may include other types of formal training or other types of acceptable testing in accordance with the training program. An employer should consider building in some flexibility in its program to address exceptions to its normal training program. Of course, if FRA learns that the technology is contributing to training or testing failures, the agency will consider whether any enforcement action is warranted or whether a rulemaking should be initiated to revisit the issue.

R. FRA's Qualifications To Review Training Programs

One commenter questions whether FRA employs individuals with teaching credentials to evaluate whether training components satisfy the educational standards used for effective teaching.

FRA's Response

FRA employs personnel who train other FRA employees. Each in-house FRA trainer must earn a professional certification for trainers at the "Master Trainer" level, if not otherwise credentialed to teach. Thus, FRA's in-house trainers are both qualified in teaching methods and in various aspects of railroading. These in-house trainers have been, and continue to be, instrumental in FRA's development of the interim final compliance guide. For these reasons, the FRA personnel that will be reviewing training programs for educational sufficiency have the requisite background to effectively review each training component, or oversee other FRA personnel who can assist with program review.

S. Compliance Guide

One commenter suggested that FRA "issue a compliance guide, specifically to railroads that have 15 or less safety-related railroad employees, (as contemplated in 49 CFR part 209, appendix C) and then delay the implementation of the proposed rule to these smallest railroads for one year after the compliance guide is made available to these smallest railroads."

FRA's Response

As FRA is required to prepare a final regulatory flexibility analysis (see VII, B. of this rule titled "Regulatory Flexibility Act and Executive Order 13272; Final Regulatory Flexibility Assessment"), FRA is also required under sec. 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA), to publish one or more guides to assist small entities in complying with the final rule. FRA intends to publish an interim final compliance guide early in 2015. By characterizing the guidance as "interim final," the guidance will be effective immediately, but signal that FRA is willing to consider amending the guidance based on comments received. Consequently, FRA will provide a 60-day comment period and intends to issue a notice for the final guidance by no later than one year from the date of issuance of the interim final guidance. FRA also amended the proposal so that small entities will have at least four years from the date of issuance of the interim final compliance guide to implement a training program under § 243.101(a)(2) and at least four years and eight months from the date of issuance of the interim final compliance guide to designate existing employees under § 243.201(a)(2). That schedule for publication of a compliance guide should also benefit model program developers who will want to reference the guide in their attempt to meet the May 1, 2017 submission deadline in § 243.105(a)(3).

FRA's compliance guide is intended to aid employers by providing the task inventories that provide the foundation of the OJT program. The compliance guide can be used by all employers, but will be written with a primary emphasis on assisting small entities. The task inventories will be presented in a format that is highly respected in the adult training community, and will be modeled after training formats FRA's master trainers use to train FRA personnel. The guide will address each major type of safety-related railroad employee category. It will explain the roles and responsibilities for those administering the program, as well as the trainees and trainers. Duties will be identified by the performance task that the employee is supposed to be able to do. The guide will help identify the preparation that trainers will have to take in order to make sure that the conditions are conducive for learning. For example, trainers will ensure that trainees have all the tools, equipment, and documents needed to practice the task. Furthermore, the guide will help establish standards for establishing when a trainee has demonstrated proficiency. Such standards are generally based on repetition, the completeness, and the percentage of accuracy. These factors for establishing standards will be driven by the complexity of the related task.

Thus, FRA has addressed this commenter's concern by agreeing to publish a compliance guide and delaying implementation for small entities so that the small entities will have at least four years to consider the agency's guidance prior to the deadline for program submission.

VI. Section-by-Section Analysis

Part 214

FRA received three comments regarding the proposed amendments to this part. Two of the commenters, AAR and APTA, support the amendments without recommending any changes from the proposal. The joint labor comment supported the overall direction of the amendments, and included a recommendation to expand this regulation to address the myriad of crane safety issues which fall outside the scope of roadway worker protection and the on-track safety programs specified in part 214, subpart C. For this reason, the joint labor comment requested that the crane operator qualification and certification requirements be moved to a new subpart within part 214.

In the NPRM, FRA explained that on August 9, 2010, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) published a final rule regarding "Cranes and Derricks in Construction" (Final Crane Rule, 75 FR 47906) and how it may be very difficult or unnecessarily burdensome for the railroad industry to comply with the crane operator certification requirements provided for in OSHA's regulation. In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," which requires "[g]reater coordination across agencies" to produce simplification and harmonization of rules, FRA has coordinated with OSHA to maintain an equivalent level of safety in replacing OSHA's training and certification requirements for operators of roadway maintenance machines equipped with a crane who work in the railroad environment.

Although the railroad industry uses many different types of cranes, nearly all of the cranes utilized by railroads are used to support railroad operations and would fall within what FRA refers to as "roadway maintenance machines." FRA's "Railroad Workplace Safety" regulation, found at 49 CFR part 214, defines roadway maintenance machine as "a device powered by any means of energy other than hand power which is being used on or near railroad track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems. Roadway maintenance machines may have road or rail wheels or may be stationary." 49 CFR 214.7. FRA already requires some training for crane operators that is related to roadway worker safety, although, prior to this rule, FRA did not require operator certification. *See* 49 CFR 214.341 and 214.355.

As FRA is promulgating a new regulation (part 243) in this notice to address training standards for all safety-related railroad employees, FRA is solidly situated to require a viable training alternative to OSHA's certification options for certain crane operators in the railroad industry. In particular, FRA is especially well-suited to address the training and qualification requirement for operators of roadway maintenance machines equipped with a crane. This final rule contains various requirements for each employer of a safety-related railroad employee, which would include employers of one or more operators of roadway maintenance machines that are equipped with a crane, to submit a training program that explains in detail how each type of employee will be trained and qualified. However, new part 243 is only intended to cover training of Federal railroad safety laws, regulations, and orders and those railroad rules and procedures promulgated to implement those Federal requirements. Consequently, FRA is adding a new § 214.357 to existing part 214 which includes training and qualification requirements for operators of roadway maintenance machines equipped with a crane. The details of those requirements are addressed below in the analysis for that particular section.

Section 214.7 Definitions

The final rule would add a definition for *roadway maintenance machines equipped with a crane* in order to address the term's use in § 214.357. The definition of this term would mean any roadway maintenance machine equipped with a crane or boom that can hoist, lower, and horizontally move a suspended load.

Section 214.341 Roadway Maintenance Machines

FRA is amending paragraph (b)(2) to address two issues. First, FRA is

removing the requirement that the operator of a roadway maintenance machine have "complete" knowledge of the safety instructions applicable to that machine. Based on feedback received from the regulated community, FRA has been informed that requiring that the knowledge be "complete" suggests that a roadway worker operator have instant recall of every instruction contained in the manual. This reading of the rule is not FRA's intention. FRA intends each operator to have sufficient knowledge of the safety instructions so that the operator would be able to safely operate the machine without reference to the manual under routine conditions, and know where in the manual to look for guidance when operation of the machine is not routine.

The second change to paragraph (b)(2) addresses what is meant by "knowledge of the safety instructions applicable to that machine." FRA's intent is that this term means the manufacturer's instruction manual for that machine. However, it has come to FRA's attention that some portion(s) of a manufacturer's instruction manual may not be applicable to a particular machine if the machine has been adapted for a specific railroad use. In that case, FRA requires that the employer have a duty to ensure that such instructions be amended or supplemented so that they shall address all aspects of the safe operation of the crane and be as comprehensive as the manufacturer's safety instructions they replace. The purpose of this requirement is to ensure that the safety instructions provided address all known safety concerns related to the operation of the machine. If some type of functionality is added to the machine through adaption, the safety instructions would need to address the known safety concerns and proper operation of that additional function. On the other hand, if the adaption removes an operational functionality, the safety instructions would no longer need to address the function that was removed, although it could be possible that the removal of a device could create other safety hazards that may need to be addressed in the safety instructions in order to be considered comprehensive. In order to ensure that the safety instructions for a machine are comprehensive, some employers may choose to provide a completely new safety instruction manual for adapted equipment; however, other employers may choose to simply void certain pages or chapters of the manufacturer's manual, and provide a supplemental manual to address the safety instructions related to the adapted functions of the equipment.

§ 214.357 Training and Qualification for Operators of Roadway Maintenance Machines Equipped With a Crane

As mentioned previously, FRA is amending this section in order to ensure that each railroad or contractor (or subcontractor) to a railroad ensures that operators of roadway maintenance machines equipped with a crane are adequately trained to ensure their vehicles are safely operated. The training requirements are intended to address both safe movement of the vehicles and safe operation of the cranes. Once this rule is effective, FRA regulations would apply to operators of roadway maintenance machines equipped with a crane, rather than OSHA's regulation related to crane operator qualification and certification found at 29 CFR 1926.1427.

Paragraph (a) clarifies that this section requires new training requirements in addition to the existing requirements already contained in this subpart. Paragraph (a) also includes a requirement that each employer adopt and comply with a training and qualification program for operators of roadway maintenance machines equipped with a crane to ensure the safe operation of such machines. The requirement in paragraph (a) to "adopt" and "comply" with a training and qualification program may seem redundant; however, the use of these terms together are intended to remind each employer that it will need to both "adopt" such a program and "comply" with its own program. Failure to adopt or comply with a program required by this section will be considered a failure to comply with this section.

Paragraph (b) requires that each employer's training and qualification program address initial and periodic qualification for each operator of a roadway maintenance machine equipped with a crane. Both initial training and periodic refresher training must, at a minimum, include certain procedures for addressing critical safety areas. Paragraph (b)(1) requires that each employer develop procedures for determining that the operator has the skills to safely operate each machine the person is authorized to operate. FRA would expect that those procedures would include demonstrated proficiency as observed by a qualified instructor or supervisor. Paragraph (b)(2) requires that each employer develop procedures for determining that the operator has the knowledge to safely operate each machine the person is authorized to operate. As explained in the analysis of the amendments to § 214.341(b)(2), an operator must have knowledge of the safety instructions applicable to that machine, regardless of whether the machine has been adapted for a particular railroad use. Implicit in this rule is the requirement that the employer must supply the safety instructions for the crane. If the crane has been adapted for a specific use, the employer must ensure that the safety instructions are also adapted. FRA would expect the employer to employ or contract out for a qualified person to adapt the safety instructions, but in any case the employer is responsible for ensuring that the instructions address all aspects of the safe operation of the crane. When equipment has been adapted, the employer has a duty to provide revised safety instructions that comprehensively address each adapted feature as well as any feature supplied by the manufacturer that was not removed during the adaptation.

Paragraph (c) requires that each employer maintain records that form the basis of the training and qualification determinations of each operator of roadway maintenance machines equipped with a crane that it employs. This requirement repeats the requirement contained in § 243.203 to maintain records. However, it is useful to repeat the requirement as a reminder to employers. In repeating this requirement, FRA does not intend the requirement to cause an employer to duplicate records kept in accordance with proposed part 243. Similarly, paragraph (d) requires that each employer is required to make all records available for inspection and copying/photocopying to representatives of FRA, upon request during normal business hours, as is also required in part 243.

In paragraph (e), FRA permits training conducted by an employer in accordance with operator qualification and certification required by the Department of Labor (29 CFR 1926.1427) to be used to satisfy the training and qualification requirements of this section. The purpose of this paragraph is to allow an employer to choose to train and certify an employee in accordance with OSHA's Final Crane Rule and opt out of the other proposed requirements of this section for that employee. As explained in the introductory analysis to part 214 in the NPRM, if the crane equipment is modified for railroad operations there may not be an accredited crane operator testing organization that could certify the operator in accordance with OSHA's Final Crane Rule. 29 CFR 1926.1427(b). However, there are some roadway maintenance machines equipped with a crane that are considered standard construction equipment and thus it

would be possible to certify operators of that equipment through such an accredited organization. For this reason, FRA does not want to preclude the option for a person to be trained by the accredited organization and meet OSHA's requirements in lieu of FRA's requirements. Similarly, FRA envisions that some railroads or employers may employ some operators on roadway maintenance machines equipped with a crane who could be used exclusively within State or local jurisdictions in which the operators are licensed. Under those circumstances, the operator would be in compliance with OSHA's fourth option for certifying crane operators as it permits the licensing of such operators by a government entity. 29 CFR 1926.1427(e). FRA has no objection to the use of crane operators who meet OSHA's requirements and does not intend, by the addition of this section, to impose any additional regulatory requirements on such operators. Although the purpose of this section is to provide an alternative method of training and qualification that is tailored to the unique circumstances faced by most operators of roadway maintenance machines equipped with a crane working for the railroad industry, the purpose of paragraph (e) is to permit an employer to opt out of the alternative FRA requirements as long as the operator has met OSHA's training and certification requirements.

Part 232

Section 232.203 Training Requirements

FRA modeled some aspects of this final rule related to part 243 after the training requirements found in this section. Meanwhile, when reviewing this section, FRA discovered that several minor corrections to the section are necessary. The minor corrections were described in the NPRM and FRA did not receive any comments regarding them or objecting to their adoption. 77 FR 6420, 6453. As this portion of the final rule is identical to the proposed version, the analysis provided for in the NPRM is not being repeated here.

Part 243

Subpart A—General

Section 243.1 Purpose and Scope

In response to comments received in response to the NPRM, some minor edits have been made to paragraph (a) and paragraph (e) of this section. FRA has not repeated the analysis contained in the NPRM for those paragraphs that remain the same as in the proposal. 77 FR 6420–21. The comments received regarding this specific section are addressed here.

As previously explained in the supplementary information, FRA is required by RSIA to address minimum training standards for safety-related railroad employees. Paragraph (a) is consistent with the specific statutory language and captures Congress' intent to ensure that any person doing work covered by the Federal railroad safety laws, regulations, and orders, regardless of whether the person is employed by a railroad or a contractor, is properly trained and qualified. This regulation meets the statutory requirement as it intends to cover each employee that does work required by a Federal mandate, regardless of the employer.

Paragraph (a) provides the scope of the training required by this final rule. FRA is only requiring training for an employee to the extent that the employee is required to comply with a Federal mandate. Furthermore, the training that is required by this part is limited to any training necessary to ensure that the employee is qualified to comply with all Federal railroad safety laws, regulations, and orders that would be applicable to the work the employee would be expected to perform. Thus, an employer that chooses to train employees on issues other than those covered by Federal railroad safety laws, regulations, and orders would not need to submit such training to FRA for review and approval in accordance with this part.

Given the limited scope of this rule, not every person that works on a railroad's property should expect that this rule will require that an employer provide that person with training. Some employees of a railroad or a contractor of a railroad may do work that has a safety nexus but is not required by any Federal railroad safety laws, regulations, or orders. For example, a person may be hired to clean passenger rail cars by a railroad's maintenance division for other than safety purposes. However, as there are no Federal requirements related to the cleaning of passenger rail cars, this rule would not require an employer to ensure that this person is trained to clean passenger rail cars. On the other hand, if the person is expected to perform any of the inspections, tests, or maintenance required by 49 CFR part 238, the person must be trained in accordance with all applicable Federal requirements. *See e.g.*, §§ 238.107 and 238.109.

If the employer's rules mirror the Federal requirements, or are even more restrictive than the Federal requirements, the employer may train to the employer's own rules and would not be required to provide separate training on the Federal requirements. During the RSAC process, some employers raised the concern that it would be confusing for employees if FRA required that training be made directly on the Federal requirements as that would pose potential conflicts whenever an employer's rule was stricter than the Federal requirement. FRA agrees with this concern, and this final rule does not require that employers provide separate training on both the Federal requirements and on employer's rules. As long as the employer's rules satisfy the minimum Federal requirements, an employer's training on its own rules will suffice.

Although FRA does not want to confuse employees, FRA encourages employers to emphasize when compliance with the employer's rules is based on a Federal requirement so that employees can learn which duties are being imposed by the Federal government. When an employee is put on notice that an employer's rule is based on a Federal requirement, the notice that the Federal government deems the issue important enough to regulate may provide further incentive for the employee to comply with the rule at every opportunity. Additionally, in response to concerns raised by RSAC members during the Working Group meetings, FRA wants to be clear that the requirements in this part would not require an employee to be able to cite the volume, chapter, and section of each Federal railroad safety law, regulation, or order that is relevant to the employee's qualification.

Often, a railroad or contractor will train employees on the employer's own safety-related rules, without referencing any particular Federal requirement. There may also be instances where the Federal requirement is generally stated with the expectation that the employer will create procedures or plans that will implement the conceptual requirement of the Federal requirement. Paragraph (a) makes clear that this part covers both types of training; i.e., training that either directly or indirectly is used to qualify safety-related railroad employees on the Federal railroad safety laws, regulations, and orders the person is required to comply with to do his or her job. As an introductory matter, FRA also wishes to make clear that not all training is task-based. Some Federal requirements include prohibitions and the relevant training must impart that information so that employees know how they can comply. For example, employees need to know when they may use cell phones and when they are prohibited from using them.

FRA received one comment suggesting that paragraph (a) could be improved. AAR suggests that paragraph (a) be amended because it could be interpreted to mean the opposite of what the preamble says is not intended; namely, that an employee has to be familiar with the actual wording and citations for relevant regulations. AAR suggests that paragraph (a) be amended to read: "The purpose of this part is to ensure that any person employed by a railroad or a contractor of a railroad as a safety-related railroad employee is trained and qualified to comply with any relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders." FRA agrees with AAR's recommendation and has changed paragraph (a) accordingly.

REB's comment recommends confirming the scope by stating that "This rule does not apply to training programs that do not address FRA rules, regulations, and orders." FRA believes it would be repetitive to restate the scope of the rule in the way in which REB's comment suggests and is concerned with the ambiguity of the double negative in the suggested rewrite. Meanwhile, REB's comment has merit and FRA offers the following clarification. REB's comment seems to indicate that if another Federal agency, or State or local jurisdiction required training, that the training required by these other authorities would not need to be addressed in the training programs submitted to FRA for approval. FRA agrees. Similarly, an employer may require its employees to complete company-specific training, such as training on an employee's duties and responsibilities, that are unrelated to FRA's requirements. Again, FRA agrees with REB that this final rule is not intended to require the employer to file those types of company-specific training programs to FRA.

No comments were received requesting specific changes to proposed paragraphs (b) through (d), and these paragraphs are identical to those in the NPRM.

Paragraph (e) was not proposed, but has been added in order to clarify that this rule does not address hazardous materials training of "hazmat employees" as that term is defined by PHMSA. PHMSA already extensively regulates the training of hazmat employees. This requirement has been added to prevent any confusion on the matter.

Section 243.3 Application and Responsibility for Compliance

No comments were received concerning this proposed section and the rule text is identical to the proposed version. *See* 77 FR 6421.

As discussed in the NPRM, the extent of FRA's jurisdiction, and the agency's exercise of that jurisdiction, is well-established. *See* 49 CFR part 209, appendix A. The application and responsibility for compliance section is consistent with FRA's published policy for how it will enforce the Federal railroad safety laws. This final rule is intended to apply to all railroads (except those types of railroads that are specifically listed as exceptions in paragraph (a)), contractors of railroads, and training organizations or learning institutions that train safety-related railroad employees. Paragraph (b) contains a statement clarifying that each person who performs the duties of this part is responsible for compliance, even if that duty is expressed in terms of the duty of a railroad.

Section 243.5 Definitions

The final rule adds a definition for "refresher training" in response to comments and modifies the definition of "formal training" so it is clear that correspondence training is an acceptable type of formal training. The final rule also modifies the definition of "designated instructor" to be clear that such a person, where applicable, has the necessary experience to effectively provide formal training "of the subject matter." Otherwise, the definitions in this section are identical to the version in the NPRM. The analysis in the NPRM can be found at 77 FR 6421–25.

This section defines a number of terms that have specific meaning in this part. A few of these terms have definitions that are similar to, but may not exactly mirror, definitions used elsewhere in this chapter. Definitions may differ from other parts of this chapter because a particular word or phrase used in the definition in another chapter does not have context within this part.

FRA raised a question in the NPRM regarding the definitions of *Administrator* and *Associate Administrator*, even though these are standard definitions used in other parts of this chapter. In this part, the term *Associate Administrator* means the Associate Administrator for Railroad Safety/Chief Safety Officer. When the RSAC Committee voted for certain recommendations prior to the NPRM's publication, the recommendations did not address the role of the Associate Administrator for Railroad Safety/Chief Safety Officer. The NPRM proposed this additional definition so that it would be clear that some of the proposed program review processes would be delegated to the Associate Administrator. The agency's expertise in reviewing training programs lies within its Office of Railroad Safety, and the decision-making on these issues will routinely be decided by the Associate Administrator. If a person were to have a material dispute with a decision of the Associate Administrator, it would be expected that the person could bring that dispute to the Administrator's attention and request final agency action. As FRA did not receive comments on this issue and believes it is an effective approach for agency decision-making, the final rule retains the Associate Administrator definition.

The final rule defines the term *formal training* mainly to distinguish it from informal, less structured training that may be offered by employers. Generally, a briefing during a "safety blitz," in which an employer quickly tries to raise awareness of a safety issue following an accident or close call incident, would not be considered formal training. Formal training would typically be more structured than a safety blitz briefing and be planned on a periodic basis so that all eligible employees would continuously get opportunities to take the training. Formal training should contain a defined curriculum, as it is not the type of training that can be hastily prepared and improvised.

Formal training may be delivered in several different ways. Many people first think of classroom training as synonymous with formal training, and certainly that is one acceptable way of delivering formal training. However, the definition explains that "[i]n the context of this part, formal training may include, but is not limited to, classroom, computer-based, correspondence, on-the-job, simulator, or laboratory training." The only change to this definition from the proposed rule is that FRA included correspondence training as a listed type of formal training. Although the list of formal types of training is specifically identified as not being comprehensive, FRA added correspondence to the list to address a commenter's concern. In a sense, correspondence training is not that much different than computer-based training. Computer-based training could certainly be web-based so that a learner could access training from anywhere with an electronic device capable of accessing the internet. Similarly, software could be given to a person to install on a business-owned or

personally-owned computer, and training could be accomplished anywhere the person used the computer. Consequently, FRA is adding correspondence training to the list of types of formal training.

During the RSAC process prior to the NPRM's publication, some labor organizations explained that their members expressed a preference for classroom training over computer-based training. One valid concern expressed was that computer-based training is often performed without a qualified instructor present to answer questions. It can be frustrating to a training participant if the person finds a subject confusing and cannot get immediate clarification. Meanwhile, the RSAC members recognized an equally valid concern that there could be circumstances when a qualified instructor cannot immediately answer a substantive question during classroom training—so mandating classroom training is not necessarily the remedy for addressing this problem. The final rule addresses this concern by requiring that formal training include an opportunity for training participants "to have questions timely answered during the training or at a later date." An employer, or other entity providing training, will need to establish procedures for providing participants the opportunity to have questions timely answered. For example, some course providers may give training participants an email address to send questions and promise to respond within five business days. Certainly, there are a wide-variety of reasonable procedures that could be established by course providers that could include registering a question by telephone, written form made available at the time of the training, or even instant-messaging (IM) during the training itself. However, in all such instances, procedures must be clear and provide the training participant an opportunity to have questions answered in a timely fashion.

The term *refresher training* refers to the periodic retraining an employer determines is necessary to keep a safety-related railroad employee qualified. This is the training required for previously qualified employees, not employees who are completely new to the subject matter. Refresher training is required pursuant to paragraph (e) of § 243.201. The term was used in the proposed rule, but was not defined in the NPRM. In consideration of a comment received, FRA has added this definition. Additional information about the comment and what is meant by refresher training is addressed in the Discussion of Specific Comments and Conclusions section.

Section 243.7 Penalties and Consequences for Non-Compliance

This section was formerly proposed as § 243.9, but was renumbered because proposed § 243.7 (addressing the issue of waivers) was not retained in this final rule.

No comments were directly received with regard to proposed § 243.9 and it is identical substantively to the proposed version; thus, the analysis provided for in the NPRM is merely summarized here. *See* 77 FR 6425. Some commenters did raise questions regarding what civil penalty amounts would be reasonable if FRA were to take enforcement action, and those comments are addressed with regard to the analysis for appendix A, the schedule of civil penalties.

This final rule section provides minimum and maximum civil penalty amounts determined in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Public Law 104–134, April 26, 1996, and the RSIA.

Subpart B—Program Components and Approval Process

Section 243.101 Employer Program Required

Compared to the NPRM, this section only contains a few changes. In paragraphs (a) and (b), FRA extends the actual implementation dates significantly from the NPRM's proposed dates. The broad issue of implementation dates is addressed in the Discussion of Specific Comments and Conclusions section of this document. Also in paragraph (b), FRA is making some substantive changes which are addressed below. Finally, this analysis includes a discussion of comments received with regard to paragraph (d)(3) of this section, to explain why FRA decided to reject an alternative to the proposed rule that FRA suggested in the NPRM's section-by-section analysis.

Paragraph (a) differs from the NPRM as it was split into two paragraphs so that small entity employers could be provided with one year longer to comply with the training program submission requirement as compared to those employers subject to this part with 400,000 total employee work hours or more annually. Paragraphs (a)(1) and (a)(2) contain the general requirement for each "employer" to submit, adopt, and comply with a training program for its safety-related railroad employees. Both paragraphs (a)(1) and (a)(2) provide a significantly more generous deadline for compliance than what was proposed.

An employer's program must be submitted and approved by FRA in accordance with the process set forth in §§ 243.107, 243.109, and 243.113. However, an employer's duty is not complete upon submission of a program to FRA. The employer will also be required to adopt and comply with its program. By using the term "adopt," FRA is requiring each employer to accept its training program as its own. Furthermore, an employer is obligated to comply with its program by implementing it. Thus, when adopted and complied with, FRA would expect the employer's safety-related railroad employees to receive training in accordance with the employer's program. Potentially, FRA could take enforcement action if an employer failed to comply with its approved training program. As with any potential enforcement action, FRA will use its discretion regarding whether to issue a warning, a civil monetary penalty, or other enforcement action. *See* 49 CFR part 209, appendix A.

NRC and ASLRRA recommend amending paragraph (b) of this proposed section so that an employer commencing operations subject to this part after the rule is implemented shall submit a training program within one year after commencing operations, instead of the proposed 90 days in advance of commencing operations. The commenters take the position that to do otherwise would stifle the entrepreneurial spirit of small business job creators. The commenters also state that many small business owners would not even know for certain that they would be starting a new business 90 days prior to commencing operations, much less be prepared to file an extensive training program with FRA. FRA agrees that the commenters have identified an issue, but disagrees on the approach to resolving the perceived conflict.

Paragraph (b) differs from the proposal in order to provide equal treatment of program review and implementation regardless of whether an employer commences operations after the appropriate deadline under paragraph (b) or submits a training program as an existing employer under paragraphs (a)(1) or (a)(2). FRA decided not to retain paragraph (b) as proposed in order to address the concerns FRA received regarding the difficulties of compliance that start-ups and joint ventures could face. The change will still require an employer under

paragraph (b) to submit its training program prior to commencing operations, but will no longer contain the proposed requirement that the program be submitted at least 90 days prior to commencing operations. In addition, FRA has removed the proposed requirement that the employer wait for FRA to approve the program prior to adopting and complying with it. Instead, the final rule requires that the employer adopt and comply with its submitted training program no later than upon the commencement of operations. FRA does not agree with the comments suggesting that start-ups and joint ventures should be allowed to use employees for up to one year to perform safety-related duties without designating those employees in accordance with a training program filed with FRA. If FRA were to do so, FRA believes it would be creating a large loophole for many new businesses to use untrained or unqualified individuals in positions that endanger the lives of railroad employees and the general public. FRA notes that there is nothing in the regulation preventing an employer from implementing a training program prior to commencing operations so that its safety-related railroad employees are ready to work independently on its first day of operations. The employer is required to adopt and comply with the training program for the same reasons as explained in the analysis for paragraph (a).

As no comments were received regarding paragraphs (c) through (f), and those paragraphs are identical to the proposed versions, we are merely summarizing the rest of the requirements in this section.

Paragraph (c) requires a list of over-arching organizational requirements for each employer's training program.

Paragraph (d) contains OJT training requirements that are essential to ensuring that OJT successfully concludes in a transfer of knowledge from the instructor to the employee (learning transfer), but only applies if a training program has OJT. As FRA alluded to in the analysis for the definition of OJT, too much OJT is currently unstructured and does not lead to learning transfer. OJT should not vary so much that one person can have a good mentor who is able to give the employee all the hands-on instruction the employee will need while another mentor makes the person simply watch the mentor do the job without any feedback, instruction, or quality hands-on experience. OJT should be a positive experience for the learner, as well as the mentor, with sufficient opportunity for practice and feedback.

In the NPRM, FRA explained that a manual and a checklist may serve similar, but not identical purposes. RSAC recommended that FRA only require one or the other, or another similar document. By requiring only one document, the requirement is less burdensome. However, FRA requested comments in the section-by-section analysis of the NPRM with regard to paragraph (d)(3). FRA wanted commenters to consider the distinctions between these types of documents, and whether FRA should promulgate this final rule with a requirement for both a manual and a checklist. 77 FR 6426–27. In response, a number of railroads and railroad association commenters unanimously voiced strong opposition to the suggestion that a manual and a checklist should be required. The commenters argued primarily that a requirement for both a checklist and a manual would be micromanaging that would reduce an employer's flexibility to comply. AAR stated that "railroads might use different methods for different types of employees and different types of training [and thus] . . . [u]niform . . . requirements for the documentation of tasks are neither necessary nor desirable." Although FRA strongly urges each employer to consider making both detailed manuals and the generally less detailed checklists available to all employees involved in OJT exercises, FRA has decided to provide each employer with the flexibility to choose which type of reference document must be made to employees involved in OJT exercises.

In concluding the analysis of this section, FRA responds to a comment by APTA requesting that FRA simplify the OJT requirements further. APTA suggests that the OJT does not have to be "a formalized program, replete with specific steps, tasks and methods that must be followed and documented in exacting detail." FRA does not agree with APTA that the OJT requirements are too complicated and unnecessary. Without formalizing OJT, FRA will be unable to break the cycle of unstructured OJT practices by some employers that permit shadowing an experienced person without any confirmation of learning transfer on any particular safety-related tasks. If the rule failed to contain this requirement, the rule would likely fail to substantially improve safety. Certainly, each employer will need to review whether a previously imposed OJT program is too informal, and may not be able to maintain the status quo without adding structure or a defined curriculum as this rule requires for formal training.

Section 243.103 Training Components Identified in Program

No comments were received that suggested specific changes with regard to this section and the final rule is identical to the proposed rule; thus, the analysis provided in the NPRM is merely summarized here. *See* 77 FR 6427–29.

Unlike § 243.101, which focuses on the general requirements for an employer's training program, this section details the component requirements for each program. The main purpose for this section is to ensure that an employer provides sufficient detail so that FRA would be able to understand how the program works when the agency reviews the program for approval. It is expected that a failure to include one or more component requirements would result in disapproval of the program. In § 243.111, FRA also requires that training organizations and learning institutions include all information required for an employer's program in accordance with this part, and this mainly means the information required in this section. Thus, each program submitter should ensure that each component requirement in this section is addressed.

Although the analysis for paragraph (b) of this section remains the same as that in the NPRM, FRA wants to emphasize that it provides an option for an employer to avoid submitting one or more similar training programs or plans when the employer has a separate requirement, found elsewhere in this chapter, to submit that similar program or plan to FRA. In order to take advantage of this option, an employer must choose to cross-reference any program or plan that it wishes not to submit in the program required by this part. In the NPRM, FRA listed the examples of FRA training programs that an employer may choose not to resubmit as located in §§ 214.307, 217.9, 217.11, 218.95, 236.905, and 240.101. After publication of the NPRM, FRA published a final rule regarding conductor certification at 49 CFR part 242. Certainly, the training program required by §§ 242.101 and 242.103 is another example of a program that may be referenced in the program required by this part without being submitted again.

During the Working Group meeting to discuss comments, AAR asked whether FRA will contact a railroad when a previously submitted program does not meet the training program criteria of this

rule. FRA explained that paragraph (b) requires the employer to state in the training program filed under this rule that it has previously filed a training program in accordance with another FRA regulation. Once an employer has put FRA on notice of the previously filed program under a different regulation, it will be FRA's burden to contact the railroad to address any perceived inadequacies.

Section 243.105 Optional Model Program Development

This section of the final rule is identical to the proposed rule except for the addition of paragraph (a)(3). *See* 77 FR 6429–30. The addition of this paragraph was made to address FRA's concerns raised in the NPRM that incentives should be offered to submitters of model programs so that they are encouraged to seek FRA's approval of such programs at an early stage. Early approval of model programs would make it more likely that an employer could choose to adopt and comply with the model program. If a model program is not approved prior to the deadlines set forth in § 243.101(a)(1) and (a)(2) for each employer to submit a program, the model program is not likely to be of much use to employers.

To encourage early submission of model programs, FRA is guaranteeing that, as long as the submission is made prior to May 1, 2017, the program may be considered implicitly approved and implemented 180 days after the program is submitted unless FRA explicitly disapproves of the program. Although FRA encourages model program submitters to submit much earlier than this optional deadline, the deadline will permit programs submitted on April 30, 2017 to be implicitly approved on October 27, 2017—which is 65 days prior to the employer's deadline, for those employers with 400,000 total employee work hours annually or more, under § 243.101(a)(1), and at least one year and 65 days prior to the small entity employer's deadline under § 243.101(a)(2), as the small entity deadline may be extended depending on the date of issuance of FRA's Interim Final Compliance Guide. Of course, FRA may explicitly approve the program in less than 180 days, which would also benefit the early model program submitter and the employers that intend to use the model program.

FRA also received one comment regarding this section that pertained to the use of unique identifiers for each model program, but has decided not to amend this section based on the comment. The commenter recommends that FRA assign a unique identification number to all training developers—whether they are employers or third-party developers. In the NPRM, FRA proposed that each entity submitting an optional model program should submit a unique identifier associated with the program, or FRA will assign a unique identifier. The proposal and final rule provide a training developer with the maximum flexibility to create its own unique identifier. If one submitter duplicates another entity's identifier, FRA intends to notify the training developer so that entity has an opportunity to create another identifier. There does not appear to be any basis for supporting FRA's creation of unique identification numbers for training developers versus the developers creating their own unique identifier.

During the RSAC process, FRA expressed that it wanted to encourage the development of model training programs that could be used by multiple employers. There are several reasons why model programs are desirable as an option. Smaller entities may struggle with the costs and burdens of developing a program independently; thus, a model program could reduce the costs, especially for smaller businesses. For instance, in the context of locomotive engineer training and certification programs required pursuant to 49 CFR part 240, FRA has worked with ASLRRA in developing model programs for use by short line and regional railroads. Furthermore, there are economies of scale that benefit FRA in helping organizations, associations, and other businesses to develop model programs that may be adopted by other entities. That is, the more businesses that adopt model programs, the fewer the number of programs FRA would need to closely scrutinize in the review process. FRA is willing to provide early and frequent feedback to any entity producing a model program. In that way, FRA can ensure that each model program will contain all of the necessary components of a successful program and can be implemented by multiple businesses with little fear of rejection during the program submission and approval process.

Paragraph (a) contains an option that would permit any organization, business, or association to submit one or more model programs to FRA for later use by multiple employers. As FRA explained in the preamble under the heading "Compliance Guide," FRA will be publishing an interim final compliance guide in early 2015. Additionally, FRA has amended the proposal so that small entities will have at least four years to review FRA's guidance prior to the requirement in § 243.101(a)(2) that a small employer file a training program. That schedule for publication of a compliance guide should also benefit model program developers who will want to reference the guide in their attempt to meet the May 1, 2017 submission deadline in § 243.105(a)(3). In addition to short line and regional railroads, FRA encourages similar types of contractors to submit model programs possibly developed by a common association. In some instances, it is foreseeable that several employers may hire an organization, such as a training organization or learning institution, to develop a model program for those multiple employers to submit to FRA. FRA notes that the model program would be the program for any employer that chooses to submit it, and it is not a program submitted on behalf of the training organization, business, or learning institution that developed the program. Another possibility is that one railroad or contractor develops a program for its own use that it later allows other entities to copy. FRA expects that some organizations, businesses, and associations may take a proprietary interest in any model program it develops; however, FRA would hope that the costs imposed on small entities would be reasonable. Although FRA does not intend to draft and develop programs for employers to use, FRA intends to provide guidance to any person or entity in the development of model or individual employer programs.

To aid users, model program developers may use a modular approach in the design phase. For example, a model program designed for Track Safety Standards (49 CFR part 213), will likely incorporate all subparts (A–G) of the regulation. A modular approach will enable small railroad that may have all "excepted track" to essentially only use the training materials associated with subparts A and F, since the regulation for excepted track only requires a weekly inspection and a record of the inspection. Similarly, any railroad that only operates trains for distances of 20 miles or less are not required to train to the full requirements of the Brake System Safety Standards for Freight (49 CFR part 232). Once again, a modular approach in the design phase will enable users to easily customize a model program to fit their operational needs.

Section 243.107 Training Program Submission, Introductory Information Required

No comments were received recommending specific changes with regard to this section and the final rule is identical to the proposed rule; thus,

the analysis provided in the NPRM is merely summarized here. *See* 77 FR 6430.

In this section, FRA requires specific information from each employer submitting a program. The required information will provide FRA with some introductory information that the agency will need to understand the employer's approach to training. The information required in these paragraphs is intended to help put the training components in the program in some context before a reviewer reads the finer details of each component. For example, FRA may closely scrutinize a small railroad's training program if the program states that the employer primarily conducts the training of its own safety-related railroad employees using its own resources. The reason that information may raise a concern is that smaller railroads would not always have qualified instructors to implement all the different types of training required by the Federal laws, regulations, and orders.

Section 243.109 Training Program Submission, Review, and Approval Process

Several comments were received with regard to this section, but most of those comments did not persuade FRA to deviate from the provisions proposed in the NPRM. As the comments raised fairly narrow issues, the comments have been addressed in this analysis. As most of the final rule is identical to the proposed rule, the analysis provided in the NPRM is merely summarized here. Interested parties are directed to the NPRM for a more detailed discussion. The analysis in the NPRM can be found at 77 FR 6430–32. However, the following analysis explains the differences between the proposed rule and this final rule.

Paragraph (a)(1) addresses the issue of how employers must address apprenticeship, or similar intern programs, that have begun prior to submission of the employer's initial program filed in accordance with this part. RSAC recommended that FRA address this situation so that those persons who had already started an apprenticeship-type training program would know that their training would not be mooted by this final rule. During the RSAC deliberations, there were general concerns raised that some long-term training might be initiated prior to a training program submission and that, when reviewed in the context of the rest of the employer's initial program, the long-term training would not meet the employer's program requirements. In some instances, it may be possible to revise an apprenticeship or similar long-term intern program that has already begun; in other instances, changing the apprenticeship program would be prohibitively expensive or logistically difficult. RSAC recommended and FRA accepted the premise that as long as the apprenticeship-type training program is described in the employer's initial program, that apprenticeship or similar intern program may continue unless FRA advises the employer of specific deficiencies.

As FRA explained previously in the section-by-section analysis to § 243.101, the agency chose to provide equal treatment to an employer whether it is submitting a training program as an existing employer (as of January 1, 2018 under § 243.101(a)(1) or as of January 1, 2019 under § 243.101(a)(2)) or as an employer commencing operations after January 1, 2018 under § 243.101(b). FRA decided to provide this equal treatment in order to address concerns FRA received regarding the difficulties of compliance that start-ups and joint ventures could face. In order to carry that equal treatment throughout the rule, FRA is requiring the same initial program submission requirements for both § 243.101(a) and (b) employers in paragraph (a)(2) of this section, and has removed proposed paragraph (a)(3) of this section. This will allow all employers to consider their initial program submissions to be approved and ready for immediate implementation. Railroads are already required to ensure proper training techniques prior to commencing their operations. Therefore, this rule should not create barriers to entry nor delays in starting new operations. More so, new railroads would have access to model training programs and best-in-class training practices. Therefore, they should be able to use their own human resources more efficiently for training purposes and possibly expedite entry into market.

FRA did not receive comments suggesting that allowing an employer to immediately implement a training program without explicit FRA-approval might prove problematic; however, FRA considered whether the final rule could be problematic in that regard. FRA starts with the premise that even before this final rule is effective, all safety-related railroad employees are required to comply with the applicable Federal railroad safety laws, regulations and orders. An employer is responsible for its employees, and thus FRA could hold an employer accountable for any violations committed by an employee. In FRA's experience with program approval requirements, employers express the greatest anxiety over whether they can immediately implement a program versus having to wait for FRA's explicit approval. By allowing employers to immediately implement a program, FRA believes it has relieved most anxiety that employers are likely to have. In FRA's experience, it often takes several years before a latent problem in a training program is discovered. The open ended approval process permits FRA to go back years after initial approval and raise newly identified alleged instances of non-compliance. Although FRA will use enforcement when necessary, the agency's primary goal is to improve training for safety-related railroad employees and FRA expects that its focus will be on employers taking effective remedial measures.

If an employer's training program failed to meet the requirements of this final rule, there are two potential concerns. One concern is that the employer will incur additional training costs beyond what it would have incurred if FRA had rendered explicit approval prior to implementation and the second is that the employees will not be adequately trained. With regard to the first concern, FRA expects that most shortline railroads and contractors will use model programs previously FRA-approved in accordance with § 243.105. Because the model program would have received prior approval, FRA expects that any problems encountered will likely be with the implementation of the programs and not the programs themselves. Problems with implementation are likely to be discovered during investigations and audits, not during program reviews. If an employer is implementing its own individualized program. FRA expects that the worst case scenario is that the program would reflect the current state of the employer's training program without formalizing OJT or other aspects of its training. Under these scenarios, FRA intends to instruct the employer on the requirements of the rule and request a plan to get the training program in compliance with the final rule. Enforcement action will be considered on a case-by-case basis, but certainly would not be warranted in every instance if swift remedial action can be accomplished. An employer filing an individualized training program might be able to avoid these issues by submitting its program much earlier than the applicable implementation deadline and thereby getting FRA-approval prior to implementation. With regard to the second concern that employees will not

be properly trained, again, FRA does not see the problem as an employer failing to discuss a subject as an employer is responsible for an employee's non-compliance even prior to the effective date of this rule. FRA believes the problems will be that the training is not sufficiently formalized to capture that an employee can complete each assigned task; as this is an essential element of this final rule, it seems that it would be a blatant disregard of the requirements of the rule for an employer to leave it out of its program. In those cases, enforcement action is likely appropriate and, depending on the circumstances, an employer will have to plan a fix for the next training cycle or immediate remedial measures.

In paragraph (b), FRA implements a requirement for an annual informational filing. This filing is intended to ease an employer's regulatory burden by reducing the number of times an entire training program would need to be revised, resubmitted, and reviewed for approval on routine matters. An employer is required to submit a single informational filing no later than January 30 each calendar year that addresses any new safety-related Federal railroad laws, regulations, or orders issued, or new safety-related technologies, procedures, or equipment that were introduced into the workplace during the previous calendar year. The rule explains how FRA may advise individual employers, one or more group of employers, or the general public that an informational filing is not required for a particular issue.

APTA's comment requests that each railroad be provided the discretion to file an information filing anytime it wants rather than within 30 days of the end of the calendar year. However, FRA notes that APTA has misinterpreted the requirement. Under paragraph (b) of this section, an employer must file an informational filing "not later than 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise." There is no prohibition against an employer filing earlier than 30 days after the end of the calendar year in which the modification occurred. FRA has simply set a deadline for filing the informational filings, not a requirement that the filings can only be made within 30 days of the end of the calendar year.

Paragraph (c) sets forth the requirements for an employer that wants to revise a training program that has been previously approved. The requirement would allow substantial additions or revisions to a previously approved program to be considered approved and implemented immediately upon submission. For example, a program is considered revised if the employer adds any occupational categories or subcategories of safety-related railroad employees to the training program. Most other changes to an existing program would not be considered a substantial addition or revision but instead would likely require only an "informational filing" under paragraph (b).

AAR's comment reiterated a concern raised during RSAC Working Group meetings that the final rule should contain the flexibility to implement modifications in a manner consistent with each railroad's normal training schedule. After discussing the issue at the Working Group meeting to discuss the comments, it is FRA's belief that the final rule contains the flexibility that AAR seeks. For example, under paragraph (b), "the employer must review its previously approved training program and modify it accordingly when new safety-related Federal railroad laws, regulations, or orders are issued, or new safety-related technologies, procedures, or equipment are introduced into the workplace and result in new knowledge requirements, safety-related tasks, or modification of existing safety-related duties." Pursuant to paragraph (b), FRA expects that new legal requirements will contain their own implementation deadlines and that any employer implementing a new legal requirement will comply with that new legal requirement's deadline. Paragraph (b) also requires that an employer that needs to modify its training program to implement a new legal requirement shall submit an informational filing to the Associate Administrator not later than 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise. In other words, the rule requires that the employer be permitted the flexibility to modify the program at any time but the employer is not required to notify FRA of the modification until January 30 in the year after the modification occurred. The informational filing is the employer's notice to the FRA that the modification to the training program was made the previous year. As AAR's members will have completed new training curriculums by January 1 of each year, summarizing the modifications and filing the changes in an informational filing to FRA by January 30 should not pose an obstacle for any railroad that wishes to continue its normal training schedule.

Similarly, there is no requirement in paragraph (c) that could possibly deter a railroad or contractor from having the maximum flexibility to implement modifications in a manner consistent with the employer's training schedules. Paragraph (c) permits substantial additions or revisions to a previously approved program, that are not described as informational filings in accordance with paragraph (b) of this section, to be considered approved and ready for immediate implementation upon submission. Of course, if an employer chooses to submit the addition or revision during the early part of a newly started training cycle (*e.g.,* January through March for a major railroad) and FRA finds the addition or revision does not conform to this part, the employer will potentially have trained and be continuing to train employees based on a non-conforming program. Thus, an employer that begins new training in January should make every effort to get FRA's approval of an addition or revision prior to January.

FRA disagrees with APTA's concerns regarding the training program submission, review, and approval process. APTA states that the approval process "stifles the development of innovative and progressive techniques in training methodologies which could provide better employee understanding and adherence." APTA suggests that FRA add a provision to the final rule for a provisional status, such as "Conditional Acceptance" to allow for piloting or testing of new training approaches outside of misusing the waiver application for such a purpose. APTA is concerned that FRA will reject new training concepts or that an employer cannot utilize new training concepts until FRA approves a program. In response, FRA notes that under the rule, an employer could, at any time, submit substantial additions or revisions to a previously approved program and that the submission would be considered approved and may be implemented immediately upon submission. *See* § 243.109(c). Thus, as an employer could change the method of course delivery (*see* § 243.103 Training components identified in program) at any time after a program has been approved; a provision for conditional acceptance is unnecessary. The change will be considered accepted unless FRA determines that the new portion or revision to an approved program does not conform to this part; however, even then an employer will have 90 days to resubmit the program in accordance with the instructions provided by FRA.

APTA further comments that the disqualification procedure for the program was not well-defined in the NPRM and that due process should be provided. APTA is concerned about

employers having to pay civil penalties for failing to resubmit conforming programs. FRA does not believe that additional procedures are warranted. The procedures are sufficiently defined and give FRA the discretion to address each type of non-conformance through enforcement. FRA believes it needs the discretion to decide the appropriate method of addressing non-conforming training programs. FRA does not expect civil penalties to be assessed for program deficiencies that are correctable and corrected within the time allotted to the employer. FRA envisions taking enforcement action when an employer has a deficient program that is not corrected within the 90 days provided, and the deficiency is likely to have an impact on the quality of the training or the non-conforming aspect of the program makes it difficult for FRA to properly assess the quality of the program. Whenever possible, FRA would consider the potential disruption in requiring an immediate fix to a deficient program and extend this 90-day period upon written request in accordance with paragraph (a)(2). Instead of requiring the deficiencies to be fixed within 90 days, FRA could allow changes in the program to be made during during the employer's normal program review and implemented during the employer's normal training cycle. Furthermore, FRA is not obligated to assess civil penalties or take other enforcement action, and does not anticipate doing so unless the agency deems that such action is warranted.

FRA also expects that, in some instances, FRA representatives will be meeting with the entity that submits the non-conforming program and discussing the issues FRA identifies as problematic. These types of meetings are expected to lead to a better understanding of FRA's concerns, which FRA hopes would alleviate any anxiety that the agency is acting without understanding the submitter's concerns. Finally, once a submitter has exhausted its requests for FRA to accept its program, the submitter may have a legal cause of action based on the agency's final decision. Thus, the submitter will receive due process by appealing to Federal court after receiving an adverse final agency action. *See* Administrative Procedure Act, 5 U.S.C. 701–706.

The requirement in paragraph (d), to serve and involve labor organizations in the review of training programs, is for railroads only. One comment requested further clarification on what entities were obligated to comply with paragraph (d). For this reason, FRA clarifies that this requirement does not apply to any non-railroad entities that may have other obligations within this part. Thus, paragraph (d) does not apply to contractors, training organizations, and learning institutions that submit training programs. Paragraph (d) also does not apply to any model program submitters, unless the submitter is a railroad that intends to implement the model program on its own property following FRA approval.

FRA has also rejected AAR's comments suggesting that the requirement for a railroad to maintain proof that it has served a labor organization president with a training submission, resubmission, or informational filing is unnecessary under paragraph (d)(1)(ii) of this section. AAR states that if a railroad failed to provide a labor organization president with service of the training program, the railroad would be subject to FRA enforcement. AAR also questions the need for the names and addresses of the people served, as it is anachronistic with the use of electronic service and electronic docketing systems. FRA notes that it has recently promulgated a similar provision in 49 CFR part 242, Conductor Certification, and that the agency's concern is ensuring that the relevant labor organizations have sufficient time to review and provide FRA with feedback on the training submissions. When FRA reviews the program, if the agency notices that a certificate of service contains out-of-date or incorrect information then the agency can notify the railroad and relevant labor representatives of the error quickly. Certainly, if the labor organizations are amenable to being served by email or some other electronic means, the railroad would be required to capture that electronic address in addition to the name of the labor organization president served. FRA is less concerned with catching a railroad out of compliance than with ensuring that labor organizations have a full 90 days to comment on any program submission and not otherwise delaying the approval process because of improper service. Without a certificate of service, there is a greater likelihood that a railroad could intentionally or negligently fail to properly serve a labor organization. The certificate of service provides FRA with a relatively simple way to verify that the correct persons have been served.

Paragraph (d)(2) requires that each railroad labor organization has up to 90 days to file a comment. The reason for the 90-day deadline is that FRA would like to send approval notification to railroads in a timely fashion. Without a deadline for comments, the approval process would seem open ended. However, FRA realizes that, from time-to-time, a labor organization may find something objectionable in a previously approved program, and FRA encourages those types of comments to be filed as they are discovered. When a labor organization discovers an objectionable issue outside of the required 90-day window, FRA would still accept the comment and review the issue to see whether a revision to the training program is warranted.

Section 243.111 Approval of Programs Filed by Training Organizations or Learning Institutions

Only one comment was received with regard to this section and it is addressed in this analysis without a need to change the proposal. FRA made a slight change to paragraph (b) in order to align the implementation deadline for training organizations and learning institutions with that of the other implementation deadlines in the final rule. Otherwise, the final rule is identical substantively to the proposed version and the analysis provided for in the NPRM is merely summarized here. Interested parties are directed to the NPRM for a more detailed discussion. The analysis in the NPRM can be found at 77 FR 6432–34.

The purpose of this section is to facilitate the option of using training organizations or learning institutions. An employer that intends to implement any training programs conducted by some other entity (such as a training organization or learning institution), or intends to qualify safety-related railroad employees previously trained by training organizations or learning institutions, has an obligation to inform FRA of that fact in the employer's submission. If FRA has already approved the training organization or learning institution's program, an employer could reference the approved program in its submission, avoid lengthy duplication, and likely expect a quick review and approval by FRA. Furthermore, individuals or employers that use training provided by training organizations or learning institutions need assurances that the training will meet or exceed FRA's requirements prior to incurring any training expense. Without such assurances, an individual or employer may determine that paying for such training is not worth the risk.

Paragraph (b) requires that a training organization or learning institution that has provided training services to employers covered by this part prior to January 1, 2017 may continue to offer such training services without FRA approval until January 1, 2018. The final

rule is more generous than the NPRM as it provides additional time for any training organization or learning institution to submit a program for FRA approval. FRA decided that since the final rule does not require any employer to submit a program prior to January 1, 2018, FRA should permit any training organization or learning institution to continue offering such training services without FRA approval until that date. Each training organization and learning institution should understand that its best interests are served by seeking early FRA approval of its training program so the program can be referenced by the employers who are its clients. In accordance with paragraph (d) of this section, explicit approval of such a program is required and the program will not be considered approved on submission. FRA will need time to review each program and it can be anticipated that the agency will be busy reviewing a large volume of programs late in 2017 and throughout 2018. Thus, each training organization and learning institution should plan to file its program as early as possible to avoid implementation delays.

Paragraph (c) requires that a program submitted by a training organization or learning institution must include all information required for an employer's program in accordance with this part, unless the requirement could only apply to an employer's program. In the section-by-section analysis in the NPRM, FRA explained that this sentence mainly refers to the requirements found in §§ 243.101 and 243.103. FRA received one comment requesting clarification as to whether § 243.103(a)(3) applies to employers only. In response to the comment, FRA notes that the citation refers to the requirement for an employer's program to have a document for each OJT program component that includes certain information about the OJT program. FRA concludes that OJT would not be a required part of a program filed by a training organization or learning institution, but individual employers that utilize a training organization or learning institution may choose to supplement a program with OJT. It can be left to each employer to clarify that supplemental OJT issue in the employer's program. Please note that OJT is not considered a mandatory program requirement and, other types of hands-on formal training provided by a training organization or learning institution may be considered an adequate substitute for OJT.

§ 243.113 Electronic and Written Program Submission Requirements

In the NPRM, FRA raised the issue of whether the option to file a program electronically should be modified to mandate electronic filing. An electronic submission process would allow the agency to more efficiently track and review training programs than a written paper submission process would permit. FRA was also concerned with incurring costs in developing and maintaining an electronic submission process if many submitters opted out. FRA always has the option to add paper submissions to an electronic database, but FRA would have to allocate resources to digitize and upload those paper submissions to the database.

FRA received one comment that objected to mandatory electronic submission. ASLRRA disagreed with FRA's assumption that even the smallest Class III railroads should have access to the Internet (or reliable access), and should therefore be able to file a training program electronically. FRA explored this issue with ASLRRA and the Working Group at the meeting held to discuss the comments filed in response to the NPRM.

FRA's electronic submission mandate addresses the ASLRRA's comment by creating an exception for an employer with less than 400,000 total employee work hours annually in paragraph (a) of this section. Typically, when FRA has created an exception for small entities (especially railroads), it has defined small entities as those having less than 400,000 total employee work hours annually. FRA's exception is an accommodation that will spare small companies from requesting a waiver from the otherwise mandatory electronic submission process. Of course, nothing in this final rule precludes an employer with less than 400,000 total employee work hours annually from submitting its program electronically. If an employer does not meet the requirements for the exception and does not have the capability to file electronically, the employer may submit a waiver request to FRA, consistent with FRA's general waiver provision found at 49 CFR part 211. Paragraph (a) also requires that all model programs be filed electronically in accordance with the requirements of this section.

In addition to the previously mentioned considerations, FRA considered that it is becoming routine for private and public transactions to occur electronically. It would currently be unusual for an employer to forego having a Web site that customers can visit. FRA also expects that many companies would prefer not to have to print out written materials to mail in when a paper free electronic submission process is available. For these reasons, FRA is best served by requiring electronic submission.

This section and section title were modified from the NPRM to reflect the mandatory nature of the electronic program submission and to acknowledge that the section also contains the requirements for a written submission. Other than the comment and changes previously discussed, only minor edits were made compared to the proposed section. Interested parties are directed to the NPRM for a more detailed discussion. The analysis in the NPRM can be found at 77 FR at 6434.

Paragraph (b)(1) was changed from the proposal so that it is clear that organizations, businesses, and associations may file a program, not just employers, training organizations, and learning institutions. Throughout the section, the term "person" was substituted for the term "entity," which was not defined in the NPRM or this final rule.

FRA intends to create a secure document submission site and will need basic information from each company before setting up the user's account. The points of contact information in paragraph (b) are necessary in order to provide secure access. FRA has already developed a prototype of the document submission site and has offered a variety of likely users that represent the gamut of the regulated community an opportunity to test the site. Based on feedback received from test users, FRA received valuable insight into the pros and cons of the prototype. If necessary, the secure site should be able to start accepting electronic submissions by the effective date of the rule, although FRA expects to make additional functionality improvements up to the date of publication of FRA's compliance guide. FRA encourages every regulated organization and employer to obtain access to FRA's secure document submission site early in the program drafting process in order to become familiar with what can be accomplished on the site and potentially to enter basic user or program information so that the contact for the organization or employer will only need to upload the relevant written program submissions as they are completed. By developing the electronic submission process years in advance before the first programs are required for submission, FRA intends to create an electronic submission process that is easy to use and provides benefits to both the user and the agency.

The requirements in paragraphs (c), (e), and (f) will allow FRA to make efficient use of this electronic database. It is anticipated that FRA will be able to approve or disapprove all or part of a program and generate automated notifications by email to an entity's points of contact. Thus, FRA wants each point of contact to understand that by providing any email addresses, the entity is consenting to receive approval and disapproval notices from FRA by email. Entities that allow notice from FRA by email would gain the benefit of receiving such notices quickly and efficiently.

Paragraph (d) is necessary to provide FRA's mailing address for those entities that need to submit a program submission in writing to FRA. Those entities that choose to submit printed materials to FRA must deliver them directly to the specified address. Some entities may choose to deliver a CD, DVD, or other electronic storage format to FRA rather than requesting access to upload the documents directly to the secure electronic database; although this will be an acceptable method of submission if the exception in paragraph (a) applies or the entity is granted a waiver, FRA would encourage each entity to utilize the electronic submission capabilities of the system. Please be advised that FRA will reject any submission if FRA does not have the capability to read it in the type of electronic storage format sent.

In the NPRM, FRA requested comments on whether this section should address the submission of proprietary materials or other materials that an entity wishes to keep confidential. This issue has been addressed previously under the Discussion of Specific Comments and Conclusions section of this document.

Subpart C—Program Implementation and Oversight Requirements

Once a program has been approved by FRA, each employer will have to comply with the requirements of this subpart. The subpart includes both implementation and oversight requirements. Some requirements apply only to railroads, and others to both railroads and contractors. Additionally, each training organization and learning institution will be required to maintain records as evidence of completed training.

Section 243.201 Employee Qualification Requirements

Except for comments received regarding implementation dates, no comments were received requesting specific changes to this proposed section. FRA made some minor changes and clarifications to this section which are explained in the following analysis. This analysis summarizes all the requirements, but interested parties should reference the NPRM (77 FR 6434–36) for additional analysis on those requirements that are the same as the proposal.

The implementation dates in paragraphs (a), (b), and (e) have been extended from the proposal to address concerns raised in the comments. Paragraph (a), which requires each employer to designate existing employees, was split into two paragraphs so that smaller employers will have an extra year to comply with that requirement; this change from the proposal mirrors the change made to § 243.101(a) that provides smaller employers with an extra year to submit a training program. The implementation date issues are discussed in greater detail in the Discussion of Specific Comments and Conclusions section of this document, but FRA complied with the spirit of the agreement reached by the Working Group to delay the start of refresher training so that it does not interrupt the normal three year training cycle instituted by many employers. Paragraph (b) contains a conforming change to reflect the new implementation dates in paragraph (a) of this section. Paragraph (e) was also split into two paragraphs so that smaller employers will have an extra year to comply with the refresher training requirements. In addition, in order to explain FRA's intent regarding when refresher training is due when the last training event occurs prior to FRA's approval of the employer's training program, some clarifying language has been added to paragraphs (e)(1) and (e)(2). This clarification is explained in more detail later in this analysis.

In the NPRM, FRA raised the issue of whether proposed paragraph (f) should stand alone or be combined with proposed paragraph (c)(2) of this section. That is, the proposed paragraph (f) requirement related directly to situations in which "as part of the OJT process and prior to completing such training and passing the field evaluation, a person may perform such tasks under the direct onsite observation of any qualified person, provided the qualified person has been advised of the circumstances and is capable of intervening if an unsafe act or non-compliance with Federal railroad safety laws, regulations, or orders is observed." Because proposed paragraph (f) provided the context of what is a "qualified person" under paragraph (c)(2) of this section, FRA has decided that the proposed paragraph (f) requirement should be incorporated into the final paragraph (c)(2). This information explains why FRA deleted proposed paragraph (f) of this section.

This section includes an exemption for existing employees to be designated for a particular occupational category or subcategory without further training, provides procedures for qualifying those employees that are not exempted by the employer for a particular occupational category or subcategory, and requires each employer to deliver refresher training. FRA's intention is to ensure that all safety-related railroad employees receive proper initial training if previously unqualified, and that all previously qualified employees receive refresher training at regular intervals to ensure continued compliance. FRA encourages each employer to find ways to provide remedial training and retesting of any employee that fails to successfully pass any training or testing. Under this part, a failure of any test or training does not bar the person from successfully completing the training or testing at a later date. Of course, FRA does not regulate employment issues and will leave those issues to be settled in accordance with any applicable collective bargaining agreement or employment and labor law.

Paragraph (e) of this section requires that each employer shall deliver refresher training at an interval not to exceed three calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. Comments were raised at the Working Group meeting regarding how to treat employees who are already receiving refresher training in a three year cycle. The commenters wanted to clarify that FRA would not be requiring every existing employee to receive refresher training in the same year, which would disrupt the current refresher training cycle as well as be expensive and logistically difficult. The commenters correctly stated FRA's position, although FRA determined that the proposal could be improved to articulate that position more clearly. The regulatory language indicates that the employer is required to conduct refresher training at an interval based on "an employee's last training event." Based on the comments, FRA has added clarification in the rule to further bolster the agency's intent that if the last training event occurs prior to FRA's approval of the employer's training program, the employer shall provide refresher training either within 3

calendar years from that prior training event or no later than December 31, 2022 or December 31, 2023, depending on the size of the employer. The changes from the proposal do not prevent an employer from initiating and completing its first round of refresher training all within the year of the applicable deadline established by paragraphs (e)(1) or (e)(2). However, the final rule allows for any employer to begin or continue implementing refresher training on a three calendar year cycle for one-third of its workforce each year without creating any logistical issues.

Section 243.203 Records

Several comments were received with regard to this section and they are addressed in this analysis. Compared to the NPRM, this section is substantially the same except that proposed paragraph (b)(5) was deleted, resulting in the renumbering of the remaining numbered paragraphs in paragraph (b); paragraph (c) was amended to address comments suggesting that certain types of records should only be required to be kept at one of the employer's headquarters location within the United States; and, the electronic recordkeeping requirements were revised to more closely resemble FRA's latest approach in this chapter. As most of the final rule is identical to the proposed rule, the analysis provided in the NPRM is merely summarized here. Interested parties are directed to the NPRM for a more detailed discussion. *See* 77 FR 6436–38.

An essential requirement of any training program is the maintenance of adequate records to support that the training was completed. In paragraph (a) of this section, FRA sets forth the general requirements for each safety-related railroad employee's qualification status records and the accessibility of those records. One commenter asks whether a railroad will be required to maintain records for its contractors. The answer to the question is found in paragraph (a) which requires that each employer is responsible for keeping records of each of its own safety-related railroad employees. Thus, a railroad is not required to maintain records for any contractor's safety-related railroad employees. It is the contractor that is responsible for keeping records of its own employees.

In paragraph (b), FRA requires that certain core information be kept in the records for each current or former safety-related railroad employee. As mentioned previously in this analysis, proposed paragraph (b)(5) was deleted. In the NPRM, FRA questioned whether proposed paragraph (b)(5) was necessary as it would have required that the records for each current or former safety-related railroad employee indicate whether the person passed or failed any tests associated with training even though paragraph (b)(4) requires that the employer indicate in the records that the person successfully completed a specified formal training course. FRA received four comments supporting removal of proposed paragraph (b)(5) as unnecessary and none in support of retaining the provision.

Paragraph (c) contains a three-year record retention requirement for any records that are not individual employee records. The records referred to here would mainly be those kept in accordance with periodic oversight (§ 243.205) and the annual review (§ 243.207). The proposed three-year window for retention would actually be a bit longer than 3 years because it would be measured as three calendar years after the end of the calendar year to which the event relates. Thus, if a test occurred on March 1, 2018, the record would need to be maintained through December 31, 2021.

Paragraph (c) also requires that any records that are not individual employee records must be accessible at one headquarters location within the United States. This paragraph lists different types of acceptable headquarters locations, but this is not an all-inclusive list and certainly other locations may be suitable. However, FRA has specifically rejected the idea that a multi-national corporation could maintain these records exclusively in a foreign location as doing so could hamper FRA's enforcement activities. FRA eliminated the proposed requirement that these records also be kept at each division headquarters where the test, inspection, annual review, or other event is conducted after considering the overwhelming negative comments received. Thus, the revisions to this paragraph provide the flexibility sought by employers to choose where to maintain records, as well as eliminating the proposed requirement that the records also be maintained at certain division headquarters.

Paragraph (d) contains the requirements for each employer, training organization, or learning institution to make available any record that it is required to maintain under this part.

Paragraph (e) contains the requirements that apply for each employer, training organization, or learning institution that chooses to retain the information prescribed in this section by maintaining an electronic recordkeeping system. FRA decided not to retain the same provisions that were in the NPRM because the agency recently promulgated electronic recordkeeping provisions in the conductor certification final rule that provide a more up-to-date version of such requirements. *See* 49 CFR 242.203(g). NRC recommends deleting paragraphs (e)(1) through (e)(3) from this proposed section arguing that small contractors would find the requirements too prescriptive to comply with. In response, FRA disagrees with the comment that a small business would have difficulty complying with proposed paragraph (e)(3) or paragraph (e)(2) of the final rule, which requires limiting access and identifying individuals with access. Off-the-shelf software should be available to small businesses that would provide the appropriate security necessary to comply with these requirements. FRA is concerned that if these electronic recordkeeping system requirements are relaxed for small businesses that the integrity of the records would be susceptible to inadvertent changes or outright falsification. Individual employers may file a waiver request, using FRA's standard procedures in 49 CFR part 211, and provide alternative assurances to the integrity of an electronic system to bolster such a request.

Paragraph (f) contains a transfer of records requirement with the goal of preserving training records that might otherwise be lost when an employer ceases to do business.

Section 243.205 Periodic Oversight

FRA had requested comments on whether to expand periodic oversight beyond what was proposed in the NPRM, but the only comment FRA received with regard to this section requested that FRA not consider any additional oversight necessary. Considering the comment and the RSAC's recommendation, FRA has decided to keep this section of the final rule identical to the proposed version except for one non-substantive change discussed in this analysis. Thus, the analysis provided for in the NPRM is still applicable and merely summarized here. Interested parties are directed to the NPRM for a more detailed discussion. The analysis in the NPRM can be found at 77 FR 6438–41.

There are two central purposes to conducting periodic oversight under a training rulemaking. One central purpose is to take notice of individual employees who are in non-compliance and to take corrective action to ensure

that those specific employees know how to do the work properly. In some instances, the employee might need coaching or retraining, especially if the person has not had much experience doing the work. In other instances, training may not be an issue and other remedial action may be appropriate. A second central purpose in conducting periodic oversight is to look at all of the oversight data as a whole to detect patterns of non-compliance. The annual review in § 243.207 is intended to spur such a global review of training and trigger adjustments that improve the effectiveness of training courses. Taken together, these oversight and review actions should lead to significant improvements in compliance and the overall quality of training programs. The recording of oversight, and the identification of problem areas, is intended to compel each employer to focus on how a training course can be improved to place greater emphasis on the causes of such non-compliance.

Paragraph (a) contains the general periodic oversight provision and limits the required testing and inspection oversight to the Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. The Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety that FRA is referring to are currently limited to 49 CFR part 214 (Railroad Workplace Safety), part 218 (Railroad Operating Practices), and part 220 (Railroad Communications). These particular compliance issues are not currently required to be as closely monitored as train movements and other railroad operations. For that reason, FRA would like to close that gap and have employers more closely monitor the activities of largely maintenance-of-way, signal, and operations personnel (who are not conductors or locomotive engineers, *see* § 243.205(b)) that are required to abide by the listed regulations related to FRA-regulated personal and work group safety. Thus, this section does not impose periodic oversight requirements for each and every Federal railroad safety law, regulation, and order that the training program required by § 243.101 covers.

Periodic oversight means regularly conducting both tests and inspections. In this context, a test is conducted by a qualified supervisor who changes the work environment so that one or more employees would need to act to prevent non-compliance. An inspection involves a qualified supervisor observing one or more employees at a job site and determining whether the employees are in compliance.

Paragraph (b) exempts railroads from conducting periodic oversight under this part on certified locomotive engineers and conductors as those safety-related railroad employees are already covered by similar requirements found elsewhere in this chapter.

Although only paragraph (c) contains the heading "[r]ailroad oversight," paragraphs (c) through (f) need to be read together in order to fully understand the responsibilities for each railroad as it performs oversight. Generally, a railroad is required to provide periodic oversight tests and inspections for the safety-related railroad employees that it authorizes to perform safety-related duties on its property. Paragraph (c) lists several exceptions to this general rule.

Paragraph (d) limits a railroad's requirement to conduct periodic oversight of a contractor's employees. In situations where a railroad is obligated to conduct oversight of a contractor's employees, a railroad would not be required to perform operational tests of safety-related railroad employees employed by a contractor. Please note that although paragraph (d) does not require a railroad to conduct operational tests of safety-related railroad employees employed by a contractor, this provision does not prohibit it either.

Paragraph (e) provides each railroad with significant discretion to conduct oversight of a contractor's safety-related railroad employees when it is convenient for the railroad. Each railroad has the discretion to choose when it is convenient to conduct oversight of contractors. Paragraphs (e)(1) and (e)(2) suggest that a railroad may choose to require supervisory employees to perform oversight under certain conditions.

Paragraph (f) requires that when a railroad finds evidence of contractor employee non-compliance during the periodic oversight it shall provide that employee and that employee's employer with details of the non-compliance. The final rule substitutes "a railroad" for "any railroad," but the meaning is the same as the requirement applies to each and every railroad that finds such evidence of a contractor employee's non-compliance.

Paragraph (g) requires each contractor to conduct periodic oversight tests and inspections of its safety-related railroad employees provided that certain conditions are met. If any condition is not met, the contractor is exempt from being required to perform the oversight. For instance, in paragraph (g)(1) there is a small business exemption for any contractor that employs 15 or fewer safety-related railroad employees.

Paragraph (h) would allow a railroad and a contractor to agree that the contractor will provide the periodic oversight, notwithstanding the requirements of this section that impose the requirements on either the railroad or the contractor. With that understanding, the RSAC proposed that in order to accept this oversight responsibility, the contractor would need to address in its program that the railroad has trained the contractor employees responsible for training and oversight. In other words, the contractor may accept responsibility for the oversight, but not until the railroad trains the contractor's supervisory employee and qualifies that person to do the oversight; thus, the railroad has some obligation to ensure that the contractor's supervisory employees are capable of conducting the oversight before abdicating what would otherwise be the railroad's responsibility.

Paragraph (i) contains the requirements for retaining oversight records and paragraph (j) contains the statement that the records required under this section are subject to the requirements of § 243.203, which is the section containing the recordkeeping requirements of this part. In the NPRM, FRA requested comments on whether paragraph (j) is necessary given that the requirements of § 243.203 would apply to any records of period oversight required under this part even if paragraph (j) was deleted. Although FRA has not received any comments on this issue, FRA is retaining paragraph (j) as a reminder that records of periodic oversight must be retained and that without the paragraph some employers might not grasp that the recordkeeping requirements apply under these circumstances.

FRA also sought comments on a potential scope issue that would allow some situations where safety-related railroad employees would not be subject to any oversight. Those situations would likely occur when a short line railroad hires a contractor with 15 or fewer safety-related railroad employees. It is possible that the short line railroad would not have the supervisors with the expertise necessary to conduct the oversight and the contractor would be too small to be required to do it themselves per the requirements of this section. As FRA did not receive any comments raising concerns with this scope issue, FRA has decided to finalize its proposal for the reasons acknowledged in the NPRM. Of course, if FRA receives information that supports addressing this issue, FRA can

initiate a rulemaking to amend the rule accordingly.

Section 243.207 Annual Review

FRA has decided to keep this section of the final rule identical to the proposed version, except for a non-substantive change to paragraph (b) to clarify that this section does not apply to a railroad with less than 400,000 total employee work hours annually. Thus, the analysis provided for in the NPRM is still applicable and merely summarized here. Interested parties are directed to the NPRM for a more detailed discussion. The analysis in the NPRM can be found at 77 FR 6441–43. The comments received with regard to this section have been addressed in this analysis.

Paragraph (a) of this section requires that each railroad with at least 400,000 total employee work hours per year must conduct an annual review in accordance with the requirements of this section. This section only applies to railroads except that, in accordance with paragraphs (a) and (f), contractors must use any information provided by railroads to adjust training specific to the Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. In order to address a comment suggesting proposed paragraph (b) seemed to include railroads with less than 400,000 total employee work hours per year despite the exclusion in paragraph (a), FRA has added a reference to this exception in an introductory phrase to paragraph (b). FRA anticipates that this non-substantive change will prevent further misunderstandings of the agency's intent.

It is likely that most annual reviews will reveal that the current method of formal training covers the subject matter, but some aspect of the training could be improved. For example, it might be determined that the training could place more emphasis on compliance with one or more specific tasks. Greater emphasis could be placed on the task by increasing the amount of time covering how to perform the task and the problems that could be encountered when conducting the task. The course materials should be reviewed to see if they could be improved for clarity. In other instances, especially when the pattern of non-compliance is detected in a safety-related task, adding an OJT or hands-on component, or adding more repetitions within the OJT or hands-on component, may increase an employee's proficiency and lead to more lasting compliance. In still other instances, adding opportunities for individualized instruction and feedback could cut down on non-compliance. It could also be determined that a particular instructor is ineffective, or some other aspect of the way the course is delivered is not conducive to learning.

There are certainly a number of ways to improve training and that is why it is important that each person a railroad designates to conduct the annual review should be familiar with the training program filed with FRA. The rule does not mandate that the designated person in paragraph (c) have any specific knowledge requirements; although the NPRM requested comments on whether there should be any such requirements, FRA did not receive any comments on this issue. Consequently, FRA is maintaining the position it took in the proposal that the person designated to conduct the review will need to have extensive information about the training program and individual course material, as well as direct access to shape the methods of delivery. Again, the annual review is intended to effect change in how training is delivered to improve performance and should not be viewed as the end itself.

In the NPRM, FRA explained that paragraph (f) requires that contractors have a duty to use any information provided by railroads to adjust training specific to the Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. FRA solicited comments regarding this paragraph because FRA was concerned that it failed to address a situation in which a contractor disagrees with the railroad's information that a modification to a training program is necessary. FRA received three comments on this issue and all three comments took the position that FRA should not address such potential conflicts between a railroad and a contractor. The NRC, ASLRRA, and AAR were unified in their position that such conflicts should be handled without Federal intervention and during the normal course of business. As FRA does not have a strong rationale for addressing these potential conflicts between a railroad and a contractor, FRA has decided not to change the rule from the proposal.

Section 243.209 Railroad Maintained List of Contractors Utilized

FRA has decided to keep this section of the final rule identical to the proposed version. Thus, the analysis provided for in the NPRM is still applicable and merely summarized here. *See* 77 FR 6443–44.

One issue that was repeatedly raised during the RSAC meetings was that employees of contractors routinely work alongside employees of railroads. From an enforcement viewpoint, it is essential that FRA be able to identify which employees work for railroads and which for contractors. When an employee works for a contractor, FRA can sometimes find it an additional burden to figure out basic contact information for the contractor employer. This section is intended to require each railroad to maintain a list of the contractors it uses and some basic contact information about each of those contractors.

With this basic information, FRA should be able to track down a contractor to follow-up during any audit or investigation.

Appendix A

FRA did not publish a proposed penalty schedule because such penalty schedules are statements of policy, and thus notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). FRA has published similar penalty schedules in each of its existing rules and this practice is described in 49 CFR part 209, appendix A, under the heading "Penalty Schedules: Assessment of Maximum Penalties." The schedule is intended to set penalty levels commensurate with the severity of the violation for typical violations, whether willful or non-willful. Of course, the penalty schedule does not constrict the agency's authority to issue a penalty anywhere in the range from the statutory minimum amount to the statutory maximum amount.

In the NPRM, FRA reminded interested parties that they were welcome to submit their views on what penalties may be appropriate. FRA received three comments requesting that FRA adopt a penalty schedule at the lowest or lower range of possible penalties. Each commenter expressed a different reason why low penalties in the schedule are warranted.

ASLRRA asked that FRA adopt a penalty schedule at the lowest range of possible penalties which reflects the low threat to safety which training rule infractions represent. ASLRRA is concerned that onerous penalties against small railroads for recordkeeping and procedural errors will waste resources when few of those types of non-complying conditions are likely to have a direct, adverse, or serious consequence on the immediate safety to employees or the public. In response, it should be noted that regardless of recommended standard penalties in a schedule, FRA is always

free to adjust penalties for small entities based on ability to pay and a variety of mitigating factors. *See* 49 CFR part 209, appendix C.

AAR urged FRA to adopt a penalty schedule with the potential penalties at the lower end of the penalty ranges normally found in FRA's penalty schedules. AAR argues that it is extremely unlikely that violations of the training requirements would lead directly to accidents. Furthermore, AAR stated that the railroads already have a record of providing sufficient training to their employees. In response, FRA acknowledges AAR's position and believes it has been taken into account in the penalty schedule. Of course, there are many other factors to consider in creating this penalty schedule. For example, some penalties may be geared towards one-time violations when others are for systemic issues; in that case, it may be appropriate to propose higher penalties on average for systemic non-compliance than a violation involving a single occurrence. FRA has also considered that gaps in training or ineffective training are often found to be contributing causes to accidents/incidents.

NRC urges FRA to adopt a penalty schedule with the potential penalties on the lowest end of the penalty ranges normally found in FRA's penalty schedules in order to consider the "unprecedented level of direct interaction between the FRA and hundreds of rail contractors that have little previous experience being directly regulated by a federal agency." Again, FRA appreciates the comment and can make adjustments to assessed penalties on a case-by-case basis depending on the totality of the legal and factual circumstances. Contractors unfamiliar with FRA's civil penalty process should consult 49 CFR part 209, appendix A for a description of that process and the factors FRA considers when deciding the amount or the appropriateness of any penalty. FRA also understands that NRC's comment refers to the fact that FRA is an active enforcement agency that conducts inspections and audits of regulated entities on a continual basis, not just when an accident/incident occurs. Some rail contractors may be more familiar with other Federal agencies that rarely are quite as active as FRA in that regard. Despite the truth to NRC's comment that some contractors may not have experience with an active Federal enforcement agency, FRA does not agree that the penalty schedule amounts should be adjusted lower to account for employers that lack that experience.

VII. Regulatory Impact and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action within the meaning of Executive Order 12866, Executive Order 13563, and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this final rule.

The RIA details estimates of the costs likely to occur over the first twenty years after its effective date and a breakeven analysis that details the reductions in relevant railroad accidents and incidents that will be necessary for the final rule to breakeven in the same timeframe. Informed by its analysis of the economic effects of this final rule, FRA believes that this final rule will result in positive net benefits. FRA believes the final rule will achieve positive net benefits primarily through requiring that training programs include "hands-on" training components, such as OJT, simulation, and lab training,[6] which scientific literature has shown to be much more effective at reducing railroad accidents and incidents than traditional training.[7] The costs that will be induced by this final rule over the twenty-year period considered include: the costs of revising training programs to include "hands-on" training where appropriate, as well as the costs of creating entirely new training programs for any employer that does not have one already; the costs of customizing model training programs for those employers that choose to adopt a model program rather than create a new program; the costs of annual data review and analysis required in order to constantly improve training programs; the costs of revising programs in later years; the costs of additional time new employees may have to spend in initial training; the costs of additional periodic oversight tests and inspections; the costs of additional qualification tests; and the costs of additional time all safety-related railroad employees may have to spend in refresher training. (FRA has accounted for additional costs that were not addressed in the NPRM including: hiring new trainers and indoctrinating them into the railroad training programs; filing documentation on programs to FRA; and hosting visits of FRA officials to review training programs.)

In analyzing the final rule, FRA has applied updated "Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses," March 2013. This policy updates the Value of a Statistical Life (VSL) from $6.2 million to $9.1 million and revises guidance used to compute benefits based on injury and fatality avoidance in each year of the analysis based on forecasts from the Congressional Budget Office of a 1.07% annual growth rate in median real wages over the next 30 years (2013–2043). FRA also adjusted wage based labor costs in each year of the analysis accordingly. Real wages represent the purchasing power of nominal wages. Non-wage inputs are not impacted. The primary cost and benefit drivers for this RIA are labor costs and avoided injuries and fatalities, both of which in turn depend on wage rates.

Based on the 2013 VSL DOT guidance and CBO wage forecast, the total non-discounted cost of the final rule over the 20-year period analyzed is approximately $389.9 million. Present discounted costs evaluated over the first 20 years of the final rule total about $290.9 million at a 3% discount rate and about $207.1 million at a 7% discount rate.

The annualized costs are $26,201,913 at a 3% discount rate and $36,796,090 at a 7% discount rate.

FRA has performed a break-even analysis for this final rule. FRA expects that improving training primarily by requiring the inclusion and implementation of "hands-on" elements where appropriate will reduce the number of relevant railroad accidents and incidents. Rather than assume any specific reduction will be achieved, FRA has calculated the percentage of relevant railroad accidents that will need to be prevented by this final rule to at least offset the total costs of the final rule. Reductions in railroad accidents will result in fatalities avoided, injuries avoided, and property damage avoided, all of which can be monetized and quantified using FRA safety data.

The table below presents the average yearly number of accidents, fatalities, injuries, and property damage from relevant railroad accidents between 2001 and 2010.

[6] Hands-on training is generally used by instructors/trainers to re-enforce new skills to the learner. Hands-on can be a simulated exercise in a laboratory, classroom, or it can be used in the actual work environment similar to OJT. Hands-on activity enables the trainer/instructor to objectively assess learning transfer based on successful completion of the task to be performed.

[7] For a review and citation information of this scientific literature, please see the Regulatory Impact Analysis that accompanies this final rule and that has been placed in the docket.

Average yearly number of accidents/incidents	Average yearly number of fatalities	Average yearly number of injuries	Average yearly property damage	Average monetized economic damages from all relevant accidents (using VSL of $9.1 million)
9,723	43	7,545	$273,896,902	$1,566,480,194

The accident/incident pool that FRA used for its analysis includes a wide range of events. These range from very minor and less expensive incidents to major accidents with multiple fatalities. An incident that was a result of an employee not wearing proper fall protection is an example of an incident that might be impacted by this rule. The more rigorous training (emphasized by this rule) not only focuses on specific safety hazards and safety behavior, it also enhances the overall safety culture which will affect both work safety performance and the quality of the safety training provided. On the higher end of the range, for example, are derailments and collisions between on track equipment.

FRA believes that additional hands-on and refresher training will reduce the frequency and severity of some future accidents and incidents. Expected safety benefits were calculated using full accident costs, which are based on past accident history, the values of preventing future fatalities and injuries sustained, and the cost of property damage. (Full accident costs are determined by the number of fatalities and injuries multiplied by their respective prevention valuations, and the cost of property damage.)

In addition to fatalities, injuries, and property damage, railroad accidents can result in train delay, environmental damages, evacuations and emergency response costs, but FRA does not have sufficient data with which to estimate those potential costs savings related to implementation of the enhanced training requirements due to this final rule. Human factors can also play a role in limiting the consequences of accidents—in other words reducing the severity of their outcomes. Some FRA regulations are focused on the subject of reducing human factor caused accidents and this final rule has the potential to result in improvements in this area as well.

Using the 2013 VSL guidance, FRA estimates that this final rule will break even if it results in a 20-year total reduction in relevant railroad accidents and incidents of 4.59% using a 3% discount rate, and 4.59% using a 7% discount rate. These are the official break-even percentages. Safety regulations have already achieved significant results, while the industry has increased freight and passenger traffic, total number of trains, and employee hours worked. However, all of these statistics are on an upward trend with very little increase in track miles (*i.e.*, density ever increasing, creating an environment where the probability of an accident is higher). FRA believes that this comprehensive rule that improves the safety behavior of safety-related employees in the industry should achieve the results as stated above. The table below shows the total present discounted annual costs of relevant railroad accidents and incidents that would likely be incurred over the next 20 years without this final rule, as well as the percent reduction in relevant railroad accidents and incidents that will be necessary for the accident reduction benefits to justify implementation of the final rule. This corresponds to approximately 118 accidents and incidents per year on average over the 20-year period that would have to be avoided for this rule to break even. This potential reduction of 118 accidents and incidents would likely involve relatively more employee fatality or injury incidents resulting while carrying out work duties (as compared to train accidents). Another way this final rule would break even is by preventing 1 fatality and 86 injuries per year. These injuries would likely be comprised of a few severe injuries and many minor injuries. These calculations take into account various other recent and concurrent initiatives to address railroad accidents and incidents including implementation of positive train control systems, revisions to hours of service regulations, development of conductor certification standards and a roadway worker protection rule, and implementation of programs to address fatigue and electronic device distraction, among others.

The following table summarizes estimates using the revised DOT guidance and CBO real wage rate forecasts.

Present value of potential annual benefits (3% discount rate)	Total present discounted costs (3% discount rate)	Percent reduction for breakeven (3% discount rate)	Present value of potential annual benefits (7% discount rate)	Total present discounted costs (7% discount rate)	Percent reduction for breakeven (7% discount rate)
$6,333,998,623	$290,932,418	4.59%	$4,507,378,459	$207,068,184	4.59%

With the 2013 VSL policy, DOT also recommended a sensitivity analysis be considered using VSL of $5.2 million and $12.9 million. Using a VSL of $5.2 million, FRA estimates that this final rule will break even if it results in a 20-year total reduction in relevant railroad accidents and incidents of 7.18% using a 3% discount rate, and 7.18% using a 7% discount rate. Using a VSL of $12.9 million, FRA estimates that this final rule will break even if it results in a 20-year total reduction in relevant railroad accidents and incidents of 3.41% using a 3% discount rate, and 3.41% using a 7% discount rate.

For comparability purposes, FRA has also provided below the costs and benefits, as calculated and using the same real wage and VSL assumptions used in the NPRM—assuming no changes in real wage rates for the period of the analysis, using a VSL of $6.2 million, which reflected DOT guidance at the time, and in 2010 dollars.

Using this methodology, the total cost of the final rule is estimated to be about $261 million, discounted at a 3% rate, and about $186.9 million, discounted at a 7% rate. The Table below lists specific cost elements and each element's estimated cost over the first 20 years following promulgation of the final rule, as well as the total cost estimates.

Cost element	Twenty-year total (3% discount rate)	Twenty-year total (7% discount rate)
Creating and revising training programs	$31,796,815	$26,599,026
Revising programs for model program users:		
400,000 or more total labor hours annually	166,976	117,558
Less than 400,000 total labor hours annually	7,654,491	5,870,184
Customizing model programs	839,572	727,798
Designating current and future employees	995,974	804,215
Additional initial training	91,195,393	62,663,586
Additional refresher training	74,701,853	48,936,721
Additional periodic tests and inspections	24,689,109	16,964,762
Qualification testing	14,136,417	12,185,273
Hiring and indoctrinating additional trainers	12,209,461	9,991,110
Other Costs (Filing, hosting FRA)	2,656,263	2,012,102
Total	261,042,324	186,872,334

Using the former methodology with a VSL of $6.2 million and no annual growth rate in real wages, FRA estimates that this final rule will break even if it results in a twenty-year total reduction in relevant railroad accidents and incidents of 6.07% using a 3% discount rate, and a 6.06% reduction using a 7% discount rate. The table below details the total present discounted annual costs of the final rule.

Present value of potential annual benefits (3% discount rate)	Total present discounted costs (3% discount rate)	Percent reduction for breakeven (3% discount rate)	Present value of potential annual benefits (7% discount rate)	Total present discounted costs (7% discount rate)	Percent reduction for breakeven (7% discount rate)
$4,301,939,374	$261,042,324	6.07%	$3,081,262,864	$186,872,334	6.06%

In the RIA, FRA presented a sensitivity analysis using the $6.2 million VSL. By presenting a low and high end of four main cost components,[8] and varying the accident benefit reduction potential from other FRA regulations,[9] a break-even range was presented. Using all possible combinations of the cost component options and accident benefit options, the lowest break-even point (at 3 percent discount rate) was 1.87% and the highest was 15.91%. Using a 7 percent discount rate, the lowest break-even point was 1.96% and the highest was 17.03%.

Given the prevalence of accidents and incidents in the railroad industry and the relationship between quality training and safety, FRA believes it is reasonable to expect that improvements in training as required in this final rule will yield safety benefits that will exceed the costs.[10] As stated above, accident/incident reductions due to safety regulations have occurred even while the industry has been growing at a fast rate for the most part of the last decade (infrastructure assets, business, and people). This training standards final rule will improve the safety behavior of all safety-related employees in the industry and should achieve the results as concluded. The improvements to training programs is expected to produce employees who are more highly qualified, and therefore better able to avoid or prevent accidents and incidents, even in an environment that has more employees, passengers, work activities, and assets operated.

B. Regulatory Flexibility Act and Executive Order 13272; Final Regulatory Flexibility Assessment

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. During the Notice of Proposed Rulemaking (NPRM) stage, FRA had not determined whether the proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FRA published an IRFA to aid the public in commenting on the potential small business impacts of the proposals in the NPRM. All interested parties were invited to submit data and information regarding the potential economic impact that would result from adoption of the proposals in the NPRM.

The Regulatory Flexibility Act also requires an agency to conduct a final regulatory flexibility assessment (FRFA) unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. FRA is not able to certify that the final rule will not have a significant economic impact on a substantial number of small entities. FRA received comments and data from several commenters on the IRFA, and that information was used to make this determination. Therefore, FRA will publish this FRFA and issue a guidance document that includes small entities.

FRA estimates that approximately 10% of the total cost of this rulemaking (see the regulatory impact analysis (RIA)) will be borne by small entities. This burden is because more small railroads will have to enhance, upgrade, or modify their current training programs. It is important to note that, in general, the typical small railroad is a less complex operation and has an average of only 21 employees. Small railroads do not have as many layers of supervision; therefore, revising or implementing programs can be done more quickly and efficiently than in larger railroads.

This final rule also mandates that each railroad have an approved training

[8] Cost components that were varied for the sensitivity analysis were: number of employers creating/revising their own programs, number of employers customizing programs, costs for 1.5 days of initial training, and the amount of additional refresher training required per employee.

[9] For the sensitivity analysis, four alternate projections of future economic damages from relevant railroad accidents were presented, given alternate future reductions from other initiatives.

[10] To further indicate the reasonableness of this analysis, FRA has removed other regulatory impact results so no double-counting of accident/incident reductions from other regulations are represented here. These benefits solely reflect training standards results.

program, but the training program is only applicable to federally mandated training requirements. Therefore, the training program, its requirements, and implications do not cover other training that a railroad provides or initiates for other purposes.

FRA provides the rationale the agency used for assessing what impacts will be borne by small entities. FRA considered comments received in the public comment process when making a determination in the FRFA.

This FRFA was developed in accordance with the Regulatory Flexibility Act.

(1) A succinct statement of the need for and objectives of the rule.

FRA is addressing the RSIA's statutory mandate to establish minimum training standards for safety-related railroad employees and the submission of training plans in this rulemaking. FRA is requiring that each employer of one or more safety-related railroad employees (whether the employer is a railroad, contractor, or subcontractor) be required to train and qualify each such employee on the Federal railroad safety laws, regulations, and orders that the employee is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders. The final rule also requires that the training program developed by each employer be submitted to FRA for approval.

The scientific literature on training in general and FRA's experience with training in the railroad industry show a clear link between the quality of training programs—including whether training is engaging or hands-on—and safety. Please see the RIA for a more detailed discussion and references for the scientific literature.

Even though rail transportation in the United States is generally an extremely safe mode of transportation and rail safety has improved over the years, well-designed training programs have the potential to further reduce risk in the railroad environment. All of the positive impacts noted above would apply to expected results from enhanced training in the railroad industry, and the work force performing job tasks more efficiently, skillfully, and more safely. The main goal of this rulemaking is to improve railroad safety by ensuring that safety-related employees receive appropriate training that takes into consideration the type of activities they perform and analysis of relevant data.

(2) A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments.

Several comments were received that directly addressed the IRFA or the impacts on small entities. One commenter (ASLRRA) disagreed with FRA's RIA for the NPRM. ASLRRA also believed that this rulemaking would have a significant economic impact on the small railroad industry.

(a) Training Program Approval

ASLRRA noted that "further aggravating the potential cost disadvantage for small railroads is the threat by FRA in the proposed rule to scrutinize more intensely the training programs of small railroads that primarily conduct their own training. (77 FR 6430). Railroads that otherwise might have perfectly adequate in-house safety programs may turn to more costly alternatives out of fear of being subject to extensive and distracting audits from FRA just because they are small. There are many reasons that small railroads may evaluate in deciding whether or not to conduct their own training programs or use outside resources . . . . FRA should allow the railroads to make the most rational economic and operating decision according to their individual circumstances and not intimidate them into choosing a more costly option if they would not otherwise do so." FRA believes that the level of scrutiny that any railroad's training program will receive will be based on a number of risk factors. The comment did not include FRA's explanation in the proposed rule that the reason to more closely scrutinize a small railroad that chooses to conduct all of its own training is because a small railroad "would not always have qualified instructors to implement all the different types of training required by the Federal laws, regulations, and orders." Thus, FRA's example in the proposed rule focused on the situation where a shortline's training program appears legally sufficient at first glance, but unless the shortline has taken affirmative steps to train or hire qualified instructors, the shortline is unlikely to be able to fully implement its program. FRA recognizes that this issue could still potentially be a concern that it considers in its review of programs, as we want to put all railroads on notice that they must both adopt and comply with the training program submitted to FRA. However, when it comes to the amount of scrutiny FRA gives each program, FRA will certainly be looking at other factors that are more directly related to safety concerns and a greater level of scrutiny will be placed on the particular risks inherent in a particular employer's operation. For example, a small railroad operation that is relatively segregated from major railroad operations and only operates in rural areas may pose less risk than those that routinely interchange with major railroads or operate through more populated suburbs and urban neighborhoods. If a simple railroad operation with low risk has a good history complying with FRA's regulations, FRA may view in-house training more favorably, as long as the railroad's program meets the minimum requirements of the final rule. Meanwhile, if a small railroad has a relatively complicated operation that poses significant risks to employees and the general public, FRA would certainly be justified to more closely scrutinize the in-house training for that operation; especially if the railroad does not have a good history of railroad safety law compliance. Other risk factors FRA may consider including, but are certainly not limited to, are the employer's accident history, the condition of the railroad's track and equipment, the types of commodities hauled, and the number of train miles operated annually.

Although each employer may be better suited than FRA to identify the weaknesses in its existing training program and to seek ways to strengthen those components, FRA has the expertise to also make such judgments. FRA understands that changing a training program will have costs associated with it, and the agency intends to only request training adjustments that will positively impact safety. FRA will not require training program changes that would force an entity to exceed the minimum requirements for compliance. Finally, small entities should expect that FRA will consult with the entity in order to receive constructive input prior to ordering any programmatic changes. Therefore, the process FRA envisions is expected to engage any size entity in a discussion of any FRA-perceived weaknesses in a training program before FRA issues a decision that the entity's program is inadequate and must be upgraded.

FRA also notes that each employer's training program will not be reviewed by an FRA field inspector. FRA will have a specific group of safety specialists designated, trained, and responsible for reviewing and approving the training programs. Local or regional FRA personnel will not be authorized to conduct random audits without the involvement of FRA's specialized training staff, which should lead to a uniform approach to enforcement of this

rule. Small railroads will generally not be subject to intrusive or distracting audits as some might be concerned, unless one of three events occur: (1) A major accident or fatality occurs on that railroad's property; (2) a complaint is filed with FRA from an employee or other entity alleging noncompliance with respect to the mandates of this part; or (3) a pattern of incidents industry wide raises a training concern attributable to multiple small railroads with certain similar characteristics. In summary, FRA is unlikely to initiate enforcement activities to find weaknesses in a small entity's training program unless there is some basis that raises a specific concern.

FRA does not agree with ASLRRA's comment suggesting that small railroads will be intimidated into providing unneeded costly training. FRA fully intends to offer to enter into a constructive dialog with any employer whose training program is found to be deficient. In each instance, FRA fully expects that there will be more than one option to correct a training deficiency and that it will be up to the employer to choose those options. Because FRA will review all the training programs, FRA may have some recommended options for addressing any training program deficiency. Meanwhile, just like any other business decision, there will be pros and cons to every option. For example, some options may be proven effective, but cost more than a lesser-used option. Although FRA will have the authority to reject unsuitable options that fail to meet the minimum requirements of this part, FRA will not otherwise reject less expensive options and impose additional costs on any employer.

(b) Annual Review Exemption

ASLRRA also noted "Section 243.207(a) expressly grants an exemption from the annual review requirement for a railroad with fewer than 400,000 total employee work hours annually. Paragraph (b) then states that any railroad required to conduct periodic oversight under section 243.205 is also required to conduct an annual review." ASLRRA requested clarification of who is exempt from the annual review requirement.

FRA addressed this issue by adding the exemption language as an introductory phrase to 49 CFR 243.207(b). Paragraph (b) now reads: "[e]*xcept as provided for in paragraph (a) of this section,* each railroad that is required to conduct periodic oversight in accordance with § 243.205 is also required to conduct an annual review, as provided in this section, and shall retain, at its system headquarters, one copy of the written annual review" (italicized emphasis added). As noted in the preamble above, FRA did not change the intent of paragraph (b) of this section but, by adding the exception language, it did clarify that this section does not apply to railroads with less than 400,000 total employee work hours annually. FRA anticipates that this non-substantive change will prevent further misunderstandings of the agency's intent.

FRA also notes that the final rule requires all railroads and most contractors to conduct periodic oversight, per § 243.205. A contractor would be exempt from the periodic oversight requirements if it (1) employs 15 or fewer employees; (2) does not rely on training it directly provides to its own employees as the basis for qualifying those employees to perform safety-related duties on a railroad; or (3) does not employ supervisory safety-related railroad employees capable of performing oversight. Periodic oversight is limited to Federal regulations associated with FRA-regulated personal and work group safety currently in parts 214, 218, and 220. Periodic oversight does not apply to employees covered by parts 240 and 242, but information gained (performance gaps) from those assessments must be used when appropriate in training programs to close performance gaps.

(c) Impact on Railroads That Have Less Than 16 Employees

One commenter was concerned "that this proposed rule will adversely affect the smallest railroads, in particular railroads that have less than 16 employees, these railroads do not have the resources for training like a Class I or even larger Class III railroads that typically send a new hire to a central location for 6 weeks of initial training. The smallest railroads initial training is almost always a one-on-one, on-the-job training with the person who does the hiring. Ongoing training is most often addressed at an annual rules class or frequently provided to an employee with an impromptu training session when incorrect behavior/technique is observed. How these smallest railroads document the training they do to the satisfaction of the FRA will be problematic." The commenter indicated that it believed small railroads should be allowed to continue the status quo with a training program centered on an annual rules class and informal on-the-job training (OJT) that is completed without any recordkeeping of what safety-related tasks and information were learned.

This final rule is being promulgated to satisfy statutory requirements in the RSIA to establish minimum training standards for safety-related railroad employees. The statute does not explicitly exempt small entities from the requirements, nor does it suggest that FRA could permit a small entity exemption. Therefore, FRA believes it was Congress's intent to include small entities as that statute focuses on the training of each employee, not each employee that works only for a major railroad or large contractor.

FRA agrees with the commenter that the rule will require more than what most small railroads were doing prior to the promulgation of this rule. The final rule will require that a small railroad submit a formal training program where none likely existed before; however, FRA expects that most small railroads will adopt and comply with a model training program that is largely written by an association that understands the Federal requirements and can devise a broad program suitable for the flexibility needed by most small railroads. Many small railroads may continue to train employees largely in the same manner by periodically providing a rules class and training through OJT. However, the OJT will need to meet the standards of "formal training," as that term is defined in the rule, and it is that formality that will raise the standards from one in which a supervisor believes the employee should know how to do the safety-related task to one in which the supervisor knows and has a record to support that the employee has demonstrated the knowledge and ability to perform the task. The extra time necessary for a qualified supervisor or instructor to record what training the employee has accomplished and to retain that record should not add significantly to the cost of the previously unrecorded OJT. Some instructors may spend more time instructing and observing employees conduct federally mandated tasks than what was being performed prior to the promulgation of this rule, but FRA views that alleged additional burden as a flaw in the execution of current training programs that should not be tolerated by the employer. An employer should not be permitted to claim that this final rule adds costs for training if the employer is currently not meeting the minimum requirements for the pertinent federally mandated employee training. It is for this very reason that formalized training programs and records are necessary—that is, to compel all employers of safety-related railroad employees to provide

appropriate training that can be measured as having been successfully administered.

(d) Compliance Guide

One commenter suggested that FRA "issue a compliance guide, specifically to railroads that have 15 or less safety-related railroad employees, (as contemplated in 49 CFR part 209, appendix C)." As noted previously, FRA intends to publish an interim final compliance guide early in 2015. By characterizing the guidance as "interim final," the guidance will be effective immediately, but signal that FRA is willing to consider amending the guidance based on comments received. Consequently, FRA will provide a 60-day comment period and intends to issue a notice for the final guidance by no later than one year from the date of issuance of the interim final guidance. FRA also amended the proposal so that small entities will have at least four years from the date of issuance of the interim final compliance guide to implement a training program under § 243.101(a)(2) and at least four years and eight months from the date of issuance of the interim final compliance guide to designate existing employees under § 243.201(a)(2).

FRA's compliance guide is intended to aid employers by providing the task inventories that provide the foundation of the OJT program. The compliance guide can be used by all employers, but will be written with a primary emphasis on assisting small entities. The task inventories will be presented in a format that is highly respected in the adult training community, and will be modeled after training formats FRA's master trainers use to train FRA personnel. The guide will address each major type of safety-related railroad employee category. It will explain the roles and responsibilities for those administering the program, as well as the trainees and trainers. Duties will be identified by the performance task that the employee is supposed to be able to do. The guide will help identify the preparation that trainers will have to take in order to make sure that the conditions are conducive for learning. For example, trainers will ensure that trainees have all the tools, equipment, and documents needed to practice the task. Furthermore, the guide will help establish standards for establishing when a trainee has demonstrated proficiency. Such standards are generally based on repetition, the completeness, and the percentage of accuracy. These factors for establishing standards will be driven by the complexity of the related task.

(e) Implementation and Program Submission Date for Small Railroads

One commenter thought that FRA should push back the "deadline for an employer submission by at least one year after the submission deadline for an organization that allows other entities to copy its program to at a reasonable cost." FRA agrees that the comment has validity and would make the implementation of the rule much smoother. Therefore, FRA addressed this comment by extending the implementation deadline schedule in multiple ways. A summary of the changes made in response to this comment and similar comments can be found in the preamble under the heading "Implementation Dates and Incentives for Early Filing of Programs."

(f) Number of Contractors Considered To Be Small Entities

One commenter responded to FRA's request for comment on the number of small contractors impacted by this rule. The National Railroad Construction and Maintenance Association (NRC) responded that FRA's estimates appear reasonable. This commenter further noted that it was their understanding that "the 600+ other contractors generally consist of extremely small companies, some of which may be more accurately thought of as 'two guys and a pickup truck,' however the NRC is not aware of any comprehensive listing of these small companies."

(g) Impact on Commuter Operations

APTA noted in its comment that most "of the public agencies providing commuter rail services are small entities and contract all or a significant amount of the operations to one or more specialized rail service contractors. The contracts typically specify that any training or qualifications, for example to meet FRA regulations, is the responsibility of the contractor. These types of public agencies would not be knowledgeable on training costs or in a position to estimate their cost to develop and implement a training program of this type. Contracting out the entire training program or adopting a model program with input from their contractors would likely be a solution for the small operators. For most, contracting out the entire training program would be prohibitively expensive for a small entity."

By FRA's definition of a small entity, only two commuter railroads would be considered to be small entities, which represent approximately 8% of the total number of commuter railroads. (*See* FRA policy on small entities at 68 FR 24891 (May 9, 2003)). These two entities are very different from all of the other commuter railroads. They are primarily event- or seasonal destination-based passenger rail transportation (e.g., scheduled service to sporting events). One of the two entities is primarily contracted by a university to operate trains to football games. Therefore, all of the train and engine crew training would be conducted by a Class III railroad, which should currently be compliant with all federally mandated training. The function of the conductors is carried out by volunteers who should also be compliant with part 242. The additional burden from this final rule should only be from the adoption of a model training program and not significant. The second small entity that is classified as a commuter operation is owned by a larger holding company. This entity began operation in 2011, running trains Friday through Monday primarily for racetrack attendees. The entity does operate year round with activities that include seasonal ski trains. From site visits, FRA believes this second small entity is also compliant with all federally mandated training requirements. This railroad is an expanding operation that had made all necessary efforts to be compliant with FRA regulations. The additional burden for this entity should also only be from the adoption of a model training program and any necessary modifications.

(3) A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate is Available

"Small entity" is defined in 5 U.S.C. 601 (Section 601). Section 601(3) defines a small entity as having the same meaning as "small business concern" under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) includes within the definition of small entities not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, Section 601(5) defines small entities as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is for-profit may be, and still be classified as a small entity, is 1,500 employees for "line haul operating railroads" and 500

employees for "switching and terminal establishments."

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.[11] The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment)[12] is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA is using the STB's threshold in its definition of small entities for railroads affected by this rule. FRA has also adopted the STB threshold for Class III railroad carriers as the size standard for railroad contractors.[13] FRA estimates that 720 railroads will be affected by this final rule. This number equals the number of railroads that reported to FRA in 2011, minus those railroads that are tourist, scenic, excursion, or historic railroads and are not part of the general system (these railroads are exempt from the rule). Of those railroads, 44 are Class I, Class II, commuter, and intercity passenger railroads. The remaining 676 railroads are therefore assumed to be small railroads for the purpose of this assessment. It is important to note that in the RIA for the final rule, FRA has not revised the number of railroads used in these analyses to provide better transparency in the comparison of the analyses for the NPRM and the final rule. The final rule will affect all employers of safety-related railroad employees, which, in addition to railroads of all sizes, includes contractors and subcontractors who are engaged to perform safety-related duties on railroads. FRA assumes in its RIA that approximately 795 railroad contractors and subcontractors exist, based on conversations with industry experts. That figure of 795 includes 155 well-established track and signal maintenance contractors, 500 very small (1–4 employee companies) or relatively new track and signal maintenance contractors, and another 140 contractors who do not perform track or signal maintenance. FRA has previously clarified its definition of small entity with respect to contractors, stating that FRA defines railroad contractors that meet the income level established for Class III railroads as small entities. For the purpose of this analysis, FRA conservatively assumes that about 10 of these contractors have annual revenues in excess of $20 million, leaving 785 contractors that are considered small entities that may be affected by this proposed rule. FRA requested comments on this assumption and any information regarding the number of small contractors affected by this proposal. As noted above, FRA did receive one comment on this estimate and is using it for the purpose of this analysis.

Therefore, the total estimate of the number of small entities that the rule may affect equals 676 Class III railroads plus approximately 785 contractors, totaling approximately 1,459 entities. All but 6 of the 676 Class III railroads have less than 400,000 annual employee hours. Most contractors are businesses with less than 400,000 hours as well.

(4) A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The final rule will include several recordkeeping requirements that may pertain to small entities. Each employer will be required to maintain records that form the basis of the training and qualification determinations of each operator of roadway maintenance machines equipped with a crane that it employs. Each employer will be required to maintain records to demonstrate the qualification status of each safety-related railroad employee. Each employer that conducts periodic oversight in accordance with the final rule will be required to keep a record of the date, time, place, and result of each test or inspection. Each railroad using contractors to supply the railroad with safety-related railroad employees will be required to maintain a list at its system headquarters with information regarding each contractor used unless:

(1) The railroad qualifies each of the contractor's safety-related railroad employees used.

(2) The railroad maintains the training records for each of the contractor's safety-related railroad employees used.

The burden of maintaining a list of contractors is certainly significantly less than the burden of training each contractor employee and maintaining records for each contractor employee. Given the propensity for shortline railroads to hire smaller contractors to handle segments of the railroad's safety-related work (for example, signal or track maintenance), keeping up-to-date information regarding the contractors recently used is a reasonable, and not overly taxing, burden on small entities. FRA believes that a professional or administrative employee will be capable of maintaining these records.

The final rule will require employers of safety-related railroad employees to submit a training program to FRA for approval. Each employer's training program will be required to include on-the-job training where appropriate and practicable. However, FRA has given employers the option to adopt a model program, and FRA assumes in this assessment that nearly all small entities will adopt model programs rather than hire training experts to develop a complete, unique program. However, for the sake of the RIA and this assessment, FRA assumes that any entity that adopts a model program will customize the model program, if necessary. FRA also assumes that such customization should require about 8 hours on average.

Following the initial submission of the training program, employers of safety-related railroad employees will be required to revise the training programs, if necessary. The decision on whether to revise a training program would be required annually and will depend on changes in the workplace environment. When new laws, regulations, technologies, procedures, or equipment are introduced into the workplace, for example, it may be appropriate for training programs to be modified accordingly. FRA assumes in the RIA accompanying the final rule that some annual revision of training programs will be required every year for all employers of safety-related railroad employees. Furthermore, these annual revisions will be required to reflect the results of annual reviews of safety data for all entities with 400,000 or more total employee work hours annually. For purposes of this analysis, FRA assumes that four Class III railroads and three small contractors will surpass this threshold. One comment was received relative to it from the NRC, which only noted that they estimated 10 contractors had 80 or more employees.[14]

Specifically, as in the RIA, FRA assumes that two Class III railroads will choose to develop their own programs, while the remaining 657 Class III railroads adopt model programs. FRA

[11] *See* 68 FR 24891 (May 9, 2003); 49 CFR part 209, appendix C.

[12] For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201.

[13] *See* 68 FR 24891 (May 9, 2003).

[14] Note: a company that has 400,000 or more total employee work hours annually would have more than 190 employees.

also believes that all 785 small contractors will adopt model programs. All of the hours spent creating or revising training programs are assumed to be incurred by training experts or craft-specific technical experts at a cost $56.84 per hour, which is the average wage rate in 2010 dollars of professional and administrative employees for Class I railroads as reported to the STB, multiplied by 1.75 to cover overhead.[15]

The IRFA provided a table of the cost of compliance for small entities. The RIA for the final rule has been revised and some of these cost estimates have also been revised. The revised estimates include small entities. In the NPRM, FRA estimated that the average railroad would take 160 hours to create and submit an initial program. Based on comments received, the RIA for the final rule now estimates that it would take 2,160 hours. However, that cost is an average cost estimate. It is estimated that Class III railroads will create their own training programs and FRA believes that these two small entities will spend much less than the average railroad. The NPRM's RIA also estimated that the annual revisions would take 40 hours per railroad to complete. The final rule's RIA now estimates that cost at 432 hours.[16] Again, these two small entities will likely spend significantly less than the average railroad. FRA is retaining the NPRM's estimate of 8 hours for the average small entity to customize the model program.

This final rule also did not change the NPRM's estimate of 30 hours for the average entity with 400,000 or more total employee work hours annually to perform annual review and annual revisions in subsequent years. FRA estimates that only four Class III railroads and three contractors will be affected by this requirement. For entities that have less than 400,000 total employee work hours annually, the RIA for the final rule estimates that it will take 4 hours per year to perform annual revisions in subsequent years past the implementation.

While the final rule does not explicitly require any increase in the amount of time that must be spent in initial or refresher training, such increases may arise for some small entities if those entities add substantial amounts of OJT to training programs. Since small railroads usually have less formal training programs for their employees, this may be the case. In the RIA for the NPRM, FRA assumed that new hires would require 1 extra day of initial training as a result of the final rule, and that 1 additional hour of refresher training would be required on average for each employee. In the IRFA, FRA noted that it was not clear to what extent the cost of additional initial training—to whatever extent that is induced by the proposed rule—would be borne by small entities. For the final rule, FRA has revised this estimate to 1.5 days (12 hours) of additional training for initial training for new hires. For the refresher training, FRA has also revised the estimate to half a day (4 hours). Small entities will likely have to incur the cost of additional refresher training to whatever extent that will be required.

(5) A Description of the Steps the Agency Has Taken To Minimize the Significant Adverse Economic Impact on Small Entities Consistent With the Objectives of Applicable Statutes, Including a Statement of Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule, and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Was Rejected

FRA is unaware of any significant alternatives that would meet the intent of the RSIA and that would further reduce the economic impact on small entities. FRA is exercising its discretion to provide the greatest flexibility for small entities available under the RSIA.

The process by which this final rule was developed provided outreach to small entities. As noted earlier in the preamble, this notice was developed in consultation with industry representatives via the RSAC, which includes small railroad representatives. Throughout the development of RSAC's recommendation for this rule, FRA received input that focused discussions on issues specific to shortline and regional railroads and contractors. The discussions yielded insight into their concerns and this rule takes into account those concerns expressed by small railroads during the deliberations. Several alternatives were considered in the creation of this final rule in order to attempt to minimize the impact on small entities. FRA and the RSAC Working Group recognized very early on in the rulemaking recommendation process that small entities probably do not have training experts on staff. Requiring every small entity to create or revise a unique training program could create a disproportionate, and possibly unnecessary, burden on small entities because it might require the small entities to hire a training expert to perform the task, whereas larger railroads and contractors may already have training experts on staff. As an alternative to requiring every entity to create unique programs, FRA has a provision in the final rule to formalize a process for entities (including and especially small entities) to adopt a "model program." FRA envisions a model program designed with modular characteristics reflecting best practices in training program development. Model programs designed in modular format will allow small entities to easily customize the training for their operational needs. Any organization, business, or association may create a model program and submit that model program to FRA for approval. Subsequently, any employer may then choose to use a model program approved by FRA, rather than create its own program. An employer adopting a model program need only inform FRA that the employer plans to use a model program, submit the unique identifier for the program, and include any information reflecting customization or deviation from the model program that the employer has undertaken. This alternative can significantly simplify and consolidate the reporting requirements of this final rule for small entities.

The final rule's requirements with respect to periodic oversight also contain alternatives that were designed by FRA and the Working Group to limit the final rule's impact on small entities. Periodic oversight operational tests and inspections will be required by the final rule to determine if safety-related railroad employees comply with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. FRA and the Working Group considered requiring that periodic oversight tests and inspections be performed by all employers of safety-related railroad employees. However, FRA and the Working Group also recognized that small entities may not employ supervisory employees who are qualified as safety-related railroad employees in some or all categories of employees. Requiring these entities to perform periodic oversight would necessitate that those entities expand their workforce expressly for that purpose. Additionally, one purpose of periodic oversight with respect to this rule is to determine if changes in

[15] For 2011, the wage rate is $59.34 per hour.

[16] FRA initially estimated 40 hours per railroad for modifying training programs. In its comments to the NPRM, AAR suggested 800 hours per railroad for this purpose. FRA revised its estimate substantially to 432 hours per railroad. This estimate was developed by using a like proportion that it had increased the time allotted to create training programs (now 6,480 hours per railroad over 3 years). The details and explanation for this revised estimate can be found in the RIA.

training programs are necessary to close any proficiency gaps found during oversight assessments. As such, it would make sense if the entity that performs the training of safety-related employees is also the entity that performs the periodic oversight tests and inspections.

As an alternate approach designed to ensure that periodic oversight is useful, and to minimize the burden that would arise if small entities had to expand their workforce just to comply, several provisions are included in the final rule that limit the extent to which small contractors will have to conduct periodic oversight. In general, railroads will be responsible for performing oversight for all railroad employees and some oversight for contractors performing safety-related duties on railroad property. Railroads will not be required to perform operational tests of contractor employees, but railroads will be required to perform periodic oversight inspections of contractor employees performing safety-related duties on railroad property. However, if a contractor employs more than 15 safety-related railroad employees, trains its own employees, and employs supervisory safety-related railroad employees capable of performing oversight, the contractor (rather than the railroad) will be required to perform periodic oversight on its own employees. Contractors who meet those criteria may not be small entities, and contractors will only perform periodic oversight if the contractor relied on its own training in accordance with its training program and could therefore improve the program with the results of the oversight program. In any case, a railroad and contractor may voluntarily agree that the contractor will perform the periodic oversight.

The requirements for periodic oversight also contain provisions designed to limit the impact on small railroads. First, if a contractor conducts its own periodic oversight, then the railroad will not be required to also do so. Second, railroads will not be required to perform operational tests of contractor employees in any case, as mentioned above. Third, a railroad will not be required to perform oversight tests or inspections for categories of a contractor's safety-related railroad employees if the railroad does not employ supervisory employees who are qualified as safety-related railroad employees in those categories. This final exception is designed mostly with small entities in mind. Small railroads may maintain a very small workforce and hire contractors to perform most safety-related duties. Those small railroads that do not have supervisory employees on staff who are capable of performing oversight of contractor employees will therefore not be required to expand their workforces by hiring a supervisory employee trained in the safety-related duties that the contractor employees perform in order to perform oversight of contractor employees.

FRA and the Working Group also considered alternatives for small entities in the section of the final rule requiring annual reviews of safety data. Railroads will be required, under the final rule, to conduct an annual review of periodic oversight data, reportable accident/incident data, FRA inspection report data, employee training feedback, and feedback received from labor representatives if available. However, all railroads with less than 400,000 total employee work hours annually will be exempt from this annual review requirement. FRA stated in the NPRM that it is likely that all but six Class III freight railroads would fall below this threshold and no comments were received challenging this assumption. In § 243.113(a) of this final rule, FRA provided another alternative to decrease the impact on small entities. The final rule exempts any employer (approximately 653 Class III railroads and most contractors) with less than 400,000 total employee work hours annually from the requirement to file written program submission requirements electronically.

In § 243.101(a)(2), FRA has provided each employer with less than 400,000 total employee work hours annually an additional year to implement its training program. Therefore, instead of having to implement the programs by January 1, 2018, most small entities will not have to implement the programs until January 1, 2019, or four years from the date of issuance of FRA's Interim Final Compliance Guide, whichever is later. There should be cost savings from this delayed implementation. In addition, the small railroads will benefit from being able to observe the implementation of the larger railroads in the industry. The additional time will permit these small entities to spread out the cost of revising or modifying a model program too.

FRA has identified no additional significant alternative to this final rule that satisfies the mandate of the RSIA or meets the agency's objective in promulgating this rule, and that would further reduce the economic impact of the rulemaking on small entities.

C. Paperwork Reduction Act

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

49 CFR section or statutory provision	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
214.357—Training and Qualification Program for Operators of Roadway Maintenance Machines (RMM) Equipped with a Crane.	535 railroads/contractors.	535 revised programs.	4 hours	2,140
—Initial Training/Qualification of RMM Operators (Cranes).	17,396 roadway workers.	1,750 tr. worker +15,646 tr. wrkr.	24 hours + 4 hours	104,584
—Periodic Training/Qualification of RMM Operators (Cranes).	17,396 roadway workers.	17,396 trained workers.	1 hour	17,396
—Records of Training/Qualification	17,396 roadway workers.	17,396 records	15 minutes	4,349
243.101—*Training Programs* Submissions by Employers subject to this Part with 400,000 total annual employee work hours or more by Jan. 1, 2018.	56 railroads/contractors/etc.	16 programs	6,480 hours	103,680
—Submissions by Employers subject to this Part with less than 400,000 total annual work hours by Jan. 1, 2019.	1,459 railroads/contractors/etc.	486 programs	20 hours	9,720
—Submission by New Employers Commencing Operations after Jan. 1, 2018.	5 New Railroads	5 programs	40 hours	200

49 CFR section or statutory provision	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Validation documents sent from contractors that train their own safety-related employees to railroads that are using their training programs.	795 railroad contractors/subcontractors.	50 documents	15 minutes	13
—Copies of contractor validation documents kept by railroads.	720 railroads	50 copies	10 minutes	8
243.103—Training Programs required to be modified by FRA due to essential missing/inadequate components.	1,459 railroads/contractors/etc.	73 programs	10 hours	730
243.105—Optional Model Program Development—Customized Training Program Submissions.	1,459 railroads/contractors/etc.	4 model training programs.	8 hours	32
243.109—Initial Training Programs Found Non-Conforming to this Part by FRA—Revisions to Programs.	56 railroads/contractors/etc.	7 programs	10 hours	70
—Written Request to Extend Revision/Resubmission Deadline.	56 railroads/contractors/etc.	1 request	15 minutes	.25
—Previously Approved Programs Requiring an Informational Filing When Modified.	56 railroads/contractors/etc.	8 informational filings	432 hours	3,456
—New Portions or Substantial Revisions to an approved Training Program.	56 railroads	25 revised programs	16 hours	400
—Training Programs found Deficient	56 railroads	12 rev. program	16 hours	192
—Copy of Additional Submissions, Resubmissions, and Informational Filings to Labor (Union) Presidents.	56 railroads	225 copies	15 minutes	56
—Railroad Statement Affirming that a copy of Submissions, Resubmissions, or Informational Filings has been served to Labor (Union) Presidents.	56 railroads	25 affirming statements.	60 minutes	25
—Labor comments on Railroad Training Program Submissions, Resubmissions, or Informational Filings.	5 RR labor Organizations.	3 comments	4 hours	12
243.111—Written Request by Training Organization/Learning Institution Previously Providing Training Services to Railroads Prior to Jan. 1, 2017, to Provide Such Services after Jan. 1, 2018.	11 tr. organizations/Learning Institutions.	3 requests	60 minutes	3
—Revised/Resubmitted Training Program by Training Organization/Learning Institution after found Deficient by FRA.	11 tr. organizations/Learning Inst.	2 programs	20 hours	40
—Informational Filing by Training Organization/Learning Institution due to New Federal Laws/Regulations/Order or New Technologies/Procedures/Equipment.	11 tr. organizations/Learning Inst.	1 filing	432 hours	432
—New Portions or Revisions to Training Organization/Learning Institution Training Program Found Deficient.	11 tr. organizations/Learning Inst.	2 programs	20 hours	40
—Safety Related Employees Instructed by Training Organizations/Records.	11 tr. organizations/Learning Inst.	1,600 employees + 1,600 records.	8 hours + 5 minutes	12,933
—Request to Training Organization/Learning Institution by Student to Provide Transcript or Record.	11 tr. organizations /Learning Inst	200 requests + 200 records.	5 minutes + 5 minutes.	34
243.113—Required Employer Information Sent to FRA Prior to First Electronic Submission (Employers with 400,000 Annual Work Hours or More).	56 RRs/contractors/learning institution. /associations	16 letters	15 minutes	4
243.201—Designation of Existing Safety-related Employees by Job Category—Lists (Employer with 400,000 Annual Work Hours or More).	56 railroads/contractors.	13 lists	15 minutes	5
—Written Request to Extend Deadline for Designation List by These Employers.	56 railroads/contractors.	3 requests	60 minutes	3
—Designation of Existing Safety-related Employees by Job Category—Lists (Employer with Less than 400,000 Annual Work Hours).	1,459 railroads/contractors/etc.	486 lists	15 minutes	122
—Training of Newly Hired Employees or Those Assigned New Safety-related Duties and Records.	56 railroads/contractors.	114 trained employees + 114 records.	8 hours + 15 minutes.	941
—Requests for Relevant Qualification or Training Record from an Entity Other Than Current Employer.	56 railroads/contractors.	11 requests + 11 records.	5 minutes + 5 minutes.	2
—Testing of Employees When Current Record of Training is Unavailable.	56 railroads/contractors.	68 tests + 68 records.	8 hours + 30 minutes.	578
—Testing of Employees Who Have Not Received Initial/Periodic Training or Who Have Not Performed the Necessary Safety-Related Duties for An Occupational Category or Subcategory in the Previous 180 Days.	56 railroads/contractors.	68 tests + 68 records.	8 hours + 30 minutes	578
243.203—Electronic Recordkeeping—Systems Set Up to Meet FRA Requirements.	56 RRs/contractors	20 systems	120 hours	2,400
—Transfer of Records to Successor Employer	56 RRs/contractors	20 records	15 minutes	5
243.205—Modified Training Resulting from Periodic Oversight Tests and Inspections.	56 railroads/contractors.	1 modified programs	40 hours	40
—Periodic Tests and Inspections	56 railroads/contractors.	8,600 tests/Insections.	10 minutes	1,433

49 CFR section or statutory provision	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—RR Identification of Supervisory Employees Who Conduct Periodic Oversight Tests by Category/Subcategory.	56 railroads/contractors.	10 identification	5 minutes	1
—Contractor Periodic Tests/Inspections Conducted by RR Supervisory Employees.	56 railroads/contractors.	4,695 tests/inspections.	20 minutes	1,565
—Notification by RR of Contractor Employee Non-Compliance with Federal Laws/Regulations/Orders to Employee and Employee's Employer.	56 railroads/contractors.	175 notices + 175 notices.	5 minutes	30
—Contractor conduct of Periodic Oversight Tests/Inspections of Its Safety-related Employees.	11 contractors	795 tests/inspections	10 minutes	133
—Contractor Direct Training of Its Employees for Qualifying Those Employees to Perform Safety-related Duties.	11 contractors	45 trained employees.	8 hours	360
—Employer Records of Periodic Oversight	56 railroads/contractors.	5,490 records	5 minutes	458
243.207—Written Annual Review of Safety Data (RRs with 400,000 Annual Employee Work Hours or More).	18 railroads	4 reviews	20 hours	80
—RR Copy of Written Annual Review at System Headquarters.	18 railroads	4 review copies	20 minutes	1
—RR Designation of Person(s) to Conduct Written Annual Review.	18 railroads	48 designations	15 minutes	12
—Adjustments to Initial/Refresher Training Based Upon Results of Written Annual Review.	18 railroads	1 adjusted program	1 hour	1
—RR Notification to Contractor of Relevant Training Program Adjustments.	18 railroads	2 notifications	15 minutes	1
—Contractor Adjustment of Its Training Program Based on RR Information.	38 contractors	1 adjusted program	20 hours	20
243.209—Railroad Maintained List of Contractors Utilized	56 railroads	11 lists	30 minutes	6
—Updated Lists of Contractors	56 railroads	1 list	15 minutes	.25

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

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

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

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

D. Federalism Implications

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

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This final rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation

prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to sec. 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. For the year 2010, this monetary amount of $100,000,000 has been adjusted to $143,100,000 to account for inflation. This final rule would not result in the expenditure of more than $143,100,000 by the public sector in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

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

List of Subjects

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 232

Railroad power brakes, Railroad safety, Two-way end-of-train devices.

49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

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

PART 214—[AMENDED]

■ 1. The authority citation for part 214 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 31304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Section 214.7 is amended by adding a definition in alphabetical order for *roadway maintenance machines equipped with a crane* to read as follows:

§ 214.7 Definitions.

* * * * *

Roadway maintenance machines equipped with a crane means any roadway maintenance machine equipped with a crane or boom that can hoist, lower, and horizontally move a suspended load.

* * * * *

Subpart C—Roadway Worker Protections

■ 3. Section 214.341 is amended by revising paragraph (b)(2) to read as follows:

§ 214.341 Roadway maintenance machines.

* * * * *

(b) * * *

(2) No roadway worker shall operate a roadway maintenance machine without having knowledge of the safety instructions applicable to that machine. For purposes of this paragraph, the safety instructions applicable to that machine means:

(i) The manufacturer's instruction manual for that machine; or

(ii) The safety instructions developed to replace the manufacturer's safety instructions when the machine has been adapted for a specific railroad use. Such instructions shall address all aspects of the safe operation of the crane and shall be as comprehensive as the manufacturer's safety instructions they replace.

* * * * *

■ 4. Section 214.357 is added to read as follows:

§ 214.357 Training and qualification for operators of roadway maintenance machines equipped with a crane.

(a) In addition to the general training and qualification requirements for operators of roadway maintenance machines set forth in §§ 214.341 and 214.355 of this subpart, each employer shall adopt and comply with a training and qualification program for operators of roadway maintenance machines equipped with a crane to ensure the safe operation of such machines.

(b) Each employer's training and qualification program for operators of roadway maintenance machines equipped with a crane shall require initial and periodic qualification of each operator of a roadway maintenance machine equipped with a crane and shall include:

(1) Procedures for determining that the operator has the skills to safely operate each machine the person is authorized to operate; and

(2) Procedures for determining that the operator has the knowledge to safely operate each machine the person is authorized to operate. Such procedures shall determine that either:

(i) The operator has knowledge of the safety instructions (*i.e.*, the manufacturer's instruction manual) applicable to that machine; or

(ii) The operator has knowledge of the safety instructions developed to replace the manufacturer's safety instructions when the machine has been adapted for a specific railroad use. Such instructions shall address all aspects of the safe operation of the crane and shall be as comprehensive as the manufacturer's safety instructions they replace.

(c) Each employer shall maintain records that form the basis of the training and qualification determinations of each operator of roadway maintenance machines equipped with a crane that it employs.

(d) Availability of records: Each employer required to maintain records under this part shall make all records available for inspection and copying/photocopying to representatives of FRA, upon request during normal business hours.

(e) Training conducted by an employer in accordance with operator qualification and certification required by the Department of Labor (29 CFR 1926.1427) may be used to satisfy the training and qualification requirements of this section.

PART 232—[AMENDED]

■ 5. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 31304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart C—Inspection and Testing Requirements

■ 6. Section 232.203 is amended by revising paragraphs (b)(6)(iv) and (e)(6) through (8) to read as follows:

§ 232.203 Training requirements.

* * * * *

(b) * * *

(6) * * *

(iv) Any combination of the training or testing contained in paragraphs (b)(6)(i) through (b)(6)(iii) of this section and paragraphs (b)(3) through (b)(5) of this section may be used to satisfy the training and testing requirements for an employee in accordance with this paragraph.

* * * * *

(e) * * *

(6) The tasks required to be performed under this part which the employee is deemed qualified to perform;

(7) Identification of the person(s) determining that the employee has successfully completed the training necessary to be considered qualified to perform the tasks identified in paragraph (e)(6) of this section; and

(8) The date that the employee's status as qualified to perform the tasks identified in paragraph (e)(6) of this section expires due to the need for refresher training.

* * * * *

■ 7. Add part 243 to read as follows:

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES

Subpart A—General

Sec.
243.1 Purpose and scope.
243.3 Application and responsibility for compliance.
243.5 Definitions.
243.7 Penalties and consequences for noncompliance.

Subpart B—Program Components and Approval Process

243.101 Employer program required.
243.103 Training components identified in program.
243.105 Optional model program development.
243.107 Training program submission, introductory information required.
243.109 Training program submission, review, and approval process.
243.111 Approval of programs filed by training organizations or learning institutions.
243.113 Electronic and written program submission requirements.

Subpart C—Program Implementation and Oversight Requirements

243.201 Employee qualification requirements.
243.203 Records.
243.205 Periodic oversight.
243.207 Annual review.
243.209 Railroad maintained list of contractors utilized.
Appendix to Part 243—Schedule of Civil Penalties

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

§ 243.1 Purpose and scope.

(a) The purpose of this part is to ensure that any person employed by a railroad or a contractor of a railroad as a safety-related railroad employee is trained and qualified to comply with any relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(b) This part contains the general minimum training and qualification requirements for each category and subcategory of safety-related railroad employee, regardless of whether the employee is employed by a railroad or

a contractor of a railroad. Contractors shall coordinate with railroads and comply with the contents of this part, including those aspects of training that are specific to the contracting railroad's rules and procedures.

(c) The requirements in this part do not exempt any other requirement in this chapter.

(d) Unless otherwise noted, this part augments other training and qualification requirements contained in this chapter.

(e) The requirements in this part do not address hazardous materials training of "hazmat employees" as defined in 49 CFR 171.8 as such training is required pursuant to 49 CFR part 172, subpart H.

§ 243.3 Application and responsibility for compliance.

(a) This part applies to all railroads, contractors of railroads, and training organizations or learning institutions that train safety-related railroad employees except:

(1) Railroads or contractors of railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (i.e., plant railroads, as defined in § 243.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 243.5; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any duty covered by this part, shall perform that duty in accordance with this part.

§ 243.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Associate Administrator means the Associate Administrator for Railroad Safety and Chief Safety Officer of the Federal Railroad Administration or that person's delegate as designated in writing.

Calendar year means the period of time beginning on January 1 and ending on December 31 of each year.

Contractor means a person under contract with a railroad, including, but not limited to, a prime contractor or a subcontractor.

Designated instructor means a person designated as such by an employer, training organization, or learning institution, who has demonstrated, pursuant to the training program submitted by the employer, training organization, or learning institution, an adequate knowledge of the subject matter under instruction and, where applicable, has the necessary experience to effectively provide formal training of the subject matter.

Employer means a railroad or a contractor of a railroad that employs at least one safety-related railroad employee.

Formal training means training that has a structured and defined curriculum, and which provides an opportunity for training participants to have questions timely answered during the training or at a later date. In the context of this part, formal training may include, but is not limited to, classroom, computer-based, correspondence, on-the-job, simulator, or laboratory training.

Knowledge-based training is a type of formal training that is not task-based and is intended to convey information required for a safety-related railroad employee to comply with Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

On-the-job training (OJT) means job training that occurs in the workplace, i.e., the employee learns the job while doing the job.

Person means an entity of any type covered under 1 U.S.C. 1, including, but not limited to, the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Qualified means that a person has successfully completed all instruction, training, and examination programs required by both the employer and this part, and that the person, therefore, may reasonably be expected to proficiently perform his or her duties in compliance with all Federal railroad safety laws, regulations, and orders.

Refresher training means periodic retraining required by an employer for each safety-related railroad employee to remain qualified.

Safety-related duty means either a safety-related task or a knowledge-based prohibition that a person meeting the definition of a safety-related railroad employee is required to comply with, when such duty is covered by any Federal railroad safety law, regulation, or order.

Safety-related railroad employee means an individual who is engaged or compensated by an employer to:

(1) Perform work covered under the hours of service laws found at 49 U.S.C. 21101, et seq.;

(2) Perform work as an operating railroad employee who is not subject to the hours of service laws found at 49 U.S.C. 21101, et seq.;

(3) In the application of parts 213 and 214 of this chapter, inspect, install, repair, or maintain track, roadbed, and signal and communication systems, including a roadway worker or railroad bridge worker as defined in § 214.7 of this chapter;

(4) Inspect, repair, or maintain locomotives, passenger cars or freight cars;

(5) Inspect, repair, or maintain other railroad on-track equipment when such equipment is in a service that constitutes a train movement under part 232 of this chapter;

(6) Determine that an on-track roadway maintenance machine or hi-rail vehicle may be used in accordance with part 214, subpart D of this chapter, without repair of a non-complying condition;

(7) Directly instruct, mentor, inspect, or test, as a primary duty, any person while that other person is engaged in a safety-related task; or

(8) Directly supervise the performance of safety-related duties in connection with periodic oversight in accordance with § 243.205.

Safety-related task means a task that a person meeting the definition of a safety-related railroad employee performs, when such task is covered by any Federal railroad safety law, regulation, or order.

Task-based training means a type of formal training with a primary focus on teaching the skills necessary to perform specific tasks that require some degree of neuromuscular coordination.

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (i.e., there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

§ 243.7 Penalties and consequences for noncompliance.

(a) A person who violates any requirement of this part, or causes the violation of any such requirement, is subject to a civil penalty of at least $650 and not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. *See* Appendix A to this part for a statement of agency civil penalty policy.

(b) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

Subpart B—Program Components and Approval Process

§ 243.101 Employer program required.

(a)(1) Effective January 1, 2018, each employer conducting operations subject to this part with 400,000 total employee work hours annually or more shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(2) Effective January 1, 2019 or four years from the date of issuance of FRA's Interim Final Compliance Guide, whichever is later, each employer conducting operations subject to this part with less than 400,000 total employee work hours annually shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(b) Except for an employer subject to the requirement in paragraph (a)(2) of this section, an employer commencing operations subject to this part after January 1, 2018 shall submit a training program for its safety-related railroad employees prior to commencing operations. Upon commencing operations, the employer shall adopt and comply with the training program.

(c) In the program required by this part, the employer shall:

(1) Classify its safety-related railroad employees in occupational categories or subcategories by craft, class, task, or other suitable terminology;

(2) Define the occupational categories or subcategories of safety-related railroad employees. The definition of each category or subcategory shall include a list of the Federal railroad safety laws, regulations, and orders that the employee is required to comply with, based on the employee's assignments and duties, broken down at a minimum to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order. The listing of the Federal requirements shall contain the descriptive title of each law, regulation, or order;

(3) Create tables or utilize other suitable formats which summarize the information required in paragraphs (c)(1) and (2) of this section, segregated by major railroad departments (e.g., Operations, Maintenance of Way, Maintenance of Equipment, Signal and Communications). After listing the major departments, the tables or other formats should list the categories and subcategories of safety-related railroad employees within those departments;

(4) Develop procedures to design and develop key learning points for any task-based or knowledge-based training; and

(5) Determine how training shall be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, OJT, or other formal training. The curriculum shall be designed to impart knowledge of, and ability to comply with applicable Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those applicable Federal railroad safety laws, regulations, and orders.

(d) On-the-job (OJT) training requirements:

(1) If a training program has OJT, the OJT portion of the training program shall consist of the following three key components:

(i) A brief statement describing the tasks and related steps the employee learning the job shall be able to perform;

(ii) A statement of the conditions (prerequisites, tools, equipment, documentation, briefings, demonstrations, and practice) necessary for learning transfer; and

(iii) A statement of the standards by which proficiency is measured through a combination of task/step accuracy, completeness, and repetition.

(2) Prior to beginning the initial safety-related tasks associated with OJT exercises, employers shall make any relevant information or materials, such as operating rules, safety rules, or other rules available to employees involved for referencing.

(3) The tasks and related steps associated with OJT exercises for a particular category or subcategory of employee shall be maintained together in one manual, checklist, or similar document. This reference shall be made available to all employees involved in those OJT exercises.

(e) Contractor's responsibility to validate approved program to a railroad: A contractor that chooses to train its own safety-related railroad employees shall provide each railroad that utilizes it with a document indicating that the contractor's program of training was approved by FRA. A contractor is being utilized by a railroad when any of the contractor's employees conduct safety-related duties on behalf of the railroad and the railroad does not otherwise qualify those employees of the contractor that are allowed to perform those duties.

(f) Railroad's responsibility to retain contractor's validation of program: A railroad that chooses to utilize contractor employees to perform safety-related duties and relies on contractor-provided training as the basis for those employees' qualification to perform those duties shall retain a document from the contractor indicating that the contractor's program was approved by FRA. A copy of the document required in paragraph (e) of this section satisfies this requirement.

§ 243.103 Training components identified in program.

(a) Each employer's program shall include the following components:

(1) A unique name and identifier for each formal course of study;

(2) A course outline for each course that includes the following:

(i) Any prerequisites to course attendance;

(ii) A brief description of the course, including the terminal learning objectives;

(iii) A brief description of the target audience, e.g., a list of the occupational categories and subcategories of employees the course will be delivered to;

(iv) The method(s) of course delivery, which may include, but are not limited to, classroom, computer-based, on-the-job, simulator, laboratory, correspondence courses, or any combination thereof;

(v) The anticipated course duration;

(vi) A syllabus of the course to include any applicable U.S.C. chapters, 49 CFR parts, or FRA orders covered in the training; and

(vii) The kind of assessment (written test, performance test, verbal test, OJT standard, etc.) performed to demonstrate employee competency.

(3) A document for each OJT program component that includes the following:

(i) The roles and responsibilities of each category of person involved in the administration and implementation, guidelines for program coordination, and the progression and application of the OJT;

(ii) A listing of the occupational categories and subcategories of employees for which the OJT program applies; and

(iii) Details of the safety-related tasks and subtasks, conditions, and standards covered by the program components.

(4) The job title and telephone number of the employer's primary training point(s) of contact, listed separately by major department or employee occupational category, if applicable.

(5) If any training organization or learning institution developed and will deliver all or any part of the training, the employer must include the following:

(i) A narrative, text table, or other suitable format which describes those portions of the training that fit into this category;

(ii) The business name of the organization that developed and will deliver the training; and

(iii) The job title and telephone number of the training organization or learning institution's primary training point of contact.

(b) An employer that is required to submit similar training programs or plans pursuant to other regulatory requirements contained elsewhere in this chapter may elect to cross-reference these other programs or plans in the program required by this part rather than resubmitting that similar program or plan. When any such similar program or plan did not include the OJT components specified in paragraph (a)(3) of this section, the employer shall supplement its program in accordance with this part by providing that additional information.

(c) If an employer arranges job-related practice and practice related feedback sessions to supplement classroom, laboratory, simulator training, or OJT, the program shall include a description of the supplemental training.

(d) FRA may require modifications to any programs, including those programs referenced in paragraph (b) of this section, if it determines essential program components, such as OJT, or arranged practice and feedback, are missing or inadequate.

§ 243.105 Optional model program development.

(a) Any organization, business, or association may develop and submit one or more model training programs to FRA for review and approval so that the model program(s) may be used by multiple employers.

(1) Any such model program should be submitted with a unique identifier associated with the program, or FRA will assign a unique identifier.

(2) The program associated with the organization's unique identifier shall include all information required by § 243.103.

(3) Each model training program submitted to FRA prior to May 1, 2017 is considered approved and may be implemented 180 days after the date of submission unless the Associate Administrator advises the organization, business, or association that developed and submitted the program that all or part of the program does not conform.

(b) An employer that chooses to use a model program approved by FRA is not required to submit the entire program to FRA. Instead, the employer must submit only the unique identifier, and all other information that is specific to that employer or deviates from the model program.

§ 243.107 Training program submission, introductory information required.

(a) An employer who provides or is responsible for the training of safety-related railroad employees shall submit its training program to FRA for review and approval. Each employer shall state in its submission whether, at the time of filing, it:

(1) Primarily conducts the training program of its own safety-related railroad employees, utilizing its own resources;

(2) Conducts any training for other than its own safety-related railroad employees;

(3) Implements any training programs conducted by some other entity on its behalf but adopted by that employer;

(4) Qualifies safety-related railroad employees previously qualified by other employers;

(5) Qualifies safety-related railroad employees previously trained by training organizations or learning institutions; or

(6) Any combination of paragraph (a)(1) through (5) of this section.

(b) An employer who utilizes any of the options specified in paragraphs (a)(2) through (5) of this section shall provide the following information in its submission:

(1) The categories of safety-related railroad employees who, at the time of filing, will receive training utilizing one or more of these options; and

(2) Whether the training delivered, utilizing one or more of these options, composes all or part of the overall training program regimen for that category of employee at the time of filing.

(c) An employer that elects to use training organizations or learning institutions to train some or all of its safety-related railroad employees, or to hire new safety-related railroad employees that have previously received training from any training organizations or learning institutions, shall include the full name of the training organization or learning institution in its submission.

§ 243.109 Training program submission, review, and approval process.

(a) *Initial programs.* (1) Apprenticeship or similar intern programs, that began prior to submission of the employer's initial program filed in accordance with this part, shall be described in the employer's initial program. Any such apprenticeship or similar intern programs may continue, but if the Associate Administrator advises the employer of specific deficiencies, the employer shall resubmit that portion of its program, as revised to address specific deficiencies, within 90 days after the date of any notice of deficiencies from the Associate Administrator. A failure to resubmit the program with the necessary revisions shall be considered a failure to implement a program under this part. The Associate Administrator may extend this 90-day period upon written request.

(2) An employer's initial program, as required by § 243.101(a) or (b), must be submitted to the Associate Administrator and is considered approved, and may be implemented immediately upon submission. Following submission, the Associate Administrator will review the program and inform the employer as to whether the initial program conforms to this part. If the Associate Administrator determines that all or part of the program does not conform, the Associate Administrator will inform the employer of the specific deficiencies. The deficient portions of the non-conforming program may remain in effect until approval of the revised program, unless FRA provides notification otherwise. An employer shall resubmit the portion of its program, as revised to address specific deficiencies, within 90 days after the date of any notice of deficiencies from the Associate Administrator. A failure to resubmit the program with the necessary revisions shall be considered a failure to implement a program under this part. The Associate Administrator may extend this 90-day period upon written request.

(b) *Previously approved programs require an informational filing when modified.* The employer must review its previously approved training program and modify it accordingly when new safety-related Federal railroad laws, regulations, or orders are issued, or new safety-related technologies, procedures, or equipment are introduced into the workplace and result in new knowledge requirements, safety-related tasks, or modification of existing safety-related duties. An employer that modifies its training program for these described reasons shall submit an informational filing to the Associate Administrator not later than 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise to individual employers, one or more group of employers, or the general public. Programs modified in accordance with this paragraph, after the initial FRA approval, are considered approved upon being modified and may be implemented immediately. Any program deficiencies noted by the Associate Administrator shall be addressed in the same manner as paragraph (a)(2) of this section. The filing shall contain a summary description of sufficient detail that FRA can associate the changes with the employer's previously approved program, and shall include:

(1) Descriptions of all new or refresher training courses developed since the previous FRA approval, using the same criteria required for an initial filing;

(2) Explanations whenever OJT or arranged practice is added to, or discontinued from, a program;

(3) Explanations as to how the methods of delivering training, or qualifying employees has changed; and

(4) A statement from an organization, business, or association that has submitted a model program pursuant to this part, that the organization, business, or association has informed each employer who requested the right to use the affected training program of the changes and the need for the employer to comply with those changes that apply to the employer's operation.

(c) *New portions or revisions to an approved program.* Substantial additions or revisions to a previously approved program, that are not described as informational filings in accordance with paragraph (b) of this section, shall be considered approved and may be implemented immediately upon submission. Following submission, the Associate Administrator will review the new portions or revisions to the previously approved program and inform the employer as to whether the modifications conform to this part. Any program deficiencies noted by the Associate Administrator shall be addressed in the same manner as paragraph (a)(2) of this section. The Associate Administrator will inform the employer as to whether a new portion or revision to an approved program conforms to this part. If the Associate Administrator has determined that the changes do not conform to this part, the employer shall resubmit the portion of its program, as revised to address specific deficiencies, within 90 days after the date of any notice of deficiencies from the Associate Administrator. Failure to resubmit the program with the necessary revisions shall be considered a failure to implement a program under this part. The Associate Administrator may extend this 90-day period upon written request.

(d) *Additional submission, resubmission, or informational filing requirement for railroads.* (1) Each railroad shall:

(i) Simultaneous with its filing with the FRA, serve a copy of any submission, resubmission, or informational filing required pursuant to this section, to the president of each labor organization that represents the railroad's employees subject to this part; and

(ii) Include in its submission, resubmission, or informational filing required pursuant to this section a statement affirming that the railroad has served a copy to the president of each labor organization that represents the railroad's employees subject to this part, together with a list of the names and addresses of persons served.

(2) Not later than 90 days from the date a railroad files its submission, resubmission, or informational filing required pursuant to this section, a representative designated by the president of each labor organization that represents railroad employees subject to this part, may file a comment on the submission, resubmission, or informational filing:

(i) Each comment shall be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; and

(ii) The commenter shall certify that a copy of the comment was served on the railroad.

§ 243.111 Approval of programs filed by training organizations or learning institutions.

(a) A training organization or learning institution that provides training services for safety-related railroad employees, including providing such training services to independent students who enroll with such training organization or learning institution and who will rely on the training services provided to qualify to become safety-related railroad employees, must submit its program to FRA for review and approval.

(b) A training organization or learning institution that has provided training services to employers covered by this part prior to January 1, 2017 may continue to offer such training services without FRA approval until January 1, 2018. The Associate Administrator may extend this period at any time based on a written request. Such written requests for an extension of time to submit a program should contain any factors the training organization or learning institution wants the Associate Administrator to consider prior to approving or disapproving the extension.

(c) A program submitted by a training organization or learning institution must include all information required for an employer's program in accordance with this part, unless the requirement could only apply to an employer's program. The submitted program for a training organization or learning institution must also include the following information:

(1) The full corporate or business name of the training organization or learning institution;

(2) The training organization or learning institution's primary business and email address;

(3) The training organization or learning institution's primary telephone number and point of contact;

(4) A listing of the training organization or learning institution's designated instructors;

(5) A resume for each designated instructor, showing how the instructor achieved the subject-matter and training expertise necessary to develop and deliver training to safety-related railroad employees, unless the designated instructors are currently employed by a railroad;

(6) A list of references of employer customers the learning organization or training institution has provided services to in the past; and

(7) A brief summary statement indicating how the training organization or learning institution determined the knowledge, skills, and abilities necessary to develop the training courses it provides to employers and independent students who enroll with such training organization or learning institution in order to become safety-related railroad employees. This brief summary should be of sufficient detail so that FRA can ascertain the methodologies the training organization or learning institution used during training development.

(d) Except as specified in paragraph (b) of this section, prior approval by the Associate Administrator is required before FRA will accept such training as sufficient to meet the requirements of this part. The Associate Administrator will advise the training organization or learning institution in writing whether FRA has approved the program. If all or part of the program is not approved by FRA, the Associate Administrator will inform the training organization or learning institution of specific deficiencies. At the time that the Associate Administrator informs of any deficiencies, the Associate Administrator will clarify whether any particular training courses shall be considered approved.

(e) Previously approved programs require an informational filing when modified. The training organization or learning institution shall review its previously approved training program and modify it accordingly when new safety-related Federal railroad laws, regulations, or orders are issued, or new safety-related technologies, procedures, or equipment are introduced into the workplace and result in new knowledge requirements, safety-related tasks, or in modifications of existing safety-related duties. A training organization or learning institution that modifies its training program for these described reasons shall submit an informational filing to the Associate Administrator not later than 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise. Programs modified in accordance with this paragraph are considered approved upon modification and may be implemented immediately. Any program deficiencies noted by the Associate Administrator shall be addressed as specified in this section. The filing shall contain a summary description of sufficient detail so that FRA can associate the changes with the training organization's or learning institution's previously approved program, and shall include:

(1) Descriptions of all new or refresher training courses developed after the previous FRA approval, using the same criteria required for an initial filing;

(2) Explanations whenever OJT or arranged practice is added to, or discontinued from, a program; and

(3) Explanations as to how the methods of delivering training, or qualifying employees has changed.

(f) New portions or revisions to an approved program: Substantial additions or revisions to a previously approved program, that are not described as informational filings in accordance with paragraph (e) of this section, shall require prior approval by the Associate Administrator before FRA will accept such training as sufficient to meet the requirements of this part. The Associate Administrator will advise the training organization or learning institution in writing whether FRA has approved the new or revised program. If all or part of the program is not approved by FRA, the Associate Administrator will inform the training organization or learning institution of specific deficiencies. At the time that the Associate Administrator informs the training organization or learning institution of any deficiencies, the Associate Administrator will clarify whether any particular new or revised training courses shall be considered approved.

(g) Training organizations and learning institutions subject to this part are required to maintain records for each safety-related railroad employee that attends the training, in accordance with the recordkeeping requirements of this part.

(h) Training organizations and learning institutions subject to this part shall provide a student's training transcript or training record to any employer upon request by the student.

§ 243.113 Electronic and written program submission requirements.

(a) Except for an employer with less than 400,000 total employee work hours annually, each employer, training organization, or learning institution to which this part applies is required to file by electronic means any program submissions required under this part in accordance with the requirements of this section. Each organization, business, or association that develops an optional model program in accordance with § 243.105 of this part is required to electronically file the program in accordance with the requirements of this section.

(b) Prior to any person's first program submission electronically, the person shall provide the Associate Administrator with the following information in writing:

(1) The name of the employer, organization, learning institution, business, or association;

(2) The names of two individuals, including job titles, who will be the person's points of contact and will be the only individuals allowed access to FRA's secure document submission site;

(3) The mailing addresses for the person's points of contact;

(4) The person's system or main headquarters address located in the United States;

(5) The email addresses for the person's points of contact; and

(6) The daytime telephone numbers for the person's points of contact.

(c) A person that electronically submits an initial program, informational filing, or new portions or revisions to an approved program required by this part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email.

(d) A request for FRA review of written materials shall be addressed to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

(e) FRA may electronically store any materials required by this part regardless of whether the person that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically.

(f) A person that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided consent to receive approval or disapproval notices from FRA by email or mail.

Subpart C—Program Implementation and Oversight Requirements

§ 243.201 Employee qualification requirements.

(a) Designating existing employees:

(1) By no later than September 1, 2018, each employer with 400,000 total employee work hours annually or more in operation as of January 1, 2018, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(2) By no later than September 1, 2019 or four years and eight months from the date of issuance of FRA's Interim Final Compliance Guide, whichever is later, each employer with less than 400,000 total employee work hours annually in operation as of January 1, 2019, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(b) Except for an employer subject to the requirement in paragraph (a)(2) of this section, an employer commencing operations after January 1, 2018 shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory prior to beginning operations, and only permit designated employees to perform safety-related service in that category or subcategory. Any person designated shall have met the requirements for newly hired employees or those assigned new safety-related duties in accordance with paragraph (c) of this section.

(c) Newly hired employees or those assigned new safety-related duty:. The following requirements apply to qualifying a safety-related railroad employee who, subsequent to the employer's designation in accordance with paragraphs (a) and (b) of this section, is newly hired or is to engage in a safety-related task not associated with the employee's previous training.

(1) Prior to an employee becoming a qualified member of an occupational category or subcategory, the employer shall require a safety-related railroad employee who is newly hired or is to engage in safety-related duties not associated with the employee's previous training to successfully complete the formal training curriculum for that category or subcategory of safety-related railroad employee. Successful completion of the formal training curriculum includes passing any required examinations covering the skills and knowledge the employee will need to possess in order to perform the safety-related duties necessary to be a member of the occupational category or subcategory.

(2) If the training curriculum includes OJT, the employee shall demonstrate, to the satisfaction of a designated instructor, OJT proficiency by successfully completing the safety-related tasks necessary to become a qualified member of the occupational category or subcategory. However, as part of the OJT process and prior to completing such training and passing the field evaluation, a person may perform such tasks under the direct onsite observation of any qualified person, provided the qualified person has been advised of the circumstances and is capable of intervening if an unsafe act or non-compliance with Federal railroad safety laws, regulations, or orders is observed. An employee designated to provide formal training to other employees, and who is not a designated instructor, shall be qualified on the safety-related topics or tasks in accordance with the employer's training program and the requirements of this part.

(d) Employees previously qualified or trained, but not by the current employer: If an employee has received relevant qualification or training for a particular occupational category or subcategory through participation in a FRA-approved training program submitted by an entity other than the employee's current employer, that training shall satisfy the requirements of this part:

(1) Provided that:

(i) A current record of training is obtained from that other entity; or

(ii) When a current record of training is unavailable from that other entity, an employer performs testing to ensure the employee has the knowledge necessary to be a member of that category or subcategory of safety-related railroad employee; and

(2) When the employee, in the previous 180 days, has either not performed the safety-related duties or not received initial or periodic training for an occupational category or subcategory, the employer shall perform testing to ensure the employee has retained the knowledge necessary to remain a member of that occupational category or subcategory. In the situation where an employee's records are unavailable and the employee is subject to testing under paragraph (d)(1)(ii) of this section, no additional testing is required.

(e) Refresher training requirements and options:

(1) Beginning January 1, 2020, each employer with 400,000 total employee work hours annually or more shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs prior to FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2022. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(2) Beginning January 1, 2021 or six years from the date of issuance of FRA's Interim Final Compliance Guide, whichever is later, each employer with less than 400,000 total employee work hours annually shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs prior to FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2023. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

§ 243.203 Records.

(a) *General requirements for qualification status records; accessibility.* Each employer shall maintain records to demonstrate the qualification status of each safety-related railroad employee that it employs.

(1) The records for former safety-related railroad employees shall be accessible for 6 years at the employer's system headquarters after the employment relationship ends.

(2) Current employee records shall be accessible at the employer's system headquarters.

(b) *Employee information.* The records shall include the following information concerning each such employee:

(1) The name of the employee;

(2) Occupational category or subcategory designations for which the employee is deemed qualified;

(3) The dates that each formal training course was completed;

(4) The title of each formal training course successfully completed;

(5) If the safety-related railroad employee attended safety-related training offered by a business, a training organization, or a learning institution with an FRA-approved program, a copy of the transcript or appropriate record from that business, training organization, or learning institution;

(6) The employee's OJT performance, which shall include the unique name or identifier of the OJT program component in accordance with § 243.103, the date the OJT program component was successfully completed, and the identification of the person(s) determining that the employee successfully completed all OJT training necessary to be considered qualified to perform the safety-related tasks identified with the occupational categories or subcategories for which the employee is designated in accordance with the program required by this part;

(7) The date that the employee's status is determined to be qualified and the employee is designated to perform the safety-related duties identified with any particular occupational categories or subcategories, in accordance with the program required by this part;

(8) If an employee's qualification status was transferred from another entity with an approved program, a copy of the training record from that other entity; and

(9) Any additional information required by this part.

(c) *Record accessibility for other than individual employee records.* Except for records demonstrating the qualification status of each safety-related railroad employee as described in paragraph (b) of this section or otherwise specified in this part, each test, inspection, annual review, or other event record required by this part shall be accessible for 3 calendar years after the end of the calendar year to which the event relates. Each employer shall make these records accessible at one headquarters location within the United States, including, but not limited to, a railroad's system headquarters, a holding company's headquarters, a joint venture's headquarters, a contractor's principal place of business or other headquarters located where the contractor is incorporated. This requirement does not prohibit an employer with divisions from also maintaining any of these records at any division headquarters.

(d) *Availability of records.* Each employer, training organization, or learning institution required to maintain records under this part shall:

(1) Make all records available for inspection and copying/photocopying to representatives of FRA, upon request during normal business hours; and

(2) Make an employee's records available for inspection and copying/photocopying to that employee, former employee, or such person's representative upon written authorization by such employee during normal business hours.

(e) *Electronic recordkeeping.* Nothing in this section precludes an employer, a training organization, or a learning institution from maintaining the information required to be retained under this part in an electronic format provided that:

(1) The employer, training organization, or learning institution maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or individual records;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record;

(3) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to a record uniquely identifies the person making the amendment;

(5) The system employed by the employer, training organization, or learning institution for data storage permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives in a timely manner and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives.

(f) *Transfer of records.* If an employer ceases to do business and its assets will be transferred to a successor employer, it shall transfer to the successor employer all records required to be maintained under this part, and the successor employer shall retain them for the remainder of the period prescribed in this part.

§ 243.205 Periodic oversight.

(a) *General.* As part of the program required in accordance with this part, an employer shall adopt and comply with a program to conduct periodic oversight tests and inspections to determine if safety-related railroad employees comply with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. The program of periodic oversight shall commence on the day the employer files its program with FRA pursuant to § 243.101(a) or on the day the employer commences operations pursuant to § 243.101(b). The data gathered through the testing and inspection components of the program shall be used to determine whether systemic performance gaps exist, and to determine if modifications to the training component of the program are appropriate to close those gaps.

(b) *Locomotive engineer and conductor oversight exception.* Periodic oversight specified in this section is not required for employees covered by parts 240 and 242 of this chapter, but a railroad shall use results of the assessments required by those parts to determine if changes in its training programs are necessary to close any proficiency gaps found during those assessments.

(c) *Railroad oversight.* Each railroad shall identify supervisory employees, by category or subcategory, responsible for conducting periodic oversight tests and inspections for the safety-related railroad employees that it authorizes to perform safety-related duties on its property, except a railroad is not required to:

(1) Provide oversight for a contractor's safety-related railroad employees if that contractor is required to conduct its own periodic oversight because it meets

the criteria specified in paragraph (g) of this section;

(2) Provide oversight for categories or subcategories of a contractor's safety-related railroad employees if the railroad does not employ supervisory employees who are qualified as safety-related railroad employees in those categories or subcategories; or

(3) Provide oversight for any supervisory employee identified by the railroad as responsible for conducting oversight in accordance with this section.

(d) *Operational test exception for a railroad.* A railroad is not required to perform operational tests of safety-related railroad employees employed by a contractor.

(e) *Railroad oversight for contractors.* A railroad may choose to require supervisory employees to perform oversight of safety-related railroad employees employed by a contractor either:

(1) When oversight test and inspection sessions are scheduled specifically to determine if safety-related employees are in compliance with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety; or

(2) When a qualified railroad supervisory employee's duties place this person in the vicinity of one or more safety-related railroad employees employed by a contractor and performing the oversight would result in minimal disruption of this person's other assigned duties.

(f) *Railroad's duty to notify contractor of non-compliance.* A railroad that finds evidence of contractor employee non-compliance with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety during the periodic oversight shall provide that employee and that employee's employer with details of the non-compliance.

(g) *Contractor oversight.* Each contractor shall conduct periodic oversight tests and inspections of its safety-related railroad employees provided:

(1) A contractor employs more than 15 safety-related railroad employees;

(2) A contractor relies on training it directly provides to its own employees as the basis for qualifying those employees to perform safety-related duties on a railroad; and

(3) A contractor employs supervisory safety-related railroad employees capable of performing oversight.

(h) *Oversight divided by agreement.* Notwithstanding the requirements of paragraphs (c) and (g) of this section, a railroad and a contractor may agree that the contractor will provide the oversight by specifying in the program that the railroad has trained the contractor employees responsible for training and oversight.

(i) *Detailed records required.* Each employer that conducts periodic oversight in accordance with this section must keep a record of the date, time, place, and result of each test or inspection. The records shall specify each person administering tests and inspections, and each person tested. The record shall also provide a method to record whether the employee complied with the monitored duties, and any interventions used to remediate non-compliance. Modifications of the program required by § 217.9 of this chapter may be used in lieu of this oversight program, provided a railroad specifies it has done so in its program submitted in accordance with this part.

(j) *Additional records requirement.* Records required under this section are subject to the requirements of § 243.203.

§ 243.207 Annual review.

(a) The purpose of this review is to determine if knowledge or performance gaps exist in the application of Federal railroad safety laws, regulations, and orders. This section shall apply to each railroad once a program has been approved by FRA in accordance with this part. This section does not apply to a railroad with less than 400,000 total employee work hours annually. This section does not apply to employers other than railroads except as specified in paragraph (f) of this section.

(b) Except as provided for in paragraph (a) of this section, each railroad that is required to conduct periodic oversight in accordance with § 243.205 is also required to conduct an annual review, as provided in this section, and shall retain, at its system headquarters, one copy of the written annual review.

(c) Each railroad shall designate a person(s) who shall conduct a written annual review. The annual review shall be designed to identify knowledge or performance gaps in occupational categories and determine whether adjustments to the training component of the program are the appropriate intervention to close those gaps or otherwise improve the effectiveness of the program. Such review shall include analysis of the following data:

(1) Periodic oversight data required by § 243.205;

(2) Reportable accident/incident data as defined in part 225 of this chapter;

(3) FRA inspection report data;

(4) Employee training feedback received through a course evaluation process, if such feedback is available; and

(5) Feedback received from labor representatives, if such feedback is available.

(d) Based upon the results of the annual review, the designated person(s) shall coordinate any necessary adjustments to the initial and refresher training programs. At the railroad's option, the annual review required under this section may be conducted in conjunction with any periodic review required under part 217 of this chapter.

(e) If a railroad utilizes a contractor that directly trains its own safety-related railroad employees, the railroad shall notify the contractor of the relevant training program adjustments made to the railroad's program in accordance with paragraph (d) of this section.

(f) A contractor shall use any information provided by a railroad to adjust its training specific to the Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety.

(g) Prior to September 1 of each calendar year, each railroad to which this section applies shall complete its annual review for the previous calendar year.

§ 243.209 Railroad maintained list of contractors utilized.

(a) Each railroad utilizing contractors to supply the railroad with safety-related railroad employees shall maintain a list, at its system headquarters, with information regarding each contractor utilized unless:

(1) The railroad qualifies each of the contractor's safety-related railroad employees utilized; and

(2) The railroad maintains the training records for each of the contractor's safety-related railroad employees utilized.

(b) The listing required by paragraph (a) of this section shall include:

(1) The full corporate or business name of the contractor;

(2) The contractor's primary business and email address; and

(3) The contractor's primary telephone number.

(c) The information required by this section shall be continuously updated as additional contractors are utilized, and no contractor information shall be deleted from the list unless the contractor has not been utilized for at least 3 years from the end of the calendar year the contractor was last utilized.

Appendix to Part 243—Schedule of Civil Penalties

Appendix to Part 243—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
Subpart B—Program Components and Approval Process		
243.101—Employer program required:		
(a–c) Complete failure to submit, adopt, or comply with program	$7,500–12,500	$11,000-$16,000
(a–c) Partial failure to submit, adopt, or comply with program; or failure to correct deficiencies upon FRA's request.	4,500–9,500	6,500–13,000
(d) OJT program requirements or failure to make reference materials available	2,000–4,500	4,000–6,500
(e–f) Program validation	2,000	4,000
243.105 Claiming optional model program is FRA-approved, when it is not:	2,000–4,500	4,000–6,500
243.109 Training program submission, review, and approval process:		
(a) Failure to timely resubmit program	2,000–4,500	4,000–6,500
(b) Failure to timely submit informational filing	2,000–4,500	4,000–6,500
(c) Failure to submit new portions or revisions	4,500	6,500
(d) Railroad failure to serve program	1,000	2,000
243.111 Approval of programs filed by training organizations or learning institutions:		
(a–b) Claiming training is FRA-approved, when it is not	2,000–4,500	4,000–6,500
(c–f) FRA approved some training, but all conditions not met	2,000–4,500	4,000–6,500
(g–h) Records	1,000	2,000
Subpart C—Program Implementation and Oversight Requirements		
243.201 Employee qualification requirements:		
(a–b) Failure to designate an employee	1,000	2,000
(c–f) Other failures and refresher training (per employee)	1,000	2,000
243.203 Records:		
(a–f) Failure to maintain records (per employee)	1,000	2,000
243.205 Periodic oversight	4,500–9,500	6,500–13,000
243.207 Annual review	4,500	6,500
243.209 Railroad maintained list of contractors utilized	4,500	6,500

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Issued in Washington, DC, on October 31, 2014.

Melissa L. Porter,

Chief Counsel.

[FR Doc. 2014–26290 Filed 11–6–14; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 60 and 63
Phosphoric Acid Manufacturing and Phosphate Fertilizer Production RTR and Standards of Performance for Phosphate Processing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2012–0522; FRL–9912–61–OAR]

RIN 2060–AQ20

Phosphoric Acid Manufacturing and Phosphate Fertilizer Production RTR and Standards of Performance for Phosphate Processing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories and to new source performance standards (NSPS) for several phosphate processing categories. The proposed amendments address the results of the residual risk and technology reviews (RTR) conducted as required under the Clean Air Act (CAA), as well as other actions deemed appropriate during the review of these standards. The proposed amendments include numeric emission limits for mercury and work practice standards for hydrogen fluoride (HF) from calciners; work practice standards for hazardous air pollutant (HAP) emissions from gypsum dewatering stacks and cooling ponds; emission standards requiring HF testing from various affected sources; clarifications to the applicability and monitoring requirements for both source categories to accommodate process equipment and technology changes; changes to remove the exemptions for startup, shutdown and malfunction; work practice standards for periods of startup and shutdown; and revised provisions to address recordkeeping and reporting requirements applicable to periods of startup, shutdown and malfunction. The proposed amendments will reduce mercury emissions, thereby reducing potential mercury exposure to children, including the unborn. Further, the EPA has conducted an 8-year review of the current NSPS for these source categories, and is proposing that no revisions to the numeric emission limits for these standards are appropriate.

DATES: *Comments.* Comments must be received on or before December 22, 2014. A copy of comments on the information collection provisions should be submitted to the Office of Management and Budget (OMB) on or before December 8, 2014.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by November 12, 2014, we will hold a public hearing on November 24, 2014 on the EPA campus at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2012–0522, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*: Follow the online instructions for submitting comments.
- *Email: A-and-R-Docket@epa.gov.* Include Attention Docket ID No. EPA–HQ–OAR–2012–0522 in the subject line of the message.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2012–0522.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA–HQ–OAR–2012–0522, 1200 Pennsylvania Ave. NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.
- *Hand/Courier Delivery:* EPA Docket Center, Room 3334, EPA WJC Building, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2012–0522. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID Number EPA–HQ–OAR–2012–0522. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: *http://www.epa.gov/dockets.*

Docket. The EPA has established a docket for this rulemaking under Docket ID Number EPA–HQ–OAR–2012–0522. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Public Hearing. If anyone contacts the EPA requesting a public hearing by November 12, 2014, the public hearing will be held on November 24, 2014 at the EPA's campus at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina. The hearing will begin at 10:00 a.m. (Eastern Standard Time) and conclude at 5:00 p.m. (Eastern Standard Time). There will be a lunch break from 12:00 p.m. to 1:00 p.m. Please contact Ms. Pamela Garrett at 919–541–7966 or *garrett.pamela@epa.gov* to register to speak at the hearing, or to inquire about whether a hearing will be held. The last day to pre-register in advance to speak at the hearings will be November 19, 2014. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk, although preferences on speaking times may not

be able to be fulfilled. If you require the service of a translator or special accommodations such as audio description, please let us know at the time of registration. If you require an accommodation, we ask that you pre-register for the hearing, as we may not be able to arrange such accommodations without advance notice.

The hearing will provide interested parties the opportunity to present data, views or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing is being held at U.S. government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Ms. Garrett if they will need specific equipment, or if there are other special needs related to providing comments at the hearings. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Again, a hearing will only be held if requested by November 12, 2014. Please contact Ms. Pamela Garrett at 919–541–7966 or at *garrett.pamela@epa.gov* or visit *http://www.epa.gov/ttn/atw/phosph/phosphpg.html* to determine if a hearing will be held. If the EPA holds a public hearing, the EPA will keep the record of the hearing open for 30 days after completion of the hearing to provide an opportunity for submission of rebuttal and supplementary information.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Ms. Tina Ndoh, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2750; fax number: (919) 541–5450; and email address: *Ndoh.Tina@epa.gov*. For specific information regarding the risk modeling methodology, contact James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0359; and email address: *Hirtz.James@epa.gov*. For information about the applicability of the national emissions standards for hazardous air pollutants (NESHAP) or the NSPS to a particular entity, contact Scott Throwe, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, William Jefferson Clinton Building, Mail Code 2227A, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202)562–7013; and email address: *Throwe.Scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

Preamble Acronyms and Abbreviations

We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACI Activated Carbon Injection
AEGL Acute exposure guideline levels
AERMOD Air dispersion model used by the HEM–3 model
AFPC Association of Fertilizer and Phosphate Chemists
AOAC Association of Official Analytical Chemists
APF Ammonium phosphate fertilizer
BACT Best available control technology
BDL Below the method detection limit
BSER Best System of Emissions Reduction
CAA Clean Air Act
CalEPA California EPA
CA–REL California Reference Exposure Level
CBI Confidential Business Information
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS Continuous emissions monitoring system
CFR Code of Federal Regulations
CMS Continuous monitoring system
CPMS Continuous parameter monitoring system
DAP Diammonium phosphate
EPA Environmental Protection Agency
ERPG Emergency Response Planning Guidelines
ERT Electronic Reporting Tool
F Fluoride
FaTE Fate, Transport, and Ecological Exposure
FR Federal Register
FTIR Fourier transform infrared spectroscopy
gr/dscf Grams per dry standard cubic feet
GTSP Granular triple superphosphate
H Hydrogen
HAP Hazardous air pollutants
HCl Hydrogen chloride
HEM–3 Human Exposure Model, Version 1.1.0
HF Hydrogen fluoride
Hg Mercury
HI Hazard index
HQ Hazard quotient
ICR Information Collection Request
IRIS Integrated Risk Information System
km Kilometer
LAER Lowest achievable emissions rate
LOAEL Lowest-observed-adverse-effect level
MACT Maximum achievable control technology
MAP Monoammonium phosphate
mg/dscm Milligrams per dry standard cubic meter
mg/kg-day Milligrams per kilogram-day
mg/m^3 Milligrams per cubic meter
MIBK Methyl isobutyl ketone
MIR Maximum individual risk
MRL Minimum risk level
NAAQS National Ambient Air Quality Standards
NAICS North American Industry Classification System
NATA National Air Toxics Assessment
NEI National Emissions Inventory
NESHAP National Emissions Standards for Hazardous Air Pollutants
NOAA National Oceanic and Atmospheric Administration
NOAEL No-observed-adverse-effect level
NRC National Research Council
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OECA Office of Enforcement and Compliance Assurance
OMB Office of Management and Budget
P_2O_5 Phosphorus pentoxide
PB–HAP Hazardous air pollutants known to be persistent and bio-accumulative in the environment
PEL Probable effect levels
PM Particulate matter
POM Polycyclic organic matter
PPA Purified phosphoric acid
ppm Parts per million

QA/QC Quality assurance/quality control
RACT Reasonably available control technology
RATA Relative accuracy test audit
RBLC RACT/BACT/LAER Clearinghouse
REL Reference exposure level
RFA Regulatory Flexibility Act
RfC Reference concentration
RfD Reference dose
RTR Residual risk and technology review
SAB Science Advisory Board
SBA Small Business Administration
SiF4 Silicon tetrafluoride
SPA Superphosphoric acid
SSM Startup, shutdown and malfunction
TOSHI Target organ-specific hazard index
tpy Tons per year
TRIM Total Risk Integrated Modeling System
TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model
TTN Technology Transfer Network
UF Uncertainty factor
$\mu g/m^3$ Micrograms per cubic meter
UMRA Unfunded Mandates Reform Act
UPL Upper prediction limit
URE Unit risk estimate
VCS Voluntary consensus standards
WESP Wet electrostatic precipitator
WPPA Wet-process phosphoric acid
WWW World Wide Web

Organization of this Document. The information in this preamble is organized as follows:

I. General Information
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C. What should I consider as I prepare my comments for the EPA?
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B. What are the source categories and how do the current NESHAP and NSPS regulate emissions?
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A. What actions are we taking pursuant to CAA sections 112(d)(2) and 112(d)(3) for the Phosphoric Acid Manufacturing source category?
B. What are the results of the risk assessment and analyses for the Phosphoric Acid Manufacturing source category?
C. What are our proposed decisions regarding risk acceptability, ample margin of safety and adverse environmental effects for the Phosphoric Acid Manufacturing source category?
D. What are the results and proposed decisions based on our technology review for the Phosphoric Acid Manufacturing source category?
E. What other actions are we proposing for the Phosphoric Acid Manufacturing source category?
F. What are the notification, recordkeeping and reporting requirements for the Phosphoric Acid Manufacturing source category?
G. What compliance dates are we proposing for the Phosphoric Acid Manufacturing source category?
V. Analytical Results and Proposed Decisions for the Phosphate Fertilizer Production Source Category
A. What are the results of the risk assessment and analyses for the Phosphate Fertilizer Production source category?
B. What are our proposed decisions regarding risk acceptability, ample margin of safety and adverse environmental effects for the Phosphate Fertilizer Production source category?
C. What are the results and proposed decisions based on our technology review for the Phosphate Fertilizer Production source category?
D. What other actions are we proposing for the Phosphate Fertilizer Production source category?
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive but rather to provide a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. As defined in the "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990" (see 57 FR 31576, July 16, 1992), the "Phosphoric Acid Manufacturing" source category is any facility engaged in the production of phosphoric acid. The category includes, but is not limited to, production of wet-process phosphoric acid (WPPA) and superphosphoric acid (SPA). The "Phosphate Fertilizer Production" source category includes any facility engaged in the production of phosphate-based fertilizers including, but not limited to, plants with bulk-blend processes, fluid-mix processes or ammonia granulation processes. Examples of phosphate fertilizers are: Monoammonium phosphates (MAP) and diammonium phosphates (DAP) (or ammonium phosphate fertilizer (APF)), and triple superphosphates (TSP).[1]

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NAICS Code[a]	Examples of regulated entities
Industrial	325312	Phosphoric Acid; and Phosphate Fertilizers.

[a] North American Industry Classification System.

[1] U.S. EPA. Documentation for Developing the Initial Source Category List—Final Report, USEPA/OAQPS, EPA–450/3–91–030, July, 1992.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the Internet through the EPA's Technology Transfer Network (TTN) Web site, a forum for information and technology exchange in various areas of air pollution control. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at: *http://www.epa.gov/ttn/atw/phosph/phosphpg.html.* Following publication in the **Federal Register,** the EPA will post the **Federal Register** version of the proposal and key technical documents at the same Web site. Information on the overall residual risk and technology review program is available at the following Web site: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.htnl.*

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI. Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID Number EPA–HQ–OAR–2012–0522.

II. Background

A. What are the statutory authorities for this action?

1. NESHAP Authority

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAPs) from stationary sources. In the first stage, after the EPA has identified categories of sources emitting one or more of the HAP listed in CAA section 112(b), CAA section 112(d) requires us to promulgate technology-based NESHAP for those sources. "Major sources" are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAPs. For major sources, the technology-based NESHAP must reflect the maximum degree of emission reductions of HAPs achievable (after considering cost, energy requirements and non-air quality health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

MACT standards must reflect the maximum degree of emissions reduction achievable through the application of measures, processes, methods, systems or techniques, including, but not limited to, measures that (1) reduce the volume of or eliminate pollutants through process changes, substitution of materials or other modifications; (2) enclose systems or processes to eliminate emissions; (3) capture or treat pollutants when released from a process, stack, storage or fugitive emissions point; (4) are design, equipment, work practice or operational standards (including requirements for operator training or certification); or (5) are a combination of the above. CAA section 112(d)(2)(A)–(E). The MACT standards may take the form of design, equipment, work practice or operational standards where the EPA first determines either that (1) a pollutant cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with law; or (2) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations. CAA section 112(h)(1)–(2).

The MACT "floor" is the minimum control level allowed for MACT standards promulgated under CAA section 112(d)(3) and may not be based on cost considerations. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT floor for existing sources can be less stringent than floors for new sources but not less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, the EPA must also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on considerations of the cost of achieving the emission reductions, any non-air quality health and environmental impacts and energy requirements.

The EPA is then required to review these technology-based standards and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less frequently than every eight years. CAA section 112(d)(6). In conducting this review, the EPA is not required to recalculate the MACT floor. *NRDC* v. *EPA,* 529 F.3d 1077, 1084 (D. C. Cir. 2008). *Association of Battery Recyclers, Inc.* v. *EPA,* 716 F.3d 667 (D.C. Cir. 2013).

The second stage in standard-setting focuses on reducing any remaining (i.e., "residual") risk according to CAA section 112(f). CAA section 112(f)(1) required that the EPA prepare a report to Congress discussing (among other things) methods of calculating the risks posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks and the EPA's recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted the *Residual Risk Report to Congress,* EPA–453/R–99–001 (*Risk Report*) in March 1999. CAA section 112(f)(2) then provides that if Congress does not act on any recommendation in the Risk Report, the EPA must analyze and address residual risk for each category or subcategory of sources 8 years after promulgation of such standards pursuant to CAA section 112(d).

CAA section 112(f)(2) of the CAA requires the EPA to determine for source categories subject to MACT standards whether the emission standards provide an ample margin of safety to protect public health. CAA section 112(f)(2)(B) of the CAA expressly preserves the EPA's use of the two-step process for developing standards to address any residual risk and the agency's interpretation of "ample margin of

safety'' developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the *Risk Report* that the agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA–453/R–99–001, p. ES–11). The EPA subsequently adopted this approach in its residual risk determinations and in a challenge to the risk review for the Synthetic Organic Chemical Manufacturing source category, the United States Court of Appeals for the District of Columbia Circuit upheld as reasonable the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008)(''[S]ubsection 112(f)(2)(B) expressly incorporates the EPA's interpretation of the Clean Air Act from the Benzene standard, complete with a citation to the **Federal Register**.''); see also A Legislative History of the Clean Air Act Amendments of 1990, vol. 1, p. 877 (Senate debate on Conference Report).

The first step in the process of evaluating residual risk is the determination of acceptable risk. If risks are unacceptable, the EPA cannot consider cost in identifying the emissions standards necessary to bring risks to an acceptable level. The second step is the determination of whether standards must be further revised in order to provide an ample margin of safety to protect public health. The ample margin of safety is the level at which the standards must be set, unless an even more stringent standard is necessary to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect.

a. Step 1-Determination of Acceptability

The agency in the Benzene NESHAP concluded that ''the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information'' and that the ''judgment on acceptability cannot be reduced to any single factor.'' Benzene NESHAP at 38046. The determination of what represents an ''acceptable'' risk is based on a judgment of ''what risks are acceptable in the world in which we live'' (*Risk Report* at 178, quoting *NRDC* v. *EPA*, 824 F. 2d 1146, 1165 (D.C. Cir. 1987) (en banc) (''Vinyl Chloride''), recognizing that our world is not risk-free.

In the Benzene NESHAP, we stated that ''EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable.'' 54 FR at 38045, September 14, 1989. We discussed the maximum individual lifetime cancer risk (or maximum individual risk (MIR)) as being ''the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.'' *Id.* We explained that this measure of risk ''is an estimate of the upper bound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years.'' *Id.* We acknowledged that maximum individual lifetime cancer risk ''does not necessarily reflect the true risk, but displays a conservative risk level which is an upper-bound that is unlikely to be exceeded.'' *Id.*

Understanding that there are both benefits and limitations to using the MIR as a metric for determining acceptability, we acknowledged in the Benzene NESHAP that ''consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk.'' *Id.* Consequently, the presumptive risk level of 100-in-1 million (1-in-10 thousand) provides a benchmark for judging the acceptability of maximum individual lifetime cancer risk, but does not constitute a rigid line for making that determination. Further, in the Benzene NESHAP, we noted that:

> ''[p]articular attention will also be accorded to the weight of evidence presented in the risk assessment of potential carcinogenicity or other health effects of a pollutant. While the same numerical risk may be estimated for an exposure to a pollutant judged to be a known human carcinogen, and to a pollutant considered a possible human carcinogen based on limited animal test data, the same weight cannot be accorded to both estimates. In considering the potential public health effects of the two pollutants, the Agency's judgment on acceptability, including the MIR, will be influenced by the greater weight of evidence for the known human carcinogen.''

Id. at 38046. The agency also explained in the Benzene NESHAP that:

> ''[i]n establishing a presumption for MIR, rather than a rigid line for acceptability, the Agency intends to weigh it with a series of other health measures and factors. These include the overall incidence of cancer or other serious health effects within the exposed population, the numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km exposure radius around facilities, the science policy assumptions and estimation uncertainties associated with the risk measures, weight of the scientific evidence for human health effects, other quantified or unquantified health effects, effects due to co-location of facilities, and co-emission of pollutants.''

Id. at 38045. In some cases, these health measures and factors taken together may provide a more realistic description of the magnitude of risk in the exposed population than that provided by maximum individual lifetime cancer risk alone.

As noted earlier, in *NRDC* v. *EPA*, the court held that CAA section 112(f)(2) ''incorporates the EPA's interpretation of the Clean Air Act from the Benzene Standard.'' The court further held that Congress' incorporation of the Benzene standard applies equally to carcinogens and non-carcinogens. 529 F.3d at 1081–82. Accordingly, we also consider non-cancer risk metrics in our determination of risk acceptability and ample margin of safety.

b. Step 2-Determination of Ample Margin of Safety

CAA section 112(f)(2) requires the EPA to determine, for source categories subject to MACT standards, whether those standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, ''the second step of the inquiry, determining an 'ample margin of safety,' again includes consideration of all of the health factors, and whether to reduce the risks even further. . . . Beyond that information, additional factors relating to the appropriate level of control will also be considered, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors. Considering all of these factors, the agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by section 112.'' 54 FR at 38046, September 14, 1989.

According to CAA section 112(f)(2)(A), if the MACT standards for HAP ''classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million,'' the EPA must promulgate residual risk standards for the source category (or subcategory), as necessary to provide an ample margin of safety to protect public health. In doing so, the EPA may adopt standards equal to existing MACT standards if the EPA determines that the existing standards

(i.e., the MACT standards) are sufficiently protective. *NRDC* v. *EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008) ("If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.") The EPA must also adopt more stringent standards, if necessary, to prevent an adverse environmental effect,[2] but must consider cost, energy, safety and other relevant factors in doing so.

The CAA does not specifically define the terms "individual most exposed," "acceptable level" and "ample margin of safety." In the Benzene NESHAP, 54 FR at 38044–38045, September 14, 1989, we stated as an overall objective:

> In protecting public health with an ample margin of safety under section 112, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1-in-1 million and (2) limiting to no higher than approximately 1-in-10 thousand [*i.e.*, 100-in-1 million] the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

The agency further stated that "[t]he EPA also considers incidence (the number of persons estimated to suffer cancer or other serious health effects as a result of exposure to a pollutant) to be an important measure of the health risk to the exposed population. Incidence measures the extent of health risks to the exposed population as a whole, by providing an estimate of the occurrence of cancer or other serious health effects in the exposed population." Id. at 38045, September 14, 1989.

In the ample margin of safety decision process, the agency again considers all of the health risks and other health information considered in the first step, including the incremental risk reduction associated with standards more stringent than the MACT standard or a more stringent standard that EPA has determined is necessary to ensure risk is acceptable. In the ample margin of safety analysis, the agency considers additional factors, including costs and economic impacts of controls, technological feasibility, uncertainties and any other relevant factors. Considering all of these factors, the agency will establish the standard at a level that provides an ample margin of safety to protect the public health, as required by CAA section 112(f). 54 FR 38046, September 14, 1989.

2. NSPS Authority

New source performance standards implement CAA section 111, which requires that each NSPS reflect the degree of emission limitation achievable through the application of the best system of emission reduction (BSER) which (taking into consideration the cost of achieving such emission reductions, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Existing affected facilities that are modified or reconstructed are also be subject to NSPS. Under CAA section 111(a)(4), "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications.

Rebuilt emission units would become subject to the NSPS under the reconstruction provisions in 40 CFR 60.15, regardless of changes in emission rate. Reconstruction means the replacement of components of an existing facility such that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards (40 CFR 60.15).

Section 111(b)(1)(B) of the CAA requires the EPA to periodically review and, if appropriate, revise the standards of performance as necessary to reflect improvements in methods for reducing emissions. The EPA need not review an NSPS if the agency determines that such review is not appropriate in light of readily available information on the efficacy of the standard. When conducting the review under CAA section 111(b)(1)(B), the EPA considers both (1) whether developments in technology or other factors support the conclusion that a different system of emissions reduction has become the "best system of emissions reduction" and (2) whether emissions limitations and percent reductions beyond those required by the current standards are achieved in practice.

B. What are the source categories and how do the current NESHAP and NSPS regulate emissions?

1. Description of Phosphoric Acid Manufacturing Source Category

In 2014, 12 facilities in the United States manufacture phosphoric acid. The basic step for producing phosphoric acid is acidulation of phosphate rock. Typically, sulfuric acid, phosphate rock and water are combined together and allowed to react to produce phosphoric acid and gypsum. When phosphate rock is acidulated to manufacture WPPA, fluorine contained in the rock is released. Fluoride (F) compounds, predominately HF, are produced as particulates and gases that are emitted to the atmosphere unless removed from the exhaust stream. Some of these same F compounds also remain in the product acid and are released as air pollutants during subsequent processing of the acid. Gypsum is pumped as a slurry to ponds atop stacks of waste gypsum where the liquids separate from the slurry and are decanted for return to the process. The gypsum, which is discarded on the stack, is a solid waste stream produced in this process. Five facilities concentrate WPPA to make SPA, typically using the vacuum evaporation process. While one manufacturer is permitted to use a submerged combustion process for the production of SPA, that process was indefinitely shutdown on June 1, 2006. The majority of WPPA is used to produce phosphate fertilizers.

Additional processes may also be used to further refine phosphoric acid. At least two facilities have a defluorination process to remove F from the phosphoric acid product, and one company uses a solvent extraction process to remove metals and organics and to further refine WPPA into purified phosphoric acid (PPA) for use in food manufacturing or specialized chemical processes. In addition, four facilities have processes to remove organics from the acid (i.e., the green acid process).

Sources of HF emissions from phosphoric acid plants include gypsum dewatering stacks, cooling ponds, cooling towers, calciners, reactors, filters, evaporators and other process equipment.

2. Federal Emission Standards Applicable to the Phosphoric Acid Manufacturing Source Category

The following federal emission standards are associated with the Phosphoric Acid Manufacturing source category and are subject of this proposed rulemaking:

[2] "Adverse environmental effect" is defined as any significant and widespread adverse effect, which may be reasonably anticipated to wildlife, aquatic life or natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental qualities over broad areas. CAA section 112(a)(7).

- National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants (40 CFR part 63, subpart AA);
- Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants (40 CFR part 60, subpart T); and
- Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants (40 CFR part 60, subpart U).

a. Phosphoric Acid Manufacturing NESHAP Emission Regulations

The EPA promulgated 40 CFR part 63, subpart AA for the Phosphoric Acid Manufacturing source category on June 10, 1999 (64 FR 31358). The NESHAP established standards for major sources to control HAP emissions from phosphoric acid facilities. Total F emission limits, as a surrogate for the HAP HF, were set for WPPA process lines and SPA process lines. For new sources, WPPA process lines are limited to 0.0135 pounds (lb) total F per ton (lb total F/ton) of equivalent phosphorus pentoxide (P_2O_5), and SPA process lines are limited to 0.00870 lb total F/ton of equivalent P_2O_5. For existing sources, WPPA process lines are limited to 0.020 lb total F/ton of equivalent P_2O_5. SPA process lines using a vacuum evaporation process are limited to 0.010 lb total F/ton of equivalent P_2O_5, and SPA process lines using a submerged combustion process are limited to 0.020 lb total F/ton of equivalent P_2O_5.

The NESHAP established emission limits for PM from phosphate rock dryers and phosphate rock calciners as a surrogate for metal HAP. For new sources, phosphate rock dryers are limited to 0.060 pounds PM per ton (lb PM/ton) of phosphate rock feed, and phosphate rock calciners are limited to 0.040 grains of PM per dry standard cubic feet (gr/dscf). For existing sources, phosphate rock dryers are limited to 0.2150 lb PM/ton of phosphate rock feed, and phosphate rock calciners are limited to 0.080 gr/dscf.

Also, the NESHAP established an emission limit for methyl isobutyl ketone (MIBK) for PPA process lines and work practices for cooling towers. For new and existing sources, each product acid stream from PPA process lines is limited to 20 parts per million (ppm) of MIBK, and each raffinate stream from PPA process lines is limited to 30 ppm of MIBK (compliance is based on a 30-day average of daily concentration measurements).

b. Phosphoric Acid Manufacturing NSPS Emission Regulations

The EPA promulgated 40 CFR part 60, subpart T for Wet-Process Phosphoric Acid Plants on August 6, 1975 (40 FR 33154). The NSPS established standards to control total F emissions from WPPA plants, including reactors, filters, evaporators and hot wells. For new, modified, and reconstructed sources WPPA plants are limited to 0.020 lb total F/ton of equivalent P_2O_5.

The EPA promulgated 40 CFR part 60, subpart U for Superphosphoric Acid Plants on August 6, 1975 (40 FR 33155). The NSPS established standards to control total F emissions from SPA plants, including evaporators, hot wells, acid sumps and cooling tanks. For new, modified and reconstructed sources, SPA plants are limited to 0.010 lb total F/ton of equivalent P_2O_5.

3. Description of Phosphate Fertilizer Production Source Category

In 2014, there are 11 operating facilities that produce phosphate fertilizers, and most facilities can produce either MAP or DAP in the same process train. However, approximately 80 percent of all ammonium phosphates are produced as MAP. MAP and DAP plants are generally collocated with WPPA plants since it is manufactured from phosphoric acid and ammonia. The MAP and DAP manufacturing process consists of three basic steps: Reaction, granulation and finishing operations such as drying, cooling and screening. In addition, some of the fluorine is liberated as HF and silicon tetrafluoride (SiF_4), with the majority being emitted as HF. Sources of F emissions from MAP and DAP plants include the reactor, granulator, dryer, cooler, screens and mills.

TSP is made as run-of-the-pile-TSP (ROP–TSP) and granular TSP (GTSP) by reacting WPPA with ground phosphate rock. The phosphoric acid used in the GTSP process is appreciably lower in concentration (40- percent P_2O_5) than that used to manufacture ROP–TSP product (50- to 55- percent P_2O_5). The GTSP process yields larger, more uniform particles with improved storage and handling properties than the ROP–TSP process. Currently, no facilities produce ROP–TSP or GTSP,[3] although one facility retains an operating permit to store GTSP.

[3] According to 2014 production and trade statistics issued by International Fertilizer Industry Association (IFA).

4. Federal Emission Standards Applicable to the Phosphate Fertilizer Production Source Category

The following federal emission standards are associated with the Phosphate Fertilizer Production source category and are subject of this proposed rulemaking:

- National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants (40 CFR part 63, subpart BB);
- Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants (40 CFR part 60, subpart V);
- Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants (40 CFR part 60, subpart W); and
- Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (40 CFR part 60, subpart X).

a. Phosphate Fertilizer Production NESHAP Emission Regulations

The EPA promulgated 40 CFR part 63, subpart BB for the Phosphate Fertilizer Production source category on June 10, 1999 (64 FR 31358). The NESHAP established standards for major sources to control HAP emissions from phosphate fertilizer facilities. As a surrogate for HF, the NESHAP set total F emission limits for DAP and/or MAP process lines and GTSP process lines and storage buildings. The NESHAP also established work practices for GTSP production. For new sources, DAP and MAP process lines are limited to 0.058 lb total F/ton of equivalent P_2O_5 feed. For existing sources, DAP and MAP process lines are limited to 0.06 lb total F/ton of equivalent P_2O_5 feed. For new sources, GTSP process lines are limited to 0.1230 lb total F/ton of equivalent P_2O_5 feed. For existing sources, GTSP process lines are limited to 0.150 lb total F/ton of equivalent P_2O_5 feed. For new and existing sources, GTSP storage buildings are limited to 5.0×10^{-4} pounds of total F per hour per ton of equivalent P_2O_5 stored.

b. Phosphate Fertilizer Production NSPS Emission Regulations

The EPA promulgated 40 CFR part 60, subpart V for Diammonium Phosphate Plants on July 25, 1977 (42 FR 37938). The NSPS established standards to control total F emissions from granular DAP plants, including reactors, granulators, dryers, coolers, screens and mills. For new, modified and reconstructed sources, granular DAP plants are limited to 0.06 lb total F/ton of equivalent P_2O_5 feed.

The EPA promulgated 40 CFR part 60, subpart W for Triple Superphosphate Plants on July 25, 1977 (42 FR 37938). The NSPS established standards to control total F emissions from the production of ROP–TSP and GTSP, and the storage of ROP–TSP. For new, modified and reconstructed sources, production of ROP–TSP and GTSP and the storage of ROP–TSP is limited to 0.20 lb total F/ton of equivalent P_2O_5 feed.

The EPA promulgated 40 CFR part 60, subpart X for Granular Triple Superphosphate Storage Facilities on July 25, 1977 (42 FR 37938). The NSPS established standards to control total F emissions from the storage of GTSP, including storage or curing buildings (noted as "piles" in subpart X), conveyors, elevators, screens and mills. For new, modified and reconstructed sources, the storage of GTSP is limited to 5.0×10^{-4} pounds of total F per hour per ton of equivalent P_2O_5 stored.

C. What data collection activities were conducted to support this action?

In April 2010, the EPA requested data, pursuant to CAA section 114, from the seven companies that own and operate the 12 Phosphoric Acid facilities and 11 Phosphate Fertilizer facilities. The EPA requested available information regarding process equipment, control devices, point and fugitive emissions, and other aspects of facility operations. The seven companies completed the surveys for their facilities and submitted the responses to the EPA in the fall of 2010. Additionally, the EPA requested that the facilities conduct emissions tests in 2010 for certain HAP from specific processes. Pollutants tested included HF, total F, PM and HAP metals. The facilities also conducted analyses of the phosphate rock used in the manufacture of phosphoric acid. The facilities submitted the results of these tests to the EPA in the fall of 2010. The test results are available in the docket for this action.

On January 24, 2014, the EPA issued another CAA section 114 survey and testing request to certain facilities in order to gather additional mercury (Hg) and HF emissions data from calciner operations, and additional total F and HF emissions data from certain WPPA, SPA and APF lines. The selection of WPPA, SPA and APF lines to be tested was based on a review of the data received from the April 13, 2010 CAA section 114 survey request. In addition to the testing, the EPA requested process production rate data concurrent with the duration of the emissions testing (e.g., phosphoric acid production in tons per hour of P_2O_5).

For more information regarding the April 2010 CAA section 114 and January 2014 CAA section 114 requests, refer to the memorandum, "Information Collection and Additional Data Received for the Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket for this action.

D. What other relevant background information and data are available?

To support this proposed rulemaking, the EPA used information from the EPA's National Emissions Inventory (NEI), and the RACT/BACT/LAER Clearinghouse (RBLC) when performing the technology review and other analyses. If emissions for a specific emission point were available in the NEI, but test data were not available, we used the NEI data to estimate emissions. This approach was primarily applicable to combustion emissions. The EPA utilized the RBLC as a reference for additional control technologies when performing the technology review. See sections III.C, and IV.D, and V.C of this preamble for further details on the use of these sources of information.

Table 2 of this preamble summarizes the emissions data collected for point sources and fugitive sources at phosphoric acid manufacturing and phosphate fertilizer production facilities of HF, Total PM, Hg and other HAP Metals. This includes emissions data from stack tests, fugitive emission reports, and the NEI.

TABLE 2—SUMMARY OF EMISSIONS DATA COLLECTED FOR POINT SOURCES AND FUGITIVE SOURCES AT PHOSPHORIC ACID MANUFACTURING AND PHOSPHATE FERTILIZER PRODUCTION FACILITIES

Source category and emission point type	HF (tpy)	Total PM (tpy)	Hg (tpy)	HAP Metals (tpy) [a]
Phosphoric Acid Manufacturing:				
Point Sources	38	162	0.019	1.07
Fugitive Sources	2,155	0	0	0
Total	2,193	162	0.019	1.07
Phosphate Fertilizer Production:				
Point Sources	85.0	907	0.13	0.40
Fugitive Sources	0.0051	0	0	0
Total	85.0	907	0.13	0.40

[a] HAP metals includes: antimony, arsenic, beryllium, cadmium, chromium (VI), chromium III, cobalt, lead, manganese, nickel, and selenium.

III. Analytical Procedures

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

A. How did we estimate post-MACT risks posed by the source categories?

The EPA conducted a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause non-cancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause non-cancer health effects. The assessment also provides estimates of the distribution of cancer risks within the exposed populations, cancer incidence and an evaluation of the potential for adverse environmental effects. The risk assessment consisted of seven primary steps, as discussed below. The docket for this rulemaking contains the following document, which provides more information on the risk assessment inputs and models: *Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing.* The methods used to assess risks (as described in the seven primary steps below) are consistent with those peer-reviewed by a panel of the EPA's Science Advisory Board (SAB) in 2009 and described in their peer review report issued in 2010;[4] they are also consistent with the key

[4] U.S. EPA SAB. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing,* May 2010.

recommendations contained in that report.

1. How did we estimate actual emissions and identify the emissions release characteristics?

a. Estimation of Actual Emissions

Data from our April 2010 CAA section 114 request were used for this assessment. The EPA performed a review and thorough quality assurance/quality control (QA/QC) of the data to identify any limitations and issues. The EPA also contacted facility and industry representatives to clarify details and resolve issues with their data submissions.

The EPA updated the 2005 NEI data for the Phosphate Fertilizer Production and Phosphoric Acid Manufacturing source categories with the emissions data and corrections to facility and emission point locations that we received from industry through the CAA section 114 request. The data incorporation procedures are discussed in the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket for this action. In a few limited instances, test data were not available for an emission point available in the NEI, in which case the existing emissions data in the 2005 NEI were used. The following sections of this preamble describe each of the source categories, including a discussion of the applicable information sources used to estimate emissions.

b. Phosphoric Acid Manufacturing

Phosphate rock is the starting material for the production of all phosphate products. Once the rock reaches the phosphoric acid production facility, phosphoric acid is typically produced using the wet method, in which beneficiated ground phosphate rock (i.e., phosphate rock that has been processed to remove impurities) is reacted with sulfuric acid and weak phosphoric acid to produce phosphoric acid and phosphogypsum, a waste product. The phosphogypsum is disposed of on site in waste piles known as gypsum dewatering stacks (which are also referred to as "gypsum stacks" or "gypstacks"). Phosphoric acid facility emissions are both point sources and fugitive sources. Point source emissions originate from equipment (e.g., reactors, filters, evaporators and calciners) associated with phosphoric acid manufacturing processes including WPPA process lines, SPA process lines and PPA process lines. Fugitive emissions are released from cooling ponds, cooling towers and gypsum dewatering stacks.

In 2014, there are 12 phosphoric acid manufacturing facilities operating in the United States. Based on the emissions dataset (see the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket for this action), all 12 of these facilities are, or show the potential to be, major sources of HAP even though two of these facilities identified themselves as area sources of HAP in their response to our April 2010 CAA section 114 request. Ten of these 12 facilities are collocated with phosphate fertilizer production facilities.

Based on the emissions data provided with the CAA section 114 request or available in the NEI, the total HAP emissions for the Phosphoric Acid Manufacturing source category are approximately 2,230 tpy. HF is the HAP emitted in the largest quantity across these 12 facilities, accounting for approximately 98 percent of the total HAP emissions by mass. Persistent and bioaccumulative HAP (PB–HAP) emissions reported from these facilities include Hg, Pb, dioxin, polycyclic organic matter (POM) and cadmium compounds.

c. Phosphate Fertilizer Production

Phosphate fertilizer operations are generally collocated with phosphoric acid manufacturing facilities, which provide the feedstock (phosphoric acid) for phosphate fertilizer production facilities. Phosphate fertilizer is produced by reacting phosphoric acid and ammonia, followed by granulation, drying, cooling and screening. Emissions from each of these steps are included in the estimated point source emissions for each facility. Phosphate fertilizer facilities also send water to cooling ponds and, thus, contribute to the fugitive emissions from these sources. However, the contribution from phosphate fertilizer production sources to the fugitive emissions from the cooling ponds is minimal. Therefore, we have assigned fugitive emissions from cooling ponds to the Phosphoric Acid Manufacturing source category.

In 2014, there are 11 phosphate fertilizer production facilities operating in the United States. Based on the emissions dataset (see the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket for this action), all 11 of these facilities are, or show the potential to be, major sources of HAP even though one of these facilities identified itself as an area source of HAP in their response to our April 2010 CAA section 114 request. Ten of these 11 facilities are collocated with phosphoric acid manufacturing facilities.

Based on the emissions data provided with the CAA section 114 request or available in the NEI, the total HAP emissions for the Phosphate Fertilizer Production source category are approximately 86 tpy. The HAP emitted in the largest quantity across these 11 facilities is HF. HF accounts for 99 percent of the total emissions by mass. PB–HAP emissions reported from these facilities include Hg, Pb, and cadmium compounds.

2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during the specified annual time period. In some cases, these "actual" emission levels are lower than the emission levels required to comply with the MACT standards. The emissions level allowed to be emitted by the MACT standards is referred to as the "MACT-allowable" emissions level. We discussed the use of both MACT-allowable and actual emissions in the final Coke Oven Batteries residual risk rule (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP residual risk rules (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those previous actions, we noted that assessing the risks at the MACT-allowable level is inherently reasonable since these risks reflect the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.) Details on the methodologies for calculating allowable emissions, as discussed below, are provided in the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket for this action.

a. Phosphoric Acid Manufacturing

In the case of this particular source category, point sources contribute only a small percentage of overall emissions. Therefore, as a conservative approach, we used the emission limits and the

permitted production capacity specified in the title V permit for each facility to calculate allowable emissions for point sources. Because emission limits are in terms of total F (pounds of total F per ton of P_2O_5 production), and not the HAP HF, emissions for total F were used as a surrogate for HF when calculating allowable emissions. If emissions limits were not available in the title V permit, we used the emission limits for existing sources in the current NESHAP subpart AA. Because emissions limits for metals and MIBK are not listed in the permits, we calculated allowable emissions using the emissions as measured in the stack tests for the CAA section 114 request, and scaled these emissions up using the permitted capacity. Allowable point source emissions are as much as 59 times higher than actual total F emissions, about 8 times higher than actual metal emissions, and about 2 times higher than actual MIBK emissions at phosphoric acid manufacturing processes.

For fugitive emissions of HF from gypsum dewatering stacks, cooling ponds and cooling towers, the EPA estimated that actual emissions were equivalent to allowable emissions. We do not expect fugitive emissions to increase from these sources with an increase in production rate, or increase significantly during a process upset, as emissions from these large fugitive sources are the cumulative result of many decades of stacking gypsum waste product and re-circulating cooling water. Because of their general homeostatic nature, we expect only minor changes in cooling pond emissions over time. We also anticipate that emissions are higher during daylight hours and warmer months due to the increased evaporation rate associated with higher ambient temperatures. Test data for these sources were obtained during the spring and summer seasons and during daylight hours. Therefore, emissions would not be expected to increase significantly beyond the levels measured during the tests. We expect that the emission factors and range of estimates (high, medium and low) that we developed, based on the test data for the spring and summer seasons obtained from industry, account sufficiently for any changes to emissions as ambient conditions change. For more information on the development of emission factors, see the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket for this action.

b. Phosphate Fertilizer Production

Similar to phosphoric acid manufacturing, point sources contribute only a small percentage of overall emissions from this particular source category. Therefore, as a conservative approach, we used the emission limits (expressed in pounds of total F per ton of P_2O_5 production) and the permitted production capacity specified in the title V permit for each facility to calculate point source allowable emissions for total F, as a surrogate for HF. If emissions limits were not available in the title V permit, we used the limits for existing sources in the current NESHAP subpart BB. Because emissions limits for metals are not listed in the permits, we calculated allowable emissions using the emissions test data collected by the CAA section 114 request, and scaled these emissions up using the permitted capacity. Allowable point source emissions are as much as 11 times higher than actual total F emissions and about 2 times higher than actual metal at phosphate fertilizer production processes.

3. How did we conduct dispersion modeling, determine inhalation exposures and estimate individual and population inhalation risks?

Both long-term and short-term inhalation exposure concentrations and health risks from the source category addressed in this proposal were estimated using the Human Exposure Model (Community and Sector HEM–3 version 1.1.0). The HEM–3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air, (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources,[5] and (3) estimating individual and population-level inhalation risks using the exposure estimates and quantitative dose-response information.

The air dispersion model used by the HEM–3 model (AERMOD) is one of the EPA's preferred models for assessing pollutant concentrations from industrial facilities.[6] To perform the dispersion modeling and to develop the preliminary risk estimates, HEM–3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2011) of hourly surface and upper air observations for more than 800 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block[7] internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling hill height, which are also used in dispersion calculations. A third library of pollutant unit risk factors and other health benchmarks is used to estimate health risks. These risk factors and health benchmarks are the latest values recommended by the EPA for HAP and other toxic air pollutants. These values are available at: *http://www.epa.gov/ttn/atw/toxsource/summary.html* and are discussed in more detail later in this section.

In developing the risk assessment for chronic exposures, we used the estimated annual average ambient air concentrations of each HAP emitted by each source for which we have emissions data in the source category. The air concentrations at each nearby census block centroid were used as a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. We calculated the MIR for each facility as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week and 52 weeks per year for a 70-year period) exposure to the maximum concentration at the centroid of inhabited census blocks. Individual cancer risks were calculated by multiplying the estimated lifetime exposure to the ambient concentration of each of the HAP (in micrograms per cubic meter ($\mu g/m^3$)) by its unit risk estimate (URE). The URE is an upper bound estimate of an individual's probability of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use URE values from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without EPA IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) URE values, where available. In cases where new, scientifically credible dose response values have been developed in a manner consistent with the EPA guidelines and have undergone a peer review process similar to that used by

[5] This metric comes from the Benzene NESHAP. See 54 FR 38046.

[6] U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

[7] A census block is the smallest geographic area for which census statistics are tabulated.

the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

The EPA estimated incremental individual lifetime cancer risks associated with emissions from the facilities in the source category as the sum of the risks for each of the carcinogenic HAP (including those classified as carcinogenic to humans, likely to be carcinogenic to humans, and suggestive evidence of carcinogenic potential [8]) emitted by the modeled sources. Cancer incidence and the distribution of individual cancer risks for the population within 50 km of the sources were also estimated for the source category as part of this assessment by summing individual risks. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

To assess the risk of non-cancer health effects from chronic exposures, we summed the HQ for each of the HAP that affects a common target organ system to obtain the HI for that target organ system (or target organ-specific HI, TOSHI). The HQ is the estimated exposure divided by the chronic reference value, which is either the EPA reference concentration (RfC) (*http://www.epa.gov/riskassessment/glossary.htm*), defined as "an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime," or, in cases where an RfC from the EPA's IRIS database is not available, a value from the following prioritized sources: (1) The Agency for Toxic Substances and Disease Registry Minimum Risk Level (*http://www.atsdr.cdc.gov/mrls/index.asp*), which is defined as "an estimate of daily human exposure to a hazardous substance that is likely to be without an appreciable risk of adverse non-cancer health effects (other than cancer) over a specified duration of exposure"; (2) the CalEPA Chronic Reference Exposure Level (REL) (*http://www.oehha.ca.gov/air/hot_spots/pdf/HRAguidefinal.pdf*), which is defined as "the concentration level (that is expressed in units of micrograms per cubic meter ($\mu g/m^3$) for inhalation exposure and in a dose expressed in units of milligram per kilogram-day (mg/kg-day) for oral exposures), at or below which no adverse health effects are anticipated for a specified exposure duration"; or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA, in place of or in concert with other values.

The EPA also evaluated screening estimates of acute exposures and risks for each of the HAP at the point of highest potential off-site exposure for each facility. To do this, the EPA estimated the risks when both the peak hourly emissions rate and worst-case dispersion conditions occur. We also assume that a person is located at the point of highest impact during that same time. In accordance with our mandate in section 112 of the CAA, we use the point of highest off-site exposure to assess the potential risk to the maximally exposed individual. The acute HQ is the estimated acute exposure divided by the acute dose-response value. In each case, the EPA calculated acute HQ values using best available, short-term dose-response values. These acute dose-response values, which are described below, include the acute REL, acute exposure guideline levels (AEGL) and emergency response planning guidelines (ERPG) for 1-hour exposure durations. As discussed below, we used conservative assumptions for emissions rates, meteorology and exposure location for our acute analysis.

As described in the CalEPA's *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants*, an acute REL value (*http://www.oehha.ca.gov/air/pdf/acuterel.pdf*) is defined as "the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration." Id. at page 2. Acute REL values are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. Acute REL values are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact.

AEGL values were derived in response to recommendations from the National Research Council (NRC). As described in Standing Operating Procedures (SOP) of the National Advisory Committee on Acute Exposure Guideline Levels for Hazardous Substances (*http://www.epa.gov/oppt/aegl/pubs/sop.pdf*),[9] "the NRC's previous name for acute exposure levels—community emergency exposure levels—was replaced by the term AEGL to reflect the broad application of these values to planning, response, and prevention in the community, the workplace, transportation, the military, and the remediation of Superfund sites." Id. at 2.

This document also states that AEGL values "represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to eight hours." Id. at 2. The document lays out the purpose and objectives of AEGL by stating that "the primary purpose of the AEGL program and the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances is to develop guideline levels for once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals." Id. at 21. In detailing the intended application of AEGL values, the document states that "[i]t is anticipated that the AEGL values will be used for regulatory and nonregulatory purposes by U.S. federal and state agencies and possibly the international community in conjunction with chemical emergency response, planning, and prevention programs. More specifically, the AEGL values will be used for conducting various risk assessments to aid in the development of emergency preparedness and prevention plans, as well as real-time emergency response actions, for accidental chemical releases at fixed facilities and from transport carriers." Id. at 31.

The AEGL–1 value is then specifically defined as "the airborne concentration (expressed as ppm (parts per million) or mg/m^3 (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic

[8] These classifications also coincide with the terms "known carcinogen, probable carcinogen, and possible carcinogen," respectively, which are the terms advocated in the EPA's previous *Guidelines for Carcinogen Risk Assessment*, published in 1986 (51 FR 33992, September 24, 1986). Summing the risks of these individual compounds to obtain the cumulative cancer risks is an approach that was recommended by the EPA's SAB in their 2002 peer review of EPA's National Air Toxics Assessment (NATA) entitled, *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory*, available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf*.

[9] National Academy of Sciences (NAS), 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals*, page 2.

nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure." Id. at 3. The document also notes that, "Airborne concentrations below AEGL–1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects." Id. Similarly, the document defines AEGL–2 values as "the airborne concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape." Id.

ERPG values are derived for use in emergency response, as described in the American Industrial Hygiene Association's ERP Committee document titled, *ERPGS Procedures and Responsibilities* (*http://sp4m.aiha.org/insideaiha/GuidelineDevelopment/ERPG/Documents/ERP-SOPs2006.pdf*), which states that, "Emergency Response Planning Guidelines were developed for emergency planning and are intended as health based guideline concentrations for single exposures to chemicals." [10] Id. at 1. The ERPG–1 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor." Id. at 2. Similarly, the ERPG–2 value is defined as "the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action." Id. at 1.

As can be seen from the definitions above, the AEGL and ERPG values include the similarly-defined severity levels 1 and 2. For many chemicals, a severity level 1 value AEGL or ERPG has not been developed because the types of effects for these chemicals are not consistent with the AEGL–1/ERPG–1 definitions; in these instances, we compare higher severity level AEGL–2 or ERPG–2 values to our modeled exposure levels to screen for potential acute concerns. When AEGL–1/ERPG–1 values are available, they are used in our acute risk assessments.

Acute REL values for 1-hour exposure durations are typically lower than their corresponding AEGL–1 and ERPG–1 values. Even though their definitions are slightly different, AEGL–1 values are often the same as the corresponding ERPG–1 values, and AEGL–2 values are often equal to ERPG–2 values. Maximum HQ values from our acute screening risk assessments typically result when basing them on the acute REL value for a particular pollutant. In cases where our maximum acute HQ value exceeds 1, we also report the HQ value based on the next highest acute dose-response value (usually the AEGL–1 and/or the ERPG–1 value).

To develop screening estimates of acute exposures in the absence of hourly emissions data, generally we first develop estimates of maximum hourly emissions rates by multiplying the average actual annual hourly emissions rates by a default factor to cover routinely variable emissions. We choose the factor to use partially based on process knowledge and engineering judgment. The factor chosen also reflects a Texas study of short-term emissions variability, which showed that most peak emission events in a heavily-industrialized four-county area (Harris, Galveston, Chambers and Brazoria Counties, Texas) were less than twice the annual average hourly emissions rate. The highest peak emissions event was 74 times the annual average hourly emissions rate, and the 99th percentile ratio of peak hourly emissions rate to the annual average hourly emissions rate was 9.[11] Considering this analysis, to account for more than 99 percent of the peak hourly emissions, we apply a conservative screening multiplication factor of 10 to the average annual hourly emissions rate in our acute exposure screening assessments as our default approach. However, we use a factor other than 10 if we have information that indicates that a different factor is appropriate for a particular source category. For this source category, we applied a multiplication factor of 10 to all emission sources except for HF emissions from the gypsum dewatering stacks and cooling ponds. The EPA used a multiplication factor of 1 for gypsum dewatering stacks and cooling ponds based upon the stability of HF releases from this emission source. Section III.A.2.a of this preamble as well as the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid Manufacturing and Phosphate Fertilizer Production," which is available in the docket for this rulemaking, discusses our rationale for choosing this factor.

As part of our acute risk assessment process, for cases where acute HQ values from the screening step were less than or equal to 1 (even under the conservative assumptions of the screening analysis), acute impacts were deemed negligible and no further analysis was performed. In cases where an acute HQ from the screening step was greater than 1, additional site-specific data were considered to develop a more refined estimate of the potential for acute impacts of concern. For these source categories, the data refinements employed consisted of, in some cases, the use of a refined emissions multiplier for individual emission process groups to estimate the peak hourly emission rates in lieu of using the default emission multiplier of 10(x) the annual average 1-hour emission rate.

For the two source categories, we conducted a review of the layout of emission points at the facilities to ensure they were located within the facility boundaries as well as to identify the maximum off-site acute impact receptor for the facilities that did not screen out during the initial base model run.

Ideally, we would prefer to have continuous measurements over time to see how the emissions vary by each hour over an entire year. Having a frequency distribution of hourly emissions rates over a year would allow us to perform a probabilistic analysis to estimate potential threshold exceedances and their frequency of occurrence. Such an evaluation could include a more complete statistical treatment of the key parameters and elements adopted in this screening analysis. Recognizing that this level of data is rarely available, we instead rely on the multiplier approach.

To better characterize the potential health risks associated with estimated acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies,[12] we generally examine a wider range of available acute health metrics (e.g., RELs, AEGLs) than we do for our chronic risk assessments. This is in response to the SAB's acknowledgement

[10] *ERP Committee Procedures and Responsibilities.* November 1, 2006. American Industrial Hygiene Association.

[11] See *http://www.tceq.state.tx.us/compliance/field_ops/eer/index.html* or docket to access the source of these data.

[12] The SAB peer review of RTR Risk Assessment Methodologies is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf.*

that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. In some cases, when Reference Value Arrays [13] for HAP have been developed, we consider additional acute values (i.e., occupational and international values) to provide a more complete risk characterization.

4. How did we conduct the multipathway exposure and risk screening?

The EPA conducted a screening analysis examining the potential for significant human health risks due to exposures via routes other than inhalation (i.e., ingestion). We first determined whether any sources in the source categories emitted any hazardous air pollutants known to be persistent and bioaccumulative in the environment (PB–HAP). The PB–HAP compounds or compound classes are identified for the screening from the EPA's Air Toxics Risk Assessment Library (available at *http://www2.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library*).

For the Phosphoric Acid Manufacturing source category, we identified PB–HAP emissions of cadmium compounds, Pb compounds, Hg compounds, POM and dioxin. For the Phosphate Fertilizer Production Source Category, we identified PB–HAP emissions of cadmium compounds, Pb compounds, and Hg compounds.

Because one or more of these PB–HAP are emitted by at least one facility in the two source categories, we proceeded to the next step of the evaluation. In this step, we determined whether the facility-specific emissions rates of the emitted PB–HAP were large enough to create the potential for significant non-inhalation human health risks under reasonable worst-case conditions. To facilitate this step, we developed emissions rate screening levels for several PB–HAP using a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA's Total Risk Integrated Methodology. Fate, Transport and Ecological Exposure (TRIM.FaTE) model. The PB–HAP with emissions rate screening levels are: Pb, cadmium, chlorinated dibenzodioxins and furans, Hg compounds and POM. We conducted a sensitivity analysis on the screening scenario to ensure that its key design parameters would represent the upper end of the range of possible values, such that it would represent a conservative but not impossible scenario. The facility-specific emissions rates of each of these PB–HAP were compared to the emission rate screening levels for these PB–HAP to assess the potential for significant human health risks via non-inhalation pathways. We call this application of the TRIM.FaTE model the Tier I TRIM-screen or Tier I screen.

For the purpose of developing emissions rates for our Tier I TRIM-screen, we derived emission levels for these PB–HAP (other than Pb compounds) at which the maximum excess lifetime cancer risk would be 1-in-1 million (i.e., for polychlorinated dibenzodioxins and furans and POM) or, for HAP that cause non-cancer health effects (i.e., cadmium compounds and Hg compounds), the maximum HQ would be 1. If the emissions rate of any PB–HAP included in the Tier I screen exceeds the Tier I screening emissions rate for any facility, we conduct a second screen, which we call the Tier II TRIM-screen or Tier II screen. In the Tier II screen, the location of each facility that exceeded the Tier I emission rate is used to refine the assumptions associated with the environmental scenario while maintaining the exposure scenario assumptions. We then adjusted the risk-based Tier I screening level for each PB–HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with meteorology and environmental assumptions. PB–HAP emissions that do not exceed these new Tier II screening levels are considered to pose no unacceptable risks. When facilities exceed the Tier II screening levels, it does not mean that multipathway impacts are significant, only that we cannot rule out that possibility based on the results of the screen. These facilities may be further evaluated for multipathway risks using the TRIM.FaTE model.

In evaluating the potential multipathway risk from emissions of Pb compounds, rather than developing a screening emissions rate for them, we compared maximum estimated chronic inhalation exposures with the level of the current NAAQS for Pb.[14] Values below the level of the primary (health based) Pb NAAQS were considered to have a low potential for multi-pathway risk.

For further information on the multipathway analysis approach, see the memorandum, "Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing," which is available in the docket for this action.

5. How did we conduct the environmental risk screening assessment?

a. Adverse Environmental Effect

The EPA has developed a screening approach to examine the potential for adverse environmental effects as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

b. Environmental HAP

The EPA focuses on seven HAP, which we refer to as "environmental HAP," in its screening analysis: Five PB–HAP and two acid gases. The five PB–HAP are cadmium, dioxins/furans, POM, Hg (both inorganic mercury and methyl mercury) and Pb compounds. The two acid gases are HCl and HF. The rationale for including these seven HAP in the environmental risk screening analysis is presented below.

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment and water. The PB–HAP are taken up, through sediment, soil, water, and/or ingestion of other organisms, by plants or animals (e.g., small fish) at the bottom of the food chain. As larger and larger predators consume these organisms, concentrations of the PB–HAP in the animal tissues increases as does the potential for adverse effects. The five PB–HAP we evaluate as part of

[13] U.S. EPA. (2009) Chapter 2.9 Chemical Specific Reference Values for Formaldehyde in Graphical Arrays of Chemical-Specific Health Effect Reference Values for Inhalation Exposures (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/061, and available online at *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=211003*.

[14] In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring among other things that the standard provide an "ample margin of safety"). However, the Pb NAAQS is a reasonable measure of determining risk acceptability (*i.e.*, the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources (73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1). In addition, applying the level of the primary Pb NAAQS at the risk acceptability step is conservative, since that primary Pb NAAQS reflects an adequate margin of safety.

our screening analysis account for 99.8 percent of all PB–HAP emissions nationally from stationary sources (on a mass basis from the 2005 NEI).

In addition to accounting for almost all of the mass of PB–HAP emitted, we note that the TRIM.FaTE model that we use to evaluate multipathway risk allows us to estimate concentrations of for cadmium compounds, dioxins/furans, POM and Hg in soil, sediment and water. For Pb compounds, we currently do not have the ability to calculate these concentrations using the TRIM.FaTE model. Therefore, to evaluate the potential for adverse environmental effects from Pb compounds, we compare the estimated HEM-modeled exposures from the source category emissions of Pb with the level of the secondary NAAQS for Pb.[15] We consider values below the level of the secondary Pb NAAQS to be unlikely to cause adverse environmental effects.

Due to their well-documented potential to cause direct damage to terrestrial plants, we include two acid gases, HCl and HF, in the environmental screening analysis. According to the 2005 NEI, HCl and HF account for about 99 percent (on a mass basis) of the total acid gas HAP emitted by stationary sources in the U.S. In addition to the potential to cause direct damage to plants, high concentrations of HF in the air have been linked to fluorosis in livestock. Air concentrations of these HAP are already calculated as part of the human multipathway exposure and risk screening analysis using the HEM3–AERMOD air dispersion model, and we are able to use the air dispersion modeling results to estimate the potential for an adverse environmental effect.

The EPA acknowledges that other HAP beyond the seven HAP discussed above may have the potential to cause adverse environmental effects. Therefore, the EPA may include other relevant HAP in its environmental risk screening in the future, as modeling science and resources allow. The EPA invites comment on the extent to which other HAP emitted by the source categories may cause adverse environmental effects. Such information should include references to peer-reviewed ecological effects benchmarks that are of sufficient quality for making regulatory decisions, as well as information on the presence of organisms located near facilities within the source category that such benchmarks indicate could be adversely affected.

c. Ecological Assessment Endpoints and Benchmarks for PB–HAP

An important consideration in the development of the EPA's screening methodology is the selection of ecological assessment endpoints and benchmarks. Ecological assessment endpoints are defined by the ecological entity (e.g., aquatic communities including fish and plankton) and its attributes (e.g., frequency of mortality). Ecological assessment endpoints can be established for organisms, populations, communities or assemblages, and ecosystems.

For PB–HAP (other than Pb compounds), we evaluated the following community-level ecological assessment endpoints to screen for organisms directly exposed to HAP in soils, sediment and water:

- Local terrestrial communities (i.e., soil invertebrates, plants) and populations of small birds and mammals that consume soil invertebrates exposed to PB–HAP in the surface soil.
- Local benthic (i.e., bottom sediment dwelling insects, amphipods, isopods and crayfish) communities exposed to PB–HAP in sediment in nearby water bodies.
- Local aquatic (water-column) communities (including fish and plankton) exposed to PB–HAP in nearby surface waters.

For PB–HAP (other than Pb compounds), we also evaluated the following population-level ecological assessment endpoint to screen for indirect HAP exposures of top consumers via the bioaccumulation of HAP in food chains:

- Piscivorous (i.e., fish-eating) wildlife consuming PB–HAP-contaminated fish from nearby water bodies.

For cadmium compounds, dioxins/furans, POM and Hg, we identified the available ecological benchmarks for each assessment endpoint. An ecological benchmark represents a concentration of HAP (e.g., 0.77 ug of HAP per liter of water) that has been linked to a particular environmental effect level (e.g., a no-observed-adverse-effect level (NOAEL)) through scientific study. For PB–HAP we identified, where possible, ecological benchmarks at the following effect levels:

- Probable effect levels (PEL): Level above which adverse effects are expected to occur frequently.
- Lowest-observed-adverse-effect level (LOAEL): The lowest exposure level tested at which there are biologically significant increases in frequency or severity of adverse effects.
- NOAEL: The highest exposure level tested at which there are no biologically significant increases in the frequency or severity of adverse effect.

We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. In general, the EPA sources that are used at a programmatic level (e.g., Office of Water, Superfund Program) were used, if available. If not, the EPA benchmarks used in regional programs (e.g., Superfund) were used. If benchmarks were not available at a programmatic or regional level, we used benchmarks developed by other federal agencies (e.g., National Oceanic and Atmospheric Administration (NOAA) or state agencies.

Benchmarks for all effect levels are not available for all PB–HAP and assessment endpoints. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

d. Ecological Assessment Endpoints and Benchmarks for Acid Gases

The environmental screening analysis also evaluated potential damage and reduced productivity of plants due to direct exposure to acid gases in the air. For acid gases, we evaluated the following ecological assessment endpoint:

- Local terrestrial plant communities with foliage exposed to acidic gaseous HAP in the air.

The selection of ecological benchmarks for the effects of acid gases on plants followed the same approach as for PB–HAP (i.e., we examine all of the available chronic benchmarks). For HCl, the EPA identified chronic benchmark concentrations. We note that the benchmark for chronic HCl exposure to plants is greater than the reference concentration for chronic inhalation exposure for human health. This means that where the EPA includes regulatory requirements to prevent an exceedance of the reference concentration for human health, additional analyses for adverse environmental effects of HCl would not be necessary.

[15] The secondary Pb NAAQS is a reasonable measure of determining whether there is an adverse environmental effect since it was established considering "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

For HF, the EPA identified chronic benchmark concentrations for plants and evaluated chronic exposures to plants in the screening analysis. High concentrations of HF in the air have also been linked to fluorosis in livestock. However, the HF concentrations at which fluorosis in livestock occur are higher than those at which plant damage begins. Therefore, the benchmarks for plants are protective of both plants and livestock.

e. Screening Methodology

For the environmental risk screening analysis, the EPA first determined whether any facilities in the Phosphoric Acid Manufacturing source category and Phosphate Fertilizer Production source category emitted any of the seven environmental HAP. For the Phosphoric Acid Manufacturing source category, we identified emissions of cadmium, dioxin, Hg, Pb, POM, HCl and HF. For the Phosphate Fertilizer Production source category, we identified emissions of cadmium, Hg, Pb and HF.

Because one or more of the seven environmental HAP evaluated are emitted by at least one facility in the source categories, we proceeded to the second step of the evaluation.

f. PB–HAP Methodology

For cadmium, Hg, POM and dioxins/furans, the environmental screening analysis consists of two tiers, while Pb compounds are analyzed differently as discussed earlier. In the first tier, we determined whether the maximum facility-specific emission rates of each of the emitted environmental HAP were large enough to create the potential for adverse environmental effects under reasonable worst-case environmental conditions. These are the same environmental conditions used in the human multipathway exposure and risk screening analysis.

To facilitate this step, TRIM.FaTE was run for each PB–HAP under hypothetical environmental conditions designed to provide conservatively high HAP concentrations. The model was set to maximize runoff from terrestrial parcels into the modeled lake, which in turn, maximized the chemical concentrations in the water, the sediment and the fish. The resulting media concentrations were then used to back-calculate a screening level emission rate that corresponded to the relevant exposure benchmark concentration value for each assessment endpoint. To assess emissions from a facility, the reported emission rate for each PB–HAP was compared to the screening level emission rate for that PB–HAP for each assessment endpoint. If emissions from a facility do not exceed the Tier I screening level, the facility "passes" the screen, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier I screening level, we evaluate the facility further in Tier II.

In Tier II of the environmental screening analysis, the emission rate screening levels are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier I screen. The modeling domain for each facility in the Tier II analysis consists of eight octants. Each octant contains 5 modeled soil concentrations at various distances from the facility (5 soil concentrations × 8 octants = total of 40 soil concentrations per facility) and 1 lake with modeled concentrations for water, sediment and fish tissue. In the Tier II environmental risk screening analysis, the 40 soil concentration points are averaged to obtain an average soil concentration for each facility for each PB–HAP. For the water, sediment and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier II screening level, the facility passes the screen, and is typically not evaluated further. If emissions from a facility exceed the Tier II screening level, the facility does not pass the screen and, therefore, may have the potential to cause adverse environmental effects. Such facilities are evaluated further to investigate factors such as the magnitude and characteristics of the area of exceedance.

g. Acid Gas Methodology

The environmental screening analysis evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to acid gases. The environmental risk screening methodology for acid gases is a single-tier screen that compares the average off-site ambient air concentration over the modeling domain to ecological benchmarks for each of the acid gases. Because air concentrations are compared directly to the ecological benchmarks, emission-based screening levels are not calculated for acid gases as they are in the ecological risk screening methodology for PB–HAPs.

For purposes of ecological risk screening, the EPA identifies a potential for adverse environmental effects to plant communities from exposure to acid gases when the average concentration of the HAP around a facility exceeds the LOAEL ecological benchmark. In such cases, we further investigate factors such as the magnitude and characteristics of the area of exceedance (e.g., land use of exceedance area, size of exceedance area) to determine if there is an adverse environmental effect.

For further information on the environmental screening analysis approach, see the "Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing", which is available in the docket for this action.

6. How did we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire "facility," where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. We examined "facility-wide" risks using 2005 NEI data and modeling as described in sections IV.B.5 and V.A.5 of this preamble.

We analyzed risks due to the inhalation of HAP that are emitted "facility-wide" for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of facility-wide risks that could be attributed to each of the source categories addressed in this proposal. For the facilities in these source categories, we estimated the maximum inhalation cancer and chronic non-cancer risks associated with all HAP emissions sources at the facility, including emissions sources that are not part of the source categories but are located within a contiguous area and are under common control. We specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The results of these facility-wide assessments are summarized in sections IV and V of this preamble. The "Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing" available through the docket for this action provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How did we consider uncertainties in risk assessment?

In the Benzene NESHAP, we concluded that risk estimation uncertainty should be considered in our decision-making under the ample margin of safety framework. Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health protective and environmentally protective. A brief discussion of the uncertainties in the RTR emissions datasets, dispersion modeling, inhalation exposure estimates and dose-response relationships follows below. A more thorough discussion of these uncertainties is included in the *Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing,* which is available in the docket for this action.

a. Uncertainties in the RTR Emissions Datasets

Although the development of the RTR emissions datasets involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimated ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (*e.g.*, not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (*e.g.*, not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (*e.g.*, meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations.

c. Uncertainties in Inhalation Exposure

The EPA did not include the effects of human mobility on exposures in the assessment. Specifically, short-term mobility and long-term mobility between census blocks in the modeling domain were not considered.[16] The approach of not considering short or long-term population mobility does not bias the estimate of the theoretical MIR (by definition), nor does it affect the estimate of cancer incidence because the total population number remains the same. It does, however, affect the shape of the distribution of individual risks across the affected population, shifting it toward higher estimated individual risks at the upper end and reducing the number of people estimated to be at lower risks, thereby increasing the estimated number of people at specific high risk levels (*e.g.*, 1-in-10 thousand or 1-in-1 million).

In addition, the assessment predicted the chronic exposures at the centroid of each populated census block as surrogates for the exposure concentrations for all people living in that block. Using the census block centroid to predict chronic exposures tends to over-predict exposures for people in the census block who live farther from the facility and under-predict exposures for people in the census block who live closer to the facility. Thus, using the census block centroid to predict chronic exposures may lead to a potential understatement or overstatement of the true maximum impact, but is an unbiased estimate of average risk and incidence. We reduce this uncertainty by analyzing large census blocks near facilities using aerial imagery and adjusting the location of the block centroid to better represent the population in the block, as well as adding additional receptor locations where the block population is not well represented by a single location.

The assessment evaluates the cancer inhalation risks associated with pollutant exposures over a 70-year period, which is the assumed lifetime of an individual. In reality, both the length of time that modeled emission sources at facilities actually operate (*i.e.*, more or less than 70 years) and the domestic growth or decline of the modeled industry (*i.e.*, the increase or decrease in the number or size of domestic facilities) will influence the future risks posed by a given source or source category. Depending on the characteristics of the industry, these factors will, in most cases, result in an overestimate both in individual risk levels and in the total estimated number of cancer cases. However, in the unlikely scenario where a facility maintains, or even increases, its emissions levels over a period of more than 70 years, residents live beyond 70 years at the same location, and the residents spend most of their days at that location, then the cancer inhalation risks could potentially be underestimated. However, annual cancer incidence estimates from exposures to emissions from these sources would not be affected by the length of time an emissions source operates.

The exposure estimates used in these analyses assume chronic exposures to ambient (outdoor) levels of pollutants. Because most people spend the majority of their time indoors, actual exposures may not be as high, depending on the characteristics of the pollutants modeled. For many of the HAP, indoor levels are roughly equivalent to ambient levels, but for very reactive pollutants or larger particles, indoor levels are typically lower. This factor has the potential to result in an overestimate of 25 to 30 percent of exposures.[17]

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA that should be highlighted. The accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology and the presence of humans at the location of the maximum concentration. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from the source category and worst-case meteorological conditions co-occur, thus resulting in maximum ambient concentrations. These two

[16] Short-term mobility is movement from one micro-environment to another over the course of hours or days. Long-term mobility is movement from one residence to another over the course of a lifetime.

[17] U.S. EPA. *National-Scale Air Toxics Assessment for 1996.* (EPA 453/R–01–003; January 2001; page 85.)

events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional assumption that a person is located at this point during this same time period. For this source category, these assumptions would tend to be worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and worst-case meteorological conditions occur simultaneously.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and non-cancer effects from both chronic and acute exposures. Some uncertainties may be considered quantitatively, and others generally are expressed in qualitative terms. We note as a preface to this discussion a point on dose-response uncertainty that is brought out in the EPA's *2005 Cancer Guidelines;*[18] namely, that "the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective" (*EPA 2005 Cancer Guidelines,* pages 1–7). This is the approach followed here as summarized in the next several paragraphs. A complete detailed discussion of uncertainties and variability in dose-response relationships is given in the *Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing,* which is available in the docket for this action.

Cancer URE values used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk. That is, they represent a "plausible upper limit to the true value of a quantity" (although this is usually not a true statistical confidence limit).[19] In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.[20] When developing an upper bound estimate of risk and to provide risk values that do not underestimate risk, health-protective default approaches are generally used. To err on the side of ensuring adequate health protection, the EPA typically uses the upper bound estimates rather than lower bound or central tendency estimates in our risk assessments, an approach that may have limitations for other uses (*e.g.,* priority-setting or expected benefits analysis).

Chronic non-cancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. Specifically, these values provide an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure (RfC) or a daily oral exposure (RfD) to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. To derive values that are intended to be "without appreciable risk," the methodology relies upon an uncertainty factor (UF) approach (U.S. EPA, 1993, 1994)[21] [22] which considers uncertainty, variability and gaps in the available data. The UF are applied to derive reference values that are intended to protect against appreciable risk of deleterious effects. The UF are commonly default values,[23] *e.g.,* factors of 10 or 3, used in the absence of compound-specific data; where data are available, UF may also be developed using compound-specific information. When data are limited, more assumptions are needed and more UF are used. Thus, there may be a greater tendency to overestimate risk in the sense that further study might support development of reference values that are higher (*i.e.,* less potent) because fewer default assumptions are needed. However, for some pollutants, it is possible that risks may be underestimated.

While collectively termed "UF," these factors account for a number of different quantitative considerations when using observed animal (usually rodent) or human toxicity data in the development of the RfC. The UF are intended to account for: (1) Variation in susceptibility among the members of the human population (*i.e.,* inter-individual variability); (2) uncertainty in extrapolating from experimental animal data to humans (*i.e.,* interspecies differences); (3) uncertainty in extrapolating from data obtained in a study with less-than-lifetime exposure (*i.e.,* extrapolating from sub-chronic to chronic exposure); (4) uncertainty in extrapolating the observed data to obtain an estimate of the exposure associated with no adverse effects; and (5) uncertainty when the database is incomplete or there are problems with the applicability of available studies.

Many of the UF used to account for variability and uncertainty in the development of acute reference values are quite similar to those developed for chronic durations, but they more often use individual UF values that may be less than 10. The UF are applied based on chemical-specific or health effect-specific information (*e.g.,* simple irritation effects do not vary appreciably between human individuals, hence a value of 3 is typically used), or based on the purpose for the reference value (see the following paragraph). The UF applied in acute reference value derivation include: (1) Heterogeneity among humans; (2) uncertainty in extrapolating from animals to humans; (3) uncertainty in lowest observed adverse effect (exposure) level to no observed adverse effect (exposure) level adjustments; and (4) uncertainty in accounting for an incomplete database on toxic effects of potential concern. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (*e.g.,* 4 hours) to derive an acute reference value at another exposure duration (*e.g.,* 1 hour).

Not all acute reference values are developed for the same purpose and care must be taken when interpreting the results of an acute assessment of human health effects relative to the reference value or values being exceeded. Where relevant to the estimated exposures, the lack of short-term dose-response values at different levels of severity should be factored into

[18] Guidelines for Carcinogen Risk Assessment, EPA/630/P–03/001F, March 2005, Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC.

[19] Upper bound, IRIS glossary (*http://www.epa.gov/NCEA/iris/help_gloss.htm*).

[20] An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

[21] U.S. EPA. Reference Dose (RfD): Description and Use in Health Risk Assessments. Dated March 1993.

[22] U.S. EPA. Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry. EPA/600/8–90/066F. Dated October 1994.

[23] According to the NRC report, *Science and Judgment in Risk Assessment* (NRC, 1994) "[Default] options are generic approaches, based on general scientific knowledge and policy judgment, that are applied to various elements of the risk assessment process when the correct scientific model is unknown or uncertain." The 1983 NRC report, *Risk Assessment in the Federal Government: Managing the Process,* defined default option as "the option chosen on the basis of risk assessment policy that appears to be the best choice in the absence of data to the contrary" (NRC, 1983a, p. 63). Therefore, default options are not rules that bind the agency; rather, the agency may depart from them in evaluating the risks posed by a specific substance when it believes this to be appropriate. In keeping with the EPA's goal of protecting public health and the environment, default assumptions are used to ensure that risk to chemicals is not underestimated (although defaults are not intended to overtly overestimate risk). See EPA, 2004, *An Examination of EPA Risk Assessment Principles and Practices,* EPA/100/B–04/001 available at: *http://www.epa.gov/osa/pdfs/ratf-final.pdf.*

the risk characterization as potential uncertainties.

For a group of compounds that are unspeciated (*e.g.*, glycol ethers), we conservatively use the most protective reference value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (e.g., ethylene glycol diethyl ether) that does not have a specified reference value, we also apply the most protective reference value from the other compounds in the group to estimate risk.

e. Uncertainties in the Multipathway Assessment

For each source category, we generally rely on site-specific levels of PB–HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary. This determination is based on the results of a two-tiered screening analysis that relies on the outputs from models that estimate environmental pollutant concentrations and human exposures for 4 PB–HAP. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.[24]

Model uncertainty concerns whether the selected models are appropriate for the assessment being conducted and whether they adequately represent the actual processes that might occur for that situation. An example of model uncertainty is the question of whether the model adequately describes the movement of a pollutant through the soil. This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA Science Advisory Board reviews and other reviews, we are confident that the models used in the screen are appropriate and state-of-the-art for the multipathway risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier I of the multipathway screen, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally-representative data sets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water and soil characteristics and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier II of the multipathway assessment, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier I. By refining the screening approach in Tier II to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screen. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for Tier I and Tier II.

For both Tiers I and II of the multipathway assessment, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do screen out, we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do not screen out, it does not mean that multipathway impacts are significant, only that we cannot rule out that possibility and that a refined multipathway analysis for the site might be necessary to obtain a more accurate risk characterization for the source category.

For further information on uncertainties and the Tier I and II screening methods, refer to the risk document, Appendix 5, "Technical Support Document for TRIM-Based Multipathway Tiered Screening Methodology for RTR."

f. Uncertainties in the Environmental Risk Screening Assessment

For each source category, we generally rely on site-specific levels of environmental HAP emissions to perform an environmental screening assessment. The environmental screening assessment is based on the outputs from models that estimate environmental HAP concentrations. The same models, specifically the TRIM.FaTE multipathway model and the AERMOD air dispersion model, are used to estimate environmental HAP concentrations for both the human multipathway screening analysis and for the environmental screening analysis. Therefore, both screening assessments have similar modeling uncertainties.

Two important types of uncertainty associated with the use of these models in RTR environmental screening assessments—and inherent to any assessment that relies on environmental modeling—are model uncertainty and input uncertainty.[25]

Model uncertainty concerns whether the selected models are appropriate for the assessment being conducted and whether they adequately represent the movement and accumulation of environmental HAP emissions in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screen are appropriate and state-of-the-art for the environmental risk assessments conducted in support of our RTR analyses.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier I of the environmental screen for PB–HAP, we configured the models to avoid underestimating exposure and risk to reduce the likelihood that the results indicate the risks are lower than they actually are. This was accomplished by selecting upper-end values from nationally-representative data sets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, the location and size of any bodies of water, meteorology, surface water and soil characteristics and structure of the aquatic food web. In Tier I, we used the maximum facility-specific emissions for the PB–HAP (other than Pb compounds, which were evaluated by comparison to the secondary Pb NAAQS) that were

[24] In the context of this discussion, the term "uncertainty" as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

[25] In the context of this discussion, the term "uncertainty," as it pertains to exposure and risk assessment, encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

included in the environmental screening assessment and each of the media when comparing to ecological benchmarks. This is consistent with the conservative design of Tier I of the screen. In Tier II of the environmental screening analysis for PB–HAP, we refine the model inputs to account for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the locations of water bodies near the facility location. By refining the screening approach in Tier II to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screen. To better represent widespread impacts, the modeled soil concentrations are averaged in Tier II to obtain one average soil concentration value for each facility and for each PB–HAP. For PB–HAP concentrations in water, sediment and fish tissue, the highest value for each facility for each pollutant is used.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For both Tiers I and II of the environmental screening assessment, our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying potential risks for adverse environmental impacts.

Uncertainty also exists in the ecological benchmarks for the environmental risk screening analysis. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. In general, EPA benchmarks used at a programmatic level (e.g., Office of Water, Superfund Program) were used if available. If not, we used EPA benchmarks used in regional programs (e.g., Superfund Program). If benchmarks were not available at a programmatic or regional level, we used benchmarks developed by other agencies (e.g., NOAA) or by state agencies.

In all cases (except for Pb compounds, which were evaluated through a comparison to the NAAQS), we searched for benchmarks at the following three effect levels, as described in section III.A.5 of this preamble:

1. A no-effect level (i.e., NOAEL).
2. Threshold-effect level (i.e., LOAEL).
3. Probable effect level (i.e., PEL).

For some ecological assessment endpoint/environmental HAP combinations, we could identify benchmarks for all three effect levels, but for most, we could not. In one case, where different agencies derived significantly different numbers to represent a threshold for effect, we included both. In several cases, only a single benchmark was available. In cases where multiple effect levels were available for a particular PB–HAP and assessment endpoint, we used all of the available effect levels to help us to determine whether risk exists and if the risks could be considered significant and widespread.

The EPA evaluates the following seven HAP in the environmental risk screening assessment: Cadmium, dioxins/furans, POM, Hg (both inorganic Hg and methyl Hg), Pb compounds, HCl and HF, where applicable. These seven HAP represent pollutants that can cause adverse impacts for plants and animals either through direct exposure to HAP in the air or through exposure to HAP that is deposited from the air onto soils and surface waters. These seven HAP also represent those HAP for which we can conduct a meaningful environmental risk screening assessment. For other HAP not included in our screening assessment, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond the seven HAP that we are evaluating may have the potential to cause adverse environmental effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

Further information on uncertainties and the Tier I and II environmental screening methods, is provided in Appendix 5 of the document, "Technical Support Document for TRIM-Based Multipathway Tiered Screening Methodology for RTR: Summary of Approach and Evaluation." Also, see the memorandum, "Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing," which is available in the docket for this action.

B. How did we consider the risk results in making decisions for this proposal?

As discussed in section II.A of this preamble, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step process to address residual risk. In the first step, the EPA determines whether risks are acceptable. This determination "considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR) [26] of approximately [1-in-10 thousand] [*i.e.*, 100-in-1 million]." 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks to an acceptable level without considering costs. In the second step of the process, the EPA considers whether the emissions standards provide an ample margin of safety "in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision." *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect.

In past residual risk actions, the EPA considered a number of human health risk metrics associated with emissions from the categories under review, including the MIR, the number of persons in various risk ranges, cancer incidence, the maximum non-cancer HI and the maximum acute non-cancer hazard. See, e.g., 72 FR 25138, May 3, 2007; 71 FR 42724, July 27, 2006. The EPA considered this health information for both actual and allowable emissions. See, e.g., 75 FR 65068, October 21, 2010; 75 FR 80220, December 21, 2010; 76 FR 29032, May 19, 2011. The EPA also discussed risk estimation uncertainties and considered the uncertainties in the determination of acceptable risk and ample margin of safety in these past actions. The EPA considered this same type of information in support of this action.

The agency is considering these various measures of health information

[26] Although defined as "maximum individual risk," MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk where an individual exposed to the maximum level of a pollutant for a lifetime.

to inform our determinations of risk acceptability and ample margin of safety under CAA section 112(f). As explained in the Benzene NESHAP, "the first step judgment on acceptability cannot be reduced to any single factor" and, thus, "[t]he Administrator believes that the acceptability of risk under [previous] section 112 is best judged on the basis of a broad set of health risk measures and information." 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, "the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors." *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. In responding to comment on our policy under the Benzene NESHAP, the EPA explained that:

"[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing [her] expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in [her] judgment, believes are appropriate to determining what will 'protect the public health'."

See 54 FR at 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risks. The Benzene NESHAP explained that "an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors." *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: "EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category." *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to date in making residual risk determinations. At this time, we do not attempt to quantify those HAP risks that may be associated with emissions from other facilities that do not include the source categories in question, mobile source emissions, natural source emissions, persistent environmental pollution or atmospheric transformation in the vicinity of the sources in these categories.

The agency understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing non-cancer risks, where pollutant-specific exposure health reference levels (*e.g.*, RfCs) are based on the assumption that thresholds exist for adverse health effects. For example, the agency recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse non-cancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.*, other facilities) to which an individual is exposed may be sufficient to result in increased risk of adverse non-cancer health effects. In May 2010, the SAB advised the EPA "that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area." [27]

In response to the SAB recommendations, the EPA is incorporating cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The agency is: (1) Conducting facility-wide assessments, which include source category emission points as well as other emission points within the facilities; (2) considering sources in the same category whose emissions result in exposures to the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzing the ingestion route of exposure. In addition, the RTR risk assessments have always considered aggregate cancer risk from all carcinogens and aggregate non-cancer HI from all non-carcinogens affecting the same target organ system.

Although we are interested in placing source category and facility-wide HAP risks in the context of *total* HAP risks from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Because of the contribution to total HAP risk from emission sources other than those that we have studied in depth during this RTR review such estimates of total HAP risks would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

C. How did we perform the technology reviews for the NESHAP and NSPS?

Our technology review focused on the identification and evaluation of developments in practices, processes and control technologies that have occurred since the NESHAP standards were promulgated. We also focused on the emission limitations and percent reductions achieved in practice that have occurred since the NSPS standards were promulgated. Where we identified such developments, in order to inform our decision of whether it is "necessary" to revise the emissions standards, we analyzed the technical feasibility of applying these developments and the estimated costs, energy implications, non-air environmental impacts, as well as

[27] EPA's responses to this and all other key recommendations of the SAB's advisory on RTR risk assessment methodologies (which is available at: *http://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-1-007-unsigned.pdf*) are outlined in a memorandum to this rulemaking docket from David Guinnup titled, EPA's Actions in Response to the Key Recommendations of the SAB Review of RTR Risk Assessment Methodologies.

considering the emission reductions. For the NEHAP, we also considered the appropriateness of applying controls to new sources versus retrofitting existing sources.

Based on our analyses of the available data and information, we identified potential developments in practices, processes and control technologies. For this exercise, we considered any of the following to be a "development":

- Any add-on control technology or other equipment that was not identified and considered during development of the original NESHAP and NSPS.
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original NESHAP and NSPS) that could result in additional emissions reduction.
- Any work practice or operational procedure that was not identified or considered during development of the original NESHAP and NSPS.
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original NESHAP and NSPS.
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original NESHAP and NSPS).

In addition to reviewing the practices, processes or control technologies that were considered at the time we developed the 1999 Phosphoric Acid Manufacturing and Phosphate Fertilizer Production NESHAP (i.e., NESHAP subpart AA and NESHAP subpart BB), we reviewed a variety of data sources in our investigation of potential practices, processes or controls to consider. Among the data sources we reviewed were the NESHAP for various industries that were promulgated since the NESHAP and NSPS standards being reviewed in this action. We reviewed the regulatory requirements and/or technical analyses associated with these regulatory actions to identify any practices, processes and control technologies considered in these efforts that could be applied to emission sources in the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories as well as the costs, non-air impacts and energy implications associated with the use of these technologies.

We also consulted the EPA's RBLC to identify potential technology advances. Control technologies, classified as Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), or Lowest Achievable Emissions Rate (LAER) apply to stationary sources depending on whether the sources are existing or new, and depending on the size, age and location of the facility. BACT and LAER (and sometimes RACT) are determined on a case-by-case basis, usually by state or local permitting agencies. The EPA established the RBLC to provide a central database of air pollution technology information (including technologies required in source-specific permits) to promote the sharing of information among permitting agencies and to aid in identifying future possible control technology options that might apply broadly to numerous sources within a category or apply only on a source-by-source basis. The RBLC contains over 5,000 air pollution control permit determinations that can help identify appropriate technologies to mitigate many air pollutant emission streams. We searched this database to determine whether it contained any practices, processes or control technologies that are applicable to the types of processes covered by the phosphoric acid and phosphate fertilizer NESHAP and NSPS.

Additionally, we requested information from facilities regarding developments in practices, processes or control technology. Finally, we reviewed information from other sources, such as state and/or local permitting agency databases and industry-supported databases.

IV. Analytical Results and Proposed Decisions for the Phosphoric Acid Manufacturing Source Category

A. What actions are we taking pursuant to CAA sections 112(d)(2) and 112(d)(3) for the Phosphoric Acid Manufacturing source category?

1. MACT and Work Practice Standards for Phosphate Rock Dryers and Calciners

We are proposing MACT standards pursuant to CAA section 112(d)(2) and (d)(3), and work practice standards pursuant to CAA section 112(h), for phosphate rock calciners, an emissions source that was regulated under the initial MACT standard for PM only, and adding pollutants, Hg and HF, that were not regulated under the initial NESHAP subpart AA. Under CAA section 112(d)(3), the EPA is required to promulgate emissions limits for all HAP emitted from major source categories (see *National Lime* v. *EPA*, 233 F. 3d 625, 634 (D.C. Cir. 2000); see also *Sierra Club* v. *EPA*, 479 F. 3d 875, 878 and 883 (D.C. Cir. 2007) (finding that the EPA must set standards for HAP even if they are not currently controlled with technology and that the agency may not set "no emissions reductions" MACT floors).

The United States Court of Appeals for the District of Columbia Circuit has also held that the EPA may permissibly amend improper MACT determinations, including amendments to improperly promulgated floor determinations, using its authority under CAA section 112(d)(2) and (3). *Medical Waste Institute* v. *EPA*, 645 F. 3d 420, 425–27 (D.C. Cir. 2011). *National Line*, 233 F. 3d at 633–34; see also *Medical Waste Incinerator* 645 F. 3d at 426 (resetting MACT floor, based on post-compliance data, permissible when originally-established floor was improperly established, and permissibility of the EPA's action does not turn on whether the prior standard was remanded or vacated); *Portland Cement Ass'n* v. *EPA*, 665 F.3d 177 at 189 (the EPA may reassess its standards including revising existing floors).

Phosphate rock dryers are no longer used in the manufacture of phosphoric acid or phosphate fertilizers. Rock dryers were previously used in the industry in the manufacture of GTSP. Because there are no longer any U.S. producers of GTSP, the rock dryers that were previously used in this industry are no longer in operation. In response to our April 2010 CAA section 114 request, we received emissions data for one dryer that is currently used in the production of defluorinated phosphate rock, which is subsequently used in the production of animal feed products. Because this process is not part of the regulated source categories, Phosphoric Acid or Phosphate Fertilizer NESHAP, these data were not used to set emissions limits and the EPA is not proposing revised emissions limits for rock dryers.

a. Determination of Emission Standards for Mercury From Phosphate Rock Calciners

The 1999 Phosphoric Acid Manufacturing NESHAP (i.e., NESHAP subpart AA) specified emissions limits for metal HAP (e.g., arsenic, cadmium, Pb, Hg) from phosphate rock dryers and phosphate rock calciners in terms of a PM emissions limit (i.e., PM is used as a surrogate for all metal HAP). However, in this source category, PM is an improper surrogate for Hg. Therefore, we are eliminating the use of PM as a surrogate for Hg and proposing a Hg emission limit for phosphate rock calciners. Based on information provided by industry, rock dryers are no longer used in the production of phosphoric acid and their future use is

not anticipated, so there are no emissions from rock dryers for this source category. Therefore, we are not proposing a Hg emission limit for rock dryers. We are retaining the PM standard as a surrogate for other HAP metal emissions from phosphate rock calciners.

In general, MACT floor analyses involve an assessment of the emissions from the best-performing sources in a source category using the available emissions information. For each source category, the assessment involves a review of emissions data with an appropriate accounting for emissions variability. Various methods of estimating emissions can be used if the methods can be shown to provide reasonable estimates of the actual emissions performance of a source or sources.

The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best-performing 12 percent of existing sources (for which the Administrator has emissions information) or the best-performing five sources for source categories or subcategories with fewer than 30 sources (CAA section 112(d)(3)(A) and (d)(3)(B)). For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best-controlled similar source (CAA section 112(d)(3)). The EPA must also consider more stringent "beyond-the-floor" control options. When considering beyond-the-floor options, the EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and non-air quality health and environmental impacts.

In 2014, only one facility operates phosphate rock calciners. In response to the April 2010 CAA section 114 request, the facility provided Hg emissions testing results for one of their six calciners to the EPA. In addition, the facility provided Hg emissions testing results for another, previously untested calciner in response to the January 2014 CAA section 114 request. As a result, the EPA had two datasets (at one facility) on which to base the MACT floors for Hg for new and existing phosphate rock calciners. However, calciner Hg emissions are the result of Hg contained in the fuel and raw materials. Because the six calciners are designed to be identical and use the same raw materials and fuels, Hg emissions from the six calciners are expected to be identical. This determination is consistent with the June 13, 2002, amendments to the NESHAP subpart AA (67 FR 40814) when the EPA could not find any reason to believe that the six calciners are not identical in regards to particulate emissions. In the preamble to the 2002 amendments, we concluded that factors other than the MACT technology (e.g., the source of the rock input, operator training experience) do not affect emission levels and that the calciners were designed to be identical. For this reason, all the data from the calciners were combined into one dataset to determine both new and existing MACT floors.

To determine the MACT floors for phosphate rock calciners, we used the arithmetic average of all the available emissions data from the 2010 and 2014 data requests and accounted for emissions variability. We accounted for emissions variability in setting floors not only because variability is an aspect of performance, but because it is reasonable to assess performance over time and to account for test method variability. The United States Court of Appeals for the District of Columbia Circuit has recognized that the EPA may consider variability in estimating the degree of emission reduction achieved by best-performing sources, and in setting MACT floors (see *Mossville Environmental Action Now* v. *EPA*, 370 F.3d 1232, 1241–42 (D.C. Cir. 2004)).

To account for variability in the operation and emissions, we used the stack test data to calculate the average emissions and the 99-percent upper prediction limit (UPL) to derive the MACT floor limit. For more information regarding the general use of the UPL and why it is appropriate for calculating MACT floors, see the memorandum, "Use of the Upper Prediction Limit for Calculating MACT Floors," which is available in the docket for this action. Table 3 of this preamble provides the results of the MACT floor calculations (considering variability) for Hg.

TABLE 3—RESULTS OF THE MACT FLOOR CALCULATIONS FOR MERCURY FROM PHOSPHATE ROCK CALCINERS AT PHOSPHORIC ACID FACILITIES

Pollutant	Results	Units
Hg	0.14 [a]	mg/dscm @3%O_2.

[a] The EPA is proposing beyond-the-floor emission standards for Hg from phosphate rock calciners; therefore, the results of the MACT floor variability calculations do not reflect the proposed emission standards for Hg from phosphate rock calciners. Please refer to Table 4 of this preamble for the proposed emission limits for Hg.

Additional details regarding the MACT floor analysis and UPL calculations, including a description of how we assessed the limited dataset that was used to calculate the MACT floor value, are contained in the memorandum, "Maximum Achievable Control Technology (MACT) Floor Analysis for the Phosphate Rock Calciners at Phosphoric Acid Manufacturing Plants," which is available in the docket for this action. Additional detail on the EPA's approach for applying the UPL methodology to limited datasets is provided in the memorandum, "Approach for Applying the Upper Prediction Limit to Limited Datasets," which is available in the docket for this action.

Once the MACT floor determinations were completed, we considered various regulatory options more stringent than the MACT floor levels of control (e.g., control technologies or work practices that could result in lower emissions). The memorandum, "Beyond-the-Floor Analysis for Phosphate Rock Calciners at Phosphoric Acid Manufacturing Plants," which is available in the docket for this action, contains a detailed description of the beyond-the-floor consideration. We first identified regulatory requirements for phosphate rock calciners that would be more stringent than the MACT floor level of control and determined whether the requirements were technically feasible. If the more stringent requirements were technically feasible, we conducted an analysis of the cost and emission impacts associated with implementing the requirements.

We analyzed a beyond-the-floor option of requiring existing phosphate rock calciners to meet a Hg emission limit of 0.014 milligrams per dry standard cubic meter (mg/dscm) on a 3-percent oxygen basis. This reflects the expected emission reductions that can be achieved using the available control technologies. Specifically, we analyzed

the costs and emission reductions of two types of control technologies: installation of a fixed-bed carbon adsorption system, and installation of activated carbon injection (ACI) (followed by either the existing wet electrostatic precipitators (WESP) or a newly installed fabric filter system). Both the fixed-bed and ACI systems are estimated to reduce emissions of Hg by 90 percent from the baseline emissions (for further detail see the memorandum, "Beyond-the-Floor Analysis for the Phosphate Rock Calciners at Phosphoric Acid Manufacturing Plants," which is available in the docket for this action). We chose to evaluate an ACI system (installed after the existing WESP) followed by a fabric filter, in addition to an ACI system followed by the existing WESP, due to the relatively high moisture content of the calciner exhaust streams. ACI followed by a fabric filter is the most common control system installed for control of Hg, but in this case, the high moisture content may have a tendency to blind a fabric filter.

We also evaluated fixed-bed carbon adsorption systems as potential control technology for achieving beyond-the-floor emission reductions. For a fixed-bed carbon adsorption system, we estimate that applying additional control to reduce Hg emissions from phosphate rock calciners would result in an annualized cost of approximately $1.2 million, and would achieve Hg reductions of 145 pounds of Hg per year. The cost effectiveness of installing a fixed-bed carbon adsorber was estimated to be $8,000 dollars per pound of Hg reduced, which we considered to be cost effective. This cost-effectiveness for Hg is comparable to or less than values the EPA found to be cost effective for removal of Hg in other air toxics rules. For example, in the National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants, the cost effectiveness was found to be between $13,000 to $31,000 per pound of Hg emissions reduced for the individual facilities (see Supplemental proposed rule, 76 FR 13858 (March 14, 2011)).

For an ACI system, we estimate that applying additional control to reduce Hg emissions from phosphate rock calciners would result in an annualized cost of approximately $1.8 million to $2.5 million (using a WESP or a fabric filter system, respectively), and would achieve Hg reductions of 145 pounds of Hg per year. The cost effectiveness of installing an ACI system was estimated to be between $12,000 and $17,000 dollars per pound of Hg reduced (using a WESP or a fabric filter system, respectively), which we considered to be cost effective on the basis previously stated. Consequently, we are proposing that existing phosphate rock calciners meet a Hg emission limit of 0.014 mg/dscm on a 3-percent oxygen basis as a beyond-the-floor standard. We are also proposing that phosphate rock calciners at new sources meet a beyond-the-floor Hg emission limit of 0.014 mg/dscm on a 3-percent oxygen basis. Table 4 of this preamble lists the proposed Hg emission limits for phosphate rock calciners. We are unaware of any technologies that could further reduce Hg emissions from streams that have high moisture content. The memorandum, "Beyond-the-Floor Analysis for the Phosphate Rock Calciners at Phosphoric Acid Manufacturing Plants," which is available in the docket for this action, documents the results of the beyond-the-floor analysis.

TABLE 4—PROPOSED EMISSION LIMITS FOR MERCURY FROM PHOSPHATE ROCK CALCINERS AT PHOSPHORIC ACID FACILITIES

Pollutant	Limit	Units
Existing and new sources: Hg	0.014	mg/dscm @3%O_2.

b. Determination of Work Practice Standards for Hydrogen Fluoride From Phosphate Rock Calciners

The 1999 Phosphoric Acid Manufacturing NESHAP (i.e., NESHAP subpart AA) included emissions limits for total F as a surrogate for HF for WPPA and SPA processes. A total F emission limit was not set for phosphate rock dryers or phosphate rock calciners. We propose to address the failure to set an emission limit in this action. Test data collected from industry in 2014 show HF emissions from phosphate rock calciners, although more than half of the data are below-the-method detection limit (BDL). CAA section 112(h)(1) states that the Administrator may prescribe a work practice standard or other requirements, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term "not feasible" in this context to apply when "the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations." Therefore, we are proposing work practice standards for HF emissions from phosphate rock calciners. Rock dryers are no longer used in this source category. Therefore, we are not proposing a limit or work practice standard for HF from rock dryers.

In response to a January 2014 CAA section 114 request, the EPA received HF emissions testing results by EPA Method 320 for one phosphate rock calciner. Of the six test runs reported to EPA, four were reported as BDL. The detected concentrations were, on average, only 20 percent above the method detection limit. The expected measurement imprecision for an emissions value occurring at or near the method detection limit is about 40 to 50 percent. Because the HF emission levels are BDL or near BDL, the measured concentration values are questionable for HF. As a result, we are uncertain of the true levels of HF emitted from phosphate rock calciners.

Because approximately 67 percent of the HF data collected using EPA Method 320 were BDL, and the fact that the detected concentrations were, on average, only 20 percent above the method detection limit, the EPA concludes that HF emissions from phosphate rock calciners cannot practicably be measured. As a result, we are proposing work practice standards in place of a numeric emission limit for HF from phosphate rock calciners.

According to information provided by industry, phosphate rock calciners are operated to remove organic content from the phosphate rock in efforts to produce products with low organic content (refer to the memorandum, "Summary of August 14, 2012 U.S. EPA Meeting with PCS Phosphate," which is available in the docket for this action). Based on review of available literature, liberation of fluorine takes place at temperatures between approximately 2,500 and 2,750 degrees Fahrenheit (in addition to adding defluorinating agents), whereas

removal of organic matter and dissociation of carbonates is typically carried out between 1,200 and 1,830 degrees Fahrenheit. Process flow diagrams submitted by industry in response to an April 2010 and January 2014 CAA section 114 request indicate that the phosphate rock calciners currently in operation maintain a calcination temperature of less than 1,600 degrees Fahrenheit. Based on this information, we conclude that maintaining the temperature of the phosphate rock calciner fluidized bed at less than 1,600 degrees Fahrenheit will minimize emission of HF. Therefore, we are proposing a maximum calcination temperature of less than 1,600 degrees Fahrenheit for phosphate rock calciners as a work practice standard to control HF emissions. The facility that operates calciners currently maintains temperatures below 1,600 degrees Fahrenheit, as such, we do not expect any costs of control with this proposed work practice requirement.

In addition, particulate emissions from the calciners currently in operation are controlled using a combination of an absorber (i.e., a Venturi-type wet scrubbing system) and an electrostatic precipitator. As discussed in section IV.D.1 of this preamble, the Phosphoric Acid Manufacturing source category uses wet scrubbing technology (including Venturi-type wet scrubbing systems) to control HF emissions from various processes located at the source category. Because HF is highly soluble in water, we expect that, if HF is present in the calcination exhaust stream in any amount, the absorbers currently in operation are achieving some level of emission reduction. As a result, we are proposing to require that emissions from phosphate rock calciners be routed to an absorber, in addition to proposing a maximum calcination temperature, to limit emissions of HF from phosphate rock calciners.

Refer to the memorandum, "Maximum Achievable Control Technology (MACT) Floor Analysis for the Phosphate Rock Calciners at Phosphoric Acid Manufacturing Plants," available in the docket for this action, for additional information regarding the determination of the work practice standards to control HF emissions. The EPA did not identify any beyond-the-floor options for reducing HF emissions from the phosphate rock calciners other than the proposed work practice standard.

2. Gypsum Dewatering Stack and Cooling Pond Work Practices

We conducted an evaluation of fugitive HF emissions from gypsum dewatering stacks and cooling ponds and determined that these fugitive sources contribute the majority of HF emissions from phosphoric acid facilities (see the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket). The 1999 Phosphoric Acid Manufacturing NESHAP (i.e., NESHAP subpart AA) did not include emission limits or require work practices for control of fugitive HF emissions from gypsum dewatering stacks, or cooling ponds. We are proposing standards that will control HAP emissions from gypsum dewatering stacks and cooling ponds. We are proposing work practices instead of numeric emission limits because it is "not feasible to prescribe or enforce an emission standard" for these emissions because they are not "emitted through a conveyance designed and constructed to emit or capture such pollutant" (see CAA section 112(h)(2)(A)) as the several hundred acres average size of these sources makes conveyance impractical. The work practices would apply to any existing or new gypsum dewatering stacks or cooling ponds at a source subject to this subpart.

A review of state requirements for regulated facilities and current literature on the industry revealed work practices that include submerging the discharge pipe below the surface of the cooling pond; wetting the gypsum dewatering stack areas during hot or dry periods to minimize dust formation; using rim ditch (cell) building techniques that minimize the overall surface area of the gypsum dewatering stack and pond; applying slaked lime to the gypsum dewatering stack surfaces; and applying soil caps and vegetation to inactive gypsum dewatering stacks. After review of these various state requirements, the EPA believes that the control measures required by the states for these facilities are effective in reducing fugitive emissions. These measures are, therefore, consistent with CAA section 112(d) controls and reflect a level of performance analogous to a MACT floor. See CAA section 112(h)(1) (in promulgating work practices, the EPA is to adopt standards "which in the Administrator's judgment [are] consistent with section (d) or (f) of this section").

We are proposing that facilities develop a site-specific gypsum dewatering stack and cooling pond management plan to control fugitive emissions. We have developed a list of control techniques for facilities to use in development of this management plan. These techniques include: introducing cooling water or gypsum slurry into a pond below the surface in order to minimize aeration of F in the water; wetting the active gypsum dewatering stack areas during hot or dry periods to minimize dust formation; using cell building techniques that minimize the overall surface area of the active gypsum dewatering stack; applying slaked lime to the active gypsum dewatering stack surfaces; and applying soil caps and vegetation to all side slopes of the active gypsum dewatering stack up to 50 feet below the stack top. The memorandum, "Analysis of Requirements for Gypsum Dewatering Stacks and Cooling Ponds at Phosphoric Acid Manufacturing Plants," which is available in the docket, provides more detail for choosing these control measures.

The varying geographic locations of facilities influence the composition of the phosphate ore mined and the ambient meteorological conditions, both of which will influence best management practices. Therefore, we believe that it is most effective for sources to determine the best practices that are to be incorporated into their site-specific management plan. However, as previously noted, sources would be required to incorporate management practices from the list of options being proposed.

We are also proposing a work practice applicable to facilities when new gypsum dewatering stacks are constructed that would limit the size of active gypsum dewatering stacks and control fugitive emissions. When new gypsum dewatering stacks are constructed, the ratio of total active gypsum dewatering stacks area (i.e., sum of the footprint acreage of all existing and new active gypsum dewatering stacks combined) to annual phosphoric acid manufacturing capacity must not be greater than 80 acres per 100,000 tons of annual phosphoric acid manufacturing capacity (equivalent P_2O_5 feed).

The extensive area that gypsum dewatering stacks encompass is a direct correlation to their high HF emissions. This is seen when estimating emissions from gypsum dewatering stacks, where emission factors are applied (tons HF per acre per year). In addition, gypsum dewatering stacks are continuously releasing emissions unless they are properly covered and closed. Limiting the size of gypsum dewatering stacks would minimize emissions by creating an upper bound on emissions; this would require appropriate foresight and planning of the new gypsum dewatering stack construction process to ensure the gypsum dewatering stack area to

manufacturing capacity ratio is not exceeded (i.e., facilities may need to close gypsum dewatering stacks to comply). While certain states already require the closure of gypsum dewatering stacks at the end of their life, this work practice would apply to facilities in all states and would ensure that gypsum dewatering stacks are appropriately considered from an emissions perspective in all phases of their life.

To develop the limit of 80 acres per 100,000 tons of annual phosphoric acid manufacturing capacity, we evaluated the area of active gypsum dewatering stacks to manufacturing capacity for each facility. We expected facilities with greater manufacturing capacities to, in most cases, require larger gypsum dewatering stack areas, because higher acid manufacturing rates result in higher gypsum generation rates; however, this was not the case. Based on the available data, we did not detect a correlation between gypsum stack dewatering area and phosphoric acid manufacturing capacity.

We considered that the size of active gypsum dewatering stacks at a facility is dynamic and does not remain the same over time. We also considered other factors that influence gypsum dewatering stack size such as the actual area available for stack construction, closure of recently active stacks, and local permitting limitations. Gypsum dewatering stacks also serve the fertilizer manufacturing processes in addition to the phosphoric acid manufacturing processes as a source of cooling water, wash water, process water and slurry water. As a result, we concluded that the size of gypsum dewatering stacks is a function of several factors, including process optimization. Nonetheless, we still believe that phosphoric acid manufacturing capacity has a significant impact on the size of gypsum dewatering stacks. As a result, we are proposing a size limit based on the current operation of 10 out of 12 facilities. We believe this upper limit captures the complexities of gypsum dewatering stack size determination, but provides a reasonable limit on the size of active stacks in the future.

Further discussion on the site-specific gypsum dewatering stack and cooling pond management plan and details on the calculation of the ratio of gypsum dewatering stack area to phosphoric acid manufacturing capacity is provided in the memorandum, "Analysis of Requirements for Gypsum Dewatering Stacks and Cooling Ponds at Phosphoric Acid Manufacturing Plants," which is available in the docket for this action.

We solicit comment on the proposed site-specific gypsum dewatering stack and cooling pond management plan. We are also seeking comment on other approaches for minimizing fugitive emissions from gypsum dewatering stacks including, but not limited to: Limiting the size of active gypsum dewatering stacks independent of phosphoric acid manufacturing capacity, and requiring owners or operators to apply soil caps and vegetation to all side slopes (up to a certain distance below the stack top) for all new active gypsum dewatering stacks and new gypsum cells that are built on to (or adjacent to) existing active gypsum dewatering stacks.

B. What are the results of the risk assessment and analyses for the Phosphoric Acid Manufacturing source category?

The preamble sections below summarize the results of the risk assessment for the Phosphoric Acid Manufacturing source category. The complete risk assessment, *Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing,* is available in the docket for this action.

1. Inhalation Risk Assessment Results

The basic chronic inhalation risk estimates presented here are the maximum individual lifetime cancer risk, the maximum chronic HI and the cancer incidence. We also present results from our acute inhalation impact screening in the form of maximum HQs, as well as the results of our preliminary screening for potential non-inhalation risks from PB–HAP. Also presented are the HAP "drivers," which are the HAP that collectively contribute 90 percent of the maximum cancer risk or maximum HI at the highest exposure location.

The inhalation risk results for this source category indicate that maximum lifetime individual cancer risks are less than 1-in-1 million. The total estimated cancer incidence from this source category is 0.0002 excess cancer cases per year, or one excess case in every 5,000 years. The maximum chronic non-cancer TOSHI value for the source category could be up to 0.2 associated with emissions of hydrofluoric acid from gypsum dewatering stacks and cooling ponds, indicating no significant potential for chronic non-cancer impacts.

We analyzed the potential differences between actual emissions levels and calculated the maximum emissions allowable under the MACT standards for every emission process group for this source category. Based upon the above analysis, we multiplied the modeled actual risks for the MIR facility with site-specific process multipliers to estimate allowable risks under the MACT. We deemed this approach sufficient due to the low actual modeled risks for the source category. The maximum lifetime individual cancer risks based upon allowable emissions are still less than 1-in-1 million. The maximum chronic non-cancer TOSHI value increased to an HI of 0.3.

2. Acute Risk Results

Worst-case acute HQs were calculated for every HAP that has an acute benchmark. Two facilities were identified with HQ values greater than 1. For cases where the acute HQ from the screening analysis was greater than 1, we further refined the estimates by determining the highest HQ value that is outside facility boundaries. The highest refined, worst-case acute HQ value is 2 (based on the acute reference exposure level (REL) for hydrofluoric acid). The HQ values represent upper-bound risk estimates for both facilities; the off-site locations for these sites were either located in a rural location in which public access is limited or in an off-site area that may be owned by the facility. The primary source of emissions is fugitive air releases from gypsum dewatering stacks and cooling ponds. See the memorandum, "Emissions Data Used in Residual Risk Modeling: Phosphoric Acid and Phosphate Fertilizer Production Source Category," which is available in the docket for this rulemaking, for a detailed description of the methodology we used to develop the maximum hourly emissions for this source category. Based on maximum hourly emission estimates available by emission process group, an emissions multiplier of 1 was used to estimate the peak hourly emission rates for this source category.

To better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, we examined a wider range of available acute health metrics than we examine for our chronic risk assessments. This is in response to the acknowledgement that there are generally more data gaps and inconsistencies in acute reference values than there are in chronic reference values. By definition, the acute reference exposure level relied on in the analysis, the California Reference Exposure Level (CA–REL), represents a health-protective level of exposure, with no risk anticipated below those levels, even for repeated exposures; however, the health risk from higher-level exposures is unknown. Therefore, when

an REL is exceeded, we have used secondary acute dose-response exposure levels, including the AEGL–1 and ERPG, as a second comparative measure. The worst-case, maximum estimated 1-hour exposure to hydrofluoric acid outside the facility fence line for the Phosphoric Acid Manufacturing source category is 0.5 ug/m^3. This estimated worst-case exposure exceeds the 1-hour REL by a factor of 2 (HQ_{REL} = 2) and is below the 1-hour AEGL–1 (HQ_{AEGL-1} = 0.6). See the memorandum, "Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing" in the docket for this rulemaking for additional information.

3. Multipathway Risk Screening Results

For the Phosphoric Acid Production source category, the EPA conducted a Tier I screening-level evaluation of the potential human health risks associated with emissions of PB–HAP. The PB–HAP emitted by facilities in this category include Hg compounds (12 facilities), Pb compounds (12 facilities), and cadmium compounds (12 facilities), dioxin/furan compounds (1 facility), and POM compounds (1 facility). We compared reported emissions of PB–HAP to the Tier I screening emission thresholds established by the EPA for the purposes of the RTR risk assessments. One facility emitted divalent Hg (Hg^{2+}) above the Tier I screening threshold level, exceeding the screening threshold by a factor of 7 and the cadmium emissions exceeded the cadmium screening threshold by a factor of 2. Consequently, we conducted a Tier II screening assessment.

For the Tier II screening assessment, we refined our Hg^{2+} and cadmium analysis with additional site-specific information. The additional site-specific information included the land use around the facilities, the location of fishable lakes within 50 km of the facility, and local wind direction and speed. The Tier II Screen also included two scenarios to evaluate health risks by evaluating risks separately for two hypothetical receptors; (1) subsistence travelling angler and (2) subsistence farmer. The travelling fisher scenario is based on the idea that an adult fisher might travel to multiple lakes if the first (i.e., highest-concentration) lake is unable to provide him an adequate catch to satisfy the assumed ingestion rate (i.e., 373 grams/day for adults) over a 70-year time frame. This assessment uses the assumption that the biological productivity limitation of each lake is 1 gram of fish per acre of water, meaning that in order to fulfill the adult ingestion rate, the fisher will need to fish from 373 total acres of lakes. The result of this analysis was the development of a site-specific emission-screening threshold for Hg^{2+}. We compared this refined Tier II screening threshold for Hg^{2+} to the facility's Hg^{2+} emissions. The facility's emissions from both pollutants of concern are below the Tier II screening threshold, indicating no potential for multipathway impacts of concern from this facility.

For the other PB–HAP emitted by facilities in the source category, no facilities emit POM, or dioxin compounds above the Tier I screening threshold level. Pb is a PB–HAP, but the NAAQS value (which was used for the chronic noncancer risk assessment) takes into account multipathway exposures, so a separate multipathway screening value was not developed. Since we did not estimate any exceedances of the NAAQS in our chronic noncancer risk assessment, we do not expect any significant multipathway exposure and risk due to Pb emissions from these facilities. For more information on the multipathway screening assessment conducted for this source category, see the memorandum, "Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing" provided in the docket for this rulemaking.

4. Environmental Risk Screening Results

As described in section III.A.5 of this preamble, we conducted an environmental risk screening assessment for the Phosphoric Acid Manufacturing source category. In the Tier I screening analysis for PB–HAP other than Pb (which was evaluated differently, as noted in section III.A.5 of this preamble), none of the individual modeled concentrations for any facility in the source category exceed any of the ecological benchmarks (either the LOAEL or NOAEL). Therefore, we did not conduct a Tier II screening assessment. For Pb, we did not estimate any exceedances of the secondary Pb NAAQS.

For acid gases, the average modeled concentration around each facility (i.e., the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmarks (either the LOAEL or NOAEL). For HCl, each individual concentration (i.e., each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. For HF, less than 1 percent of the off-site modeling domain for the source category was above the LOAEL ecological benchmark. The largest facility exceedance area represented 3 percent of the facility's 50 km modeling domain. We did not identify an adverse environmental effect as defined in CAA section 112(a)(7) from HAP emissions from this source category.

5. Facility-Wide Risk Results

The facility-wide MIR and TOSHI are based on emissions, as identified in the NEI, from all emissions sources at the identified facilities. The results of the facility-wide analysis indicate that all 12 facilities with phosphoric acid manufacturing processes have a facility-wide cancer MIR less than or equal to 1-in-1 million. The maximum facility-wide TOSHI for the source category is 0.2. The risk results are summarized in Table 5 of this preamble.

TABLE 5—HUMAN HEALTH RISK ASSESSMENT FOR PHOSPHORIC ACID MANUFACTURING

Category & number of facilities modeled	Cancer MIR (in 1 million)		Cancer incidence (cases per year)	Population with risks of 1-in-1 million or more	Population with risks of 10-in-1 million or more	Max chronic non-cancer HI		Worst-case max acute non-cancer HQ
	Based on actual emissions	Based on allowable emissions				Based on actual emissions	Based on allowable emissions	
Phosphoric Acid (12 facilities).	0.09	0.09	0.0002	0	0	0.2	0.3	HQ_{REL} = 2 (hydrofluoric acid) HQ_{AEGL}–1 = 0.6 (hydrofluoric acid).

TABLE 5—HUMAN HEALTH RISK ASSESSMENT FOR PHOSPHORIC ACID MANUFACTURING—Continued

Category & number of facilities modeled	Cancer MIR (in 1 million)		Cancer incidence (cases per year)	Population with risks of 1-in-1 million or more	Population with risks of 10-in-1 million or more	Max chronic non-cancer HI		Worst-case max acute non-cancer HQ
	Based on actual emissions	Based on allowable emissions				Based on actual emissions	Based on allowable emissions	
Facility-wide (12 facilities).	0.5	0.5	0.001	0	0	0.2	0.3	_

6. What demographic groups might benefit from this regulation?

To determine whether or not to conduct a demographics analysis, which is an assessment of risks to individual demographic groups, we look at a combination of factors including the MIR, non-cancer TOSHI, population around the facilities in the source category and other relevant factors. For the Phosphoric Acid Manufacturing source category, the MIR is less than 1-in-1 million and the HI is less than 1. Therefore, we did not conduct an assessment of risks to individual demographic groups for this rulemaking. However, we did conduct a proximity analysis, which identifies any overrepresentation of minority, low income or indigenous populations near facilities in the source category. The results of this analysis are presented in the section of this preamble titled, "Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

C. What are our proposed decisions regarding risk acceptability, ample margin of safety and adverse environmental effects for the Phosphoric Acid Manufacturing source category?

1. Risk Acceptability

The risk assessment results for the phosphoric acid manufacturing source category indicate that all facilities have a cancer MIR less than 1-in-1 million. The maximum TOSHI is less than 1, and the maximum worst-case acute HQ is less than the AEGL–1 benchmark. Therefore, we propose that the risks posed by emissions from this source category are acceptable.

2. Ample Margin of Safety Analysis and Proposed Controls

Under the ample margin of safety analysis, we evaluate the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs evaluated under the technology review) that could be applied in this source category to further reduce the risks due to emissions of HAP identified in our risk assessment, as well as the health impacts of such potential additional measures. As noted in our discussion of the technology review in section III.C of this preamble, no measures (beyond those already in place or that we are proposing today under CAA sections 112(d)(2) and (d)(3)) were identified for reducing HAP emissions from the Phosphoric Acid Manufacturing source category. In addition, because our analyses show that the maximum baseline chronic cancer risk is below 1-in-1 million, the maximum chronic non-cancer HI is less than 1, and the worst-case acute HQ is less than the AEGL–1, minimal reductions in risk could be achieved even if we identified measures that could reduce HAP emissions further. Based on the discussion above, we propose that the current standards provide an ample margin of safety to protect public health.

Although the current standards were found to provide an ample margin of safety to protect public health, we also are proposing additional standards to address previously unregulated emissions of Hg and HF from phosphate rock calciners. We are proposing Hg emission limits and HF work practice standards for the phosphate rock calciners at phosphoric acid facilities, resulting in an estimated HAP reduction between 165 and 220 pounds per year of Hg. We are also proposing that sources develop management plans for fugitive emissions from cooling ponds and gypsum dewatering stacks. As noted above, we are proposing that the MACT standard, prior to the implementation of the proposed emission limits and work practice standards for phosphate rock calciners discussed in this section of the preamble and the fugitive emissions work practice standard, provides an ample margin of safety to protect public health. Therefore, we maintain that, after the implementation of the phosphate rock calciner emission limits and work practice standards, and the fugitive emissions work practice standard, the rule will continue to provide an ample margin of safety to protect public health. Consequently, we do not believe it will be necessary to conduct another residual risk review under CAA section 112(f) for this source category 8 years following promulgation of new emission limits and work practice standards for phosphate rock calciners and promulgation of new fugitive emission work practices, merely due to the addition of these MACT requirements. While our decisions on risk acceptability and ample margin of safety are supported even in the absence of these reductions (from calciners, cooling ponds and gypsum dewatering stacks), if we finalize the proposed requirements for these sources, they would further strengthen our conclusions that risk is acceptable with an ample margin of safety to protect public health.

Although we did not identify any new technologies to reduce risk from this source category, we are specifically requesting comment on whether there are additional control measures that may be able to reduce risks from the source category. We request any information on potential emission reductions of such measures, as well the cost and health impacts of such reductions to the extent they are known.

3. Adverse Environmental Effects

Based on the results of our environmental risk screening assessment, we conclude that there is not an adverse environmental effect as a result of HAP emissions from the Phosphoric Acid Manufacturing source category. We are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety and other relevant factors, an adverse environmental effect.

D. What are the results and proposed decisions based on our technology review for the Phosphoric Acid Manufacturing source category?

1. NESHAP Technology Review

In order to fulfill our obligations under CAA section 112(d)(6), we conducted a technology review to identify new developments that may

advise revisions to the current NESHAP standards applicable to the Phosphoric Acid Manufacturing source category (i.e., NESHAP subpart AA). In conducting our technology review for the Phosphoric Acid Manufacturing source category, we utilized the RBLC database and the data submitted by facilities in response to the April 2010 CAA section 114 request.

Based on our review of the RBLC, we did not find any new developments in practices, processes and control technologies that have been applied since the original NESHAP to reduce emissions from phosphoric acid manufacturing plants.

Based on our review of the CAA section 114 data (see memorandum, "CAA Section 111(b)(1)(B) and 112(d)(6) Reviews for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Source Categories," which is available in Docket No. EPA–HQ–OAR–2012–0522), we determined that the control technologies used to control stack emissions at phosphoric acid manufacturing plants have not changed since the EPA published the 1996 memorandum, "National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; Proposed Rules—Draft Technical Support Document and Additional Technical Information," which is available in Docket ID No. A–94–02.

In general, the Phosphoric Acid Manufacturing source category continues to use wet scrubbing technology to control HF emissions from the various processes located at this source category (e.g., WPPA, SPA and PPA). We did not identify any technical developments in wet scrubbing methods used at phosphoric acid manufacturing plants. As noted in the 1996 memorandum discussed above, the type and configuration of the wet scrubbing technology varies significantly between facilities and between process lines within a facility. In addition, electrostatic precipitators have been installed to control PM emissions at the phosphate rock calciners. In order to determine the differences in effectiveness of control technologies we identified, we reviewed the emissions data submitted by facilities in response to the April 2010 and January 2014 CAA section 114 requests.

For WPPA process lines, differences in facility emissions may be related to the control technology used; however, it is difficult to discern whether this is the case because each WPPA process line operates a unique equipment and control technology configuration (i.e., there are no WPPA process lines that operate in similar configurations for comparison).

We observed some differences in total F emissions from SPA process lines. However, we did not find any patterns in emissions reductions based on control technology used because most of the SPA process lines that were tested operate a unique equipment and control technology configuration. For all SPA process lines that we examined, emissions from the evaporators are sent to a single wet scrubber, but the type of wet scrubber used at these SPA process lines varies.

Some SPA process lines include an oxidation step to remove organic impurities from the acid. For one facility, we noted relatively high HF emissions from a currently uncontrolled oxidation process. The application of wet scrubbing control technology would be consistent with other SPA process lines, where all applicable emission points are controlled by wet scrubbers. Available information from similar sources controlled by wet scrubbers indicates that the use of wet scrubbing control technology would result in a reduction of emissions from the identified oxidation process to levels consistent with other industry wide SPA emissions. Because the facility already has wet scrubbing technology for their SPA process line, they should only need to install additional ductwork from the uncontrolled emission point to the wet scrubber. Therefore, it would not be necessary to install a new wet scrubber to control the oxidation process emissions. Refer to the memorandum, "Control Costs and Emissions Reductions for Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket, for additional discussion regarding the uncontrolled oxidation process.

For PPA process lines, it is not possible to discern whether the control technology used is more (or less) effective than another control technology because there is only one set of data.

We believe that observed differences in HAP emissions from WPPA, SPA and PPA process lines, except for the one uncontrolled oxidation process at a SPA process line, are the result of factors other than control technology (e.g., subtle differences in sampling and analytical techniques, age of control equipment and differences in facility operating parameters). Therefore, neither these data nor any other information we have examined show that there has been a significant improvement in the add-on control technology or other equipment since promulgation of NESHAP subpart AA.

There are six existing phosphate rock calciners located at one facility. These are the only phosphate rock calciners in the source category. The one facility with calciners had wet scrubbers installed prior to the current NESHP PM limits being promulgated. To meet the current PM limits, the facility added WESP in addition to the previously installed wet scrubbers. Based on the data submitted by facilities in response to the April 2010 CAA section 114 request, PM emissions from these units vary from 0.0012 to 0.0695 grains PM per dry standard cubic foot. This range of emissions indicate that the current limits represent expected performance of the control technology configuration. We did not identify any new cost-effective technologies that could reduce emissions further from this source. Based on this information, we are not proposing any revisions to the PM limits from calciners.

We also reviewed the CAA section 114 responses to identify any work practices, pollution prevention techniques and process changes at phosphoric acid manufacturing plants that could achieve emission reductions. We did not identify any developments regarding practices, techniques, or process changes that affect point source emissions from this source category. See the memorandum, "CAA Section 111(b)(1)(B) and 112(d)(6) Reviews for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Source Categories," which is available in the docket, for additional details on the technology review.

In light of the results of the technology review, we conclude that additional standards are not necessary pursuant to CAA section 112(d)(6) and we are not proposing changes to NESHAP subpart AA as part of our technology review. We solicit comment on our proposed decision.

2. NSPS Review

Pursuant to CAA section 111(b)(1)(B), we conducted a review to identify new developments that may advise revisions to the current NSPS standards applicable to the Phosphoric Acid Manufacturing source category (i.e., NSPS subparts T and U). This review considered both (1) whether developments in technology or other factors support the conclusion that a different system of emissions reduction has become the "best system of emissions reduction" and (2) whether emissions limitations and percent reductions beyond those required by the standards are achieved in practice.

As discussed in section IV.D.1 of this preamble, the EPA conducted a thorough search of the RBLC, section 114 data received from industry and other relevant sources. The emission sources for both NSPS and the control technologies that would be employed are the same as those used for the NESHAP regulating phosphoric acid plants, yielding the same results of no cost-effective emission reductions strategies being identified.

Therefore, we are proposing that revisions to NSPS subpart T and subpart U standards are not appropriate pursuant to CAA section 111(b)(1)(B). We solicit comment on our proposed determination.

E. What other actions are we proposing for the Phosphoric Acid Manufacturing source category?

In addition to the proposed actions described above, we are proposing additional revisions or clarifications. We are proposing clarifications to the applicability of NESHAP subpart AA, NSPS subpart T, and NSPS subpart U. In addition, we are proposing revisions to the startup, shutdown and malfunction (SSM) provisions of NESHAP subpart AA in order to ensure that they are consistent with the court decision in *Sierra Club* v. *EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing various other changes to testing, monitoring, recordkeeping and reporting requirements in NESHAP subpart AA, NSPS subpart T, and NSPS subpart U. Our analyses and proposed changes related to these issues are discussed in this section of this preamble.

1. Clarifications to Applicability and Certain Definitions

a. NESHAP Subpart AA

For the applicability section of NESHAP subpart AA, we determined that it was unclear whether emissions from clarifiers and defluorination systems at wet-process phosphoric acid process lines, and oxidation reactors at superphosphoric acid process lines, were regulated by the Phosphoric Acid Manufacturing NESHAP. To ensure the emission standards we are proposing reflect inclusion of HAP emissions from all sources in the defined source category, as initially intended in the rule promulgation, we believe it necessary to clarify the applicability of the NESHAP. Therefore, we are proposing to amend the definitions of wet-process phosphoric acid process line, superphosphoric acid process line and purified phosphoric acid process line to include relevant emission points, including clarifiers and defluorination systems at wet-process phosphoric acid process lines, and oxidation reactors at superphosphoric acid production lines. We are also proposing to remove text from the applicability section that is duplicative of the revised definitions. Defluorination of phosphoric acid is performed at several facilities with at least two facilities using diatomaceous earth for the process. Oxidation reactors are used in the production of SPA at four facilities to remove organics by mixing SPA with nitric acid, ammonium nitrate or potassium permanganate. These clarifications to the applicability and definitions of the standard are more reflective of the source category definition that includes any facility engaged in the production of phosphoric acid.

A technical memorandum, "Applicability Clarifications to the Phosphoric Acid Manufacturing Production Source Category," in the Docket ID No. EPA–HQ–OAR–2012–0522 provides further information on the applicability clarifications proposed in this action.

We also are proposing to revise the term "gypsum stack" to "gypsum dewatering stack" in order to help clarify the meaning of this fugitive emission source, and to alleviate any potential misconception that the "stack" is a point source. Other changes include the addition of definitions for "cooling pond," "phosphoric acid defluorination process," "process line" and "raffinate stream".

b. NSPS Subpart T

For the applicability section of NSPS subpart T, we determined that it was unclear whether emissions from clarifiers and defluorination systems at wet-process phosphoric acid plants were regulated by the NSPS. To ensure the emission standards we are proposing reflect inclusion of total F emissions from all sources in the defined source category, as initially intended in the rule promulgation, we believe it necessary to clarify the applicability of the NSPS. Therefore, we are proposing to amend the definition of wet-process phosphoric acid plant to include relevant emission points, including clarifiers and defluorination systems. We are also proposing to remove text from the applicability section that is duplicative of the revised definitions. Defluorination of phosphoric acid is performed at several facilities with at least two facilities using diatomaceous earth for the process. These clarifications to the applicability and definitions of the standard are more reflective of the source category definition that includes any facility engaged in the production of phosphoric acid.

A technical memorandum, "Applicability Clarifications to the Phosphoric Acid Manufacturing Production Source Category," in the Docket ID No. EPA–HQ–OAR–2012–0522 provides further information on the applicability clarifications proposed in this action.

c. NSPS Subpart U

For the applicability section of NSPS subpart U, we determined that it was unclear whether emissions from oxidation reactors at superphosphoric acid plants were regulated by the NSPS. To ensure the emission standards we are proposing reflect inclusion of total F emissions from all sources in the defined source category, as initially intended in the rule promulgation, we believe it necessary to clarify the applicability of the NSPS. Therefore, we are proposing to amend the definition of superphosphoric acid plant to include relevant emission points, including oxidation reactors. We are also proposing to remove text from the applicability section that is duplicative of the revised definitions. Oxidation reactors are used in the production of SPA at four facilities to remove organics by mixing SPA with nitric acid, ammonium nitrate, or potassium permanganate. These clarifications to the applicability and definitions of the standard are more reflective of the source category definition that includes any facility engaged in the production of phosphoric acid.

A technical memorandum, "Applicability Clarifications to the Phosphoric Acid Manufacturing Production Source Category," in the Docket ID No. EPA–HQ–OAR–2012–0522 provides further information on the applicability clarifications proposed in this action.

2. What are the startup, shutdown and malfunction requirements?

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM (*Sierra Club* v. *EPA*, 551 F.3d 1019 (D.C. Cir. 2008), *cert. denied*, 130 S. Ct. 1735 (U.S. 2010)). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1) holding

that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA*, the EPA is proposing standards in this rule that apply at all times. We are also proposing several revisions to appendix A of subpart AA (the General Provisions Applicability Table) as explained in more detail below. For example, we are proposing to eliminate the incorporation of the requirement in the General Provisions that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

For the reasons explained below, we are proposing work practice standards for periods of startup and shutdown in lieu of numerical emission limits. CAA section 112(h)(1) states that the Administrator may promulgate a design, equipment or operational work practice standard in those cases where, in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard. CAA section 112(h)(2)(B) further defines the term "not feasible" in this context to apply when "the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations."

Startup and shutdown periods at phosphoric acid manufacturing facilities generally only last between 30 minutes to 6 hours. Because of the variability and the relatively short duration compared to the time needed to conduct a performance test, which typically requires a full working day, the EPA has determined that it is not feasible to prescribe a numerical emission standard for these periods. Furthermore, according to information provided by industry, it is possible that the feed rate (i.e., equivalent P_2O_5 feed, or rock feed) can be zero during startup and shutdown periods. During these periods, it is not feasible to consistently enforce the emission standards that are expressed in terms of lb of pollutant/ton of feed.

Although we requested information on emissions and the operation of control devices during startup and shutdown periods in the CAA section 114 survey issued to the Phosphoric Acid Manufacturing source category, we did not receive any emissions data collected during a startup and shutdown period, and we do not expect that these data exist. However, based on the information for control device operation received in the survey, we concluded that the control devices could be operated normally during periods of startup or shutdown. Also, we believe that the emissions generated during startup and shutdown periods are lower than during steady-state conditions because the amount of feed materials introduced to the process during those periods is lower compared to normal operations. Therefore, if the emission control devices are operated during startup and shutdown, then HAP emissions will be the same or lower than during steady-state operating conditions.

Consequently, we are proposing a work practice standard rather than an emissions limit for periods of startup or shutdown. Control devices used on the various process lines in this source category are effective at achieving desired emission reductions immediately upon start-up. Therefore, during startup and shutdown periods, we are proposing that sources begin operation of any control device(s) in the production unit prior to introducing any feed into the production unit. We are also proposing that sources must continue operation of the control device(s) through the shutdown period until all feed material has been processed through the production unit.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition sudden, infrequent and not reasonably preventable failures of emissions control, process or monitoring equipment. The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation "achieved" by the best-performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the EPA to consider malfunctions in determining the level "achieved" by the best performing sources when setting emission standards. As the United States Court of Appeals for the District of Columbia Circuit has recognized, the phrase "average emissions limitation achieved by the best performing 12 percent of" sources "says nothing about how the performance of the best units is to be calculated." *Nat'l Ass'n of Clean Water Agencies* v. *EPA*, 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the agency to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a "normal or usual manner" and no statutory language compels EPA to consider such events in setting CAA section 112 standards.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. For these reasons, the performance of units that are malfunctioning is not "reasonably" foreseeable. See, e.g., *Sierra Club* v. *EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999) (the EPA typically has wide latitude in determining the extent of data gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to "invest the resources to conduct the perfect study."). See also, *Weyerhaeuser* v. *Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99 percent removal goes off-line as a result of a malfunction (as

might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations, and the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing, non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good-faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112 standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation" 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112, is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

In several prior CAA section 112 rules, the EPA had included an affirmative defense to civil penalties for violations caused by malfunctions in an effort to create a system that incorporates some flexibility, recognizing that there is a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances entirely beyond the control of the source. Although the EPA recognized that its case-by-case enforcement discretion provides sufficient flexibility in these circumstances, it included the affirmative defense to provide a more formalized approach and more regulatory clarity. See *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal case-by-case enforcement discretion approach is adequate); but see *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977) (requiring a more formalized approach to consideration of "upsets beyond the control of the permit holder."). Under the EPA's regulatory affirmative defense provisions, if a source could demonstrate in a judicial or administrative proceeding that it had met the requirements of the affirmative defense in the regulation, civil penalties would not be assessed. Recently, the United States Court of Appeals for the District of Columbia Circuit vacated an affirmative defense in one of the EPA's CAA section 112 regulations. *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir., 2014) (vacating affirmative defense provisions in CAA section 112 rule establishing emission standards for Portland cement kilns). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the EPA. Specifically, the court found: "As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are 'appropriate.'" See NRDC, 2014 U.S. App. LEXIS 7281 at *21 ("[U]nder this statute, deciding whether penalties are 'appropriate' in a given private civil suit is a job for the courts, not EPA.").[28] In light of NRDC, the EPA is not including a regulatory affirmative defense provision in the proposed rule. As explained above, if a source is unable to comply with emissions standards as a result of a malfunction, the EPA may use its case-by-case enforcement discretion to provide flexibility, as appropriate. Further, as the D.C. Circuit recognized, in an EPA or citizen enforcement action, the court has the discretion to consider any defense raised and determine whether penalties are appropriate. Cf. NRDC, 2014 U.S. App. LEXIS 7281 at *24 (arguments that violation were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises). The same is true for the presiding officer in EPA administrative enforcement actions.[29]

a. 40 CFR 63.608(b) General Duty

We are proposing to revise the entry for 40 CFR 63.6(e)(1)(i) and (e)(1)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.608(b) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown and malfunction events in describing the general duty. Therefore, the language the EPA is proposing does not include that language from 40 CFR 63.6(e)(1). We are also proposing to revise the entry for 40 CFR 63.6(e)(1)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant of the general duty requirement being added at 40 CFR 63.608(b).

b. SSM Plan

We are proposing to revise the entry for 40 CFR 63.6(e)(3) in the General

[28] The court's reasoning in *NRDC* focuses on civil judicial actions. The Court noted that "EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court." *Id.*

[29] Although the *NRDC* case does not address the EPA's authority to establish an affirmative defense to penalties that is available in administrative enforcement actions, the EPA is not including such an affirmative defense in the proposed rule. As explained above, such an affirmative defense is not necessary. Moreover, assessment of penalties for violations caused by malfunctions in administrative proceedings and judicial proceedings should be consistent. *Cf.* CAA section 113(e) (requiring both the Administrator and the court to take specified criteria into account when assessing penalties).

Provisions table (appendix A) by changing the "yes" in column three to a "no." Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the entry for 40 CFR 63.6(f) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

d. 40 CFR 63.606 Performance Testing

We are proposing to revise the entry for 40 CFR 63.7(e)(1) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.606(d). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The proposed regulatory text does not allow testing during startup, shutdown or malfunction. The proposed regulatory does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered "representative" for purposes of performance testing. Furthermore, as in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of operating conditions.

We are proposing that sources conduct performance tests during "maximum representative operating conditions for the process". Specifically, we are proposing that sources must operate your process during the performance test in such a way that results in the flue gas characteristics that are the most difficult for reducing emissions of the regulated pollutant(s) by the control device used. In an effort to provide more flexibility to owners and operators regarding the identification of the proper testing conditions, the most difficult condition for the control device may include, but is not limited to, the highest HAP mass loading rate to the control device, or the highest HAP mass loading rate of constituents that approach the limits of solubility for scrubbing media. The EPA understands that there may be cases where efficiencies are dependent on other characteristics of emission streams, including the characteristics of components and the operating principles of the devices. For example, the solubility of emission stream components in scrubbing media, or emission stream component affinity in carbon adsorption systems can also define the most difficult condition for a particular control device. The EPA is also proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent maximum representative operating conditions. Section 63.7(e) requires that the owner or operator make available to the Administrator upon request such records "as may be necessary to determine the condition of the performance test," but did not specifically require the owner or operator to record the information. The regulatory text the EPA is proposing to add builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the entry for 40 CFR 63.8(c)(1)(i) and (iii) in the General Provisions table by changing the "yes" in column three to a "no." The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

We are proposing to revise the entry for 40 CFR 63.8(d)(3) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement, which is no longer applicable. The EPA is proposing to add to the rule at 40 CFR 63.608(c)(4) text that is identical to 40 CFR 63.8(d)(3), except that the final sentence is replaced with the following sentence: "You must include the program of corrective action required under § 63.8(d)(2) in the plan."

f. 40 CFR 63.607 Recordkeeping

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(i) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.607(b). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and that the source record the date, time and duration of the failure rather than the "occurrence." The EPA is also proposing to add to 40 CFR 63.607(b) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the volume of each regulated pollutant emitted over the applicable standard and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data

that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(iv) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.607.

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(v) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the entry for 40 CFR 63.10(c)(15) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

g. 40 CFR 63.607 Reporting

We are proposing to revise the entry for 40 CFR 63.10(d)(5) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.607. The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the excess emission report already required under this rule. We are proposing that the report must contain the number, date, time, duration and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions (e.g., product-loss calculations, mass balance calculations, direct measurements or engineering judgment based on known process parameters). The EPA is proposing this requirement to ensure that adequate information is available to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

The proposed rule eliminates the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously-required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements. We are proposing that owners or operators no longer be required to determine whether actions taken to correct a malfunction are consistent with an SSM plan because the plans would no longer be required.

We are proposing to revise the entry for 40 CFR 63.10(d)(5)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(d)(5)(ii) describes an immediate report for SSM when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown or malfunction were not consistent with an SSM plan because the plans would no longer be required.

3. Testing, Monitoring, Recordkeeping and Reporting

a. NESHAP Subpart AA

For wet scrubbers, we are proposing alternatives to the existing requirement to monitor pressure differential across the scrubber. We received input from industry that the pressure differential is not a reliable method of determining the performance of a scrubber because fouling occurs over time, increasing the pressure differential. The pressure differential immediately after cleaning will be much lower than that after the scrubber has operated for some time. Therefore, to provide flexibility, we have included several monitoring options, including pressure and temperature measurements, as alternatives to monitoring of scrubber differential pressure. We are also adding flexibility in the existing requirement to measure the flow rate of the scrubbing liquid to each scrubber (i.e., the inlet liquid flow rate to a scrubber). We are proposing that the inlet liquid-to-gas ratio may now be monitored in lieu of the inlet liquid flow rate, which provides the ability to lower liquid flow rate with changes in gas flow rate to the scrubber.

We are removing the requirement that facilities may not implement new operating parameter ranges until the Administrator has approved them, or 30 days have passed since submission of the performance test results. For the proposed requirements, facilities must immediately comply with new operating ranges when they are developed and submitted. New operating ranges must also be established using the most recent performance test conducted by a facility, which allows for changes in control device operation to be appropriately reflected.

Because control devices may be necessary to meet the proposed Hg limits for phosphate rock calciners, we are proposing monitoring and testing requirements in subpart AA for the two types of control systems evaluated as alternatives for control of Hg: Adsorbers (typically fixed bed carbon), and sorbent injection (i.e., ACI) followed by a WESP or followed by fabric filtration. We are also proposing the addition of methods to monitor emissions of Hg using continuous emissions monitoring systems (CEMS).

As described in section IV.E.2.d of this preamble, for all processes, we have also modified the language for the conditions under which testing must be conducted to require that testing be conducted at maximum representative operating conditions for the process.

In keeping with the general provisions for continuous monitoring systems (CMS) (including CEMS and continuous parameter monitoring system (CPMS)), we are proposing the addition of a site-specific monitoring plan and calibration requirements for CMS. Provisions are also included for electronic reporting of stack test data.

We have also modified the format of the NESHAP to reference tables for emissions limits and monitoring requirements.

b. NSPS Subpart T

The EPA evaluated the monitoring and recordkeeping requirements currently required in NSPS subpart T to determine if they are adequate for determining compliance. Currently under NSPS subpart T, an owner or operator of a wet-process phosphoric acid plant is required to install, calibrate, maintain and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. However, the current rule does not require an owner or operator to establish, and demonstrate continuous compliance with, an allowable range for the pressure drop through the process scrubbing system. Therefore, we are proposing new monitoring and recordkeeping requirements for any wet-process phosphoric acid plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] to ensure continuous compliance with the standard.

We are proposing that for any wet-process phosphoric acid plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] the owner or operator establish an allowable range for the pressure drop through the process scrubbing system. The allowable range would be established during the performance test required in 40 CFR 60.8. We also propose that the allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test. In addition, the owner or operator would be required to maintain the daily average pressure drop through the process scrubbing system within the allowable range; and valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average. We also propose that the owner or operator keep records of the daily average pressure drop through the process scrubbing system, and keep records of deviations. We are proposing these monitoring and recordkeeping requirements in order to: Ensure that the process scrubbing system is properly maintained over time; ensure continuous compliance with standards; and improve data accessibility.

Finally, for consistency with terminology used in the associated NESHAP subpart AA, we have changed the term "process scrubbing system" to "absorber."

We do not expect any costs associated with these proposed monitoring and recordkeeping requirements. These proposed requirements will only apply to new sources, and we are not aware of any planned new sources. Also, we believe that most, if not all, new sources will be exempt from NSPS subpart T compliance due to the likelihood of the new source being subject to NESHAP subpart AA.

c. NSPS Subpart U

The EPA evaluated the monitoring and recordkeeping requirements currently required in NSPS subpart U to determine if they are adequate for determining compliance. Currently under NSPS subpart U, an owner or operator of a superphosphoric acid plant is required to install, calibrate, maintain and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. However, the current rule does not require an owner or operator to establish, and demonstrate continuous compliance with, an allowable range for the pressure drop through the process scrubbing system. Therefore, we are proposing new monitoring and recordkeeping requirements for any superphosphoric acid plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] to ensure continuous compliance with the standard.

We are proposing that for any superphosphoric acid plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] the owner or operator establish an allowable range for the pressure drop through the process scrubbing system. The allowable range would be established during the performance test required in 40 CFR 60.8. We also propose that the allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test. In addition, the owner or operator would be required to maintain the daily average pressure drop through the process scrubbing system within the allowable range; and valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average. We also propose that the owner or operator keep records of the daily average pressure drop through the process scrubbing system, and keep records of deviations. We are proposing these monitoring and recordkeeping requirements in order to: ensure that the process scrubbing system is properly maintained over time; ensure continuous compliance with standards; and improve data accessibility.

Finally, for consistency with terminology used in the associated NESHAP subpart AA, we have changed the term "process scrubbing system" to "absorber."

We do not expect any costs associated with these proposed monitoring and recordkeeping requirements. These proposed requirements will only apply to new sources, and we are not aware of any planned new sources. Also, we believe that most, if not all, new sources will be exempt from NSPS subpart U compliance due to the likelihood of the new source being subject to NESHAP subpart AA.

4. Translation of Total F to HF Emission Limits

The EPA is proposing to translate the current total F limit (lb total F/ton P_2O_5 feed) into an HF limit (lb HF/ton P_2O_5 feed). The current standard uses total F as a surrogate for HF, and as such, the standard allows for a scenario where 100 percent of all total F emissions could be HF. Therefore, we are proposing HF limits as the same numeric values as the current total F limits. We recognize that on a mass basis, HF emissions will be slightly greater than total F emissions; however, this relatively small difference of approximately 5 percent is negligible in measurement of the pollutant. Additionally, based on test data provided by industry, the EPA believes that moving to a form of the standard that requires HF to be measured, but retains the same numeric values as the current total F standards will be achievable by all facilities. We are proposing that sources would annually demonstrate compliance with the HF limit using EPA Method 320.

The resulting new and existing HF emission source limits are summarized in Table 6 of this preamble.

TABLE 6—SUMMARY OF PROPOSED HF EMISSION LIMITS FOR NEW AND EXISTING PHOSPHORIC ACID FACILITIES

Regulated process	Current total F limits *		Proposed HF limits *	
	Existing	New	Existing	New
WPPA Line	0.020	0.0135	0.020	0.0135
SPA Line	0.010	0.00870	0.010	0.00870

* All limits expressed as lbs/ton P_2O_5 feed.

With this proposal, we are seeking comment on finalizing the HF limit for regulating HF emissions using the target HAP (HF), instead of the long-standing surrogate for HF, total F. We invite comment on determining and setting a standard for HF in lieu of the existing total F standard. We solicit comment on our proposed decision.

We also seek comment on the use of EPA Method 320 for the compliance demonstration test method. Additionally, we solicit comment on the use of Fourier transform infrared spectroscopy (FTIR) HF CEMS as an optional continuous monitoring compliance approach within the rule. We also invite comment on the use of an HF emission standard where a source using an HF CEMS would comply with a 30-day rolling average emission limit, and annual relative accuracy test audit (RATA) certifications of CEMS. A technical memorandum, "Hydrogen Fluoride Continuous Emission Monitoring and Compliance Determination with EPA Method 320," in the Docket ID No. EPA–HQ–OAR–2012–0522 outlines technical detail on the use of HF CEMS and is provided as guidance for comments regarding details of a continuous HF monitoring option.

To allow facilities flexibility in demonstrating compliance, we are also considering an option to maintain the existing total F limits as an alternative addition to the proposed HF limits. Facilities would be required to comply with all of the provisions in this proposed rulemaking, including the emission standards, and the operating, monitoring, notification, recordkeeping and reporting requirements; however, facilities would have the option to comply with either the proposed HF limits using EPA Method 320, or the current total F limits using EPA Method 13B. This option would be implemented by revising 40 CFR 63.602(a) and Tables 1, 1a, 2 and 2a to subpart AA to include both HF and total F limits; all other provisions would remain as proposed in subpart AA. We solicit comment on allowing facilities to demonstrate compliance with the current total F limits as an alternative to the proposed HF limits.

F. What are the notification, recordkeeping and reporting requirements for the Phosphoric Acid Manufacturing source category?

In this proposal, the EPA is describing a process to increase the ease and efficiency of submitting performance test data while improving data accessibility. Specifically, the EPA is proposing that owners and operators of phosphoric acid manufacturing facilities submit electronic copies of required performance test and performance evaluation reports by direct computer-to-computer electronic transfer using EPA-provided software. The direct computer-to-computer electronic transfer is accomplished through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). The CDX is the EPA's portal for submittal of electronic data. The EPA-provided software is called the Electronic Reporting Tool (ERT), which is used to generate electronic reports of performance tests and evaluations. The ERT generates an electronic report package that facilities will submit using CEDRI. The submitted report package will be stored in the CDX archive (the official copy of record) and the EPA's public database called WebFIRE. All stakeholders will have access to all reports and data in WebFIRE and accessing these reports and data will be very straightforward and easy (see the WebFIRE Report Search and Retrieval link at *http://cfpub.epa.gov/webfire/index.cfm?action=fire.searchERTSubmission*). A description and instructions for use of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/index.html* and CEDRI can be accessed through the CDX Web site (*www.epa.gov/cdx*). A description of the WebFIRE database is available at: *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main*.

The proposal to submit performance test data electronically to the EPA applies only to those performance tests and/or performance evaluations conducted using test methods that are supported by the ERT. The ERT supports most of the commonly used EPA reference test methods. A listing of the pollutants and test methods supported by the ERT is available at: *http://www.epa.gov/ttn/chief/ert/index.html*.

We believe that industry would benefit from this proposed approach to electronic data submittal. Specifically, by using this approach, industry will save time in the performance test submittal process. Additionally, the standardized format that the ERT uses allows sources to create a more complete test report, resulting in less time spent on backfilling data if a source failed to submit all required data elements. Also through this proposal, industry may only need to submit a report once to meet the requirements of the applicable subpart because stakeholders can readily access these reports from the WebFIRE database. This also benefits industry by reducing recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be retained in hard copy, thereby, reducing staff time needed to coordinate these records.

Because the EPA will already have performance test data in hand, another benefit to industry of electronic reporting is that fewer or less substantial data collection requests in conjunction with prospective required residual risk assessments or technology reviews will be needed. This would result in a decrease in staff time needed to respond to data collection requests.

State, local and tribal air pollution control agencies may also benefit from having electronic versions of the reports they are now receiving. For example, state, local and tribal air pollution control agencies may be able to conduct a more streamlined and accurate review of electronic data submitted to them. For example, the ERT would allow for an electronic review process, rather than a manual data assessment, therefore, making their review and evaluation of the source-provided data and calculations easier and more efficient. In addition, the public stands to benefit from electronic reporting of emissions data because the electronic data will be easier for the public to access. The methods and procedures for collecting, accessing and reviewing air emissions

data will be more transparent for all stakeholders.

One major advantage of the proposed submittal of performance test data through the ERT is a standardized method to compile and store much of the documentation required to be reported by this rule. The ERT clearly states the information required by the test method and ERT has the ability to house additional data elements that might be required by a delegated authority.

In addition, the EPA must have performance test data to conduct effective reviews of CAA sections 112 standards as well as for many other purposes including compliance determinations, emission factor development and annual emission rate determinations. In conducting these required reviews, the EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators, to locate, collect and submit performance test data. Also, in recent years, stack testing firms have typically collected performance test data in electronic format, making it possible to move to an electronic data submittal system that would increase the ease and efficiency of data submittal and improve data accessibility.

A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. With timely receipt and incorporation of data from most performance tests, the EPA would be able to ensure that emission factors, when updated, represent the most current range of operational practices. Finally, another benefit of the proposed electronic data submittal to WebFIRE is that these data would greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data that the EPA evaluates to develop emissions factors.

In summary, in addition to supporting regulation development, control strategy development and other air pollution control activities, having an electronic database populated with performance test data would save industry, state, local, tribal agencies and the EPA significant time, money and effort while also improving the quality of emission factors and inventories and air quality regulations.

G. What compliance dates are we proposing for the Phosphoric Acid Manufacturing source category?

We are proposing that facilities must comply with the proposed Hg limits for existing rock calciners no later than 3 years after the effective date of this rule. We are proposing a 3-year compliance lead time so that facilities with existing rock calciners have adequate time to design and install additional controls and demonstrate compliance, including the time necessary to: construct control devices; seek bids, select a vendor and install and test the new equipment; and purchase and install compliance monitoring equipment and implement quality assurance measures. We believe that three years are needed for facilities with existing rock calciners to complete the steps described above and achieve compliance with the proposed standards. For new rock calciners that commence construction or reconstruction after December 27, 1996, and on or before the effective date of this rule, we are proposing that facilities must comply with the proposed Hg limits no later than 1 year after the effective date of this rule. New rock calciners that commence construction or reconstruction after the effective date of this rule would comply with the proposed Hg limits immediately upon startup. We are also proposing the compliance date for HF work practice standards for all (existing and new) rock calciners is the effective date of this rule. Based on the data that the EPA has received, all rock calciners are meeting the HF work practice standard; therefore, no additional time would be required to achieve compliance with this HF work practice standard. We specifically seek comment on the compliance dates proposed for regulating Hg and HF from new and existing phosphate rock calciners.

In addition, for existing gypsum dewatering stack or cooling ponds, we are proposing that facilities must prepare and comply with a gypsum dewatering stack and cooling pond management plan to control fugitive HF emissions no later than 1 year after the effective date of this rule. For new gypsum dewatering stack or cooling ponds, we are proposing that facilities must prepare and comply with a gypsum dewatering stack and cooling pond management plan to control fugitive HF emissions beginning on the effective date of this rule.

We are also proposing that for existing and new wet-process phosphoric acid process lines and superphosphoric acid process lines that commence construction or reconstruction on or before the effective date of this rule, the facility must comply with the proposed HF limits no later than 1 year after the effective date of this rule. Facilities will continue to conduct the annual performance test, but will be required to use a different test method. Therefore, we are proposing a one-year compliance lead time so that facilities have adequate time to coordinate performance testing with the new test method. We do not anticipate that any facilities will need to install a new control device to meet the proposed HF limits. For new wet-process phosphoric acid process lines and superphosphoric acid process lines that commence construction or reconstruction after the effective date of this rule, the facility must comply with the proposed HF limits beginning on the effective date of this rule. Prior to these compliance dates (for HF limits), we are proposing that facilities continue to comply with the current total F standards.

We are also proposing that the compliance date for the amended SSM requirements is the effective date of this rule.

V. Analytical Results and Proposed Decisions for the Phosphate Fertilizer Production Source Category

A. What are the results of the risk assessment and analyses for the Phosphate Fertilizer Production source category?

The preamble sections below summarize the results of the risk assessments for the Phosphate Fertilizer Production source category. The complete risk assessment, *Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing,* is available in the docket for this action.

1. Inhalation Risk Assessment Results

The basic chronic inhalation risk estimates presented here are the maximum individual lifetime cancer risk, the maximum chronic HI and the cancer incidence. We also present results from our acute inhalation impact screening in the form of maximum HQs, as well as the results of our preliminary screening for potential non-inhalation risks from PB–HAP. Also presented are the HAP "drivers," which are the HAP that collectively contribute 90 percent of the maximum cancer risk or maximum HI at the highest exposure location.

The inhalation risk results for this source category indicate that maximum lifetime individual cancer risks are less than 1-in-1 million. The total estimated cancer incidence from this source category is 0.001 excess cancer cases per year, or one excess case in every 1,000 years. The maximum chronic non-cancer TOSHI value for the source category could be up to 0.1 associated with emissions of manganese, indicating no significant potential for chronic non-cancer impacts.

We analyzed the potential differences between actual emissions levels and calculated the maximum emissions allowable under the MACT standards for every emission process group for this source category. Based upon the above analysis, we multiplied the modeled actual risks for the MIR facility with site-specific process multipliers to estimate allowable risks under the MACT. We deemed this approach sufficient due to the low actual modeled risks for the source category. The maximum lifetime individual cancer risks based upon allowable emissions are still less than 1-in-1 million. The maximum chronic non-cancer TOSHI value is also estimated at an HI of 0.1.

2. Acute Risk Results

Worst-case acute HQs were calculated for every HAP that has an acute benchmark. There were no phosphate fertilizer production facilities identified with HQ values greater than 1.

3. Multipathway Risk Screening Results

For the Phosphate Fertilizer Production source category, the EPA conducted a Tier I screening-level evaluation of the potential human health risks associated with emissions of PB–HAP. The PB–HAP emitted by facilities in this category include Hg compounds (11 facilities), Pb compounds (11 facilities), and cadmium compounds (11 facilities). We compared reported emissions of PB–HAP to the Tier I screening emission thresholds established by the EPA for the purposes of the RTR risk assessments. One facility emitted Hg^{2+} above the Tier I screening threshold level, exceeding the screening threshold by a factor of 20. Consequently, we found it necessary to conduct a Tier II screening assessment.

For the Tier II screening assessment, we refined our Hg^{2+} analysis with additional site-specific information. The additional site-specific information included the land use around the facilities, the location of fishable lakes and local meteorological data such as wind direction. The result of this analysis was the development of a site-specific emission screening threshold for Hg^{2+}. This assessment uses the assumption that the biological productivity limitation of each lake is 1 gram of fish per acre of water, meaning that in order to fulfill the adult ingestion rate, the fisher will need to fish from 373 total acres of lakes. The result of this analysis was the development of a site-specific emission screening threshold for Hg^{2+}. We compared this Tier II screening threshold for Hg^{2+} to the facility's Hg^{2+} emissions. The facility's emissions exceeded the Tier II screening threshold, by a factor of 3.

To refine our Hg Tier II Screen for this facility, we first examined the set of lakes from which the angler ingested fish. Any lakes that appeared to not be fishable or publicly accessible were removed from the assessment, and the screening assessment was repeated. After we made the determination the three critical lakes were fishable, we analyzed the hourly meteorology data from which the Tier II meteorology statistics were derived. Using buoyancy and momentum equations from literature, and assumptions about facility fenceline boundaries, we estimated by hour the height achieved by the emission plume before it moved laterally beyond the assumed fenceline. If the plume height was above the mixing height, we assumed there was no chemical exposure for that hour. The cumulative loss of chemical being released above the mixing height reduces the exposure and decreases the Tier II screening quotient. The refined Tier II analysis for mercury emissions indicated a 23-percent loss of emissions above mixing layer due to plume rise, this reduction still resulted in an angler screening non-cancer value equal to 2.

For this facility, after we performed the lake and plume rise analyses, we reran the relevant Tier II screening scenarios for the travelling subsistence angler in TRIM.FaTE with the same hourly meteorology data and hourly plume-rise adjustments from which the Tier II meteorology statistics were derived. The utilization of the time-series meteorology reduced the screening value further to a value of 0.6. For this source category our analysis indicated no potential for multipathway impacts of concern from this facility.

For the other PB–HAP emitted by facilities in the source category, no facilities emit cadmium above the Tier I screening threshold level. Lead is a PB–HAP, but the NAAQS value (which was used for the chronic noncancer risk assessment) takes into account multipathway exposures, so a separate multipathway screening value was not developed. Since we did not estimate any exceedances of the NAAQS in our chronic noncancer risk assessment, we do not expect any significant multipathway exposure and risk due to Pb emissions from these facilities. For more information on the multipathway screening assessment conducted for this source category, see the memorandum, "Draft Residual Risk Assessment for Phosphate Fertilizer Production and Phosphoric Acid Manufacturing" provided in the docket for this rulemaking.

4. Environmental Risk Screening Results

As described in section III.A.5 of this preamble, we conducted an environmental risk screening assessment for the Phosphate Fertilizer Production source category. In the Tier I screening analysis for PB–HAP (other than Pb, which was evaluated differently as noted in section III.A.5 of this preamble) none of the individual modeled concentrations for any facility in the source category exceeds any of the ecological benchmarks (either the LOAEL or NOAEL). Therefore, we did not conduct a Tier II assessment. For Pb, we did not estimate any exceedances of the secondary Pb NAAQS.

For acid gases, the average modeled concentration around each facility (i.e., the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark (either the LOAEL or NOAEL). HCl emissions were not identified from the category. For HF, each individual concentration (i.e., each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities. We did not identify an adverse environmental effect as defined in CAA section 112(a)(7) from HAP emissions from this source category.

5. Facility-Wide Risk Results

The facility-wide MIR and TOSHI are based on emissions, as identified in the NEI, from all emissions sources at the identified facilities. The results of the facility-wide analysis indicate that all 11 facilities with phosphate fertilizer production have a facility-wide cancer MIR less than or equal to 1-in-1 million. The maximum facility-wide TOSHI for the source category is 0.2. The risk results are summarized in Table 7 of this preamble.

TABLE 7—HUMAN HEALTH RISK ASSESSMENT FOR PHOSPHATE FERTILIZER PRODUCTION

Category & number of facilities modeled	Cancer MIR (in 1 million)		Cancer incidence (cases per year)	Population with risks of 1-in-1 million or more	Population with risks of 10–in-1 million or more	Max chronic non-cancer HI		Worst-case max acute non-cancer HQ
	Based on actual emissions	Based on allowable emissions				Based on actual emissions	Based on allowable emissions	
Phosphate Fertilizer. (11 facilities)	0.5	0.5	0.001	0	0	0.02	0.02	HQ_{REL} = 0.4 (elemental Hg). HQ_{AEGL-1} = 0.09 (hydrofluoric acid).
Facility-wide (11 facilities).	0.5	0.5	0.001	0	0	0.2	0.3	–

6. What demographic groups might benefit from this regulation?

To determine whether or not to conduct a demographics analysis, we look at a combination of factors including the MIR, non-cancer TOSHI, population around the facilities in the source category, and other relevant factors. For the Phosphate Fertilizer Production source category, the MIR is less than 1-in-1 million, and the HI is less than 1 and, therefore, we did not conduct an assessment of risks to individual demographic groups for this rulemaking. However, we did conduct a proximity analysis, which identifies any overrepresentation of minority, low income or indigenous populations near facilities in the source category. The results of this analysis are presented in section IX.J of this preamble.

B. What are our proposed decisions regarding risk acceptability, ample margin of safety and adverse environmental effects for the Phosphate Fertilizer Production source category?

1. Risk Acceptability

The results of both the source category and facility-wide risk assessments indicate that all phosphate fertilizer production facilities have a cancer MIR less than 1-in-1 million. The maximum source category and facility-wide TOSHI are both less than 1, and the maximum worst-case acute non-cancer HQ is less than 1. We propose that the risks posed by emissions from this source category are acceptable.

2. Ample Margin of Safety Analysis and Proposed Controls

Under the ample margin of safety analysis, we evaluate the cost and feasibility of available control technologies and other measures (including the controls, measures and costs evaluated under the technology review) that could be applied in this source category to further reduce the risks due to emissions of HAP identified in our risk assessment, as well as the health impacts of such potential additional measures. As noted in our discussion of the technology review in section V.C of this preamble, no measures (beyond those already in place) were identified for reducing HAP emissions from the Phosphate Fertilizer source category. In addition, because our analyses show that the maximum baseline chronic cancer risk is below 1-in-1 million, the maximum chronic non-cancer HI is less than 1, and the worst-case acute HQ is less than the CA–REL, minimal reductions in risk could be achieved even if we identified measures that could reduce HAP emissions further. Based on the discussion above, we propose that the current standards provide an ample margin of safety to protect public health.

Though we did not identify any new technologies to reduce risk from this source category, we are specifically requesting comment on whether there are additional control measures that may be able to reduce risks from the source category. We request any information on potential emission reductions of such measures, as well as the cost and health impacts of such reductions to the extent they are known.

3. Adverse Environmental Effects

Based on the results of our environmental risk screening assessment, we conclude that there is not an adverse environmental effect as a result of HAP emissions from the Phosphate Fertilizer Production source category. We are proposing that it is not necessary to set a more stringent standard to prevent an adverse environmental effect, taking into consideration costs, energy, safety and other relevant factors.

C. What are the results and proposed decisions based on our technology review for the Phosphate Fertilizer Production source category?

1. NESHAP Technology Review

In order to fulfill our obligations under CAA section 112(d)(6), we conducted a technology review to identify new developments that may warrant revisions to the current NESHAP standards applicable to the Phosphate Fertilizer Production source category (i.e., NESHAP subpart BB). In conducting our technology review for the Phosphate Fertilizer Production source category, we utilized the RBLC database and the data submitted by facilities in response to the April 2010 CAA section 114 request.

Based on our review of the RBLC, we did not find any new developments in practices, processes and control technologies that have been applied since the original NESHAP to reduce emissions from phosphate fertilizer production plants.

Based on our review of the CAA section 114 data (see memorandum, "CAA Section 111(b)(1)(B) and 112(d)(6) Reviews for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Source Categories," which is available in Docket No. EPA–HQ–OAR–2012–0522), we determined that the control technologies used at phosphate fertilizer production plants have not changed since the EPA published the 1996 memorandum, "National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; Proposed Rules—Draft Technical Support Document and Additional Technical Information," which is available in Docket ID No. A–94–02.

In general, the Phosphate Fertilizer Production source category continues to use wet scrubbing technology to control HF emissions from the APF processes. We did not identify any technical

developments in wet scrubbing methods used at phosphate fertilizer production plants. As noted in the memorandum discussed above, the type and configuration of the wet scrubbing technology varies significantly between facilities and between process lines within a facility. In order to determine the differences in effectiveness of control device technologies we identified, we reviewed the emissions data submitted by facilities in response to the April 2010 and January 2014 CAA section 114 requests.

For APF process lines, we identified four control technology configurations from the CAA section 114 data. However, based on the available emissions data, we could not distinguish one configuration that clearly achieved greater emissions reductions than the other configurations. The emissions data for the four configurations we identified cover a wide range of emissions and do not show that a particular configuration achieves greater emission reductions. We believe that observed differences in facility emissions are likely the result of factors other than control technology (e.g., subtle differences in sampling and analytical techniques, age of control equipment and differences in facility operation).

For TSP processes, none of the 11 facilities with APF processes have active operations for TSP production or storage based on the CAA section 114 responses. While one facility is permitted to store GTSP, we do not anticipate that the facility will resume GTSP operations at any point in the future because according to the International Fertilizer Industry Association, North American production of GTSP ceased in 2007. However, if a facility were to start producing and storing TSP, the control technologies would be the same as those already used at APF process lines because the same, or very similar, equipment is used to produce and store TSP as what is used to produce and store APF (see the 1996 memorandum, "National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; Proposed Rules—Draft Technical Support Document and Additional Technical Information," which is available in Docket ID No. A–94–02). Given the lack of TSP production in the U.S., and the lack of new control technologies for the similarly controlled APF process lines, no new technologies were identified during this review of TSP production and storage processes.

Therefore, neither these data nor any other information we have examined show that there has been a significant improvement in the add-on control technology or other equipment since promulgation of NESHAP subpart BB.

We also reviewed the CAA section 114 responses to identify any work practices, pollution prevention techniques and process changes at phosphate fertilizer production manufacturing plants that could achieve emission reductions. We did not identify any developments regarding practices, techniques, or process changes that affect point source emissions from this source category. See the memorandum, "CAA Section 111(b)(1)(B) and 112(d)(6) Reviews for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Source Categories," which is available in Docket ID No. EPA–HQ–OAR–2012–0522.

In light of the results of the technology review, we conclude that additional standards are not necessary pursuant to CAA section 112(d)(6) and we are not proposing changes to NESHAP subpart BB as part of our technology review. We solicit comment on our proposed decision.

2. NSPS Review

Pursuant to CAA section 111(b)(1)(B), we conducted a review to identify new developments that may advise revisions to the current NSPS standards applicable to the Phosphate Fertilizer Production source category (i.e., NSPS subparts V, W and X). This review considered both (1) whether developments in technology or other factors support the conclusion that a different system of emissions reduction has become the "best system of emissions reduction" and (2) whether emissions limitations and percent reductions beyond those required by the standards are achieved in practice.

a. NSPS Subpart V Review

Based on a search of the RBLC database, CAA section 114 data, and other relevant sources, we did not find any new developments that have been applied since the original NSPS subpart V to reduce total F emissions from a DAP plant. Additionally, based on our review of the CAA section 114 data provided by this industry, we determined that the technologies used to control stack emissions at DAP plants have not changed since the original NSPS subpart V. As discussed in more detail in the memorandum, "CAA Section 111(b)(1)(B) and 112(d)(6) Reviews for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production Source Categories," which is available in Docket ID No. EPA–HQ–OAR–2012–0522, we observed some differences in total F emissions from DAP plants. However, we did not find any patterns in emissions reductions based on control technology used. Although we identified four control technology configurations that are being used at DAP plants, based on the available emissions data, we could not distinguish one configuration that clearly achieved greater emissions reductions than the other configurations. The emissions data for the four configurations we identified cover a wide range of emissions and do not show that a particular configuration achieves greater emission reductions. We believe that observed differences in facility total F emissions are likely the result of factors other than control technology (e.g., subtle differences in sampling and analytical techniques, age of control equipment and differences in facility operating parameters). Therefore, neither these data nor any other information we have examined show that there has been a significant improvement in the add-on control technology or other equipment since promulgation of NSPS subpart V. Finally, we also reviewed the CAA section 114 responses to identify any work practices, pollution prevention techniques and process changes at DAP plants that could achieve greater emission reductions than is required under the current NSPS. We did not identify any developments regarding practices, techniques, or process changes that affect point source emissions from DAP plants. For these reasons, we do not see any basis for concluding that the "best system of emissions reduction" has changed.

Therefore, we are proposing that additional revisions to NSPS subpart V standards are not appropriate pursuant to CAA section 111(b)(1)(B). We solicit comment on our proposed determination.

b. NSPS Subparts W and X Reviews

As previously discussed in section V.C.1 of this preamble, none of the 11 facilities with APF processes have active operations for TSP production or storage based on the CAA section 114 responses. While one facility is permitted to store GTSP, we do not anticipate that the facility will resume GTSP operations at any point in the future because, according to the International Fertilizer Industry Association, North American production of GTSP ceased in 2007. However, if a facility were to start producing and storing TSP, the control

technologies would be the same as those already used at APF process lines because the same, or very similar, equipment is used to produce and store GTSP as what is used to produce and store APF (see the 1996 memorandum, "National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; Proposed Rules—Draft Technical Support Document and Additional Technical Information," which is available in Docket ID No. A–94–02). Given the lack of TSP production in the U.S., and the lack of new developments for the similarly controlled APF process lines, no new developments were identified during this review of TSP production and storage processes. For these reasons, we do not see any basis for concluding that the "best system of emissions reduction" has changed.

Therefore, we are proposing that additional revisions to NSPS subpart W and subpart X standards are not appropriate pursuant to CAA section 111(b)(1)(B). We solicit comment on our proposed determination.

D. What other actions are we proposing for the Phosphate Fertilizer Production source category?

In addition to the amendments described above, we reviewed NESHAP subpart BB, NSPS subpart V, NSPS subpart W and NSPS subpart X to determine whether we should make additional amendments. From this review, we are proposing several additional revisions or clarifications. We are proposing revisions to the SSM provisions of NESHAP subpart BB in order to ensure that they are consistent with the court decision in *Sierra Club* v. *EPA*, 551 F.3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. In addition, we are proposing clarifications to the applicability of NESHAP subpart BB. We also are proposing various other changes to testing, monitoring, recordkeeping and reporting requirements in NESHAP subpart BB, NSPS subpart V, NSPS subpart W and NSPS subpart X. Our analyses and proposed changes related to these issues are discussed in this section of this preamble.

1. What are the SSM requirements?

The United States Court of Appeals for the District of Columbia Circuit vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA*, 551 F.3d 1019 (D.C. Cir. 2008), *cert. denied, 130 S. Ct. 1735 (U.S. 2010)*. Specifically, the court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1) holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

We are proposing the elimination of the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA*, the EPA is proposing standards in this rule that apply at all times. We are also proposing several revisions to appendix A of subpart BB (the General Provisions Applicability Table) as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the requirement in the General Provisions that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so.

For the reasons explained below, we are proposing work practice standards for periods of startup and shutdown in lieu of numerical emission limits. CAA section 112(h)(1) states that the Administrator may promulgate a design, equipment or operational work practice standard in those cases where, in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard. CAA section 112(h)(2)(B) further defines the term "not feasible" in this context to apply when "the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations."

Startup and shutdown periods at phosphate fertilizer production facilities generally only last between 30 minutes to 6 hours. Because of the variability and the relatively short duration compared to the time needed to conduct a performance test, which typically requires a full working day, the EPA has determined that it is not feasible to prescribe a numerical emission standard for these periods. Furthermore, according to information provided by industry, it is possible that the feed rate (i.e., equivalent P_2O_5 feed) can be zero during startup and shutdown periods. During these periods, it is not feasible to consistently enforce the emission standards that are expressed in terms of lb of pollutant/ton of feed.

Although we requested information on emissions and the operation of control devices during startup and shutdown periods in the CAA section 114 survey issued to the Phosphoric Fertilizer Production source category, we did not receive any emissions data collected during a startup and shutdown period, and we do not expect that these data exist. However, based on the information for control device operation received in the survey, we concluded that the control devices could be operated normally during periods of startup or shutdown. Also, we believe that the emissions generated during startup and shutdown periods are lower than during steady-state conditions because the amount of feed materials introduced to the process during those periods is lower compared to normal operations. Therefore, if the emission control devices are operated during startup and shutdown, then HAP emissions will be the same or lower than during steady-state operating conditions.

Consequently, we are proposing a work practice standard rather than an emissions limit for periods of startup or shutdown. Control devices used on the various process lines in this source category are effective at achieving desired emission reductions immediately upon start-up. Therefore, during startup and shutdown periods, we are proposing that sources begin operation of any control device(s) in the production unit prior to introducing any feed into the production unit. We are also proposing that sources must continue operation of the control device(s) through the shutdown period until all feed material has been processed through the production unit.

Periods of startup, normal operations and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition sudden, infrequent and not reasonably preventable failures of emissions control, process or monitoring equipment. The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards. Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation

"achieved" by the best-performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the EPA to consider malfunctions in determining the level "achieved" by the best performing sources when setting emission standards. As the United States Court of Appeals for the District of Columbia Circuit has recognized, the phrase "average emissions limitation achieved by the best performing 12 percent of" sources "says nothing about how the performance of the best units is to be calculated." *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in section 112 requires the EPA to consider malfunctions as part of that analysis. A malfunction should not be treated in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a "normal or usual manner" and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

Further, accounting for malfunctions in setting emission standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. For these reasons, the performance of units that are malfunctioning is not "reasonably" foreseeable. See, e.g., *Sierra Club* v. *EPA,* 167 F. 3d 658, 662 (D.C. Cir. 1999) (the EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to "invest the resources to conduct the perfect study."). *See also, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation."). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99 percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations, and the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

In the event that a source fails to comply with the applicable CAA section 112 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good-faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112 standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation" 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112, is reasonable and encourages practices that will avoid malfunctions. Administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

In several prior CAA section 112 rules, the EPA had included an affirmative defense to civil penalties for violations caused by malfunctions in an effort to create a system that incorporates some flexibility, recognizing that there is a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission standards may be violated under circumstances entirely beyond the control of the source. Although the EPA recognized that its case-by-case enforcement discretion provides sufficient flexibility in these circumstances, it included the affirmative defense to provide a more formalized approach and more regulatory clarity. See *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (D.C. Cir. 1978) (holding that an informal case-by-case enforcement discretion approach is adequate); but see *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977) (requiring a more formalized approach to consideration of "upsets beyond the control of the permit holder."). Under the EPA's regulatory affirmative defense provisions, if a source could demonstrate in a judicial or administrative proceeding that it had met the requirements of the affirmative defense in the regulation, civil penalties would not be assessed. Recently, the United States Court of Appeals for the District of Columbia Circuit vacated an affirmative defense in one of the EPA's CAA section 112 regulations. *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir., 2014) (vacating affirmative defense provisions in CAA section 112 rule establishing emission standards for Portland cement kilns). The court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the EPA. Specifically, the court found: "As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are 'appropriate.'" See NRDC, 2014 U.S. App. LEXIS 7281 at *21 ("[U]nder this statute, deciding whether penalties are 'appropriate' in a given private civil suit is a job for the courts, not EPA.").[30] In light of NRDC, the EPA is not including

[30] The court's reasoning in *NRDC* focuses on civil judicial actions. The court noted that "EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court." *Id.*

a regulatory affirmative defense provision in the proposed rule. As explained above, if a source is unable to comply with emissions standards as a result of a malfunction, the EPA may use its case-by-case enforcement discretion to provide flexibility, as appropriate. Further, as the United States Court of Appeals for the District of Columbia Circuit recognized, in an EPA or citizen enforcement action, the court has the discretion to consider any defense raised and determine whether penalties are appropriate. Cf. *NRDC,* 2014 U.S. App. LEXIS 7281 at *24 (arguments that violation were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises). The same is true for the presiding officer in EPA administrative enforcement actions.[31]

a. 40 CFR 63.628(b) General Duty

We are proposing to revise the entry for 40 CFR 63.6(e)(1)(i) and (e)(1)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.628(b) that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown and malfunction events in describing the general duty. Therefore, the language the EPA is proposing does not include that language from 40 CFR 63.6(e)(1). We are also proposing to revise the entry for 40 CFR 63.6(e)(1)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant of the general duty requirement being added at 40 CFR 63.628(b).

b. SSM Plan

We are proposing to revise the entry for 40 CFR 63.6(e)(3) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and thus the SSM plan requirements are no longer necessary.

c. Compliance With Standards

We are proposing to revise the entry for 40 CFR 63.6(f) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." The current language of 40 CFR 63.6 (f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standard apply continuously. Consistent with *Sierra Club,* the EPA is proposing to revise standards in this rule to apply at all times.

d. 40 CFR 63.626 Performance Testing

We are proposing to revise the entry for 40 CFR 63.7(e)(1) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to add a performance testing requirement at 40 CFR 63.626(d). The performance testing requirements we are proposing to add differ from the General Provisions performance testing provisions in several respects. The proposed regulatory text does not allow testing during startup, shutdown, or malfunction. The proposed regulatory does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption and language that precluded startup and shutdown periods from being considered "representative" for purposes of performance testing. Furthermore, as in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are often not representative of operating conditions.

We are proposing that sources conduct performance tests during "maximum representative operating conditions for the process". Specifically, we are proposing that sources must operate their process during the performance test in such a way that results in the flue gas characteristics that are the most difficult for reducing emissions of the regulated pollutant(s) by the control device used. In an effort to provide more flexibility to owners and operators regarding the identification of the proper testing conditions, the most difficult condition for the control device may include, but is not limited to, the highest HAP mass loading rate to the control device, or the highest HAP mass loading rate of constituents that approach the limits of solubility for scrubbing media. The EPA understands that there may be cases where efficiencies are dependent on other characteristics of emission streams, including the characteristics of components and the operating principles of the devices. For example, the solubility of emission stream components in scrubbing media, or emission stream component affinity in carbon adsorption systems can also define the most difficult condition for a particular control device. The EPA is also proposing to add language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent maximum representative operating conditions. Section 63.7(e) requires that the owner or operator make available to the Administrator upon request such records "as may be necessary to determine the condition of the performance test," but did not specifically require the owner or operator to record the information. The regulatory text the EPA is proposing to add builds on that requirement and makes explicit the requirement to record the information.

e. Monitoring

We are proposing to revise the entry for 40 CFR 63.8(c)(1)(i) and (c)(1)(iii) in the General Provisions table by changing the "yes" in column three to a "no." The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control

[31] Although the *NRDC* case does not address the EPA's authority to establish an affirmative defense to penalties that is available in administrative enforcement actions, EPA is not including such an affirmative defense in the proposed rule. As explained above, such an affirmative defense is not necessary. Moreover, assessment of penalties for violations caused by malfunctions in administrative proceedings and judicial proceedings should be consistent. *Cf.* CAA section 113(e) (requiring both the Administrator and the court to take specified criteria into account when assessing penalties).

program for monitoring equipment (40 CFR 63.8(d)).

We are proposing to revise the entry for 40 CFR 63.8(d)(3) in the General Provisions table by changing the "yes" in column three to a "no." The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement, which is no longer applicable. The EPA is proposing to add to the rule at 40 CFR 63.628(c) text that is identical to 40 CFR 63.8(d)(3), except that the final sentence is replaced with the following sentence: "You must include the program of corrective action required under § 63.8(d)(2) in the plan."

f. 40 CFR 63.627 Recordkeeping

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(i) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is proposing to add such requirements to 40 CFR 63.627(b). The regulatory text we are proposing to add differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control and monitoring equipment. The EPA is proposing that this requirement apply to any failure to meet an applicable standard and is requiring that the source record the date, time and duration of the failure rather than the "occurrence." The EPA is also proposing to add to 40 CFR 63.627 a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the volume of each regulated pollutant emitted over the applicable standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available or engineering judgment based on known process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(iv) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.627.

We are proposing to revise the entry for 40 CFR 63.10(b)(2)(v) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise the entry for 40 CFR 63.10(c)(15) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

g. 40 CFR 63.627 Reporting

We are proposing to revise the entry for 40 CFR 63.10(d)(5) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(d)(5) describes the reporting requirements for SSM. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.627. The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the excess emission report, already required under this rule. We are proposing that the report must contain the number, date, time, duration and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the volume of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions (e.g., product-loss calculations, mass balance calculations, direct measurements, or engineering judgment based on known process parameters). The EPA is proposing this requirement to ensure that adequate information is available to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

The proposed rule eliminates the cross reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously-required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements. We are proposing that owners or operators no longer be required to determine whether actions taken to correct a malfunction are consistent with an SSM plan because the plans would no longer be required.

We are proposing to revise the entry for 40 CFR 63.10(d)(5)(ii) in the General Provisions table (appendix A) by changing the "yes" in column three to a "no." Section 63.10(d)(5)(ii) describes an immediate report for SSM when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown or malfunction were not consistent with an SSM plan, because the plans would no longer be required.

2. Clarifications to Applicability and Certain Definitions

a. NESHAP Subpart BB

We are proposing clarifications to the applicability section (40 CFR 63.620) of the Phosphate Fertilizer Production

NESHAP (subpart BB). The requirements of the current Phosphate Fertilizer Production NESHAP (subpart BB) apply to diammonium and/or monoammonium phosphate process lines, granular triple superphosphate lines and granular triple superphosphate storage buildings only. In this action, we are proposing clarifications to the applicability of the NESHAP to include any process line that produces a reaction product of ammonia and phosphoric acid. Based on facility responses to the CAA section 114 survey issued to the Phosphate Fertilizer Production source category, EPA learned that the phosphate fertilizer products produced by facilities changes over time (e.g., no facility currently produces a granular triple superphosphate product). To ensure the emission standards we are proposing reflect inclusion of HAP emissions from all sources in the defined source category, as initially intended in the rule promulgation, we believe it necessary to clarify the applicability of the NESHAP to include reaction products of ammonia and phosphoric acid, and not just diammonium and monoammonium phosphate. This revision also further aligns the definition of the source category with the current provisions in 40 CFR 63.620(a) which specify that the NESHAP applies to each phosphate fertilizers production plant.

Granular triple superphosphate is no longer produced in the United States. However, in the unlikely event that a facility were to start producing and storing GTSP, we are not proposing to remove requirements for the triple superphosphate processes regulated by NESHAP subpart BB (i.e., GTSP process lines and storage buildings).

For consistency between NESHAP subpart AA and NESHAP subpart BB, we are proposing the NESHAP subpart AA conditions that exclude the use of evaporative cooling towers for any liquid effluent from any wet scrubbing device installed to control HF emissions from process equipment also be included in NESHAP subpart BB. For additional consistency between NESHAP subpart AA and NESHAP subpart BB, we are also proposing to amend the definitions of diammonium and/or monoammonium phosphate process line, granular triple superphosphate process line and granular triple superphosphate storage building to include relevant emission points, and to remove text from the applicability section that is duplicative of the revised definitions.

b. NSPS Subpart W

We are proposing to change the word "cookers" as listed in 40 CFR 60.230(a) to "coolers" in order to correct the typographical error. The term should be "coolers," and background literature does not indicate any equipment referred to "cookers" being used in the manufacture of TSP.

3. Testing, Monitoring, Recordkeeping and Reporting

a. NESHAP Subpart BB

For wet scrubbers, we are proposing alternatives to the existing requirement to monitor pressure differential through the scrubber. We received input from industry that the pressure differential is not a reliable method of determining the performance of a column because fouling occurs over time, increasing the pressure differential. The pressure differential immediately after cleaning will be much lower than that after the scrubber has operated for some time. Therefore, to provide flexibility, we have included a number of monitoring options as alternatives to determining the performance of a column using pressure differential. We are also adding flexibility in the existing requirement to measure the flow rate of the scrubbing liquid to each scrubber (i.e., the inlet liquid flow rate to a scrubber). We are proposing that the inlet liquid-to-gas ratio may now be monitored in lieu of the inlet liquid flow rate, which provides the ability to lower liquid flow rate with changes in gas flow rate to the scrubber.

We are removing the requirement that facilities may not implement new operating parameter ranges until the Administrator has approved them, or 30 days have passed since submission of the performance test results. For the proposed requirements, facilities must immediately comply with new operating ranges when they are developed and submitted. New operating ranges must also be established using the most recent performance test conducted by a facility, which allows for changes in control device operation to be appropriately reflected.

As described in section V.D.1.d of this preamble, we have also modified the language for the conditions under which testing must be conducted to require that testing be conducted at maximum representative operating conditions for the process.

For subpart BB we are proposing monitoring requirements for fabric filters because two processes were identified that used fabric filters rather than wet scrubbing as the control technology.

In keeping with the general provisions for CMS (including CEMS and CPMS), we are proposing the addition of a site-specific monitoring plan and calibration requirements for CMS. Provisions are included for electronic reporting of stack test data.

We have also modified the format of the NESHAP to reference tables for emissions limits and monitoring requirements.

b. NSPS Subpart V

The EPA evaluated the monitoring and recordkeeping requirements currently required in NSPS subpart V to determine if they are adequate for determining compliance. Currently under NSPS subpart V, an owner or operator of a granular diammonium phosphate plant is required to install, calibrate, maintain and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. However, the current rule does not require an owner or operator to establish, and demonstrate continuous compliance with, an allowable range for the pressure drop through the process scrubbing system. Therefore, we are proposing new monitoring and recordkeeping requirements for any diammonium phosphate plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] to ensure continuous compliance with the standard.

We are proposing that for any granular diammonium phosphate plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] the owner or operator establish an allowable range for the pressure drop through the process scrubbing system. The allowable range would be established during the performance test required in 40 CFR 60.8. We also propose that the allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test. In addition, the owner or operator would be required to maintain the daily average pressure drop through the process scrubbing system within the allowable range; and valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average. We also propose that the owner or operator keep records of the daily average pressure drop through the process scrubbing system, and keep records of deviations. We are proposing

these monitoring and recordkeeping requirements in order to: Ensure that the process scrubbing system is properly maintained over time; ensure continuous compliance with standards; and improve data accessibility.

Finally, for consistency with terminology used in the associated NESHAP subpart BB, we have changed the term "process scrubbing system" to "absorber".

We do not expect any costs to be associated with these proposed monitoring and recordkeeping requirements. These proposed requirements will apply to all diammonium phosphate plants that reconstruct or modify their plants; however, facilities that are subject to the NESHAP are exempt from compliance with the NSPS. We are aware of only one facility currently subject to the NSPS, but not the NESHAP. We do not anticipate that this facility will modify their diammonium phosphate plant over the next 3 years; therefore, this facility will not trigger the proposed monitoring and recordkeeping requirements for NSPS subpart V. Furthermore, pursuant to their Title V air permit compliance assurance monitoring plan, this facility already conducts daily monitoring of pressure drop through their process scrubbing system and compares it against an established range. Therefore, any costs to comply with these requirements would be negligible should the facility become subject.

c. NSPS Subpart W

The EPA evaluated the monitoring and recordkeeping requirements currently required in NSPS subpart W to determine if they are adequate for determining compliance. Currently under NSPS subpart W, an owner or operator of a triple superphosphate plant is required to install, calibrate, maintain and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. However, the current rule does not require an owner or operator to establish, and demonstrate continuous compliance with, an allowable range for the pressure drop through the process scrubbing system. Therefore, we are proposing new monitoring and recordkeeping requirements for any triple superphosphate plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] to ensure continuous compliance with the standard.

We are proposing that for any triple superphosphate plant that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] the owner or operator establish an allowable range for the pressure drop through the process scrubbing system. The allowable range would be established during the performance test required in 40 CFR 60.8. We also propose that the allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test. In addition, the owner or operator would be required to maintain the daily average pressure drop through the process scrubbing system within the allowable range; and valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average. We also propose that the owner or operator keep records of the daily average pressure drop through the process scrubbing system, and keep records of deviations. We are proposing these monitoring and recordkeeping requirements in order to: Ensure that the process scrubbing system is properly maintained over time; ensure continuous compliance with standards; and improve data accessibility.

Finally, for consistency with terminology used in the associated NESHAP subpart BB, we have changed the term "process scrubbing system" to "absorber."

We do not expect any costs associated with these proposed monitoring and recordkeeping requirements, as we are not aware of any facilities in the United States that manufacture TSP or that plan to manufacture TSP in the next three years.

d. NSPS Subpart X

The EPA evaluated the monitoring and recordkeeping requirements currently required in NSPS subpart X to determine if they are adequate for determining compliance. Currently under NSPS subpart X, an owner or operator of a granular triple superphosphate storage facility is required to install, calibrate, maintain and operate a monitoring device which continuously measures and permanently records the total pressure drop across the process scrubbing system. However, the current rule does not require an owner or operator to establish, and demonstrate continuous compliance with, an allowable range for the pressure drop through the process scrubbing system. Therefore, we are proposing new monitoring and recordkeeping requirements for any granular triple superphosphate storage facility that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] to ensure continuous compliance with the standard.

We are proposing that for any granular triple superphosphate storage facility that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] the owner or operator establish an allowable range for the pressure drop through the process scrubbing system. The allowable range would be established during the performance test required in 40 CFR 60.8. We also propose that the allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test. In addition, the owner or operator would be required to maintain the daily average pressure drop through the process scrubbing system within the allowable range; and valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average. We also propose that the owner or operator keep records of the daily average pressure drop through the process scrubbing system, and keep records of deviations. We are proposing these monitoring and recordkeeping requirements in order to: Ensure that the process scrubbing system is properly maintained over time; ensure continuous compliance with standards; and improve data accessibility.

Finally, for consistency with terminology used in the associated NESHAP subpart BB, we have changed the term "process scrubbing system" to "absorber."

We do not expect any costs associated with these proposed monitoring and recordkeeping requirements as we are not aware of any facilities that manufacture or store GTSP or plan to manufacture or store GTSP in the next 3 years.

4. Translation of TF to HF Emission Limits

As described in section IV.E.4 of this preamble, the EPA is proposing to translate the current total F limit (lbs total F/ton P_2O_5 feed) into an HF limit (lbs HF/ton P_2O_5 feed). Please refer to section IV.E.4 of this preamble for a detailed description of the methodology used to translate the existing TF limits to HF limits.

The resulting new and existing proposed HF emission limits are summarized in Table 8 of this preamble:

TABLE 8—SUMMARY OF PROPOSED HF EMISSION LIMITS FOR NEW AND EXISTING PHOSPHATE FERTILIZER FACILITIES

Regulated process	Current total F limits *		Proposed HF limits *	
	Existing	New	Existing	New
MAP/DAP Fertilizer Lines	0.060	0.0580	0.060	0.0580
GTSP Process Line	0.150	0.1230	0.150	0.1230
GTSP Storage Building	5.0×10^{-4}	5.0×10^{-4}	5.0×10^{-4}	5.0×10^{-4}

* All limits expressed as lbs/Ton P_2O_5 feed.

Also, as discussed in section IV.E.4 of this preamble, we are seeking comment on finalizing HF limits for regulating HF rather than total F, the use of EPA Method 320 for the compliance demonstration test method, the use of FTIR HF CEMS as an optional continuous monitoring compliance approach within the rule, the use of an HF CEMS as a compliance option and reduced testing frequency for HF monitoring. A more detailed discussion of these requests for comments is provided in section IV.E.4 of this preamble.

E. What are the notification, recordkeeping and reporting requirements for the Phosphate Fertilizer Production source category?

For the Phosphate Fertilizer Production source category, we are proposing the same electronic reporting requirements described in section IV.F of this preamble.

F. What compliance dates are we proposing for the Phosphate Fertilizer Production source category?

We are proposing that for existing and new process lines that produce a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process lines), granular triple superphosphate process lines and granular triple superphosphate storage buildings that commence construction or reconstruction on or before the effective date of this rule, the facility must comply with the proposed HF limits no later than 1 year after the effective date of this rule. Facilities will continue to conduct the annual performance test, but will be required to use a different test method. Therefore, we are proposing a 1-year compliance lead time so that facilities have adequate time to coordinate performance testing with the new test method. We do not anticipate that any facilities will need to install a new control device to meet the proposed HF limits. For new process lines that produce a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process lines), granular triple superphosphate process lines and granular triple superphosphate storage buildings that commence construction or reconstruction after the effective date of this rule, the facility must comply with the proposed HF limits beginning on the effective date of this rule. Prior to these compliance dates (for HF limits), we are proposing that facilities continue to comply with the current total F standards.

We are proposing that the SSM requirements compliance date is the effective date of this rule.

VI. Summary of Cost, Environmental and Economic Impacts

A. What are the affected sources?

We anticipate that the 13 facilities currently operating in the United States will be affected by these proposed amendments. One of the 13 facilities has indicated to the EPA that it plans on closing the phosphoric acid and phosphate fertilizer processes when the gypsum dewatering stack in use reaches the end of its capacity to accept gypsum slurry. We do not expect any new facilities to be constructed or expanded in the foreseeable future.

B. What are the air quality impacts?

We have estimated the potential emissions reductions that may be realized from the implementation of the proposed emission standards for the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories. We estimated emission reductions by first calculating emissions at the current level of control for each facility (referred to as the baseline level of control), and at the proposed level of control (i.e., the proposed beyond-the-floor emission standard for Hg from phosphate rock calciners). We calculated emission reductions as the difference between the proposed level and baseline level of control. We estimate that the proposed subpart AA NESHAP will result in emissions reductions of approximately 145 lb per year of Hg from phosphate rock calciners as a result of beyond-the-floor emission standards for Hg. The current estimated Hg emissions from the phosphate rock calciners is approximately 169 lb per year. The memorandum, "Beyond-the-Floor Analysis for Phosphate Rock Calciners at Phosphoric Acid Manufacturing Plants," which is available in the docket for this action, documents the results of the beyond-the-floor analysis.

C. What are the cost impacts?

We have estimated compliance costs for all existing sources to add the necessary controls and monitoring devices, perform inspections, recordkeeping and reporting requirements to comply with the proposed rule. Based on this analysis, we anticipate an overall total capital investment of $4.9 million, with an associated total annualized cost of approximately $2.0 million (using a discount rate of 7 percent), in 2013 dollars. We do not anticipate the construction of any new phosphoric acid manufacturing plants or phosphate fertilizer production facilities in the next 5 years. Therefore, there are no new source cost impacts.

We calculated costs to meet the proposed level of control. For phosphate rock calciners, we estimated the cost of adding a fixed-bed carbon adsorption system to meet the proposed Hg emission standard. For all other emission sources, including phosphate rock calciners, we calculated capital and annual costs for testing, monitoring, recordkeeping and reporting. The memorandum, "Control Costs and Emissions Reductions for Phosphoric Acid and Phosphate Fertilizer Production Source Categories," which is available in the docket for this action, documents the control cost analyses.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, we also examine impacts on other markets. Both the magnitude of costs needed to comply with the rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to the rule. We estimated the total annualized

costs for the proposed rule to be $2.0 million. We project that only one facility will incur significant costs. A global agrochemical company with annual revenue estimated in the $100 million to $500 million range owns this facility. The facility itself would not be a small business even if it were not owned by the larger entity. The annualized control costs for this company would be 0.3 percent to 1.5 of percent revenues. We do not expect these small costs to result in a significant market impact whether they are passed on to the consumer or absorbed by the company.

Because no small firms will incur control costs, there is no significant impact on small entities. Thus, we do not expect this regulation to have a significant impact on a substantial number of small entities.

E. What are the benefits?

We anticipate this rulemaking to reduce Hg emissions by approximately 145 lb each year starting in 2016. These avoided emissions will result in improvements in air quality and reduced negative health effects associated with exposure to air pollution of these emissions; however, we have not quantified or monetized the benefits of reducing these emissions for this rulemaking because the estimated costs for this action are less than $100 million.

VII. Request for Comments

We solicit comments on all aspects of this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling, including information on the appropriate acute emissions factors for estimating emissions from the gypsum dewatering stacks and cooling ponds. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VIII of this preamble provides more information on submitting data.

VIII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.* The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern and provide any "improved" data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR Web page, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (i.e., commenter name, commenter organization, commenter email address, commenter phone number and revision comments).
3. Gather documentation for any suggested emissions revisions (e.g., performance test reports, material balance calculations, etc.).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID Number EPA–HQ–OAR–2012–0522 (through one of the methods described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities, you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility. We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR Web page at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html.*

IX. Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order 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 EPA analyzed the potential costs and benefits associated with this action. The results are presented in sections VI.C and E of this preamble.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 1790.06. The information requirements are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

We are proposing new paperwork requirements to the Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories in the form of additional requirements for stack testing, performance evaluations, and gypsum dewatering stacks.

We estimate 12 regulated entities are currently subject to 40 CFR part 63 subpart AA and 10 regulated entities are currently subject to 40 CFR part 63 subpart BB and each will be subject to all applicable proposed standards. The annual monitoring, reporting and recordkeeping burden for these amendments to subpart AA and BB is estimated to be $625,000 per year (averaged over the first 3 years after the effective date of the standards). This includes 640 labor hours per year at a total labor cost of $53,000 per year, and total non-labor capital and operating and maintenance costs of $572,000 per year. This estimate includes performance tests, notifications, reporting and recordkeeping associated with the new requirements for emission points and associated control devices. The total burden to the federal government is estimated to be 326 hours per year at a total labor cost of $17,000 per year (averaged over the first 3 years after the effective date of the standard). Burden is defined at 5 CFR 1320.3(b).

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.

To comment on the agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule

(Docket ID No. EPA–HQ–OAR–2012–0522) which includes this ICR. Submit any comments related to the ICR to the EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 7, 2014, a comment to OMB is best assured of having its full effect if OMB receives it by December 8, 2014. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities because we do not project that any small entities will incur costs due to these proposed rule amendments. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it does not contain regulatory requirements that might significantly or uniquely affect small governments because this action neither contains requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the facilities subject to this action are owned or operated by state governments, and nothing in this proposal will supersede state regulations. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000), the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action may have tribal implications, due to the close proximity of one facility to a tribe (the Shoshone-Bannock). However, this action will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law.

The EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The agency provided an overview of the source categories and rulemaking process during a monthly teleconference with the National Tribal Air Association. Additionally, we provided targeted outreach, including a visit to the Shoshone-Bannock tribe and meeting with environmental leaders for the tribe. The EPA specifically solicits additional comment on this proposed action from tribal officials.

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 economically significant as defined in Executive Order 12866. This action's health and risk assessments are contained in section V of this preamble.

The proposed standards for Hg emissions from phosphate rock calciners will reduce Hg emissions, thereby reducing potential exposure to children, including the unborn. We invite the public to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to these pollutants.

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

This action 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. The proposed changes to the emissions limits may require one facility to install additional control for Hg in the form of carbon adsorbers or ACI. These devices have minimal energy requirements, and we do not expect these devices to contribute significantly to the overall energy use at the facility. We have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law Number 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that

are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes to incorporate analytical methods of the Association of Official Analytical Chemists (AOAC) and of the Association of Fertilizer and Phosphate Chemists (AFPC). The EPA proposes to incorporate by reference the following AOAC methods: AOAC Official Method 957.02 Phosphorus (Total) in Fertilizers, Preparation of Sample Solution, AOAC Official Method 929.01 Sampling of Solid Fertilizers, AOAC Official Method 929.02 Preparation of Fertilizer Sample, AOAC Official Method 978.01 Phosphorous (Total) in Fertilizers, Automated Method, AOAC Official Method 969.02 Phosphorous (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method, AOAC Official Method 962.02 Phosphorous (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method and Quinolinium Molybdophosphate Method 958.01 Phosphorous (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method. The EPA proposes to incorporate the following AFPC methods for analysis of phosphate rock: No. 1 Preparation of Sample, No. 3 Phosphorus-P2O5 or Ca3(PO4)2, Method A-Volumetric Method, No. 3 Phosphorus-P2O5 or Ca3(PO4)2, Method B-Gravimetric Quimociac Method, No. 3 Phosphorus-P2O5 or Ca3(PO4)2, Method C-Spectrophotometric Method. The EPA proposes to incorporate the following AFPC methods for analysis of phosphoric acid, superphosphate, triple superphosphate and ammonium phosphates: No. 3 Total Phosphorus-P2O5, Method A-Volumetric Method, No. 3 Total Phosphorus-P2O5, Method B-Gravimetric Quimociac Method and No. 3 Total Phosphorus-P2O5, Method C-Spectrophotometric Method.

We did not identify any applicable VCS for EPA Methods 5, 13A, 13B or 30B. We did identify one VCS, ASTM D6348–03(2010), as an acceptable alternative for Method 320.

During EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

The search identified 8 other VCS that were potentially applicable for this rule in lieu of the EPA reference methods. After reviewing the available standards, the EPA determined that 8 candidate VCS identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. Additional information for the VCS search and determinations can be found in the memorandum, "Voluntary Consensus Standard Results for Phosphoric Acid Manufacturing and Phosphate Fertilizer Production RTR and Standards of Performance for Phosphate Processing," which is available in the docket for this action.

The EPA welcomes comments on this aspect of the proposed rulemaking, and, specifically, invites the public to identify potentially applicable VCS, and to explain why the EPA should use such standards in this regulation.

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 practical 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.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous 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. To gain a better understanding of the source category and near source populations, the EPA conducted a proximity analysis on phosphate facilities to identify any overrepresentation of minority, low income or indigenous populations. This analysis only gives some indication of the prevalence of sub-populations that may be exposed to air pollution from the sources; it does not identify the demographic characteristics of the most highly affected individuals or communities, nor does it quantify the level of risk faced by those individuals or communities. More information on the source categories risk can be found in section IV of this preamble.

The proximity analysis reveals that most demographic categories are below or within 20 percent of their corresponding national averages. The two exceptions are the minority and African American populations. The ratio of African Americans living within 3 miles of any source affected by this rule is 131 percent higher than the national average (29 percent versus 13 percent). The percentage of minorities living within 3 miles of any source affected by this rule is 37 percent above the national average (35 percent versus 28 percent). The large minority population is a direct result of the higher percentage of African Americans living near these facilities (the other racial minorities are below or equal to the national average). However, as noted previously, we found the risks from these source categories to be acceptable for all populations.

The proposed changes to the standard increase the level of environmental protection for all affected populations by ensuring no future emission increases from the source categories. Additionally, the proposed standards for Hg emissions from phosphate rock calciners will reduce Hg emissions, thereby reducing potential exposure to sustenance fishers and other sensitive populations. The proximity analysis results and the details concerning their development are presented in the October 2012 memorandum, "Environmental Justice Review: Phosphate Fertilizer Production and Phosphoric Acid," a copy of which is available in Docket ID No. EPA–HQ–OAR–2012–0522.

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Fertilizers, Fluoride, Particulate matter, Phosphate, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 21, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I, of the Code of Federal Regulations as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart T—Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants

■ 2. Section 60.200 is amended by revising paragraph (a) to read as follows:

§ 60.200 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each wet-process phosphoric acid plant having a design capacity of more than 15 tons of equivalent P_2O_5 feed per calendar day.

* * * * *

■ 3. Section 60.201 is amended by revising paragraph (a) to read as follows.

§ 60.201 Definitions.

* * * * *

(a) *Wet-process phosphoric acid plan* means any facility manufacturing phosphoric acid by reacting phosphate rock and acid. A wet-process phosphoric acid plant includes, but is not limited to: reactors, filters, evaporators, hot wells, clarifiers, and defluorination systems.

* * * * *

■ 4. Section 60.203 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 60.203 Monitoring of operations.

* * * * *

(c) The owner or operator of any wet-process phosphoric acid plant subject to the provisions of this part shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the absorber. The monitoring device shall have an accuracy of ±5 percent over its operating range.

(d) Any facility under § 60.200(a) that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this paragraph instead of the requirements in paragraph (c) of this section. If an absorber is used to comply with § 60.202, then the owner or operator shall continuously monitor pressure drop through the absorber and meet the requirements specified in paragraphs (d)(1) through (4) of this section.

(1) The owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system (CMS) that continuously measures and permanently records the pressure at the gas stream inlet and outlet of the absorber. The pressure at the gas stream inlet of the absorber may be measured using amperage on the blower if a correlation between pressure and amperage is established.

(2) The CMS must have an accuracy of ±5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.

(3) The owner or operator shall establish an allowable range for the pressure drop through the absorber. The allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test required in § 60.8. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

(4) The owner or operator shall demonstrate continuous compliance by maintaining the daily average pressure drop through the absorber to within the allowable range established in paragraph (d)(3) of this section. The daily average pressure drop through the absorber for each operating day shall be calculated using the data recorded by the monitoring system. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

■ 5. Subpart T is amended by adding § 60.205 to read as follows:

§ 60.205 Recordkeeping.

Any facility under § 60.200(a) that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this section. You must maintain the records identified as specified in § 60.7(f) and in paragraphs (a) and (b) of this section. All records required by this subpart must be maintained on site for at least 5 years.

(a) *Records of the daily average pressure.* Records of the daily average pressure drop through the absorber.

(b) *Records of deviations.* A deviation is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (b)(1) and (2) of this section being met.

(1) A deviation occurs when the daily average value of a monitored operating parameter is less than the minimum pressure drop, or greater than the maximum pressure drop established in § 60.203(d)(3).

(2) A deviation occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

Subpart U—Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants

■ 6. Section 60.210 is amended by revising paragraph (a) to read as follows:

§ 60.210 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each superphosphoric acid plant having a design capacity of more than 15 tons of equivalent P_2O_5 feed per calendar day.

* * * * *

■ 7. Section 60.211 is amended by revising paragraph (a) to read as follows:

§ 60.211 Definitions.

* * * * *

(a) *Superphosphoric acid plant* means any facility which concentrates wet-process phosphoric acid to 66 percent or greater P_2O_5 content by weight for eventual consumption as a fertilizer. A superphosphoric acid plant includes, but is not limited to: evaporators, hot wells, acid sumps, oxidation reactors, and cooling tanks.

* * * * *

■ 8. Section 60.213 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 60.213 Monitoring of operations.

* * * * *

(c) Except as specified in paragraph (d) of this section, the owner or operator

of any superphosphoric acid plant subject to the provisions of this part shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the absorber. The monitoring device shall have an accuracy of ±5 percent over its operating range.

(d) Any affected facility as defined in § 60.210(a) that commences construction, modification or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this paragraph instead of the requirements in paragraph (c) of this section. If an absorber is used to comply with § 60.212, then the owner or operator shall continuously monitor pressure drop through the absorber and meet the requirements specified in paragraphs (d)(1) through (4) of this section.

(1) The owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system (CMS) that continuously measures and permanently records the pressure at the gas stream inlet and outlet of the absorber. The pressure at the gas stream inlet of the absorber may be measured using amperage on the blower if a correlation between pressure and amperage is established.

(2) The CMS must have an accuracy of ±5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.

(3) The owner or operator shall establish an allowable range for the pressure drop through the absorber. The allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test required in § 60.8. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

(4) The owner or operator shall demonstrate continuous compliance by maintaining the daily average pressure drop through the absorber to within the allowable range established in paragraph (d)(3) of this section. The daily average pressure drop through the absorber for each operating day shall be calculated using the data recorded by the monitoring system. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

■ 9. Subpart U is amended by adding § 60.215 to read as follows:

§ 60.215 Recordkeeping.

An affected facility as defined in § 60.210(a) that commences construction, modification, or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this section. You must maintain the records identified as specified in § 60.7(f) and in paragraphs (a) and (b) of this section. All records required by this subpart must be maintained on site for at least 5 years.

(a) Records of the daily average pressure drop through the absorber.

(b) Records of deviations. A deviation is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (b)(1) and (b)(2) of this section being met.

(1) A deviation occurs when the daily average value of a monitored operating parameter is less than the minimum pressure drop, or greater than the maximum pressure drop established in § 60.213(d)(3).

(2) A deviation occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

Subpart V—Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants

■ 10. Section 60.223 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 60.223 Monitoring of operations.

* * * * *

(c) Except as specified in paragraph (d) of this section, the owner or operator of any granular diammonium phosphate plant subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the scrubbing system. The monitoring device shall have an accuracy of ±5 percent over its operating range.

(d) Any affected facility as defined in § 60.220(a) that commences construction, modification, or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this paragraph instead of the requirements in paragraph (c) of this section. If an absorber is used to comply with § 60.222, then the owner or operator shall continuously monitor pressure drop through the absorber and meet the requirements specified in paragraphs (d)(1) through (4) of this section.

(1) The owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system (CMS) that continuously measures and permanently records the pressure at the gas stream inlet and outlet of the absorber. The pressure at the gas stream inlet of the absorber may be measured using amperage on the blower if a correlation between pressure and amperage is established.

(2) The CMS must have an accuracy of ± 5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.

(3) The owner or operator shall establish an allowable range for the pressure drop through the absorber. The allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test required in § 60.8. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

(4) The owner or operator shall demonstrate continuous compliance by maintaining the daily average pressure drop through the absorber to within the allowable range established in paragraph (d)(3) of this section. The daily average pressure drop through the absorber for each operating day shall be calculated using the data recorded by the monitoring system. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

■ 11. Section 60.224 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 60.224 Test methods and procedures.

* * * * *

(b) * * *

(3) * * *

(ii) The Association of Official Analytical Chemists (AOAC) Method 9 (incorporated by reference—see § 60.17)

shall be used to determine the P_2O_5 content (R_p) of the feed.

■ 12. Subpart V is amended by adding § 60.225 to read as follows:

§ 60.225 Recordkeeping.

An affected facility as defined in § 60.220(a) that commences construction, modification, or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this section. You must maintain the records identified as specified in § 60.7(f) and in paragraphs (a) and (b) of this section. All records required by this subpart must be maintained on site for at least 5 years.

(a) Records of the daily average pressure drop through the absorber.

(b) Records of deviations. A deviation is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (b)(1) and (2) of this section being met.

(1) A deviation occurs when the daily average value of a monitored operating parameter is less than the minimum pressure drop, or greater than the maximum pressure drop established in § 60.223(d)(3).

(2) A deviation occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

Subpart W—Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants

■ 13. Section 60.230 is amended by revising paragraph (a) to read as follows:

§ 60.230 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each triple superphosphate plant having a design capacity of more than 15 tons of equivalent P_2O_5 feed per calendar day. For the purpose of this subpart, the affected facility includes any combination of: mixers, curing belts (dens), reactors, granulators, dryers, coolers, screens, mills, and facilities which store run-of-pile triple superphosphate.

* * * * *

■ 14. Section 60.233 is revised to read as follows:

§ 60.233 Monitoring of operations.

(a) The owner or operator of any triple superphosphate plant subject to the provisions of this subpart shall install, calibrate, maintain, and operate a flow monitoring device which can be used to determine the mass flow of phosphorus-bearing feed material to the process. The flow monitoring device shall have an accuracy of ±5 percent over its operating range.

(b) The owner or operator of any triple superphosphate plant shall maintain a daily record of equivalent P_2O_5 feed by first determining the total mass rate in Mg/hr of phosphorus-bearing feed using a flow monitoring device meeting the requirements of paragraph (a) of this section and then by proceeding according to § 60.234(b)(3).

(c) Except as specified in paragraph (d) of this section, the owner or operator of any triple superphosphate plant subject to the provisions of this part shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the absorber. The monitoring device shall have an accuracy of ±5 percent over its operating range.

(d) Any facility under § 60.230(a) that commences construction, modification, or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this paragraph instead of the requirements in paragraph (c) of this section. If an absorber is used to comply with § 60.232, then the owner or operator shall continuously monitor pressure drop through the absorber and meet the requirements specified in paragraphs (d)(1) through (4) of this section.

(1) The owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system (CMS) that continuously measures and permanently records the pressure at the gas stream inlet and outlet of the absorber. The pressure at the gas stream inlet of the absorber may be measured using amperage on the blower if a correlation between pressure and amperage is established.

(2) The CMS must have an accuracy of ± 5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.

(3) The owner or operator shall establish an allowable range for the pressure drop through the absorber. The allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test required in § 60.8. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

(4) The owner or operator shall demonstrate continuous compliance by maintaining the daily average pressure drop through the absorber to within the allowable range established in paragraph (d)(3) of this section. The daily average pressure drop through the absorber for each operating day shall be calculated using the data recorded by the monitoring system. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

■ 15. Subpart W is amended by adding § 60.235 to read as follows:

§ 60.235 Recordkeeping.

Any facility under § 60.230(a) that commences construction, modification, or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this section. You must maintain the records identified as specified in § 60.7(f) and in paragraphs (a) and (b) of this section. All records required by this subpart must be maintained onsite for at least 5 years.

(a) Records of the daily average pressure drop through the absorber.

(b) Records of deviations. A deviation is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (b)(1) and (2) of this section being met.

(1) A deviation occurs when the daily average value of a monitored operating parameter is less than the minimum pressure drop, or greater than the maximum pressure drop established in § 60.233(d)(3).

(2) A deviation occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

Subpart X—Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities

■ 16. Section 60.243 is amended by revising paragraph (c) and adding (e) to read as follows:

§ 60.243 Monitoring of operations.

* * * * *

(c) Except as specified in paragraph (e) of this section, the owner or operator of any granular triple superphosphate storage facility subject to the provisions

of this subpart shall install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across any absorber. The monitoring device shall have an accuracy of ±5 percent over its operating range.

* * * * *

(e) Any facility under § 60.240(a) that commences construction, modification, or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this paragraph instead of the requirements in paragraph (c) of this section. If an absorber is used to comply with § 60.232, then the owner or operator shall continuously monitor pressure drop through the absorber and meet the requirements specified in paragraphs (e)(1) through (4) of this section.

(1) The owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system (CMS) that continuously measures and permanently records the pressure at the gas stream inlet and outlet of the absorber. The pressure at the gas stream inlet of the absorber may be measured using amperage on the blower if a correlation between pressure and amperage is established.

(2) The CMS must have an accuracy of ± 5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.

(3) The owner or operator shall establish an allowable range for the pressure drop through the absorber. The allowable range is ±20 percent of the arithmetic average of the three test runs conducted during the performance test required in § 60.8. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

(4) The owner or operator shall demonstrate continuous compliance by maintaining the daily average pressure drop through the absorber to within the allowable range established in paragraph (e)(3) of this section. The daily average pressure drop through the absorber for each operating day shall be calculated using the data recorded by the monitoring system. If the emissions unit operation is continuous, the operating day is a 24-hour period. If the emissions unit operation is not continuous, the operating day is the total number of hours of control device operation per 24-hour period. Valid data points must be available for 75 percent of the operating hours in an operating day to compute the daily average.

■ 17. Subpart X is amended by adding § 60.245 to read as follows:

§ 60.245 Recordkeeping.

Any facility under § 60.240(a) that commences construction, modification, or reconstruction after [date of publication of the final rule in the **Federal Register**] is subject to the requirements of this section. You must maintain the records identified as specified in § 60.7(f) and in paragraphs (a) and (b) of this section. All records required by this subpart must be maintained onsite for at least 5 years.

(a) Records of the daily average pressure drop through the absorber.

(b) Records of deviations. A deviation is determined to have occurred when the monitoring data or lack of monitoring data result in any one of the criteria specified in paragraphs (b)(1) and (2) of this section being met.

(1) A deviation occurs when the daily average value of a monitored operating parameter is less than the minimum pressure drop, or greater than the maximum pressure drop established in § 60.243(e)(3).

(2) A deviation occurs when the monitoring data are not available for at least 75 percent of the operating hours in a day.

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 18. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 19. Section 63.14 is amended by revising paragraphs (b), (c)(1) through (7), and (l)(2) to read as follows.

§ 63.14 Incorporations by reference.

* * * * *

(b) The Association of Florida Phosphate Chemists, P.O. Box 1645, Bartow, Florida 33830.

(1) Book of Methods Used and Adopted By The Association of Florida Phosphate Chemists, Seventh Edition 1991:

(i) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample, IBR approved for § 63.606(f)(3)(ii)(A), § 63.626(f)(3)(ii)(A).

(ii) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method A—Volumetric Method, IBR approved for § 63.606(f)(3)(ii)(B), § 63.626(f)(3)(ii)(B).

(iii) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B—Gravimetric Quimociac Method, IBR approved for § 63.606(f)(3)(ii)(C), § 63.626(f)(3)(ii)(C).

(iv) Section IX, Methods of Analysis For Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method C—Spectrophotometric Method, IBR approved for § 63.606(f)(3)(ii)(D), § 63.626(f)(3)(ii)(D).

(v) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A—Volumetric Method, IBR approved for § 63.606(f)(3)(ii)(E), § 63.626(f)(3)(ii)(E), and § 63.626(g)(6)(i).

(vi) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B—Gravimetric Quimociac Method, IBR approved for § 63.606(f)(3)(ii)(F), § 63.626(f)(3)(ii)(F), and § 63.626(g)(6)(ii).

(vii) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C—Spectrophotometric Method, IBR approved for § 63.606(f)(3)(ii)(G), § 63.626(f)(3)(ii)(G), and § 63.626(g)(6)(iii).

(2) [Reserved]

(c) * * *

(1) AOAC Official Method 929.01 Sampling of Solid Fertilizers, Sixteenth edition, 1995, IBR approved for § 63.626(g)(7)(ii).

(2) AOAC Official Method 929.02 Preparation of Fertilizer Sample, Sixteenth edition, 1995, IBR approved for § 63.626(g)(7)(iii).

(3) AOAC Official Method 957.02 Phosphorus (Total) in Fertilizers, Preparation of Sample Solution, Sixteenth edition, 1995, IBR approved for § 63.626(g)(7)(i).

(4) AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(g)(7)(vii).

(5) AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(g)(7)(vi).

(6) AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995, IBR approved for § 63.626(g)(7)(v).

(7) AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method, Sixteenth edition, 1995, IBR approved for § 63.626(g)(7)(iv).

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(2) Office Of Air Quality Planning And Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, September 1997, IBR approved for §§ 63.548(e)(4), 63.606(m), 63.607(b)(2)(ii), 63.626(h), 63.627(b)(2)(iii), 63.7525(j)(2), and 63.11224(f)(2).

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■ 20. Part 63 is amended by revising subpart AA to read as follows:

Subpart AA—National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

Sec.

63.600 Applicability.
63.601 Definitions.
63.602 Standards and compliance dates.
63.603 [Reserved]
63.604 [Reserved]
63.605 Operating and monitoring requirements.
63.606 Performance tests and compliance provisions.
63.607 Notification, recordkeeping, and reporting requirements.
63.608 General requirements and applicability of part 63 general provisions.
63.609 [Reserved]
63.610 Exemption from new source performance standards.
63.611 Implementation and enforcement.
Table 1 to Subpart AA of Part 63—Existing Source Phase 1 Emission Limits
Table 1a to Subpart AA of Part 63—Existing Source Phase 2 Emission Limits and Work Practice Standards
Table 2 to Subpart AA of Part 63—New Source Phase 1 Emission Limits
Table 2a to Subpart AA of Part 63—New Source Phase 2 Emission Limits and Work Practices
Table 3 to Subpart AA of Part 63—Monitoring Equipment Operating Parameters
Table 4 to Subpart AA of Part 63—Operating Parameters, Operating Limits and Data Monitoring, Recordkeeping and Compliance Frequencies
Table 5 to Subpart AA of Part 63—Calibration and Quality Control Requirements for Continuous Parameter Monitoring System (CPMS)
Appendix A to Subpart AA of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart AA

§ 63.600 Applicability.

(a) Except as provided in paragraphs (c) and (d) of this section, you are subject to the requirements of this subpart if you own or operate a phosphoric acid manufacturing plant that is a major source as defined in § 63.2. You must comply with the emission limitations, work practice standards, and operating parameter requirements specified in this subpart at all times.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAP) emitted from the following affected sources at a phosphoric acid manufacturing plant:

(1) Each wet-process phosphoric acid process line.

(2) Each evaporative cooling tower.

(3) Each phosphate rock dryer.

(4) Each phosphate rock calciner.

(5) Each superphosphoric acid process line.

(6) Each purified phosphoric acid process line.

(7) Each gypsum dewatering stack pond associated with the phosphoric acid manufacturing plant.

(c) The requirements of this subpart do not apply to a phosphoric acid manufacturing plant that is an area source as defined in § 63.2.

(d) The provisions of this subpart do not apply to research and development facilities as defined in § 63.601.

§ 63.601 Definitions.

Terms used in this subpart are defined in § 63.2 of the Clean Air Act and in this section as follows:

Active gypsum dewatering stack means a gypsum dewatering stack that does not meet the definition of closed gypsum dewatering stack.

Breakthrough means the point in time when the level of mercury detected at the outlet of an adsorber system is 90 percent of the highest concentration allowed to be discharged consistent with the applicable emission limit.

Closed gypsum dewatering stack means a gypsum dewatering stack that is no longer receiving phosphogypsum, and has received a cover on the top and sides. The final cover of a closed gypsum dewatering stack must include a barrier soil layer that will sustain vegetation and a drought resistant vegetative cover.

Cooling pond means a natural or artificial open reservoir that is primarily used to collect and cool water that comes into direct contact with raw materials, intermediate products, by-products, waste products, or finished products from a phosphoric acid manufacturing plant. The water in the cooling pond is often used at phosphoric acid manufacturing plants as filter wash water, absorber water for air pollution control absorbers, and/or to transport phosphogypsum as slurry to a gypsum dewatering stack(s).

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorus pentoxide (P_2O_5), fed to the process.

Evaporative cooling tower means an open-water, re-circulating device that uses fans or natural draft to draw or force ambient air through the device to remove heat from process water by direct contact.

Exceedance means a departure from an indicator range established for monitoring under this subpart, consistent with any averaging period specified for averaging the results of the monitoring.

Existing source depends on the date that construction or reconstruction of an affected source commenced. A wet-process phosphoric acid process line, superphosphoric acid process line, rock dryer, rock calciner, evaporative cooling tower, or purified acid process line is an existing source if construction or reconstruction of the affected source commenced on or before December 27, 1996. A gypsum dewatering stack or cooling pond is an existing source if construction or reconstruction of the gypsum dewatering stack or cooling pond commenced on or before [date of publication of the final rule in the **Federal Register**].

Gypsum dewatering stack means the phosphogypsum stack (or pile, or landfill), together with all pumps, piping, ditches, drainage conveyances, water control structures, collection pools, cooling ponds, surge ponds, auxiliary holding ponds, and any other collection or conveyance system associated with the transport of phosphogypsum from the plant to the gypsum dewatering stack, its management at the stack, and the process wastewater return to the phosphhoric acid production or other process. This definition includes toe drain systems, ditches and other leachate collection systems, but does not include conveyances within the confines of the fertilizer plant or emergency diversion impoundments used in emergency circumstances caused by rainfall events of high volume or duration for the temporary storage of process wastewater to avoid discharges to surface waters.

HAP metals mean those metals and their compounds (in particulate or volatile form) that are included on the list of hazardous air pollutants in section 112 of the Clean Air Act. HAP metals include, but are not limited to:

antimony, arsenic, beryllium, cadmium, chromium, Pb, manganese, nickel, and selenium expressed as particulate matter as measured by the methods and procedures in this subpart or an approved alternative method. For the purposes of this subpart, HAP metals (except mercury) are expressed as particulate matter as measured by Method 5 at 40 CFR part 60, appendix A–3.

New source depends on the date that construction or reconstruction of an affected source commences. A wet-process phosphoric acid process line, superphosphoric acid process line, rock dryer, rock calciner, evaporative cooling tower, or purified acid process line is a new source if construction or reconstruction of the affected source commenced after December 27, 1996. A gypsum dewatering stack or cooling pond is a new source if construction or reconstruction of the gypsum dewatering stack or cooling pond commenced after [date of publication of the final rule in the **Federal Register**]

Phosphate rock calciner means the equipment used to remove moisture and organic matter from phosphate rock through direct or indirect heating.

Phosphate rock dryer means the equipment used to reduce the moisture content of phosphate rock through direct or indirect heating.

Phosphate rock feed means all material entering any phosphate rock dryer or phosphate rock calciner including moisture and extraneous material as well as the following ore materials: fluorapatite, hydroxylapatite, chlorapatite, and carbonateapatite.

Phosphoric acid defluorination process means any process that treats phosphoric acid in a manner that removes fluorine compounds.

Phosphoric acid oxidation reactor means any equipment that uses an oxidizing agent to treat phosphoric acid.

Process line means all equipment associated with the production of any grade or purity of a phosphoric acid product including emission control equipment.

Purified phosphoric acid process line means any process line that uses a HAP as a solvent in the separation of impurities from the product acid for the purposes of rendering that product suitable for industrial, manufacturing, or food grade uses. A purified phosphoric acid process line includes, but is not limited to: solvent extraction process equipment, solvent stripping and recovery equipment, seal tanks, carbon treatment equipment, cooling towers, storage tanks, pumps, and process piping.

Raffinate stream means the aqueous stream containing the impurities that are removed during the purification of wet-process phosphoric acid using solvent extraction.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and where the facility is not engaged in the manufacture of products for commercial sale in commerce or other off-site distribution, except in a de minimis manner.

Superphosphoric acid process line means any process line that concentrates wet-process phosphoric acid to 66 percent or greater P_2O_5 content by weight. A superphosphoric acid process line includes, but is not limited to: evaporators, hot wells, acid sumps, oxidation reactors, and cooling tanks.

Total fluorides means elemental fluorine and all F compounds, including the HAP HF, as measured by reference methods specified in 40 CFR part 60, appendix A, Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

Wet-process phosphoric acid process line means any process line manufacturing phosphoric acid by reacting phosphate rock and acid. A wet-process phosphoric acid process line includes, but is not limited to: Reactors, filters, evaporators, hot wells, clarifiers, and defluorination systems.

§ 63.602 Standards and compliance dates.

(a) On and after the date on which the initial performance test specified in §§ 63.7 and 63.606 is required to be completed, for each wet-process phosphoric acid process line, superphosphoric acid process line, rock dryer, and rock calciner, you must comply with the emission limits and work practice standards as specified in paragraphs (a)(1) through (6) of this section. If a process line contains more than one emission point, you must sum the emissions from all emission points in a process line to determine compliance with the specified emission limits.

(1) For each existing wet-process phosphoric acid process line, superphosphoric acid process line, and rock dryer that commenced construction or reconstruction on or before December 27, 1996, you must comply with the emission limits specified in Table 1 to this subpart beginning on June 10, 2002 and ending on [date one year after the date of publication of the final rule in the **Federal Register**]. Beginning on [date one year after the date of publication of the final rule in the **Federal Register**], the emission limits specified in Table 1 to this subpart no longer apply, and you must comply with the emission limits specified in Table 1a to this subpart.

(2) For each existing rock calciner that commenced construction or reconstruction on or before December 27, 1996, you must comply with the emission limits as specified in paragraphs (a)(2)(i) and (ii) of this section, and the work practice standards as specified in paragraph (a)(2)(iii) of this section.

(i) You must comply with the total particulate emission limit specified in Tables 1 and 1a to this subpart beginning on June 10, 2002.

(ii) You must comply with the mercury emission limit specified in Table 1a to this subpart beginning on [date three years after the date of publication of the final rule in the **Federal Register**].

(iii) You must comply with the hydrogen fluoride work practice standards specified in Table 1a to this subpart beginning on [date of publication of the final rule in the **Federal Register**].

(3) For each new wet-process phosphoric acid process line, superphosphoric acid process line, and rock dryer that commences construction or reconstruction after December 27, 1996 and on or before [date of publication of the final rule in the **Federal Register**], you must comply with the emission limits specified in Table 2 to this subpart beginning at startup or on June 10, 1999, whichever is later, and ending on [date one year after the date of publication of the final rule in the **Federal Register**]. Beginning on [date one year after the date of publication of the final rule in the **Federal Register**], the emission limits specified in Table 2 to this subpart no longer apply, and you must comply with the emission limits specified in Table 2a to this subpart beginning on [date one year after the date of publication of the final rule in the **Federal Register**] or immediately upon startup, whichever is later.

(4) For each new wet-process phosphoric acid process line, superphosphoric acid process line, and rock dryer that commences construction or reconstruction after [date of publication of the final rule in the **Federal Register**], you must comply with the emission limits specified in Table 2a to this subpart immediately upon startup.

(5) For each new rock calciner that commences construction or reconstruction after December 27, 1996 and on or before [date of publication of the final rule in the **Federal Register**], you must comply with the emission limits as specified in paragraphs (a)(5)(i) and (ii) of this section, and the work practice standards as specified in paragraph (a)(5)(iii) of this section.

(i) You must comply with the total particulate emission limit specified in Tables 2 and 2a to this subpart beginning on June 10, 1999 or at startup, whichever is later.

(ii) You must comply with the mercury emission limit specified in Table 2a to this subpart beginning on [date one year after the date of publication of the final rule in the **Federal Register**].

(iii) You must comply with the hydrogen fluoride work practice standards specified in Table 2a to this subpart beginning on [date of publication of the final rule in the **Federal Register**].

(6) For each new rock calciner that commences construction or reconstruction after [date of publication of the final rule in the **Federal Register**], you must comply with the emission limits and work practices standards specified in Table 2a to this subpart immediately upon startup.

(b) For each existing and new purified phosphoric acid process line, you must comply with the provisions of subpart H of this part and maintain:

(1) A 30-day rolling average of daily concentration measurements of methyl isobutyl ketone equal to or below 20 parts per million by weight (ppmw) for each product acid stream.

(2) A 30-day rolling average of daily concentration measurements of methyl isobutyl ketone equal to or below 30 ppmw for each raffinate stream.

(3) The daily average temperature of the exit gas stream from the chiller stack below 50 degrees Fahrenheit.

(c) You must not introduce into any existing or new evaporative cooling tower any liquid effluent from any wet scrubbing device installed to control emissions from process equipment.

(d) For each existing gypsum dewatering stack or cooling pond that commenced construction or reconstruction on or before [date of publication of the final rule in the **Federal Register**], you must prepare, and operate in accordance with, a gypsum dewatering stack and cooling pond management plan that contains the information specified in paragraph (f) of this section beginning on [date one year after the date of publication of the final rule in the **Federal Register**].

(e) For each new gypsum dewatering stack or cooling pond that commences construction or reconstruction after [date of publication of the final rule in the **Federal Register**], you must prepare, and operate in accordance with, a gypsum dewatering stack and cooling pond management plan that contains the information specified in paragraph (f) of this section beginning on [date of publication of the final rule in the **Federal Register**].

(f) The gypsum dewatering stack and cooling pond management plan must include the information specified in paragraphs (f)(1) through (3) of this section.

(1) Location and size (i.e., current total footprint acreage) of each closed gypsum dewatering stack, active gypsum dewatering stack, and cooling pond.

(2) Control techniques that are used to minimize hydrogen fluoride and fugitive dust emissions from exposed surface areas of each active gypsum dewatering stack and cooling pond. For each active gypsum dewatering stack and cooling pond that commenced construction or reconstruction on or before [date of publication of the final rule in the **Federal Register**], you must use, and include in the management plan, at least one of the control techniques listed in paragraphs (f)(2)(i) through (vi) of this section. For each active gypsum dewatering stack and cooling pond that commences construction or reconstruction after [date of publication of the final rule in the **Federal Register**], you must use, and include in the management plan, at least two of the control techniques listed in paragraphs (f)(2)(i) through (vi) of this section.

(i) Submerge the discharge pipe along with any necessary siphon breaks to a level below the surface of the cooling pond or the surface of the pond associated with the active gypsum dewatering stack.

(ii) Minimize the surface area of the active gypsum dewatering stack by using a rim ditch (cell) building technique or other building technique.

(iii) Wet the active gypsum dewatering stack during hot or dry periods.

(iv) Apply slaked lime to the active gypsum dewatering stack surfaces.

(v) Apply soil caps and vegetation to all side slopes of the active gypsum dewatering stack up to 50 feet below the stack top.

(vi) Close the active gypsum dewatering stack such that it meets the definition of a closed gypsum dewatering stack specified in § 63.601.

(3) You must conduct calculations and maintain a record of the calculations to demonstrate compliance with the ratio requirement specified in paragraph (g) of this section.

(g) After [date of publication of the final rule in the **Federal Register**], whenever a facility commences construction of a new gypsum dewatering stack, the ratio of total active gypsum dewatering stack area (i.e., sum of the footprint acreage of all active gypsum dewatering stacks combined) to annual phosphoric acid manufacturing capacity must not be greater than 80 acres per 100,000 tons of annual phosphoric acid manufacturing capacity (equivalent P_2O_5 feed).

(h) To demonstrate compliance with any emission limits specified in paragraph (a) of this section during periods of startup and shutdown, you must begin operation of any control device(s) being used at the affected source prior to introducing any feed into the affected source. You must continue operation of the control device(s) through the shutdown period until all feed material has been processed through the affected source.

§ 63.603 [Reserved]

§ 63.604 [Reserved]

§ 63.605 Operating and monitoring requirements.

(a) For each wet-process phosphoric acid process line or superphosphoric acid process line subject to the provisions of this subpart, you must comply with the monitoring requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Install, calibrate, maintain, and operate a continuous monitoring system (CMS) according to your site-specific monitoring plan specified in § 63.608(c). The CMS must have an accuracy of ±5 percent over its operating range and must determine and permanently record the mass flow of phosphorus-bearing material fed to the process.

(2) Maintain a daily record of equivalent P_2O_5 feed. Calculate the equivalent P_2O_5 feed by determining the total mass rate, in metric ton/hour of phosphorus bearing feed, using the monitoring system specified in paragraph (a)(1) of this section and the procedures specified in § 63.606(f)(3).

(b) For each phosphate rock dryer or phosphate rock calciner subject to the provisions of this subpart, you must comply with the monitoring requirements specified in paragraphs (b)(1) through (3) of this section.

(1) Install, calibrate, maintain, and operate a CMS according to your site-specific monitoring plan specified in

§ 63.608(c). The CMS must have an accuracy of ±5 percent over its operating range and must determine and permanently record either:

(i) The mass flow of phosphorus-bearing feed material to the phosphate rock dryer or calciner, or

(ii) The mass flow of product from the phosphate rock dryer or calciner.

(2) Maintain the records specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) If you monitor the mass flow of phosphorus-bearing feed material to the phosphate rock dryer or calciner as specified in paragraph (b)(1)(i) of this section, maintain a daily record of phosphate rock feed by determining the total mass rate in metric tons/hour of phosphorus-bearing feed.

(ii) If you monitor the mass flow of product from the phosphate rock dryer or calciner as specified in paragraph (b)(1)(ii) of this section, maintain a daily record of product by determining the total mass rate in metric ton/hour of product.

(3) For each phosphate rock calciner, you must comply with the requirements in paragraphs (b)(3)(i) and (ii) of this section.

(i) The CMS must continuously measure and permanently record the calcination temperature of the phosphate rock calciner every 15 minutes.

(ii) You must comply with the applicable calibration and quality control requirements for temperature specified in Table 5 to this subpart.

(c) For each purified phosphoric acid process line, you must comply with the monitoring requirements specified in paragraphs (c)(1) and (2) of this section.

(1) Install, calibrate, maintain, and operate a CMS according to your site-specific monitoring plan specified in § 63.608(c). The CMS must continuously measure and permanently record the stack gas exit temperature for each chiller stack.

(2) Measure and record the concentration of methyl isobutyl ketone in each product acid stream and each raffinate stream once each day.

(d) If you use a control device(s) to comply with the emission limits specified in Table 1 or 2 of this subpart, or to comply with the emission limits or work practice standards specified in Table 1a or 2a of this subpart, you must install a continuous parameter monitoring system (CPMS) and comply with the requirements specified in paragraphs (d)(1) through (5) of this section.

(1) You must monitor the operating parameter(s) applicable to the control device that you use as specified in Table 3 to this subpart and establish the applicable limit or range for the operating parameter limit as specified in paragraphs (d)(1)(i) through (iii) of this section, as applicable.

(i) Except as specified in paragraphs (d)(1)(ii) and (iii) of this section, determine the value(s) as the arithmetic average of operating parameter measurements recorded during with the three test runs conducted for the most recent performance test.

(ii) For any absorber required by the work practice standards for phosphate rock calciners in Table 1a or 2a of this subpart, you must determine the value(s) based on an engineering assessment. The engineering assessment may include, but is not limited to, manufacturer's specifications and recommendations and/or a design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to, the use of material balances based on process stoichiometry and estimation of maximum flow rate based on physical equipment design such as pump or blower capacities.

(iii) If you use an absorber or a wet electrostatic precipitator to comply with the emission limits in Table 1, 1a, 2, or 2a to this subpart and you monitor pressure drop across each absorber or secondary voltage for a wet electrostatic precipitator, you must establish allowable ranges using the methodology specified in paragraphs (d)(1)(iii)(A) and (B) of this section.

(A) The allowable range for the daily averages of the pressure drop across an absorber, or secondary voltage for a wet electrostatic precipitator, is ±20 percent of the baseline average value determined in paragraph (d)(1)(i) of this section. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

(B) As an alternative to paragraph (d)(1)(iii)(A) of this section, you may establish, and provide to the Administrator for approval, allowable ranges for the daily averages of the pressure drop across an absorber, or secondary voltage for an electrostatic precipitator, for the purpose of assuring compliance with this subpart. You must establish the allowable ranges based on the baseline average values recorded during previous performance tests, or the results of performance tests conducted specifically for the purposes of this paragraph. You must conduct all performance tests using the methods specified in § 63.606. You must certify that the control devices and processes have not been modified since the date of the performance test from which you obtained the data used to establish the allowable ranges. You must request and obtain approval of the Administrator for changes to the allowable ranges. When a source using the methodology of this paragraph is retested, you must determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters outside the previously established ranges.

(2) You must monitor, record, and demonstrate continuous compliance using the minimum frequencies specified in Table 4 to this subpart.

(3) You must comply with the calibration and quality control requirements that are applicable to the operating parameter(s) you monitor as specified in Table 5 to this subpart.

(4) If you use a non-regenerative adsorption system to achieve the mercury emission limits specified in Table 1a or 2a to this subpart, you must comply with the requirements specified in paragraph (e) of this section.

(5) If you use a sorbent injection system to achieve the mercury emission limits specified in Table 1a or 2a to this subpart and you use a fabric filter to collect the associated particulate matter, the system must meet the requirements for fabric filters specified in paragraph (f) of this section.

(e) If you use a non-regenerative adsorption system to achieve the mercury emission limits specified in Table 1a or 2a to this subpart, you must comply with the requirements specified in paragraphs (e)(1) through (3) of this section.

(1) Determine the adsorber bed life (i.e., the expected life of the sorbent in the adsorption system) using the procedures specified in paragraphs (e)(1)(i) through (iv) of this section.

(i) If the adsorber bed is expected (designed) to have a life of less than 2 years, determine the outlet concentration of mercury on a quarterly basis until breakthrough occurs for the first three adsorber bed change-outs. The adsorber bed life shall equal the average length of time between each of the three change-outs.

(ii) If the adsorber bed is expected (designed) to have a life of 2 years or greater, determine the outlet concentration of mercury on a semi-annual basis until breakthrough occurs

for the first two adsorber bed change-outs. The adsorber bed life must equal the average length of time between each of the two change-outs.

(iii) If more than one adsorber is operated in parallel, or there are several identical operating lines controlled by adsorbers, you may determine the adsorber bed life by measuring the outlet concentration of mercury from one of the adsorbers or adsorber systems rather than determining the bed life for each adsorber.

(iv) The adsorber or adsorber system you select for the adsorber bed life test must have the highest expected inlet gas mercury concentration and the highest operating rate of any adsorber in operation at the affected source. During the test to determine adsorber bed life, you must use the fuel that contains the highest level of mercury in any fuel-burning unit associated with the adsorption system being tested.

(2) You must replace the sorbent in each adsorber on or before the end of the adsorbent bed life, calculated in paragraph (e)(1) of this section.

(3) You must re-establish the adsorber bed life if the sorbent is replaced with a different brand or type, or if any process changes are made that would lead to a shorter bed lifetime.

(f) If you use a fabric filter system to comply with the emission limits specified in Table 1, 1a, 2, or 2a to this subpart, the fabric filter must be equipped with a bag leak detection system that is installed, calibrated, maintained, and continuously operated according to the requirements in paragraphs (f)(1) through (10) of this section.

(1) Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (*e.g.*, for a positive-pressure fabric filter) of the fabric filter.

(2) Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 1 milligram per actual cubic meter (0.00044 grains per actual cubic feet) or less.

(3) Use a bag leak detection system equipped with a device to continuously record the output signal from the system sensor.

(4) Use a bag leak detection system equipped with a system that will trigger an alarm when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located such that the alert is observed readily by plant operating personnel.

(5) Install a bag leak detection system in each compartment or cell for positive-pressure fabric filter systems that do not duct all compartments or cells to a common stack. Install a bag leak detector downstream of the fabric filter if a negative-pressure or induced-air filter system is used. If multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(6) Calibration of the bag leak detection system must, at a minimum, consist of establishing the baseline output level by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(7) After initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as established in your site-specific monitoring plan required in § 63.608(c). In no event may the sensitivity be increased more than 100 percent or decreased by more than 50 percent over a 365-day period unless such adjustment follows a complete inspection of the fabric filter system that demonstrates that the system is in good operating condition.

(8) Operate and maintain each fabric filter and bag leak detection system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. If the alarm sounds more than 5 percent of the operating time during a 6-month period, it is considered an operating parameter exceedance. Calculate the alarm time (i.e., time that the alarm sounds) as specified in paragraphs (f)(8)(i) through (iii) of this section.

(i) If inspection of the fabric filter demonstrates that corrective action is not required, the alarm duration is not counted in the alarm time calculation.

(ii) If corrective action is required, each alarm time is counted as a minimum of 1 hour.

(iii) If it takes longer than 1 hour to initiate corrective action, each alarm time is counted as the actual amount of time taken to initiate corrective action.

(9) If the alarm on a bag leak detection system is triggered, you must initiate procedures within 1 hour of an alarm to identify the cause of the alarm and then initiate corrective action, as specified in § 63.608(d)(2), no later than 48 hours after an alarm. Failure to take these actions within the prescribed time periods is considered a violation.

(10) Retain records of any bag leak detection system alarm, including the date, time, duration, and the percent of the total operating time during each 6-month period that the alarm sounds, with a brief explanation of the cause of the alarm, the corrective action taken, and the schedule and duration of the corrective action.

(g) If you choose to directly monitor mercury emissions instead of using CPMS as specified in paragraph (d) of this section, then you must install and operate a mercury CEMS in accordance with Performance Specification 12A of appendix B to part 60 of this chapter, or a sorbent trap-based integrated monitoring system in accordance with Performance Specification 12B of appendix B to part 60 of this chapter. You must continuously monitor mercury emissions as specified in paragraphs (g)(1) through (4) of this section.

(1) The span value for any mercury CEMS must include the intended upper limit of the mercury concentration measurement range during normal operation, which may be exceeded during other short-term conditions lasting less than 24 consecutive operating hours. However, the span should be at least equivalent to approximately two times the emissions standard. You may round the span value to the nearest multiple of 10 micrograms per cubic meter of total mercury.

(2) You must operate and maintain each mercury CEMS or sorbent trap-based integrated monitoring system according to the quality assurance requirements specified in Procedure 5 of appendix F to part 60 of this chapter.

(3) You must conduct relative accuracy testing of mercury monitoring systems, as specified in Performance Specification 12A, Performance Specification 12B, or Procedure 5 of appendix B to part 60 of this chapter, at normal operating conditions.

(4) If you use a mercury CEMS, you must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the exhaust gas flow rate to the atmosphere according to your site-specific monitoring plan specified in § 63.608(c).

§ 63.606 Performance tests and compliance provisions.

(a) You must conduct an initial performance test to demonstrate compliance with the applicable emission limits specified in Tables 1, 1a, 2, and 2a to this subpart, on or before the applicable compliance date specified in § 63.602.

(b) After you conduct the initial performance test specified in paragraph (a) of this section, you must conduct an annual performance test no more than 13 months after the date the previous performance test was conducted.

(c) For affected sources (as defined in § 63.600) that have not operated since the previous annual performance test was conducted and more than 1 year has passed since the previous performance test, you must conduct a performance test no later than 180 days after the re-start of the affected source according to the applicable provisions in § 63.7(a)(2).

(d) You must conduct the performance tests specified in this section at maximum representative operating conditions for the process. Maximum representative operating conditions means process operating conditions that are likely to recur and that result in the flue gas characteristics that are the most difficult for reducing emissions of the regulated pollutant(s) by the control device used. The most difficult condition for the control device may include, but is not limited to, the highest HAP mass loading rate to the control device or the highest HAP mass loading rate of constituents that approach the limits of solubility for scrubbing media. Operations during startup, shutdown, and malfunction do not constitute representative operating conditions for purposes of conducting a performance test. You must record the process information that is necessary to document the operating conditions during the test and include in such record an explanation to support that such conditions represent maximum representative operating conditions. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(e) In conducting all performance tests, you must use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(f) You must determine compliance with the applicable total fluorides standards or hydrogen fluoride standards specified in Tables 1, 1a, 2, and 2a to this subpart as specified in paragraphs (f)(1) through (3) of this section.

(1) Compute the emission rate (E) of total fluorides or hydrogen fluoride for each run using Equation AA–1:

$$E = \left(\sum_{i=1}^{N} C_i Q_i \right) / (PK) \qquad \text{(Eq. AA-1)}$$

Where:

E = Emission rate of total fluorides or hydrogen fluoride, gram/metric ton (pound/ton) of equivalent P_2O_5 feed.

C_i = Concentration of total fluorides or hydrogen fluoride from emission point "i," milligram/dry standard cubic meter (milligram/dry standard cubic feet).

Q_i = Volumetric flow rate of effluent gas from emission point "i," dry standard cubic meter/hour (dry standard cubic feet/hour).

N = Number of emission points associated with the affected facility.

P = Equivalent P_2O_5 feed rate, metric ton/hour (ton/hour).

K = Conversion factor, 1000 milligram/gram (453,600 milligram/pound).

(2) You must use the test methods and procedures as specified in paragraphs (f)(2)(i) or (ii) of this section.

(i) You must use Method 13A or 13B (40 CFR part 60, appendix A) to determine the total fluorides concentration (C_i) and the volumetric flow rate (Q_i) of the effluent gas at each emission point. The sampling time for each run at each emission point must be at least 60 minutes. The sampling volume for each run at each emission point must be at least 0.85 dscm (30 dscf). If Method 13B is used, the fusion of the filtered material described in Section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in section 7.3.3 and 7.3.4 in Method 13 A, may be omitted.

(ii) You must use Method 320 at 40 CFR part 63, appendix A to determine the hydrogen fluoride concentration (C_i) at each emission point. The sampling time for each run at each emission point must be at least 60 minutes. You must use Method 2 at 40 CFR part 60, Appendix A–1 to determine the volumetric flow rate (Q_i) of the effluent gas from each of the emission points.

(3) Compute the equivalent P_2O_5 feed rate (P) using Equation AA–2:

$$P = M_p R_p \qquad \text{(Eq. AA-2)}$$

Where:

P = P_2O_5 feed rate, metric ton/hr (ton/hour).

M_p = Total mass flow rate of phosphorus-bearing feed, metric ton/hour (ton/hour).

R_p = P_2O_5 content, decimal fraction.

(i) Determine the mass flow rate (M_p) of the phosphorus-bearing feed using the measurement system described in § 63.605(a).

(ii) Determine the P_2O_5 content (R_p) of the feed using, as appropriate, the following methods specified in Methods Used and Adopted By The Association of Florida Phosphate Chemists (Seventh Edition, 1991) where applicable:

(A) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample (incorporated by reference, see § 63.14).

(B) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method A-Volumetric Method (incorporated by reference, see § 63.14).

(C) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B-Gravimetric Quimociac Method (incorporated by reference, see § 63.14).

(D) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method C-Spectrophotometric Method (incorporated by reference, see § 63.14).

(E) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A-Volumetric Method (incorporated by reference, see § 63.14).

(F) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B-Gravimetric Quimociac Method (incorporated by reference, see § 63.14).

(G) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C-Spectrophotometric Method (incorporated by reference, see § 63.14).

(g) You must demonstrate compliance with the applicable particulate matter standards specified in Tables 1, 1a, 2, and 2a to this subpart as specified in paragraphs (g)(1) through (3) of this section.

(1) Compute the emission rate (E) of particulate matter for each run using Equation AA–3:

$$E = (C\ Q)/(P\ K) \qquad \text{(Eq. AA-3)}$$

Where:

E = Emission rate of particulate matter, kilogram/megagram (pound/ton) of phosphate rock feed.

C = Concentration of particulate matter, gram/dry standard cubic meter (gram/dry standard cubic feet).

Q = Volumetric flow rate of effluent gas, dry standard cubic meter/hour (dry standard cubic feet/hour).
P = Phosphate rock feed rate, megagram/hour (ton/hour).
K = Conversion factor, 1000 grams/kilogram (453.6 grams/pound).

(2) Use Method 5 at 40 CFR part 60, appendix A–3 to determine the particulate matter concentration (C) and volumetric flow rate (Q) of the effluent gas. Except as specified in paragraph (h) of this section, the sampling time and sample volume for each run must be at least 60 minutes and 0.85 dry standard cubic meter (30 dry standard cubic feet).

(3) Use the CMS described in § 63.605(b) to determine the phosphate rock feed rate (P) for each run.

(h) To demonstrate compliance with the particulate matter standards for phosphate rock calciners specified in Tables 1, 1a, 2, or 2a to this subpart, you must use Method 5 at 40 CFR part 60, appendix A–3 to determine the particulate matter concentration. The sampling volume for each test run must be at least 1.70 dry standard cubic meter.

(i) To demonstrate compliance with the mercury emission standards for phosphate rock calciners specified in Table 1a or 2a to this subpart, you must use Method 30B at 40 CFR part 60, appendix A–8 to determine the mercury concentration, unless you use a CEMS to demonstrate compliance. If you use a non-regenerative adsorber to control mercury emissions, you must use this test method to determine the expected bed life as specified in § 63.605(e)(1).

(j) If you choose to monitor the mass flow of product from the phosphate rock dryer or calciner as specified in § 63.605(b)(1)(ii), you must either:

(1) Simultaneously monitor the feed rate and output rate of the phosphate rock dryer or calciner during the performance test, or

(2) Monitor the output rate and the input and output moisture contents of the phosphate rock dryer or calciner during the performance test and calculate the corresponding phosphate rock dryer or calciner input rate.

(k) For sorbent injection systems, you must conduct the performance test at the outlet of the fabric filter used for sorbent collection. You must monitor and record operating parameter values for the fabric filter during the performance test. If the sorbent is replaced with a different brand or type of sorbent than was used during the performance test, you must conduct a new performance test.

(l) If you use a mercury CEMS as specified in § 63.605(g), or paragraph (i) of this section, you must demonstrate initial compliance based on the first 30 operating days during which you operate the affected source using a CEMS. You must obtain hourly mercury concentration and stack gas volumetric flow rate data.

(m) If you use a CMS, you must conduct a performance evaluation, as specified in § 63.8(e), in accordance with your site-specific monitoring plan in § 63.608(c). For fabric filters, you must conduct a performance evaluation of the bag leak detection system consistent with the guidance provided in Office Of Air Quality Planning And Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, September 1997 (incorporated by reference, see § 63.14). You must record the sensitivity of the bag leak detection system to detecting changes in particulate matter emissions, range, averaging period, and alarm set points during the performance test.

§ 63.607 Notification, recordkeeping, and reporting requirements.

(a) You must comply with the notification requirements specified in § 63.9. You must also notify the Administrator each time that the operating limits change based on data collected during the most recent performance test. When a source is retested and the performance test results are submitted to the Administrator pursuant to paragraph (b)(1) of this section, § 63.7(g)(1), or § 63.10(d)(2), you must indicate whether the operating range is based on the new performance test or the previously established range. Upon establishment of a new operating range, you must thereafter operate under the new range. If the Administrator determines that you did not conduct the compliance test in accordance with the applicable requirements or that the ranges established during the performance test do not represent normal operations, you must conduct a new performance test and establish new operating ranges.

(b) You must comply with the reporting and recordkeeping requirements in § 63.10 as specified in paragraphs (b)(1) through (b)(5) of this section.

(1) You must comply with the general recordkeeping requirements in § 63.10(b)(1).

(2) As required by § 63.10(d), you must report the results of the initial and subsequent performance tests as part of the notification of compliance status required in § 63.9(h). You must verify in the performance test reports that the operating limits for each process have not changed or provide documentation of revised operating limits established according to § 63.605, as applicable. In the notification of compliance status, you must also:

(i) Certify to the Administrator annually that you have complied with the evaporative cooling tower requirements specified in § 63.602(c).

(ii) Submit analyses and supporting documentation demonstrating conformance with the Office Of Air Quality Planning And Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, September 1997 (incorporated by reference, see § 63.14) and specifications for bag leak detection systems as part of the notification of compliance status report.

(iii) Submit the gypsum dewatering stack and cooling pond management plan specified in § 63.602(f).

(iv) If you elect to demonstrate compliance by following the procedures in § 63.605(d)(1)(iii)(B), certify to the Administrator annually that the control devices and processes have not been modified since the date of the performance test from which you obtained the data used to establish the allowable ranges.

(v) Each time a gypsum dewatering stack is closed, certify to the Administrator within 90 days of closure, that the final cover of the closed gypsum dewatering stack is a drought resistant vegetative cover that includes a barrier soil layer that will sustain vegetation.

(vi) If you operate a phosphate rock calciner, include the engineering assessment as required by § 63.605(d)(1)(ii) and the information in paragraphs (b)(2)(vi)(A) through (D) of this section.

(A) Description of the monitoring devices and monitoring frequencies.

(B) The established operating limits of the monitored parameter(s).

(C) The rationale for the established operating limit, inlcuding any data and calculations used to develop the operating limit and a description of why the operating limit inidcates proper operation of the control device.

(D) The rationale used to determine which format to use for your operating limit (e.g., operating range, minimum operating level or maximum operating level), where this subpart does not specify which format to use.

(3) As required by § 63.10(e)(3), you must submit an excess emissions report for any exceedance of an emission limit, work practice standard, or operating parameter limit if the total duration of the exceedances for the reporting period is 1 percent of the total operating time for the reporting period or greater. The report must contain the information specified in § 63.10 and paragraph (b)(4)

of this section. When exceedances of an emission limit or operating parameter have not occurred, you must include such information in the report. You must submit the report semiannually and the report must be delivered or postmarked by the 30th day following the end of the calendar half. If you report exceedances, you must submit the excess emissions report quarterly until a request to reduce reporting frequency is approved as described in § 63.10(e)(3)(ii).

(4) In the event that an affected unit fails to meet an applicable standard, record and report the following information for each failure:

(i) The date, time and duration of the failure.

(ii) A list of the affected sources or equipment for which a failure occurred.

(iii) An estimate of the volume of each regulated pollutant emitted over any emission limit.

(iv) A description of the method used to estimate the emissions.

(v) A record of actions taken to minimize emissions in accordance with § 63.608(b), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(5) You must submit a summary report containing the information specified in § 63.10(e)(3)(vi). You must submit the summary report semiannually and the report must be delivered or postmarked by the 30th day following the end of the calendar half.

(c) Your records must be in a form suitable and readily available for expeditious review. You must keep each record for 5 years following the date of each recorded action. You must keep each record on site, or accessible from a central location by computer or other means that instantly provides access at the site, for at least 2 years after the date of each recorded action. You may keep the records off site for the remaining 3 years.

(d) In computing averages to determine compliance with this subpart, you must exclude the monitoring data specified in paragraphs (d)(1) through (2) of this section.

(1) Periods of non-operation of the process unit;

(2) Periods of no flow to a control device; and any monitoring data recorded during CEMS or continuous parameter monitoring system (CPMS) breakdowns, out-of-control periods, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero (low-level), mid-level (if applicable), and high-level adjustments.

(e) Within 60 days after the date of completing each performance test (as defined in § 63.2), you must submit the results of the performance tests, including any associated fuel analyses, required by this subpart according to the methods specified in paragraphs (e)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*), you must submit the results of the performance test to the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX) (*http://cdx.epa.gov/epa_home.asp*), unless the Administrator approves another approach. Performance test data must be submitted in a file format generated through the use of the EPA's ERT. Owners or operators, who claim that some of the information being submitted for performance tests is confidential business information (CBI), must submit a complete file generated through the use of the EPA's ERT, including information claimed to be CBI, on a compact disk, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph.

(2) For any performance test conducted using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(f) Within 60 days after the date of completing each CEMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation according to the method specified by either paragraph (f)(1) or (f)(2) of this section.

(1) For data collection of relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site, you must submit the results of the performance evaluation to the CEDRI that is accessed through the EPA's CDX, unless the Administrator approves another approach. Performance evaluation data must be submitted in a file format generated through the use of the EPA's ERT. If you claim that some of the performance evaluation information being transmitted is CBI, you must submit a complete file generated through the use of the EPA's ERT, including information claimed to be CBI, on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) by registered letter to the EPA. The compact disk shall be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph.

(2) For any performance evaluations with RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT Web site, you shall submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 63.13.

§ 63.608 General requirements and applicability of part 63 general provisions.

(a) You must comply with the general provisions in subpart A of this part as specified in appendix A to this subpart.

(b) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination by the Administrator of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) For each CMS (including CEMS or CPMS) used to demonstrate compliance with any applicable emission limit or work practice, you must develop, and submit to the Administrator for approval upon request, a site-specific monitoring plan according to the requirements specified in paragraphs (c)(1) through (3) of this section. You must submit the site-specific monitoring plan, if requested by the Administrator, at least 60 days before the initial performance evaluation of the CMS. The requirements of this paragraph also apply if a petition is made to the Administrator for alternative monitoring parameters under § 63.8(f).

(1) You must include the information specified in paragraphs (c)(1)(i) through (vi) of this section in the site-specific monitoring plan.

(i) Location of the CMS sampling probe or other interface. You must include a justification demonstrating that the sampling probe or other interface is at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device).

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems.

(iii) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(iv) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1)(ii), (c)(3), (c)(4)(ii), and Table 4 to this subpart.

(v) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(1) and (2) and Table 5 to this subpart.

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(2) You must include a schedule for conducting initial and subsequent performance evaluations in the site-specific monitoring plan.

(3) You must keep the site-specific monitoring plan on site for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If you revise the site-specific monitoring plan, you must keep previous (i.e., superseded) versions of the plan on site to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. You must include the program of corrective action required under § 63.8(d)(2) in the plan.

(d) For each bag leak detection system installed to comply with the requirements specified in § 63.605(f), you must include the information specified in paragraphs (d)(1) and (2) of this section in the site-specific monitoring plan specified in paragraph (c) of this section.

(1) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations), including how the alarm set point will be established.

(2) A corrective action plan describing corrective actions to be taken and the timing of those actions when the bag leak detection alarm sounds. Corrective actions may include, but are not limited to, the actions specified in paragraphs (d)(2)(i) through (vi) of this section.

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other conditions that may cause an increase in regulated material emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective fabric filter compartment.

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system.

(vi) Shutting down the process controlled by the fabric filter.

§ 63.609 [Reserved]

§ 63.610 Exemption from new source performance standards.

Any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart T, subpart U, or subpart NN. To be exempt, a source must have a current operating permit pursuant to title V of the Clean Air Act and the source must be in compliance with all requirements of this subpart. For each affected source, this exemption is effective upon the date that you demonstrate to the Administrator that the requirements of §§ 63.605 and 63.606 have been met.

§ 63.611 Implementation and enforcement.

(a) This subpart is implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable state, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a state, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a state, local, or Tribal agency.

(b) The authorities specified in paragraphs (b)(1) through (5) of this section are retained by the Administrator of U.S. EPA and cannot be delegated to State, local, or Tribal agencies.

(1) Approval of alternatives to the requirements in §§ 63.600, 63.602, 63.605, and 63.610.

(2) Approval of requests under §§ 63.7(e)(2)(ii) and 63.7(f) for alternative requirements or major changes to the test methods specified in this subpart, as defined in § 63.90.

(3) Approval of requests under § 63.8(f) for alternative requirements or major changes to the monitoring requirements specified in this subpart, as defined in § 63.90.

(4) Waiver or approval of requests under § 63.10(f) for alternative requirements or major changes to the recordkeeping and reporting requirements specified in this subpart, as defined in § 63.90.

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

TABLE 1 TO SUBPART AA OF PART 63—EXISTING SOURCE PHASE 1 EMISSION LIMITS [a] [b]

For the following existing sources . . .	You must meet the emission limits for the specified pollutant . . .			
	Total fluorides	Hydrogen fluoride	Total particulate	Mercury
Wet-Process Phosphoric Acid Line	0.020 lb/ton of equivalent P_2O_5 feed.	.....	.....	
Superphosphoric Acid Process Line.	0.010 lb/ton of equivalent P_2O_5 feed.	.....	.....	
Superphosphoric Acid Submerged Line with a Submerged Combustion Process.	0.20 lb/ton of equivalent P_2O_5 feed.	.....	.....	
Phosphate Rock Dryer	.....	.....	0.2150 lb/ton of phosphate rock feed.	
Phosphate Rock Calciner	.....	.....	0.181 g/dscm	

[a] The phase 1 existing source compliance date is June 10, 2002.

[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.602(h).

TABLE 1A TO SUBPART AA OF PART 63—EXISTING SOURCE PHASE 2 EMISSION LIMITS AND WORK PRACTICE STANDARDS [a b]

For the following existing sources . . .	You must meet the emission limits and work practice standards for the specified pollutant . . .			
	Total fluorides	Hydrogen fluoride	Total particulate	Mercury
Wet-Process Phosphoric Acid Line	.....	0.020 lb/ton of equivalent P_2O_5 feed.	.....	
Superphosphoric Acid Process Line.	.....	0.010 lb/ton of equivalent P_2O_5 feed.	.....	
Superphosphoric Acid Submerged Line with a Submerged Combustion Process.	.....	0.20 lb/ton of equivalent P_2O_5 feed.	.....	
Phosphate Rock Dryer	.....	.....	0.2150 lb/ton of phosphate rock feed.	
Phosphate Rock Calciner	.....	Maintain a daily average calcination temperature below 1,600 °F, and route emissions to an absorber.	0.181 g/dscm	0.014 mg/dscm @3% O_2

[a] The phase 2 existing source compliance dates apply at different times for different pollutants as specified in § 63.602(a).
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.602(h).

TABLE 2 TO SUBPART AA OF PART 63—NEW SOURCE PHASE 1 EMISSION LIMITS [a b]

For the following new sources . . .	You must meet the emissions limits for the specified pollutant . . .			
	Total fluorides	Hydrogen fluoride	Total particulate	Mercury
Wet-Process Phosphoric Acid Line	0.0135 lb/ton of equivalent P_2O_5 feed.	.....	.....	
Superphosphoric Acid Process Line.	0.00870 lb/ton of equivalent P_2O_5 feed.	.....	.....	
Phosphate Rock Dryer	.....	.....	0.060 lb/ton of phosphate rock feed.	
Phosphate Rock Calciner	.....	.....	0.092 g/dscm	

[a] The phase 1 new source compliance dates are based on date of construction or reconstruction as specified in § 63.602(a).
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.602(h).

TABLE 2A TO SUBPART AA OF PART 63—NEW SOURCE PHASE 2 EMISSION LIMITS AND WORK PRACTICES [a b]

For the following new sources . . .	You must meet the emissions limits and work practice standards for the specified pollutant . . .			
	Total fluorides	Hydrogen fluoride	Total particulate	Mercury
Wet-Process Phosphoric Acid Line	.....	0.0135 lb/ton of equivalent P_2O_5 feed.	.....	
Superphosphoric Acid Process Line.	.....	0.00870 lb/ton of equivalent P_2O_5 feed.	.....	
Phosphate Rock Dryer	.....	.....	0.060 lb/ton of phosphate rock feed.	
Phosphate Rock Calciner	.....	Maintain a daily average calcination temperature below 1,600 °F, and route emissions to an absorber.	0.092 g/dscm	0.014 mg/dscm @3% O_2

[a] The phase 2 new source compliance dates are based on date of construction or reconstruction as specified in § 63.602(a).
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.602(h).

TABLE 3 TO SUBPART AA OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

You must . . .	If . . .	And you must monitor . . .	And . . .
All Absorbers (Wet Scrubbers): Choose one of the following two options			
Install a continuous parameter monitoring system (CPMS) for liquid flow at the inlet of the absorber.	You choose to monitor only the influent liquid flow, rather than the liquid-to-gas ratio.	Influent liquid flow	
Install CPMS for liquid and gas flow at the inlet of the absorber.	You choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow.	Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the inlet gas flow rate. The units of measure must be consistent with those used to calculate this ratio during the performance test, or those found in the engineering assessment as specified in § 63.605(d)(1)(ii), as applicable.	You must measure the gas stream by: Measuring the gas stream flow at the absorber inlet; or Using the design blower capacity, with appropriate adjustments for pressure drop.
Absorbers (Wet Scrubbers): You must also choose one of the following three options			
Install CPMS for pressure at the gas stream inlet and outlet of the absorber.	You choose to monitor pressure drop through the absorber, and your pressure drop through the absorber is greater than 5 inches of water.	Pressure drop through the absorber.	You may measure the pressure of the inlet gas using amperage on the blower if a correlation between pressure and amperage is established.
Install CPMS for temperature at the absorber gas stream outlet and pressure at the liquid inlet of the adsorber.	You choose to monitor exit gas temperature and inlet pressure of the liquid.	Exit gas temperature of the absorber and inlet liquid pressure of the absorber.	
Install CPMS for temperature at the absorber gas stream outlet and absorber gas stream inlet.	You choose to monitor temperature differential across the absorber.	Exit gas temperature of the absorber and inlet gas temperature of the absorber.	
Condensers			
Install a CPMS for temperature in the stack exit gas.		Temperature of the stack exit gas	
Sorbent Injection			
Install a CPMS for flow rate		Sorbent injection rate	
Install a CPMS for flow rate		Sorbent injection carrier gas flow rate.	
Wet Electrostatic Precipitators			
Install secondary voltage meter	You control mercury or metal HAP (particulate matter) using an electrostatic precipitator.	Secondary voltage	

TABLE 4 TO SUBPART AA OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

For the operating parameter applicable to you, as specified in Table 3 . . .	You must establish the following operating limit . . .	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . .		
		Data measurement	Data recording	Data averaging period for compliance
Absorbers (Wet Scrubbers)				
Influent liquid flow	Minimum inlet liquid flow	Continuous	Every 15 minutes	Daily.
Influent liquid flow rate and gas stream flow rate.	Minimum influent liquid-to-gas ratio.	Continuous	Every 15 minutes	Daily.
Pressure drop	Pressure drop range	Continuous	Every 15 minutes	Daily.
Exit gas temperature	Maximum exit gas temperature.	Continuous	Every 15 minutes	Daily.
Inlet gas temperature	Minimum temperature difference between inlet and exit gas.	Continuous	Every 15 minutes	Daily.
Inlet liquid pressure	Minimum Inlet liquid pressure.	Continuous	Every 15 minutes	Daily.

TABLE 4 TO SUBPART AA OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES—Continued

For the operating parameter applicable to you, as specified in Table 3 . . .	You must establish the following operating limit . . .	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies . . .		
		Data measurement	Data recording	Data averaging period for compliance
Condensers				
Gas temperature at the exit of the condenser.	Maximum outlet gas temperature.	Continuous	Every 15 minutes	Daily.
Sorbent Injection				
Sorbent injection rate	Minimum injection rate	Continuous	Every 15 minutes	Daily.
Sorbent injection carrier gas flow rate.	Minimum carrier gas flow rate.	Continuous	Every 15 minutes	Daily.
Fabric Filters				
Alarm time	Maximum alarm time is not established on a site-specific basis but is specified in § 63.604(e)(1)(ix).	Continuous	Each date and time of alarm start and stop.	Maximum alarm time specified in § 65.604(e)(1)(ix).
Wet Electrostatic Precipitator				
Secondary voltage	Secondary voltage range	Continuous	Every 15 minutes	Daily.

TABLE 5 TO SUBPART AA OF PART 63—CALIBRATION AND QUALITY CONTROL REQUIREMENTS FOR CONTINUOUS PARAMETER MONITORING SYSTEM (CPMS)

If you monitor this parameter . . .	Your accuracy requirements are . . .	And your calibration requirements are . . .
Temperature	±1 percent over the normal range of temperature measured or 2.8 degrees Celsius (5 degrees Fahrenheit), whichever is greater, for non-cryogenic temperature ranges. ±2.5 percent over the normal range of temperature measured or 2.8 degrees Celsius (5 degrees Fahrenheit), whichever is greater, for cryogenic temperature ranges.	Performance evaluation annually and following any period of more than 24 hours throughout which the temperature exceeded the maximum rated temperature of the sensor, or the data recorder was off scale. Visual inspections and checks of CPMS operation every 3 months, unless the CPMS has a redundant temperature sensor. Selection of a representative measurement location.
Flow Rate	±5 percent over the normal range of flow measured or 1.9 liters per minute (0.5 gallons per minute), whichever is greater, for liquid flow rate. ±5 percent over the normal range of flow measured or 280 liters per minute (10 cubic feet per minute), whichever is greater, for gas flow rate. ±5 percent over the normal range measured for mass flow rate.	Performance evaluation annually and following any period of more than 24 hours throughout which the flow rate exceeded the maximum rated flow rate of the sensor, or the data recorder was off scale. Checks of all mechanical connections for leakage monthly. Visual inspections and checks of CPMS operation every 3 months, unless the CPMS has a redundant flow sensor. Selection of a representative measurement location where swirling flow or abnormal velocity distributions due to upstream and downstream disturbances at the point of measurement are minimized.
Pressure	±5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.	Checks for obstructions (*e.g.,* pressure tap pluggage) at least once each process operating day. Performance evaluation annually and following any period of more than 24 hours throughout which the pressure exceeded the maximum rated pressure of the sensor, or the data recorder was off scale. Checks of all mechanical connections for leakage monthly. Visual inspection of all components for integrity, oxidation and galvanic corrosion every 3 months, unless the CPMS has a redundant pressure sensor. Selection of a representative measurement location that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

TABLE 5 TO SUBPART AA OF PART 63—CALIBRATION AND QUALITY CONTROL REQUIREMENTS FOR CONTINUOUS PARAMETER MONITORING SYSTEM (CPMS)—Continued

If you monitor this parameter . . .	Your accuracy requirements are . . .	And your calibration requirements are . . .
Sorbent Injection Rate	±5 percent over the normal range measured	Performance evaluation annually. Visual inspections and checks of CPMS operation every 3 months, unless the CPMS has a redundant sensor. Select a representative measurement location that provides measurement of total sorbent injection.
Secondary voltage	±1kV.	

APPENDIX A TO SUBPART AA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA

40 CFR citation	Requirement	Applies to subpart AA	Comment
§ 63.1(a)(1) through (4)	General Applicability	Yes	None.
§ 63.1(a)(5)		No	[Reserved].
§ 63.1(a)(6)	Contact information	Yes	None.
§ 63.1(a)(7)–(9)		No	[Reserved].
§ 63.1(a)(10) through (12)	Time periods	Yes	None.
§ 63.1(b)	Initial Applicability Determination	Yes	None.
§ 63.1(c)(1)	Applicability After Standard Established	Yes	None.
§ 63.1(c)(2)	Permits	Yes	Some plants may be area sources.
§ 63.1(c)(3)–(4)		No	[Reserved].
§ 63.1(c)(5)	Area to Major source change	Yes	None.
§ 63.1(d)		No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes	None.
§ 63.2	Definitions	Yes	Additional definitions in § 63.601.
§ 63.3	Units and Abbreviations	Yes	None.
§ 63.4(a)(1) and (2)	Prohibited Activities	Yes	None.
§ 63.4(a)(3) through (5)		No	[Reserved].
§ 63.4(b) and (c)	Circumvention/Fragmentation	Yes	None.
§ 63.5(a)	Construction/Reconstruction Applicability.	Yes	None.
§ 63.5(b)(1)	Existing, New, Reconstructed Sources Requirements.	Yes	None.
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3), (4), and (6)	Construction/Reconstruction approval and notification.	Yes	None.
§ 63.5(b)(5)		No	[Reserved]
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	None.
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes	None.
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes	None.
§ 63.6(a)	Compliance with Standards and Maintenance Applicability.	Yes	None.
§ 63.6(b)(1) through (5)	New and Reconstructed Sources Dates.	Yes	See also § 63.602.
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)	Area to major source change	Yes	None.
§ 63.6(c)(1) and (2)	Existing Sources Dates	Yes	§ 63.602 specifies dates.
§ 63.6(c)(3) and (4)		No	[Reserved].
§ 63.6(c)(5)	Area to major source change	Yes	None.
§ 63.6(d)		No	[Reserved].
§ 63.6(e)(1)(i) and (ii)	Operation & Maintenance Requirements.	No	See § 63.608(b) for general duty requirement.
§ 63.6(e)(iii)		Yes	None.
§ 63.6(e)(2)		No	[Reserved].
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	No	None.
§ 63.6(f)	Compliance with Emission Standards	No	See general duty at § 63.608(b).
§ 63.6(g)	Alternative Standard	Yes	None.
§ 63.6(h)	Compliance with Opacity/VE Standards	No	Subpart AA does not include VE/opacity standards.
§ 63.6(i)(1) through (14)	Extension of Compliance	Yes	None.
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes	None.

APPENDIX A TO SUBPART AA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA—Continued

40 CFR citation	Requirement	Applies to subpart AA	Comment
§ 63.6(j)	Exemption from Compliance	Yes	None.
§ 63.7(a)	Performance Test Requirements Applicability.	Yes	None.
§ 63.7(b)	Notification	Yes	None.
§ 63.7(c)	Quality Assurance/Test Plan	Yes	None.
§ 63.7(d)	Testing Facilities	Yes	None.
§ 63.7(e)(1)	Conduct of Tests; startup, shutdown, and malfunction provisions.	No	§ 63.606 specifies additional requirements.
§ 63.7(e)(2) through (4)	Conduct of Tests	Yes	§ 63.606 specifies additional requirements.
§ 63.7(f)	Alternative Test Method	Yes	None.
§ 63.7(g)	Data Analysis	Yes	None.
§ 63.7(h)	Waiver of Tests	Yes	None.
§ 63.8(a)	Monitoring Requirements Applicability	Yes	None.
§ 63.8(b)	Conduct of Monitoring	Yes	None.
§ 63.8(c)(1)(i)	General duty to minimize emissions and CMS operation.	No	See 63.608(b) for general duty requirement.
§ 63.8(c)(1)(ii)		Yes	None.
§ 63.8(c)(1)(iii)	Requirement to develop SSM Plan for CMS.	No	None.
§ 63.8(c)(2) through (4)	CMS Operation/Maintenance	Yes	None.
§ 63.8(c)(5)	COMS Operation	No	Subpart AA does not require COMS.
§ 63.8(c)(6) through(8)	CMS requirements	Yes	None.
§ 63.8(d)(1) and (2)	Quality Control	Yes	None.
§ 63.8(d)(3)	Written procedure for CMS	No	See § 63.608 for requirement.
§ 63.8(e)	CMS Performance Evaluation	Yes	None.
§ 63.8(f)(1) through (5)	Alternative Monitoring Method	Yes	None.
§ 63.8(f)(6)	Alternative to RATA Test	Yes	None.
§ 63.8(g)(1)	Data Reduction	Yes	None.
§ 63.8(g)(2)		Yes	None.
§ 63.8(g)(3) through (5)		Yes	None.
§ 63.9(a)	Notification Requirements Applicability	Yes	None.
§ 63.9(b)	Initial Notifications	Yes	None.
§ 63.9(c)	Request for Compliance Extension	Yes	None.
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes	None.
§ 63.9(e)	Notification of Performance Test	Yes	None.
§ 63.9(f)	Notification of VE/Opacity Test	No	Subpart AA does not include VE/opacity standards.
§ 63.9(g)	Additional CMS Notifications	Yes	Subpart AA does not require CMS performance evaluation, COMS, or CEMS.
§ 63.9(h)(1) through (3)	Notification of Compliance Status	Yes	None.
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5) and (6)		Yes	None.
§ 63.9(i)	Adjustment of Deadlines	Yes	None.
§ 63.9(j)	Change in Previous Information	Yes	None.
§ 63.10(a)	Recordkeeping/Reporting-Applicability	Yes	None.
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	None.
§ 63.10(b)(2)(i)	Startup or shutdown duration	No	None.
§ 63.10(b)(2)(ii)	Malfunction	No	See § 63.607 for recordkeeping and reporting requirement.
§ 63.10(b)(2)(iii)	Maintenance records	Yes	None.
§ 63.10(b)(2)(iv) and (v)	Startup, shutdown, malfunction actions	No	None.
§ 63.10(b)(2)(vi) through (xiv)	General Recordkeeping Requirements	Yes	None.
§ 63.10(b)(3)	General Recordkeeping Requirements	Yes	None.
§ 63.10(c)(1)	Additional CMS Recordkeeping	Yes	None.
§ 63.10(c)(2) through (4)		No	[Reserved].
§ 63.10(c)(5)		Yes	None.
§ 63.10(c)(6)		Yes	None.
§ 63.10(c)(7) and (8)		Yes	None.
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10) through (13)		Yes	None.
§ 63.10(c)(14)		Yes	None.
§ 63.10(c)(15)	Startup Shutdown Malfunction Plan Provisions.	No	None.
§ 63.10(d)(1)	General Reporting Requirements	Yes	None.
§ 63.10(d)(2)	Performance Test Results	Yes	None.
§ 63.10(d)(3)	Opacity or VE Observations	No	Subpart AA does not include VE/opacity standards.

APPENDIX A TO SUBPART AA OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART AA—Continued

40 CFR citation	Requirement	Applies to subpart AA	Comment
§ 63.10(d)(4)	Progress Reports	Yes	None.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	No	See § 63.607 for reporting of excess emissions.
§ 63.10(e)(1) and (2)	Additional CMS Reports	Yes	None.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes	None.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart AA does not require COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes	None.
§ 63.11	Control Device and Work Practice Requirements.	Yes	None.
§ 63.12	State Authority and Delegations	Yes	None.
§ 63.13	Addresses	Yes	None.
§ 63.14	Incorporation by Reference	Yes	None.
§ 63.15	Information Availability/Confidentiality	Yes	None.
§ 63.16	Performance Track Provisions	No	Terminated.

■ 21. Part 63 is amended by revising subpart BB to read as follows:

Subpart BB—National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

Sec.

63.620 Applicability.
63.621 Definitions.
63.622 Standards and compliance dates.
63.623 [Reserved]
63.624 [Reserved]
63.625 Operating and monitoring requirements.
63.626 Performance tests and compliance provisions.
63.627 Notification, recordkeeping, and reporting requirements.
63.628 General requirements and applicability of part 63 general provisions.
63.629 Miscellaneous requirements.
63.630 [Reserved]
63.631 Exemption from new source performance standards.
63.632 Implementation and enforcement.
Table 1 to Subpart BB of Part 63—Existing Source Phase 1 Emission Limits
Table 1a to Subpart BB of Part 63—Existing Source Phase 2 Emission Limits
Table 2 to Subpart BB of Part 63—New Source Phase 1 Emission Limits
Table 2a to Subpart BB of Part 63—New Source Phase 2 Emission Limits
Table 3 to Subpart BB of Part 63—Monitoring Equipment Operating Parameters
Table 4 to Subpart BB of Part 63—Operating Parameters, Operating Limits and Data Monitoring, Recordkeeping and Compliance Frequencies
Table 5 to Subpart BB of Part 63—Calibration and Quality Control Requirements for Continuous Parameter Monitoring Systems (CPMS)
Appendix A to Subpart BB of Part 63—Applicability of General Provisions (40 CFR Part 63, Subpart A) to Subpart BB

§ 63.620 Applicability.

(a) Except as provided in paragraphs (c) and (d) of this section, you are subject to the requirements of this subpart if you own or operate a phosphate fertilizer production plant that is a major source as defined in § 63.2. You must comply with the emission limitations, work practice standards, and operating parameter requirements specified in this subpart at all times.

(b) The requirements of this subpart apply to emissions of hazardous air pollutants (HAP) emitted from the following affected sources at a phosphate fertilizer production plant:

(1) Each diammonium and/or monoammonium phosphate process line and any process line that produces a reaction product of ammonia and phosphoric acid.

(2) Each granular triple superphosphate process line.

(3) Each granular triple superphosphate storage building.

(c) The requirements of this subpart do not apply to a phosphate fertilizer production plant that is an area source as defined in § 63.2.

(d) The provisions of this subpart do not apply to research and development facilities as defined in § 63.621.

§ 63.621 Definitions.

Terms used in this subpart are defined in § 63.2 of the Clean Air Act and in this section as follows:

Diammonium and/or monoammonium phosphate process line means any process line manufacturing granular diammonium and/or monoammonium phosphate by reacting ammonia with phosphoric acid that has been derived from or manufactured by reacting phosphate rock and acid. A diammonium and/or monoammonium phosphate process line includes, but is not limited to: Reactors, granulators, dryers, coolers, cooling towers, screens, and mills.

Equivalent P_2O_5 feed means the quantity of phosphorus, expressed as phosphorus pentoxide (P_2O_5), fed to the process.

Equivalent P_2O_5 stored means the quantity of phosphorus, expressed as phosphorus pentoxide, being cured or stored in the affected facility.

Exceedance means a departure from an indicator range established for monitoring under this subpart, consistent with any averaging period specified for averaging the results of the monitoring.

Existing source depends on the date that construction or reconstruction of an affected source commenced. A process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), granular triple superphosphate process line, or granular triple superphosphate storage is an existing source if construction or reconstruction of the affected source commenced on or before December 27, 1996.

Fresh granular triple superphosphate means granular triple superphosphate produced within the preceding 72 hours.

Phosphate fertilizer process line or production plant means any process line or production plant that manufactures a phosphate fertilizer by reacting phosphoric acid with ammonia.

Granular triple superphosphate process line means any process line, not including storage buildings, that manufactures granular triple superphosphate by reacting phosphate rock with phosphoric acid. A granular triple superphosphate process line

includes, but is not limited to: Mixers, curing belts (dens), reactors, granulators, dryers, coolers, cooling towers, screens, and mills.

Granular triple superphosphate storage building means any building curing or storing fresh granular triple superphosphate. A granular triple superphosphate storage building includes, but is not limited to: Storage or curing buildings, conveyors, elevators, screens, and mills.

New source depends on the date that construction or reconstruction of an affected source commences. A process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), granular triple superphosphate process line, or granular triple superphosphate storage is a new source if construction or reconstruction of the affected source commenced after December 27, 1996.

Research and development facility means research or laboratory operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and where the facility is not engaged in the manufacture of products for commercial sale in commerce or other off-site distribution, except in a de minimis manner.

Total fluorides means elemental fluorine and all fluoride compounds, including the HAP hydrogen fluoride, as measured by reference methods specified in 40 CFR part 60, appendix A, Method 13 A or B, or by equivalent or alternative methods approved by the Administrator pursuant to § 63.7(f).

§ 63.622 Standards and compliance dates.

(a) On and after the date on which the initial performance test specified in §§ 63.7 and 63.626 is required to be completed, for each process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), granular triple superphosphate process line, and granular triple superphosphate storage building, you must comply with the emission limits as specified in paragraphs (a)(1) through (3) of this section. If a process line contains more than one emission point, you must sum the emissions from all emission points in a process line to determine compliance with the specified emission limits.

(1) For each existing process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), granular triple superphosphate process line, and granular triple superphosphate storage building that commenced construction or reconstruction on or before December 27, 1996, you must comply with the emission limits specified in Table 1 to this subpart beginning on June 10, 2002 and ending on [date one year after the date of publication of the final rule in the **Federal Register**]. Beginning on [date one year after the date of publication of the final rule in the **Federal Register**], the emission limits specified in Table 1 to this subpart no longer apply, and you must comply with the emission limits specified in Table 1a to this subpart.

(2) For each new process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), granular triple superphosphate process line, and granular triple superphosphate storage building that commences construction or reconstruction after December 27, 1996 and on or before [date of publication of the final rule in the **Federal Register**], you must comply with the emission limits specified in Table 2 to this subpart beginning at startup or on June 10, 1999, whichever is later, and ending on [date one year after the date of publication of the final rule in the **Federal Register**]. Beginning on [date one year after the date of publication of the final rule in the **Federal Register**], the emission limits specified in Table 2 to this subpart no longer apply, and you must comply with the emission limits specified in Table 2a to this subpart beginning on [date one year after the date of publication of the final rule in the **Federal Register**] or immediately upon startup, whichever is later.

(3) For each new process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), granular triple superphosphate process line, and granular triple superphosphate storage building that commences construction or reconstruction after [date of publication of the final rule in the **Federal Register**], you must comply with the emission limits specified in Table 2a to this subpart immediately upon startup.

(b) You must not ship fresh granular triple superphosphate from your granular triple superphosphate storage building.

(c) You must not introduce into any evaporative cooling tower any liquid effluent from any wet scrubbing device installed to control emissions from process equipment.

(d) To demonstrate compliance with any emission limits specified in paragraph (a) of this section during periods of startup and shutdown, you must begin operation of any control device(s) being used at the affected source prior to introducing any feed into the affected source. You must continue operation of the control device(s) through the shutdown period until all feed material has been processed through the affected source.

§ 63.623 [Reserved]

§ 63.624 [Reserved]

§ 63.625 Operating and monitoring requirements.

(a) For each process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), or granular triple superphosphate process line subject to the provisions of this subpart, you must comply with the monitoring requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Install, calibrate, maintain, and operate a continuous monitoring system (CMS) according to your site-specific monitoring plan specified in § 63.628(c). The CMS must have an accuracy of ±5 percent over its operating range and must determine and permanently record the mass flow of phosphorus-bearing material fed to the process.

(2) Maintain a daily record of equivalent P_2O_5 feed. Calculate the equivalent P_2O_5 feed by determining the total mass rate in metric ton/hour of phosphorus bearing feed using the procedures specified in § 63.626(f)(3).

(b) For each granular triple superphosphate storage building subject to the provisions of this subpart, you must maintain an accurate record of the mass of granular triple superphosphate in storage to permit the determination of the amount of equivalent P_2O_5 stored.

(c) For each granular triple superphosphate storage building subject to the provisions of this subpart, you must comply with the requirements specified in paragraphs (c)(1) and (2) of this section.

(1) Maintain a daily record of total equivalent P_2O_5 stored by multiplying the percentage P_2O_5 content, as determined by § 63.626(f)(3)(ii), by the total mass of granular triple superphosphate stored as specified in paragraph (b) of this section.

(2) Develop for approval by the Administrator a site-specific methodology including sufficient recordkeeping for the purposes of

demonstrating compliance with § 63.622(b).

(d) If you use a control device(s) to comply with the emission limits specified in Tables 1, 1a, 2, or 2a of this subpart, you must install a continuous parameter monitoring system (CPMS) and comply with the requirements specified in paragraphs (d)(1) through (4) of this section.

(1) You must monitor the operating parameter(s) applicable to the control device that you use as specified in Table 3 to this subpart and establish the applicable limit or range for the operating parameter limit as specified in paragraphs (d)(1)(i) and (ii) of this section, as applicable.

(i) Except as specified in paragraph (d)(1)(ii) of this section, determine the value(s) as the arithmetic average of operating parameter measurements recorded during with the three test runs conducted for the most recent performance test.

(ii) If you use an absorber to comply with the emission limits in Table 1, 1a, 2, or 2a to this subpart and you monitor pressure drop across each absorber, you must establish allowable ranges using the methodology specified in paragraphs (d)(1)(ii)(A) and (B) of this section.

(A) The allowable range for the daily averages of the pressure drop across each absorber is ±20 percent of the baseline average value determined in paragraph (d)(1)(i) of this section. The Administrator retains the right to reduce the ±20 percent adjustment to the baseline average values of operating ranges in those instances where performance test results indicate that a source's level of emissions is near the value of an applicable emissions standard. However, the adjustment must not be reduced to less than ±10 percent under any instance.

(B) As an alternative to paragraph (d)(1)(ii)(A) of this section, you may establish, and provide to the Administrator for approval, allowable ranges for the daily averages of the pressure drop across an absorber for the purpose of assuring compliance with this subpart. You must establish the allowable ranges based on the baseline average values recorded during previous performance tests or the results of performance tests conducted specifically for the purposes of this paragraph. You must conduct all performance tests using the methods specified in § 63.626. You must certify that the control devices and processes have not been modified since the date of the performance test from which you obtained the data used to establish the allowable ranges. You must request and obtain approval of the Administrator for changes to the allowable ranges. When a source using the methodology of this paragraph is retested, you must determine new allowable ranges of baseline average values unless the retest indicates no change in the operating parameters outside the previously established ranges.

(2) You must monitor, record, and demonstrate continuous compliance using the minimum frequencies specified in Table 4 to this subpart.

(3) You must comply with the calibration and quality control requirements that are applicable to the operating parameter(s) you monitor as specified in Table 5 to this subpart.

(4) If you use a fabric filter system to comply with the emission limits specified in Table 1, 1a, 2, or 2a to this subpart, the system must meet the requirements for fabric filters specified in paragraph (e) of this section.

(e) If you use a fabric filter system to comply with the emission limits specified in Table 1, 1a, 2, or 2a to this subpart, the fabric filter must be equipped with a bag leak detection system that is installed, calibrated, maintained and continuously operated according to the requirements in paragraphs (e)(1) through (10) of this section.

(1) Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute particulate matter loadings for each exhaust stack, roof vent, or compartment (*e.g.*, for a positive-pressure fabric filter) of the fabric filter.

(2) Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 1 milligram per actual cubic meter (0.00044 grains per actual cubic feet) or less.

(3) Use a bag leak detection system equipped with a device to continuously record the output signal from the system sensor.

(4) Use a bag leak detection system equipped with a system that will trigger an alarm when an increase in relative particulate material emissions over a preset level is detected. The alarm must be located such that the alert is observed readily by plant operating personnel.

(5) Install a bag leak detection system in each compartment or cell for positive-pressure fabric filter systems that do not duct all compartments or cells to a common stack. Install a bag leak detector downstream of the fabric filter if a negative-pressure or induced-air filter is used. If multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(6) Calibration of the bag leak detection system must, at a minimum, consist of establishing the baseline output level by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(7) After initial adjustment, you must not adjust the sensitivity or range, averaging period, alarm set points or alarm delay time, except as established in your site-specific monitoring plan required in § 63.628(c). In no event may the sensitivity be increased more than 100 percent or decreased by more than 50 percent over a 365-day period unless such adjustment follows a complete inspection of the fabric filter system that demonstrates that the system is in good operating condition.

(8) Operate and maintain each fabric filter and bag leak detection system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. If the alarm sounds more than 5 percent of the operating time during a 6-month period, it is considered an operating parameter exceedance. Calculate the alarm time (*i.e.*, time that the alarm sounds) as specified in paragraphs (e)(8)(i) through (iv) of this section.

(i) If inspection of the fabric filter demonstrates that corrective action is not required, the alarm duration is not counted in the alarm time calculation.

(ii) If corrective action is required, each alarm time is counted as a minimum of 1 hour.

(iii) If it takes longer than 1 hour to initiate corrective action, each alarm time (*i.e.*, time that the alarm sounds) is counted as the actual amount of time taken by you to initiate corrective action.

(9) If the alarm on a bag leak detection system is triggered, you must initiate procedures within 1 hour of an alarm to identify the cause of the alarm and then initiate corrective action, as specified in § 63.628(d)(2), no later than 48 hours after an alarm. Failure to take these actions within the prescribed time periods is considered a violation.

(10) Retain records of any bag leak detection system alarm, including the date, time, duration, and the percent of the total operating time during each 6-month period that the alarm triggers, with a brief explanation of the cause of the alarm, the corrective action taken, and the schedule and duration of the corrective action.

§ 63.626 Performance tests and compliance provisions.

(a) You must conduct an initial performance test to demonstrate compliance with the emission limits specified in Tables 1, 1a, 2, and 2a to this subpart, on or before the applicable compliance date specified in § 63.622.

(b) After you conduct the initial performance test specified in paragraph (a) of this section, you must conduct an annual performance test no more than 13 months after the date the previous performance test was conducted.

(c) For affected sources (as defined in § 63.620) that have not operated since the previous annual performance test was conducted and more than 1 year has passed since the previous performance test, you must conduct a performance test no later than 180 days after the re-start of the affected source according to the applicable provisions in § 63.7(a)(2).

(d) You must conduct the performance tests specified in this section at maximum representative operating conditions for the process. Maximum representative operating conditions means process operating conditions that are likely to recur and that result in the flue gas characteristics that are the most difficult for reducing emissions of the regulated pollutant(s) by the control device used. The most difficult condition for the control device may include, but is not limited to, the highest HAP mass loading rate to the control device or the highest HAP mass loading rate of constituents that approach the limits of solubility for scrubbing media. Operations during startup, shutdown, and malfunction do not constitute representative operating conditions for purposes of conducting a performance test. You must record the process information that is necessary to document the operating conditions during the test and include in such record an explanation to support that such conditions represent maximum representative operating conditions. Upon request, you must make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(e) In conducting all performance tests, you must use as reference methods and procedures the test methods in 40 CFR part 60, appendix A, or other methods and procedures as specified in this section, except as provided in § 63.7(f).

(f) For each process line that produces a reaction product of ammonia and phosphoric acid (e.g., diammonium and/or monoammonium phosphate process line), and granular triple superphosphate process line, you must determine compliance with the applicable total fluorides or hydrogen fluoride standards specified in Tables 1, 1a, 2, and 2a to this subpart as specified in paragraphs (f)(1) through (3) of this section.

(1) Compute the emission rate (E) of total fluorides or hydrogen fluoride for each run using Equation BB–1:

$$E = \left(\sum_{i=1}^{N} C_i Q_i \right) / (PK) \qquad \text{(Eq. BB-1)}$$

Where:

E = Emission rate of total fluorides or hydrogen fluoride, gram/metric ton (pound/ton) of equivalent P_2O_5 feed.

Ci = Concentration of total fluorides or hydrogen fluoride from emission point "i," milligram/dry standard cubic meter (milligram/dry standard cubic feet).

Qi = Volumetric flow rate of effluent gas from emission point "i," dry standard cubic meter/hour (dry standard cubic feet/hour).

N = Number of emission points associated with the affected facility.

P = Equivalent P_2O_5 feed rate, metric ton/hour (ton/hour).

K = Conversion factor, 1,000 milligram/gram (453,600 milligram/pound).

(2) You must use the test methods and procedures as specified in paragraphs (f)(2)(i) or (f)(2)(ii) of this section.

(i) You must use Method 13A or 13B (40 CFR part 60, appendix A) to determine the total fluorides concentration (C_i) and the volumetric flow rate (Q_i) of the effluent gas at each emission point. The sampling time for each run at each emission point must be at least 60 minutes. The sampling volume for each run at each emission point must be at least 0.85 dscm (30 dscf). If Method 13B is used, the fusion of the filtered material described in Section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in section 7.3.3 and 7.3.4 in Method 13A, may be omitted.

(ii) You must use Method 320 at 40 CFR part 63, appendix A to determine the hydrogen fluoride concentration (C_i) at each emission point. The sampling time for each run at each emission point must be at least 60 minutes. You must use Method 2 at 40 CFR part 60, Appendix A–1 to determine the volumetric flow rate (Q_i) of the effluent gas from each of the emission points.

(3) Compute the equivalent P_2O_5 feed rate (P) using Equation BB–2:

$$P = M_p R_p \qquad \text{(Eq. BB-2)}$$

Where:

P = P_2O_5 feed rate, metric ton/hour (ton/hour).

M_p = Total mass flow rate of phosphorus-bearing feed, metric ton/hour (ton/hour).

R_p = P_2O_5 content, decimal fraction.

(i) Determine the mass flow rate (M_p) of the phosphorus-bearing feed using the measurement system described in § 63.625(a).

(ii) Determine the P_2O_5 content (R_p) of the feed using, as appropriate, the following methods specified in the Book of Methods Used and Adopted By The Association of Florida Phosphate Chemists (Seventh Edition, 1991) where applicable:

(A) Section IX, Methods of Analysis for Phosphate Rock, No. 1 Preparation of Sample (incorporated by reference, see § 63.14).

(B) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus—P_2O_5 or $Ca_3(PO_4)_2$, Method A—Volumetric Method (incorporated by reference, see § 63.14).

(C) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or $Ca_3(PO_4)_2$, Method B—Gravimetric Quimociac Method (incorporated by reference, see § 63.14).

(D) Section IX, Methods of Analysis for Phosphate Rock, No. 3 Phosphorus-P_2O_5 or Ca3$(PO_4)_2$, Method C—Spectrophotometric Method (incorporated by reference, see § 63.14).

(E) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method A—Volumetric Method (incorporated by reference, see § 63.14).

(F) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method B—Gravimetric Quimociac Method (incorporated by reference, see § 63.14).

(G) Section XI, Methods of Analysis for Phosphoric Acid, Superphosphate, Triple Superphosphate, and

Ammonium Phosphates, No. 3 Total Phosphorus-P_2O_5, Method C—Spectrophotometric Method (incorporated by reference, see § 63.14).

(g) For each granular triple superphosphate storage building, you must determine compliance with the applicable total fluorides or hydrogen fluoride standards specified in Tables 1, 1a, 2, and 2a to this subpart as specified in paragraphs (g)(1) through (7) of this section.

(1) You must conduct performance tests only when the following quantities of product are being cured or stored in the facility:

(i) Total granular triple superphosphate is at least 10 percent of the building capacity, and

(ii) Fresh granular triple superphosphate is at least six percent of the total amount of granular triple superphosphate, or

(iii) If the provision in paragraph (g)(1)(ii) of this section exceeds production capabilities for fresh granular triple superphosphate, the fresh granular triple superphosphate is equal to at least 5 days maximum production.

(2) Compute the emission rate (E) of total fluorides or hydrogen fluoride for each run using Equation BB–3:

$$E = \left(\sum_{i=1}^{N} C_i Q_i \right) / (PK) \qquad \text{(Eq. BB-3)}$$

Where:

E = Emission rate of total fluorides or hydrogen fluoride, gram/hour/metric ton (pound/hour/ton) of equivalent P_2O_5 stored.

C_i = Concentration of total fluorides or hydrogen fluoride from emission point "i," milligram/dry standard cubic meter (milligram/dry standard cubic feet).

Q_i = Volumetric flow rate of effluent gas from emission point "i," dry standard cubic meter/hour (dry standard cubic feet/hour).

N = Number of emission points in the affected facility.

P = Equivalent P_2O_5 stored, metric tons (tons).

K = Conversion factor, 1000 milligram/gram (453,600 milligram/pound).

(3) You must use the test methods and procedures as specified in paragraphs (g)(3)(i) or (g)(3)(ii) of this section.

(i) You must use Method 13A or 13B (40 CFR part 60, appendix A) to determine the total fluorides concentration (C_i) and the volumetric flow rate (Q_i) of the effluent gas at each emission point. The sampling time for each run at each emission point must be at least 60 minutes. The sampling volume for each run at each emission point must be at least 0.85 dscm (30 dscf). If Method 13B is used, the fusion of the filtered material described in Section 7.3.1.2 and the distillation of suitable aliquots of containers 1 and 2, described in section 7.3.3 and 7.3.4 in Method 13A, may be omitted.

(ii) You must use Method 320 at 40 CFR part 63, appendix A, to determine the hydrogen fluoride concentration (C_i) at each emission point. The sampling time for each run must be at least 60 minutes. You must use Method 2 at 40 CFR part 60, Appendix A–1 to determine the volumetric flow rate (Q_i) of the effluent gas from each of the emission points.

(4) Compute the equivalent P_2O_5 stored (P) using Equation BB–4:

$$P = M_p R_p \qquad \text{(Eq. BB-4)}$$

Where:

P = P_2O_5 stored (ton).

M_p = Amount of product in storage, metric ton (ton).

R_p = P_2O_5 content of product in storage, weight fraction.

(5) Determine the amount of product (M_p) in storage using the measurement system described in § 63.625(b) and (c).

(6) Determine the P_2O_5 content (R_p) of the product stored using, as appropriate, the following methods specified in the Book of Methods Used and Adopted By The Association of Florida Phosphate Chemists, Seventh Edition 1991, where applicable:

(i) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method A—Volumetric Method (incorporated by reference, see § 63.14).

(ii) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method B—Gravimetric Quimociac Method (incorporated by reference, see § 63.14).

(iii) Section XI, Methods of Analysis For Phosphoric Acid, Superphosphate, Triple Superphosphate, and Ammonium Phosphates, No. 3 Total Phosphorus—P_2O_5, Method C—Spectrophotometric Method (incorporated by reference, see § 63.14), or,

(7) Determine the P_2O_5 content (R_p) of the product stored using, as appropriate, the following methods specified in the Official Methods of Analysis of AOAC International, Sixteenth edition, 1995, where applicable:

(i) AOAC Official Method 957.02 Phosphorus (Total) In Fertilizers, Preparation of Sample Solution, Sixteenth edition, 1995, (incorporated by reference, see § 63.14).

(ii) AOAC Official Method 929.01 Sampling of Solid Fertilizers, Sixteenth edition, 1995, (incorporated by reference, see § 63.14).

(iii) AOAC Official Method 929.02 Preparation of Fertilizer Sample, Sixteenth edition, (incorporated by reference, see § 63.14).

(iv) AOAC Official Method 978.01 Phosphorus (Total) in Fertilizers, Automated Method, Sixteenth edition, 1995 (incorporated by reference, see § 63.14).

(v) AOAC Official Method 969.02 Phosphorus (Total) in Fertilizers, Alkalimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995 (incorporated by reference, see § 63.14).

(vi) AOAC Official Method 962.02 Phosphorus (Total) in Fertilizers, Gravimetric Quinolinium Molybdophosphate Method, Sixteenth edition, 1995 (incorporated by reference, see § 63.14).

(vii) AOAC Official Method 958.01 Phosphorus (Total) in Fertilizers, Spectrophotometric Molybdovanadophosphate Method, Sixteenth edition, 1995 (incorporated by reference, see § 63.14).

(h) If you use a CMS, you must conduct a performance evaluation, as specified in § 63.8(e), in accordance with your site-specific monitoring plan in § 63.628(c). For fabric filters, you must conduct a performance evaluation of the bag leak detection system consistent with the guidance provided in Office Of Air Quality Planning And Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, September 1997 (incorporated by reference, see § 63.14). You must record the sensitivity of the bag leak detection system to detecting changes in particulate matter emissions, range,

averaging period, and alarm set points during the performance test.

§ 63.627 Notification, recordkeeping, and reporting requirements.

(a) You must comply with the notification requirements specified in § 63.9. You must also notify the Administrator each time that the operating limits change based on data collected during the most recent performance test. When a source is retested and the performance test results are submitted to the Administrator pursuant to paragraph (b)(1) of this section, § 63.7(g)(1), or § 63.10(d)(2), you must indicate whether the operating range will be based on the new performance test or the previously established range. Upon establishment of a new operating range, you must thereafter operate under the new range. If the Administrator determines that you did not conduct the compliance test in accordance with the applicable requirements or that the ranges established during the performance test do not represent normal operations, you must conduct a new performance test and establish new operating ranges.

(b) You must comply with the reporting and recordkeeping requirements in § 63.10 as specified in paragraphs (b)(1) through (5) of this section.

(1) You must comply with the general recordkeeping requirements in § 63.10(b)(1); and

(2) As required by § 63.10(d), you must report the results of the initial and subsequent performance tests as part of the notification of compliance status required in § 63.9(h). You must verify in the performance test reports that the operating limits for each process have not changed or provide documentation of revised operating limits established according to § 63.625, as applicable. In the notification of compliance status, you must also:

(i) Certify to the Administrator that you have not shipped fresh granular triple superphosphate from an affected facility.

(ii) Certify to the Administrator annually that you have complied with the evaporative cooling tower requirements specified in § 63.622(c).

(iii) Submit analyses and supporting documentation demonstrating conformance with the Office Of Air Quality Planning And Standards (OAQPS), Fabric Filter Bag Leak Detection Guidance, EPA–454/R–98–015, September 1997 (incorporated by reference, see § 63.14) and specifications for bag leak detection systems as part of the notification of compliance status report.

(iv) If you elect to demonstrate compliance by following the procedures in § 63.625(d)(1)(ii)(B), certify to the Administrator annually that the control devices and processes have not been modified since the date of the performance test from which you obtained the data used to establish the allowable ranges.

(3) As required by § 63.10(e)(1), you must submit an excess emissions report for any exceedance of an emission or operating parameter limit if the total duration of the exceedances for the reporting period is 1 percent of the total operating time for the reporting period or greater. The report must contain the information specified in § 63.10 and paragraph (b)(4) of this section. When exceedances of an emission limit or operating parameter have not occurred, you must include such information in the report. You must submit the report semiannually and the report must be delivered or postmarked by the 30th day following the end of the calendar half. If exceedances are reported, you must submit the excess emissions report quarterly until a request to reduce reporting frequency is approved as described in § 63.10(e)(3).

(4) In the event that an affected unit fails to meet an applicable standard, record and report the following information for each failure:

(i) The date, time and duration of the failure.

(ii) A list of the affected sources or equipment for which a failure occurred.

(iii) An estimate of the volume of each regulated pollutant emitted over any emission limit.

(iv) A description of the method used to estimate the emissions.

(v) A record of actions taken to minimize emissions in accordance with § 63.628(b), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(5) You must submit a summary report containing the information specified in § 63.10(e)(3)(vi). You must submit the summary report semiannually and the report must be delivered or postmarked by the 30th day following the end of the calendar half.

(c) Your records must be in a form suitable and readily available for expeditious review. You must keep each record for 5 years following the date of each recorded action. You must keep each record on site, or accessible from a central location by computer or other means that instantly provide access at the site, for at least 2 years after the date of each recorded action. You may keep the records off site for the remaining 3 years.

(d) In computing averages to determine compliance with this subpart, you must exclude the monitoring data specified in paragraphs (d)(1) through (3) of this section.

(1) Periods of non-operation of the process unit;

(2) Periods of no flow to a control device; and

(3) Any monitoring data recorded during continuous parameter monitoring system (CPMS) breakdowns, out-of-control periods, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero (low-level), mid-level (if applicable), and high-level adjustments.

(e) Within 60 days after the date of completing each performance test (as defined in § 63.2), you must submit the results of the performance tests, including any associated fuel analyses, required by this subpart according to the methods specified in paragraphs (e)(1) or (2) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*http://www.epa.gov/ttn/chief/ert/index.html*), you must submit the results of the performance test to the Compliance and Emissions Data Reporting Interface (CEDRI) that is accessed through the EPA's Central Data Exchange (CDX) (*http://cdx.epa.gov/epa_home.asp*), unless the Administrator approves another approach. Performance test data must be submitted in a file format generated through the use of the EPA's ERT. Owners or operators, who claim that some of the information being submitted for performance tests is confidential business information (CBI), must submit a complete file generated through the use of the EPA's ERT, including information claimed to be CBI, on a compact disk, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to the EPA via CDX as described earlier in this paragraph.

(2) For any performance test conducted using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

§ 63.628 General requirements and applicability of part 63 general provisions.

(a) You must comply with the general provisions in subpart A of this part as specified in appendix A to this subpart.

(b) At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination by the Administrator of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) For each CMS used to demonstrate compliance with any applicable emission limit, you must develop, and submit to the Administrator for approval upon request, a site-specific monitoring plan according to the requirements specified in paragraphs (c)(1) through (3) of this section. You must submit the site-specific monitoring plan, if requested by the Administrator, at least 60 days before the initial performance evaluation of the CMS. The requirements of this paragraph also apply if a petition is made to the Administrator for alternative monitoring parameters under § 63.8(f).

(1) You must include the information specified in paragraphs (c)(1)(i) through (vi) of this section in the site-specific monitoring plan.

(i) Location of the CMS sampling probe or other interface. You must include a justification demonstrating that the sampling probe or other interface is at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device).

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems.

(iii) Performance evaluation procedures and acceptance criteria (e.g., calibrations).

(iv) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1)(ii), (c)(3), (c)(4)(ii), and Table 4 to this subpart.

(v) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d)(1) and (2) and Table 5 to this subpart.

(vi) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of §§ 63.10(c), 63.10 (e)(1), and 63.10(e)(2)(i).

(2) You must include a schedule for conducting initial and subsequent performance evaluations in the site-specific monitoring plan.

(3) You must keep the site-specific monitoring plan on site for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If you revise the site-specific monitoring plan, you must keep previous (i.e., superseded) versions of the plan on site to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. You must include the program of corrective action required under § 63.8(d)(2) in the plan.

(d) For each bag leak detection system installed to comply with the requirements specified in § 63.625(e), you must include the information specified in paragraphs (d)(1) and (2) of this section in the site-specific monitoring plan specified in paragraph (c) of this section.

(1) Performance evaluation procedures and acceptance criteria (e.g., calibrations), including how the alarm set-point will be established.

(2) A corrective action plan describing corrective actions to be taken and the timing of those actions when the bag leak detection alarm sounds. Corrective actions may include, but are not limited to, the actions specified in paragraphs (d)(2)(i) through (vi) of this section.

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other conditions that may cause an increase in regulated material emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective fabric filter compartment.

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system.

(vi) Shutting down the process controlled by the fabric filter.

§ 63.629 Miscellaneous requirements.

The Administrator retains the authority to approve site-specific test plans for uncontrolled granular triple superphosphate storage buildings developed pursuant to § 63.7(c)(2)(i).

§ 63.630 [Reserved]

§ 63.631 Exemption from new source performance standards.

Any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart V, subpart W, or subpart X. To be exempt, a source must have a current operating permit pursuant to title V of the Clean Air Act and the source must be in compliance with all requirements of this subpart. For each affected source, this exemption is effective upon the date that you demonstrate to the Administrator that the requirements of §§ 63.625 and 63.626 have been met.

§ 63.632 Implementation and enforcement.

(a) This subpart is implemented and enforced by the U.S. EPA, or a delegated authority such as the applicable state, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to a state, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to a state, local, or Tribal agency.

(b) The authorities specified in paragraphs (b)(1) through (5) of this section are retained by the Administrator of U.S. EPA and cannot be delegated to State, local, or Tribal agencies.

(1) Approval of alternatives to the requirements in §§ 63.620, 63.622, 63.625, 63.629, and 63.631.

(2) Approval of requests under §§ 63.7(e)(2)(ii) and 63.7(f) for alternative requirements or major changes to the test methods specified in this subpart, as defined in § 63.90.

(3) Approval of requests under § 63.8(f) for alternative requirements or major changes to the monitoring requirements specified in this subpart, as defined in § 63.90.

(4) Waiver or approval of requests under § 63.10(f) for alternative requirements or major changes to the recordkeeping and reporting requirements specified in this subpart, as defined in § 63.90.

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

TABLE 1 TO SUBPART BB OF PART 63—EXISTING SOURCE PHASE 1 EMISSION LIMITS [a] [b]

For the following existing sources . . .	You must meet the emission limits for the specified pollutant . . .	
	Total fluorides	Hydrogen fluoride
Process Line that Produces a Reaction Product Of Ammonia And Phosphoric Acid (e.g., Diammonium and/or Monoammonium Phosphate Process Line).	0.060 lb/ton of equivalent P_2O_5 feed.	
Granular Triple Superphosphate Process Line	0.150 lb/ton of equivalent P_2O_5 feed.	
GTSP storage building	5.0×10^{-4} lb/hr/ton of equivalent P_2O_5 stored.	

[a] The phase 1 existing source compliance date is June 10, 2002.
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.622(d).

TABLE 1a TO SUBPART BB OF PART 63—EXISTING SOURCE PHASE 2 EMISSION LIMITS [a] [b]

For the following existing sources . . .	You must meet the emission limits for the specified pollutant . . .	
	Total fluorides	Hydrogen fluoride
Process Line that Produces a Reaction Product Of Ammonia And Phosphoric Acid (e.g., Diammonium and/or Monoammonium Phosphate Process Line).	.....	0.060 lb/ton of equivalent P_2O_5 feed.
Granular Triple Superphosphate Process Line	.....	0.150 lb/ton of equivalent P_2O_5 feed.
GTSP storage building	.....	5.0×10^{-4} lb/hr/ton of equivalent P_2O_5 stored.

[a] The phase 2 existing source compliance date is [date one year after the date of publication of the final rule in the **Federal Register**] or immediately upon startup, whichever is later.
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.622(d).

TABLE 2 TO SUBPART BB OF PART 63—NEW SOURCE PHASE 1 EMISSION LIMITS [a] [b]

For the following existing sources . . .	You must meet the emission limits for the specified pollutant . . .	
	Total fluorides	Hydrogen fluoride
Process Line that Produces a Reaction Product Of Ammonia And Phosphoric Acid (e.g., Diammonium and/or Monoammonium Phosphate Process Line).	0.0580 lb/ton of equivalent P_2O_5 feed.	
Granular Triple Superphosphate Process Line	0.1230 lb/ton of equivalent P_2O_5 feed.	
GTSP storage building	5.0×10^{-4} lb/hr/ton of equivalent P_2O_5 stored.	

[a] The phase 1 new source compliance dates are based on date of construction or reconstruction as specified in § 63.622(a).
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.622(d).

TABLE 2a TO SUBPART BB OF PART 63—NEW SOURCE PHASE 2 EMISSION LIMITS [a] [b]

For the following new sources . . .	You must meet the emission limits for the specified pollutant . . .	
	Total fluorides	Hydrogen fluoride
Process Line That Produces a Reaction Product of Ammonia and Phosphoric Acid (e.g., Diammonium and/or Monoammonium Phosphate Process Line).	.....	0.0580 lb/ton of equivalent P_2O_5 feed
Granular Triple Superphosphate Process Line	.....	0.1230 lb/ton of equivalent P_2O_5 feed
GTSP storage building	.....	5.0×10^{-4} lb/hr/ton of equivalent P_2O_5 stored

[a] The phase 2 new source compliance dates are based on date of construction or reconstruction as specified in § 63.622(a).
[b] During periods of startup and shutdown, for emission limits stated in terms of pounds of pollutant per ton of feed, you are subject to the work practice standards specified in § 63.622(d).

TABLE 3 TO SUBPART BB OF PART 63—MONITORING EQUIPMENT OPERATING PARAMETERS

You must . . .	If . . .	And you must monitor . . .	And . . .
All Absorbers (Wet Scrubbers): Choose one of the following two options			
Install a continuous parameter monitoring system (CPMS) for liquid flow at the inlet of the absorber.	You choose to monitor only the influent liquid flow, rather than the liquid-to-gas ratio.	Influent liquid flow	
Install CPMS for liquid and gas flow at the inlet of the absorber.	You choose to monitor the liquid-to-gas ratio, rather than only the influent liquid flow, and you want the ability to lower liquid flow with changes in gas flow.	Liquid-to-gas ratio as determined by dividing the influent liquid flow rate by the inlet gas flow rate.The units of measure must be consistent with those used to calculate this ratio during the performance test.	You must measure the gas stream by: Measuring the gas stream flow at the absorber inlet; or Using the design blower capacity, with appropriate adjustments for pressure drop.
Absorbers (Wet Scrubbers): You must also choose one of the following three options			
Install CPMS for pressure at the gas stream inlet and outlet of the absorber.	You choose to monitor pressure drop through the absorber, and your pressure drop through the absorber is greater than 5 inches of water.	Pressure drop through the absorber.	You may measure the pressure of the inlet gas using amperage on the blower if a correlation between pressure and amperage is established.
Install CPMS for temperature at the absorber gas stream outlet and pressure at the liquid inlet of the adsorber.	You choose to monitor outlet temperature and inlet pressure of the liquid.	Exit gas temperature of the absorber and inlet liquid pressure of the absorber.	
Install CPMS for temperature at the absorber gas stream outlet and absorber gas stream inlet.	You choose to monitor temperature differential across the absorber.	Exit gas temperature of the absorber and inlet gas temperature of the absorber.	

TABLE 4 TO SUBPART BB OF PART 63—OPERATING PARAMETERS, OPERATING LIMITS AND DATA MONITORING, RECORDKEEPING AND COMPLIANCE FREQUENCIES

For the operating parameter applicable to you, as specified in Table 3 . . .	You must establish the following operating limit during your performance test . . .	And you must monitor, record, and demonstrate continuous compliance using these minimum frequencies		
		Data measurement	Data recording	Data averaging period for compliance
Absorbers (Wet Scrubbers)				
Influent liquid flow	Minimum inlet liquid flow	Continuous	Every 15 minutes	Daily.
Influent liquid flow rate and gas stream flow rate.	Minimum influent liquid-to-gas ratio	Continuous	Every 15 minutes	Daily.
Pressure drop	Pressure drop range	Continuous	Every 15 minutes	Daily.
Exit gas temperature	Maximum exit gas temperature	Continuous	Every 15 minutes	Daily.
Inlet gas temperature	Minimum temperature difference between inlet and exit gas.	Continuous	Every 15 minutes	Daily.
Inlet liquid pressure	Minimum Inlet liquid pressure	Continuous	Every 15 minutes	Daily.

TABLE 5 TO SUBPART BB OF PART 63—CALIBRATION AND QUALITY CONTROL REQUIREMENTS FOR CONTINUOUS PARAMETER MONITORING SYSTEMS (CPMS)

If you monitor this parameter . . .	Your accuracy requirements are . . .	And your calibration requirements are . . .
Temperature	± 1 percent over the normal range of temperature measured or 2.8 degrees Celsius (5 degrees Fahrenheit), whichever is greater, for non-cryogenic temperature ranges.	Performance evaluation annually and following any period of more than 24 hours throughout which the temperature exceeded the maximum rated temperature of the sensor, or the data recorder was off scale. Visual inspections and checks of CPMS operation every 3 months, unless the CPMS has a redundant temperature sensor. Selection of a representative measurement location.

TABLE 5 TO SUBPART BB OF PART 63—CALIBRATION AND QUALITY CONTROL REQUIREMENTS FOR CONTINUOUS PARAMETER MONITORING SYSTEMS (CPMS)—Continued

If you monitor this parameter . . .	Your accuracy requirements are . . .	And your calibration requirements are . . .
Flow Rate	± 5 percent over the normal range of flow measured or 1.9 liters per minute (0.5 gallons per minute), whichever is greater, for liquid flow rate.	Performance evaluation annually and following any period of more than 24 hours throughout which the flow rate exceeded the maximum rated flow rate of the sensor, or the data recorder was off scale. Checks of all mechanical connections for leakage monthly. Visual inspections and checks of CPMS operation every 3 months, unless the CPMS has a redundant flow sensor. Selection of a representative measurement location where swirling flow or abnormal velocity distributions due to upstream and downstream disturbances at the point of measurement are minimized.
	± 5 percent over the normal range of flow measured or 28 liters per minute (10 cubic feet per minute), whichever is greater, for gas flow rate.	
	± 5 percent over the normal range measured for mass flow rate.	
Pressure	± 5 percent over the normal range measured or 0.12 kilopascals (0.5 inches of water column), whichever is greater.	Checks for obstructions (*e.g.*, pressure tap pluggage) at least once each process operating day. Performance evaluation annually and following any period of more than 24 hours throughout which the pressure exceeded the maximum rated pressure of the sensor, or the data recorder was off scale. Checks of all mechanical connections for leakage monthly. Visual inspection of all components for integrity, oxidation and galvanic corrosion every 3 months, unless the CPMS has a redundant pressure sensor. Selection of a representative measurement location that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

APPENDIX A TO SUBPART BB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB

40 CFR citation	Requirement	Applies to subpart BB	Comment
§ 63.1(a)(1) through (4)	General Applicability	Yes	None.
§ 63.1(a)(5)		No	[Reserved].
§ 63.1(a)(6)	Contact information	Yes	None.
§ 63.1(a)(7) through (9)		No	[Reserved].
§ 63.1(a)(10) through (12)	Time periods	Yes	None.
§ 63.1(b)	Initial Applicability Determination	Yes	None.
§ 63.1(c)(1)	Applicability After Standard Established	Yes	None.
§ 63.1(c)(2)	Permits	Yes	Some plants may be area sources.
§ 63.1(c)(3) through (4)		No	[Reserved].
§ 63.1(c)(5)	Area to Major source change	Yes	None.
§ 63.1(d)		No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes	None.
§ 63.2	Definitions	Yes	Additional definitions in § 63.621.
§ 63.3	Units and Abbreviations	Yes	None.
§ 63.4(a)(1) and (2)	Prohibited Activities	Yes	None.
§ 63.4(a)(3) through (5)		No	[Reserved].
§ 63.4(b) and (c)	CircumventionFragmentation	Yes	None.
§ 63.5(a)	ConstructionReconstruction Applicability	Yes	None.
§ 63.5(b)(1)	Existing, New, Reconstructed Sources Requirements	Yes	None.
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3), (4), and (6)	ConstructionReconstruction approval and notification	Yes	None.
§ 63.5(b)(5)		No	[Reserved]
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of ConstructionReconstruction	Yes	None.
§ 63.5(e)	Approval of ConstructionReconstruction	Yes	None.
§ 63.5(f)	Approval of ConstructionReconstruction Based on State Review.	Yes	None.
§ 63.6(a)	Compliance with Standards and Maintenance Applicability	Yes	None.
§ 63.6(b)(1) through (5)	New and Reconstructed Sources Dates	Yes	See also § 63.622.
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)	Area to major source change	Yes	None.
§ 63.6(c)(1)and (2)	Existing Sources Dates	Yes	§ 63.622 specifies dates.
§ 63.6(c)(3) and (4)		No	[Reserved].

APPENDIX A TO SUBPART BB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB—Continued

40 CFR citation	Requirement	Applies to subpart BB	Comment
§ 63.6(c)(5)	Area to major source change	Yes	None.
§ 63.6(d)		No	[Reserved].
§ 63.6(e)(1)(i) and (ii)	Operation & Maintenance Requirements	No	See § 63.628(b) for general duty requirement
§ 63.6(e)(iii)		Yes	None.
§ 63.6(e)(2)		No	[Reserved]
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No	None.
§ 63.6(f)	Compliance with Emission Standards	No	See general duty at § 63.628(b)
§ 63.6(g)	Alternative Standard	Yes	None.
§ 63.6(h)	Compliance with OpacityVE Standards	No	Subpart BB does not include VEopacity standards.
§ 63.6(i)(1) through (14)	Extension of Compliance	Yes	None.
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes	None.
§ 63.6(j)	Exemption from Compliance	Yes	None.
§ 63.7(a)	Performance Test Requirements Applicability	Yes	None.
§ 63.7(b)	Notification	Yes	None.
§ 63.7(c)	Quality AssuranceTest Plan	Yes	None.
§ 63.7(d)	Testing Facilities	Yes	None.
§ 63.7(e)(1)	Conduct of Tests; startup, shutdown and malfunction provisions.	No	§ 63.626 specifies additional requirements.
§ 63.7(e)(2) through (4)	Conduct of Tests	Yes	§ 63.626 specifies additional requirements.
§ 63.7(f)	Alternative Test Method	Yes	None.
§ 63.7(g)	Data Analysis	Yes	None.
§ 63.7(h)	Waiver of Tests	Yes	None.
§ 63.8(a)	Monitoring Requirements Applicability	Yes	Non.
§ 63.8(b)	Conduct of Monitoring	Yes	None.
§ 63.8(c)(1)(i)	General duty to minimize emissions and CMS operation	No	See § 63.628(b) for general duty requirement
§ 63.8(c)(1)(ii)		Yes	None.
§ 63.8(c)(1)(iii)	Requirement to develop SSM Plan for CMS	No	None.
§ 63.8(c)(2) through (4)	CMS OperationMaintenance	Yes	None.
§ 63.8(c)(5)	COMS Operation	No	Subpart BB does not require COMS
§ 63.8(c)(6) through (8)	CMS requirements	Yes	None.
§ 63.8(d)(1) and (2)	Quality Control	Yes	None.
§ 63.8(d)(3)	Written procedure for CMS	No	See § 63.628(d) for requirement
§ 63.8(e)	CMS Performance Evaluation	Yes	None.
§ 63.8(f)(1) through (5)	Alternative Monitoring Method	Yes	None.
§ 63.8(f)(6)	Alternative to RATA Test	No	Subpart BB does not require CEMS.
§ 63.8(g)(1)	Data Reduction	Yes	None.
§ 63.8(g)(2)		No	Subpart BB does not require COMS or CEMS.
§ 63.8(g)(3) through (5)		Yes	None.
§ 63.9(a)	Notification Requirements Applicability	Yes	None.
§ 63.9(b)	Initial Notifications	Yes	None.
§ 63.9(c)	Request for Compliance Extension	Yes	None.
§ 63.9(d)	New Source Notification for Special Compliance Requirements	Yes	None.
§ 63.9(e)	Notification of Performance Test	Yes	None.
§ 63.9(f)	Notification of VEOpacity Test	No	Subpart BB does not include VEopacity standards.
§ 63.9(g)	Additional CMS Notifications	Yes	None.
§ 63.9(h)(1) through (3)	Notification of Compliance Status	Yes	None.
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5) and (6)		Yes	None.
§ 63.9(i)	Adjustment of Deadlines	Yes	None.
§ 63.9(j)	Change in Previous Information	Yes	None.
§ 63.10(a)	RecordkeepingReporting-Applicability	Yes	None.
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	None.
§ 63.10(b)(2)(i)	Startup or shutdown duration	No	None.
§ 63.10(b)(2)(ii)	Malfunction	No	See § 63.627 for recordkeeping and reporting requirement.

APPENDIX A TO SUBPART BB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART BB—Continued

40 CFR citation	Requirement	Applies to subpart BB	Comment
§ 63.10(b)(2)(iii)	Maintenance records	Yes	None.
§ 63.10(b)(2)(iv) and (v)	Startup, shutdown, malfunction actions	No	None.
§ 63.10(b)(2)(vi) through (xiv)	General Recordkeeping Requirements	Yes	None.
§ 63.10(b)(3)	General Recordkeeping Requirements	Yes	None.
§ 63.10(c)(1)	Additional CMS Recordkeeping	Yes	None.
§ 63.10(c)(2) through (4)		No	[Reserved].
§ 63.10(c)(5)		Yes	None.
§ 63.10(c)(6)		Yes	None.
§ 63.10(c)(7) and (8)		Yes	None.
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10) through (13)		Yes	None.
§ 63.10(c)(14)		Yes	None.
§ 63.10(c)(15)	Startup Shutdown Malfunction Plan Provisions	No	None.
§ 63.10(d)(1)	General Reporting Requirements	Yes	None.
§ 63.10(d)(2)	Performance Test Results	Yes	None.
§ 63.10(d)(3)	Opacity or VE Observations	No	Subpart BB does not include VEopacity standards.
§ 63.10(d)(4)	Progress Reports	Yes	None.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	No	See § 63.627 for reporting of excess emissions.
§ 63.10(e)(1) and (2)	Additional CMS Reports	Yes	None.
§ 63.10(e)(3)	Excess EmissionsCMS Performance Reports	Yes	None.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart BB does not require COMS.
§ 63.10(f)	RecordkeepingReporting Waiver	Yes	None.
§ 63.11	Control Device and Work Practice Requirements	Yes	None.
§ 63.12	State Authority and Delegations	Yes	None.
§ 63.13	Addresses	Yes	None.
§ 63.14	Incorporation by Reference	Yes	None.
§ 63.15	Information AvailabilityConfidentiality	Yes	None.
§ 63.16	Performance Track Provisions	No	Terminated.

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